

## **EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 24 APRIL 2009**

**08/0752/FL: PROPOSED EXTENSION OF EXISTING SURFACE MINE AND  
RETENTION OF EXISTING SITE INFRASTRUCTURE, PLANT AND  
BUILDINGS FOR DURATION OF EXTENDED OPERATIONS  
AT SKARES ROAD SURFACE MINE, DARNTAGGERT FARM, SKARES,  
NEAR CUMNOCK.**

**APPLICATION BY ATH RESOURCES PLC**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 Permission is sought for an extension to Area C (south) of the existing opencast site covering an area of 35 hectares comprising of commercial forestry in the ownership of Forestry Enterprise. This would be mined essentially as an extension to the previously consented workings undertaken in Areas C and F which are contiguous with the proposed extension area. The proposed new extension area has been termed as the Area D extension. Excavations would move initially in a north-east to south-west direction within the extended area primarily in two phases (the eastern strip and the western strip. Operations will take place in this manner to allow for the diversion of the Ward Burn through the restored part of the eastern strip area prior to the excavations taking place in the western strip area. Soils stripped from the Area D extension will be used to form baffle and screening mound along the northern boundary of the limit of excavation which will provide noise dust and visual screening to assist mitigation of potential impacts on the village of Skares.

1.2 The application area is underlain by some 650,000 tonnes of coal in the Ell, Lugar Main, 30 Inch and the 3 Dirt seams. These seams were being extracted in Areas C and F. the average thickness of coal over the extension area is in the order of 4.9 metres. Overburden excavated within the proposed Area D extension will be placed on the former Area C extraction area, a process that will continue for a period of approximately 7 months after which overburden will then be directed to backfill as excavation operations continue to progress on site. The backfilling operation will essentially create the final restoration profile of the site. Subsequently, when extraction in the proposed extension area is completed, the overburden storage mound will be dismantled and taken to the final void to complete restoration contours. The maximum depth of excavation is 55 metres. The applicant has indicated that the blasting of overburden prior to extraction will not be necessary within the proposed extension area.

1.3 As stated above, all site infrastructure will be provided through the existing facilities within the Skares Road site. All coals won from the proposed

extension area will be taken to the existing coal processing area within the Skares Road site and thereafter dispatched by road, using the existing agreed transportation routes, to the existing railhead at Killoch. A new internal haul road will be formed in the Area D extension to link into the existing site haul roads to transport coal to the coal processing area.

1.4 The period of extraction of coal from the proposed Area D extension is anticipated to be between 18 and 24 months, as a continuation of the current workings. Backfilling and restoration works would continue for a further period of 12 months giving a total development period of around 3 years. It is intended to restrict operations within the proposed Area D extension to a single shift between the hours of 7 am to 7 pm on weekdays and between 8 am and 12 pm on Saturdays. No operations would take place on Sundays or Bank Holidays. The coal processing and distribution operations would continue to follow the current consented operating hours for those activities.

1.5 The extension would provide continued direct employment for 37 ATH employees within the surface mining operations and provide employment for a further 20 hauliers either employed directly or contracted in the transportation of coal off site. Many of those employed are drawn from East Ayrshire and the applicant would continue to utilise numerous local sub contractors, trades and small businesses in connection with the site operations and haulage of coal. The proposed extension would also contribute to the sustained indirect employment in the local area for numerous workers and subcontractors in connection with the onward haulage, handling and disposal of the coal produced.

1.6 The current planning consents for the Skares Road site allow for operations until 2010. The proposed extension and working of Area D will result in coaling activities within the Skares Road site continuing until 2012.

1.7 Restoration of the extension area will follow a strategy of maximising the potential for progressive restoration, the visual integration / assimilation of the site into its surroundings and the enhancement and development of the ecological value of the site. The applicant envisages that the site would be restored to an ecologically based afteruse comprising a mosaic of habitats including woodland, scrub habitats, open meadow, species rich wet meadow, ephemeral ponds and the re-instated course of the Ward Burn.

1.8 The application supporting statement is also accompanied by a formal Environmental Statement that considers environmental impact that may result from working the proposed Area D extension. The principal elements of this environmental information focus on noise, air quality, landscape and visual impacts associated with the proposed development, primarily due to the proximity of the proposed development to the village of Skares.

## **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice 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 applicant, in respect of the matters described in Section 8.6 of this report.**

**2.2 It is further recommended that the application and a copy of this report be referred to the Scottish Ministers in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.**

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, the application will not require to be referred to the Principal Planning Committee as this 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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### 08/0752/FL: PROPOSED EXTENSION OF EXISTING SURFACE MINE AND RETENTION OF EXISTING SITE INFRASTRUCTURE, PLANT AND BUILDINGS FOR DURATION OF EXTENDED OPERATIONS AT SKARES ROAD SURFACE MINE, DARNTAGGERT FARM, SKARES, NEAR CUMNOCK.

APPLICATION BY ATH RESOURCES PLC

#### 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 because it represents an extension to an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan and is subject to objections.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 3 miles south west of Cumnock and 2.5 miles south of Ochiltree and lies on the south side of the B7046 Skares Road, immediately south of the small village of Skares. The application site extends to approximately 124 hectares and comprises an extension to the existing operational site (35 hectares) and part of the existing operational area (89 hectares) that contains existing site infrastructure that would be used for the duration of operations in the proposed extension area. The extension area is predominantly grazing land much of which has been disturbed by historic coal extraction operations not connected to the present operations at Skares Road.

2.2 The local area surrounding the application site is generally rural in nature, with agriculture, forestry, surface mining and an operational landfill being the predominant land uses. The site boundary extends in the north to abut the village of Skares. The closest dwellings to the proposed site operations are at Whitesmuir, located approximately 110 metres to the north of the proposed extraction area while the village of Skares is the closest community to the proposed extraction area, being located approximately 230 metres to the north.

2.3 In topographical terms, the proposed extension area has a general northerly aspect, sloping from 230 metres (AOD) in the south to 215 metres (AOD) in the north. The western most portion of the proposed extraction area comprises part of a recently created water body in former surface workings.

The Ward Burn runs through the proposed extraction area and the Watson Burn emerges on the north and western boundary of the proposed extraction area. The eastern boundary of the proposed extension area stands off of the Polcalk Burn. Two minor, unclassified roads cross the proposed extraction area to provide private access to a property owned by the applicant. There are no public footpaths or other dedicated public rights of way that cross the proposed extension area.

2.4 The retained infrastructure is established as part of the existing Skares Road operational site and comprises plant, roads and other infrastructure used in connection with the processing and distribution of coal from the site. The application under consideration does not propose any alteration to those operations or the infrastructure already on site. The extension does however necessitate the retention of the coal processing and disposal point for the duration of the extended operations.

2.5 The application site represents an extension to the Skares Road Opencast Coal site for which planning permission was granted by East Ayrshire Council for the winning and working of coal on 13 March 1997 under application CD/95/0254/MIN. This site was to be operated in two main phases by two mineral developers. The Milzeoch Farm phase of operation commenced coaling during Summer 1997 this being undertaken by William Grant (Mining) Limited. The main phase of operation at Skares Road was to be operated by Rackwood Colliery Company Limited, with operations on this part of the site scheduled to commence during 1998.

2.6 William Grant (Mining) Limited, however, went into receivership and the personal consent granted to this company has been transferred to the Miller Group under application 97/0686/FL, following approval of this application by the Development Services Committee at its meeting on 02 December 1997. The Milzeoch Farm phase of development is now in the restoration phase under the terms of the original planning consent CD/95/0254/MIN. Restoration of this site is now the responsibility of the current applicant and restoration works on Milzeoch are due to be completed during 2003.

2.7 The former Development Services Committee approved a revised application for the Skares Road site on 27 January 1998 under application 97/0596/FL. The decision notice was issued on 15 May 1998 following the completion of a Section 75 Agreement under the Town and Country Planning (Scotland) Act, 1997. Works commenced on site in 1998 with some 6 million tonnes of coal having been extracted to date and coaling operations are continuing at present although are due to finish in the near future. The Skares Road site comprises 4 separate coal extraction areas known as Areas B, C, E and F. More recent planning history is indicated in Section 6 of this report.

2.8 **Proposed Development:** Permission is sought for an extension to Area C (south) of the existing opencast site covering an area of 35 hectares comprising of commercial forestry in the ownership of Forestry Enterprise. This would be mined essentially as an extension to the previously consented

workings undertaken in Areas C and F which are contiguous with the proposed extension area. The proposed new extension area has been termed as the Area D extension. Excavations would move initially in a north-east to south-west direction within the extended area primarily in two phases (the eastern strip and the western strip. Operations will take place in this manner to allow for the diversion of the Ward Burn through the restored part of the eastern strip area prior to the excavations taking place in the western strip area. Soils stripped from the Area D extension will be used to form baffle and screening mound along the northern boundary of the limit of excavation which will provide noise dust and visual screening to assist mitigation of potential impacts on the village of Skares.

2.9 The application area is underlain by some 650,000 tonnes of coal in the Ell, Lugar Main, 30 Inch and the 3 Dirt seams. These seams were being extracted in Areas C and F. the average thickness of coal over the extension area is in the order of 4.9 metres. Overburden excavated within the proposed Area D extension will be placed on the former Area C extraction area, a process that will continue for a period of approximately 7 months after which overburden will then be directed to backfill as excavation operations continue to progress on site. The backfilling operation will essentially create the final restoration profile of the site. Subsequently, when extraction in the proposed extension area is completed, the overburden storage mound will be dismantled and taken to the final void to complete restoration contours. The maximum depth of excavation is 55 metres. The applicant has indicated that the blasting of overburden prior to extraction will not be necessary within the proposed extension area.

2.10 As stated above, all site infrastructure will be provided through the existing facilities within the Skares Road site. All coals won from the proposed extension area will be taken to the existing coal processing area within the Skares Road site and thereafter dispatched by road, using the existing agreed transportation routes, to the existing railhead at Killoch. A new internal haul road will be formed in the Area D extension to link into the existing site haul roads to transport coal to the coal processing area.

2.11 The period of extraction of coal from the proposed Area D extension is anticipated to be between 18 and 24 months, as a continuation of the current workings. Backfilling and restoration works would continue for a further period of 12 months giving a total development period of around 3 years. It is intended to restrict operations within the proposed Area D extension to a single shift between the hours of 7 am to 7 pm on weekdays and between 8 am and 12 pm on Saturdays. No operations would take place on Sundays or Bank Holidays. The coal processing and distribution operations would continue to follow the current consented operating hours for those activities.

2.12 The extension would provide continued direct employment for 37 ATH employees within the surface mining operations and provide employment for a further 20 hauliers either employed directly or contracted in the transportation of coal off site. Many of those employed are drawn from East Ayrshire and the applicant would continue to utilise numerous local sub

contractors, trades and small businesses in connection with the site operations and haulage of coal. The proposed extension would also contribute to the sustained indirect employment in the local area for numerous workers and subcontractors in connection with the onward haulage, handling and disposal of the coal produced.

2.13 The current planning consents for the Skares Road site allow for operations until 2010. The proposed extension and working of Area D will result in coaling activities within the Skares Road site continuing until 2012.

2.14 Restoration of the extension area will follow a strategy of maximising the potential for progressive restoration, the visual integration / assimilation of the site into its surroundings and the enhancement and development of the ecological value of the site. The applicant envisages that the site would be restored to an ecologically based afteruse comprising a mosaic of habitats including woodland, scrub habitats, open meadow, species rich wet meadow, ephemeral ponds and the re-instated course of the Ward Burn.

2.15 The application supporting statement is also accompanied by a formal Environmental Statement that considers environmental impact that may result from working the proposed Area D extension. The principal elements of this environmental information focus on noise, air quality, landscape and visual impacts associated with the proposed development, primarily due to the proximity of the proposed development to the village of Skares.

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

3.1 East Ayrshire Council's Roads and Transportation Division has no objections to the proposed development subject to conditions. The applicant will require to agree further maintenance contributions towards repair work carried out on the A70/B7046/U728 public road haulage route between the site and Killoch with the Roads Authority under Section 96 of the Roads (Scotland) Act 1984 and in line with the original section 75 Agreement for the site, due to damage caused by coal traffic over previous years.

***The existing Section 75 Agreement for the Skares Road site has provision for the recovery of extraordinary road maintenance costs on the agreed haulage routes.***

The B7046 part of the haulage route is currently in good condition due to jointly funded maintenance and the applicant has contributed in the past to patching work on the U728 Glenconner Road (2002 – 2005) but more work is now required. The level of contribution expected from the applicant would equate to 70% of the cost of patching repair work with EAC Roads contributing the remaining 30%. The amount of patching work required would be determined by a joint inspection survey to be carried out on the route with the work completed during the Glasgow Fair holiday period (to suit the site shutdown) in July 2009 and 2010. The applicant's contribution is expected to be in the order of £0.04 to £0.06 pence per tonne.

***Comments as per above.***

3.2 Ochiltree Community Council has not responded to the consultation letter.

***Noted.***

3.3 East Ayrshire Council's Environmental Health Division is pleased to note that no blasting operations are involved in the proposal, nor is it the intention of the applicant to operate outwith normal dayshift working. The Division does advise however that in the event of complaint regarding noise or dust being received it would require to investigate these complaints under the relevant provisions of the Environmental Protection Act 1990.

***Noted.***

3.4 Scottish Natural Heritage initially responded to the application on 19 February 2009 stating that the proposed development could have potentially serious adverse impacts on important natural heritage interests, namely otters, which are European Protected Species (EPS). It was SNH's position that there was insufficient information in the application and Environmental Statement that accompanied it to allow SNH to advise the Council as to whether the development will or will not be detrimental to the maintenance of the populations of otters at a Favourable Conservation Status (FCS). SNH therefore objected to the application until information required to demonstrate that the proposal will not be detrimental to the maintenance of the population of otters was available.

***Noted.***

As a result of the additional information in the Otter Addendum, SNH now withdraws its holding objection, but advises that consent should be refused unless matters to mitigate the impacts of the proposals are addressed by conditions or are part of legal planning agreement of any consent. The matters to be addressed as conditions or contained in a planning agreement in relation to otters are detailed in Appendix 1 of the consultation response. This response refers only to SNH's position regarding otters and its holding objection; SNH's other matters recommended for conditions as described in items 2-5 of Appendix 2 in the letter of 19 February remain.

***Any consent granted for the proposed development would be subject to conditions and / obligations within a Section 75 Agreement to fully meet the stated requirements of SNH.***

SNH is content with the Otter Addendum assessment of the main usage of the site and the comments that it is not possible to conclusively determine how the habitats may be used across an entire year. Given the information however, the results are a reasonable assessment leading to conclusions about otters uses. SNH welcomes the main proposals for mitigation set out in

Section 8, particularly the plan to translocate amphibians to newly established ponds to ensure, as far as possible, foraging for otters is maintained within the general area. SNH would remind the applicant that during translocation, workers should be on the look out for any signs of great crested newts and should there be evidence of these, SNH should be informed.

***The applicant has been made aware of these comments by SNH.***

SNH agrees with the statement in the Otter Addendum that lack of evidence of any one protected species in particular does not necessarily preclude their being present on site at a later date. As a result, SNH proposes the following matters for conditions or agreement:

(i) Mitigation Measures: The Otter Addendum identifies a range of mitigation measures aimed at maintaining the otter population at favourable condition. SNH confirms this mitigation is appropriate and largely agrees with the proposals in the Otter Addendum at Section 8 'Mitigation Measures'. SNH notes the reference in section 8.1 to the need for a licence when disturbing an otter's place of refuge. SNH stresses the need for a qualified person to examine potential holts and resting places immediately before an area is worked on - with advice sought from SNH if otters are found to be present. The only issue of significance that SNH raises is that the proposed 2 artificial holts are constructed at least **one year** prior to the loss through destruction or disturbance of any existing holts rather than 6 months prior as stated in the Otter Addendum (NB - comments subsequently amended).

(ii) Protected Mammals Management Plan: SNH agrees that these matters described in the Otter Addendum are included as conditions or agreements of any planning consent and for ease of reference these should be included, along with mitigation for badgers, and proposals for monitoring and reporting as part of a Protected Mammals Management Plan, as already outlined in SNH's earlier letter.

(iii) Survey During Operational Phases: Immediately prior to the start of each phase of excavation or other disturbance operation such as vegetation clearing or dumping of material, potential holts or resting places are examined by a suitably qualified independent ecologist "Ecological Clerk of Works" (ECoW). Should otters be found to be present, advice will be sought from SNH.

(iv) Non-protected Species: A fish survey should be undertaken prior to any work beginning on site. If populations are present in any water body to be affected in any way by the proposals then an assessment of impacts should be undertaken and mitigation produced. In particular a method statement for fish protection and translocation should be produced prior to start of work on the site should this be necessary in relation to diverting the Ward Burn. No vegetation clearance including soil strip shrub or tree removal should be undertaken within the main bird breeding season March to June inclusive without the written agreement of the planning authority.

(v) Habitats: Prior to the start of work on the site, a Habitat Restoration Plan should be produced and agreed with the planning authority which is based on the principles of the 'Outline Strategy' in the ES. Existing landscape features around the site to be retained must be properly protected by being securely fenced off with sturdy and prominently material to ensure no plant machinery or materials go within an agreed standoff and such protection is put in place before any work begins on site. Species for reseeded and planting must be native to the area, typical of location and conditions, thus species such Highland bent (*Agrostis castellana*) should be replaced by a locally typical species found in similar conditions in or around the site. The restored water course should be fenced at a distance of at least 5 times the bed width of the watercourse and a trough be provided for stock drinking. Gates may be required to allow light grazing to provide sward height and structure to be maintained in accordance with best practice as outlined in Scottish Natural Heritage's booklet 'Grassland for plants and animals'.

(vi) Landscape: Restoration should adhere to the guidance in 'Ayrshire Landscape Assessment – Land Use Consultants on behalf of SNH', which identifies the following management as appropriate to the key landscape types in this area:

- Reinstate hedgerows and hedgerow trees.
- Establish herb rich meadows to enhance wildlife interest.
- Create new woodlands appropriate to setting.
- Potential for low-key recreational development

(vii) Restoration Bond: A bond is secured for mitigation and restoration works outlined in the ES or in any other documents associated with consent for this proposal.

***Any consent granted for the proposed development would be subject to conditions and / obligations within a Section 75 Agreement to fully meet the stated requirements of SNH.***

3.5 Scottish Power Energy Networks has no objections to the proposed development but advises that it has an operational sub-station and / or overhead lines that may be affected by the proposed development.

***The applicant is aware of SP Energy Network apparatus that may be affected by the proposed development.***

3.6 The Scottish Environment Protection Agency had originally objected to the proposed development and in subsequent correspondence highlighted the reasons for the maintenance of our objection to the planning application. SEPA has now received supplementary information from the applicant which has subsequently been assessed and reviewed. In this regard SEPA now indicates that the hydrogeological conceptual model has been significantly improved since the original ES and is now supported by site specific factual data. Baseline groundwater monitoring has now commenced and the initial results are acknowledged as being generally consistent with the conceptual

model. On the basis of the information presented, SEPA considers that the proposed extension to the opencast operation at Skares, provided it is managed in accordance with best practice, is unlikely to pose a significant adverse risk to the water environment, inclusive of groundwater. SEPA would therefore confirm it is now willing to remove its objection to the planning application.

***Noted.***

SEPA would offer the following advice/recommendations:

(i) A CAR abstraction permit will be required for the proposed dewatering of the opencast extension.

***The applicant is aware of the requirement for a CAR permit from SEPA.***

(ii) The backfill risk assessment must be revised as appropriate, once the results of the QXRD testing are available. In particular, given that measurable concentrations of List I metals were detected in the leachability testing, the backfill risk assessment should seek to demonstrate that backfilling will not lead to the direct discharge of List I substances to groundwater or to pollution of the groundwater by List II substances. It is also recommended that the use of any available analogue data is considered when the backfill risk assessment is completed.

(iii) Ongoing monitoring should be undertaken in advance of any excavation works and should continue during mineral extraction and during the aftercare period. The overall scope of the monitoring is considered reasonable, however SEPA would request that ammoniacal nitrogen is added to the quarterly monitoring suite. SEPA would also expect the surface waters to be subject to ongoing monitoring. The monitoring results should be regularly reviewed, and the monitoring plan should be amended and updated as necessary.

(iv) SEPA would emphasise the importance of ensuring that the headworks for Borehole SLR5 are designed and constructed such that water does not overflow in an uncontrolled manner.

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

SEPA would encourage the applicant to produce a Construction Management Plan (CMP). Before production of a CMP, it is essential that baseline information is available for all environmental receptors on and off site considered to be “at risk” from the development. It is important to also identify ephemeral ditches and field drains that tend only to flow in wetter conditions and which may easily be overlooked during site survey work. The effectiveness of proposed mitigation measures must be assessed through regular environmental monitoring on site and comparison with conditions on

site prior to any works commencing. Should planning permission be granted then SEPA would request a condition such that no work commences on site until the CMP has been submitted to SEPA for comment. Having a CMP will only be effective if it is fully implemented by all operators on site. When work commences, it is essential that there is a named person, responsible for the CMP, who has the necessary expertise and authority to control works on site. A named responsible person should always be on site whenever works are in progress.

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

SEPA has no objection to the proposed development on flood risk grounds, subject to the following planning conditions being imposed:

- The Ward Burn diversion channel is to be engineered to have sufficient capacity to retain a 0.5% annual probability flood without overtopping;
- The original slope and characteristics of the Ward Burn are to be reinstated.

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

SEPA states that the processing of coal at this site will require authorisation under The Pollution Prevention and Control (Scotland) Regulations 2000 as amended (PPC). PPC does not cover the excavation and movement of overburden material required to allow access to the coal measures, this being the responsibility of the local authority.

***Noted.***

The proposed extension to the existing opencast operations at Skares Surface Mine highlights a number of significant sources of particulate matter including fugitive dust from the materials handling, site operations and from transport sources and unpaved haul roads. There are numerous relevant exposure sources within 1km of the site and in particular the nearest receptor would appear to be approximately 100 m to the north-west of the site boundary. The Environmental Statement uses national inventory background concentrations to assist in predicting impact of PM10 on local air quality which it concludes would not lead to exceedences of the PM10 Objective level of 18ug/m<sup>3</sup>. Considering the close proximity of receptors, SEPA would recommend that the local authority should request that the developer conduct ambient background air monitoring prior to commencement of operations at these receptors to assess likely impact on air quality as a consequence of this development. It is also SEPA's opinion that additional baseline information regarding wind speed and wind direction would be required to justify the conclusions reached regarding the likely impact on the adjacent receptors, this will be particularly relevant for the receptors at risk during the winning and

working operations in Area 4 of the planned extension.

Furthermore, these locations should be monitored for PM10 using a particulate monitor which is compliant with Local Air Quality Management Technical Guidance TG(03) rather than dust gauges which are more synonymous with dust nuisance monitoring. The baseline monitoring data should be used to validate the atmospheric dispersion modelling conducted for the site. Modelling should be in the form of an industry standard model rather than a nomogram assessment and using actual monitored background concentrations rather than National Air Quality Archive predicted data.

***The obligation of the applicant to conduct baseline air quality monitoring and ongoing air quality monitoring can be secured by means of a Section 75 Agreement, the details of which can be the subject of discussion and agreement with the Planning Authority in consultation with SEPA.***

The assumption contained within 'Local Review and Assessment of Air Quality', in Section 9.46 states that local air quality management reports conducted by the East Ayrshire Council conclude that levels of particulate matter have been within the objective levels: SEPA would affirm that with the exception of a detailed assessment to be conducted in Cumnock and the Doon Valley during 2009, SEPA is unaware of any historic monitoring programmes for particulate matter undertaken by East Ayrshire Council which would justify this statement.

***Noted.***

The EIA identifies that the principal measure to be utilised by the applicant for ensuring that particulate matter and dust emissions are appropriately mitigated during the proposed coaling operations at the site is by wetting the ground, roads, overburden areas, etc as and when required. SEPA would highlight that the onerous burden of responsibility for managing this risk will require to be fully endorsed by the applicant, as inevitably failure through poor housekeeping to control this issue could result in unacceptable dust emissions outwith the site boundary. This issue is heightened due to the proximity of the receptors to the site.

***Noted.***

3.7 Scottish Water has no objections to the proposed development.

***Noted.***

3.8 The Health and Safety Executive has no comments to make on the Environmental Statement.

***Noted.***

3.9 The Royal Society for the Protection of Birds does not object to the proposed development but takes the opportunity to comment on some aspects of the proposal, including issues that it believes should be addressed using suitable conditions or by legal agreement, should the Council be minded to grant consent.

***Noted.***

(i) Assessment of Impact: RSPB is satisfied with the conclusions of the EIA that the habitats on the site are of low ecological value but that the marshy grassland, ponds and woodland habitats will have value to a range of breeding birds. RSPB is disappointed to see that the proposals will involve the removal of new native woodland in the north-east of the site, which is understood to have been established at the time of consent of the original development. The diversion of the Ward Burn will also have a negative impact for the lifetime of the operation and depending on the quality of the restoration, potentially after re-instatement. RSPB believes that these negative impacts can be minimised by careful timing of works and implementation of a well-designed restoration plan that maximises habitat value of the site.

***Noted.***

(ii) Restoration Plans: RSPB supports the intention to restore habitats to a mix of grassland, wetland and native woodland. RSPB believes that the priorities for restoration of the Skares site are:

- Creation of wet grassland and scrapes for the benefit of breeding waders
- Creation of hedgerow habitats to benefit farmland passerines
- Restoration of the Ward Burn to a habitat of high ecological value.

As with all restoration schemes, the degree of success in delivering habitats of ecological value will depend on the details of site restoration. RSPB therefore requests that should the Council be minded to grant consent, a condition be used to ensure a restoration plan is agreed and implemented to the satisfaction of a Technical Working Group, including representatives of appropriate conservation bodies. A bond should also be secured through appropriate condition or legal agreement to ensure that restoration is delivered.

***The requirements of RSPB can be secured by obligations within a Section 75 Legal Agreement, either by provisions within the existing Skares Road Section 75 Agreement or by appropriate amendments to it.***

(iii) Disturbance to Nesting Birds: the Nature Conservation (Scotland) Act 2004 gives protection to all nesting birds and RSPB requests that, should the Council be minded to grant consent, a condition be used to ensure that

vegetation clearance takes place outside the bird breeding season (March to July inclusive).

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

3.10 The West of Scotland Archaeology Service indicates that there is no known archaeological issue raised by the proposed development.

***Noted.***

3.11 Historic Scotland notes that the historic environment has been scoped out of the Environmental Assessment and confirms that for its historic environment interests at the national level, it is content that this is the case.

***Noted.***

3.12 The Scottish Government Climate Change and Water Industry Directorate (Water Industry Division) makes the following comments on the Environmental Statement:

(i) Air Quality – We note that a detailed assessment has been undertaken to consider the potential impacts of the proposed development on local air quality, that mitigation measures are proposed to control dust emissions from onsite operations and that impacts from the development are considered to be short or medium term with no significant impacts on local air quality.

(ii) Noise – We note that an assessment of noise has been carried out and that mitigation measures to ensure the potential for noise disturbance at adjacent sensitive properties is minimised and are recommended in the report.

(iii) Soils – The developer may wish to consider providing Agricultural Land Classification (ALC) for the land which will be altered from grazing land to mining. This will confirm whether the land is of poor agricultural quality, and hence that the restoration plans are appropriate.

(iv) Soil stripping and storage – The developers may wish to note the provisions of PAN 64: Reclamation of Surface Mineral Workings which gives advice on the need (or otherwise) to strip and store individual soil layers separately, and on storage conditions including duration and bund height.

***The applicant has been made aware of the comments of the CCWID.***

3.13 The Scottish Government Trunk Roads Network Management Division (Transport Scotland) states that the proposed development will have little impact on the trunk road network and on that basis has no comments to make.

**Noted.**

3.14 The Ayrshire Rivers Trust states that there is a complete lack of detail regarding the proposed diversion of the Ward Burn. The diversion will be constructed on backfill and there are no details of the methodology to be adopted. The route of the burn diversion may require sealing as there is a risk of the water loss through the backfill. This would be particularly important during low flow periods when any loss of water would have a major detrimental impact on the burn downstream. Points that should be considered include potential lining material for the diversion, and the preservation of suitable substrate for the proposed diversion and reinstated channel.

***In response the applicant has indicated that details of the Ward Burn diversion were not included in the planning application as it would be subject to a subsequent CAR application to SEPA where such detail would be provided. The applicant has met with SEPA to discuss the proposed diversion and an appropriate application prepared which has been circulated to ART for comments prior to formal submission.***

ART supplied the consultants who produced the ES with electro-fishing data (2007) from the lower Ward Burn close to the A70 road; however the data was not included in the ES. The survey found a single trout parr only, with an absence of trout fry and salmon. The trout parr results were in the bottom quintile in the Scottish National classification scheme. The worryingly low results from the site are typical of most of the burns draining into the Lugar Water between Ochiltree and Cumnock. It is probable that discharges from the opencast site, or changes in the hydrology associated with the mine workings, along with other activities such as the landfill site are largely responsible for the poor fish populations. The loss of what should be significant production of juvenile salmon and trout from these nursery burns is a major loss to the Lugar Water fishery and general biodiversity in the area. There has been no assessment of fish populations in the Ward Burn within the proposed works area. If the burn is diverted there may be a requirement to carry out a fish rescue with transplantation to an undisturbed part of the burn.

***The applicant has confirmed that an electro-fishing survey will be carried out in June of this year (a requirement also forming part of the response from SNH). The results of such a survey will determine whether fish are present and if so, a programme of relocation is to be implemented by the applicant.***

The headwaters of the Skares Burn have been subject to severe disruption during the operation of the Skares Road site. As the site is operating on a relatively old consent it would appear that there is a lack of control measures to protect the burn. The proposed extension is a further disruption to the ecology and hydrology of the Ward Burn. The survey work undertaken during the production of the ES found considerable evidence of otter activity in the Ward Burn, but concluded (paragraph 7.55) that otter(s) would utilise the

Ward Burn during the spring when there would be increased availability of amphibian prey and suggested that there would be insufficient prey available in the burn to sustain otters at other times. The lack of fish data from the Ward Burn in the proposed works area makes it difficult to comment.

***The issue of otters is addressed in both the Environmental Statement and the Otter Addendum report. SNH, on the basis of the clarifications contained within this report, has now withdrawn its holding objection, subject to certain matters being addressed by means of planning conditions or by obligations within a Section 75 Legal Agreement.***

There has been a history of pollution incidents from the Skares Road site, including three known by ART in 2008. These incidents included diesel spills and discharge of dirty, silt laden water. These incidents will have a cumulative negative impact on the ecology of the burns affected and the Lugar Water. The ES states that ATH has “significant experience in dealing with and managing surface water runoff “. Whilst this may be the case at other ATH sites it is the experience of ART that the Skares Road site is not well managed in that respect. It is the opinion of ART that these incidents will continue due to the lack of mitigation measures associated with the original Skares Road site with an increased likelihood of further incidents during the diversion and reinstatement of the Ward Burn.

***The applicant has stated that it has recently undertaken a review of its water management procedures at Skares and has now implemented a number of additional measures with an updated water management system to improve on the current situation that has caused previous concerns. The applicant acknowledges that some problems did occur at Skares last year which was partly due to the fact that a large part of the site was restored last year with soils put back on the land. Unfortunately this was too late for grass to grow albeit it had been seeded. This led to some dirty surface water run-off in times of high rainfall. This temporary problem was addressed by the construction of two further settlement lagoons to assist in slowing down the flow of water and allow any suspended solids to settle out. It is anticipated that the establishment of the grass on the restored area in the Spring will alleviate the problem. The discharges from the Skares Road site are closely monitored by SEPA and the applicant has been working closely with SEPA to manage the water environment around Skares.***

Whilst the ES ecology chapter (paragraph 7.119) may be correct in concluding that the proposal provides an opportunity to improve the habitat within the area it should be noted that with the exception of the high intensity grazing level there is little wrong with physical habitat of the Ward Burn in that area at present and that the proposed works will only damage the burn and riparian habitat for years to come.

***The views of ART are noted.***

ART welcomes the proposed inclusion of riparian fencing along the reinstated course of the burn. In summary ART consider that there has been insufficient detail provided to ease concerns regarding the impact of the proposed diversion and that there is increased likelihood that the history of incidents from the site will continue.

***It is considered that with the provision of further information as requested by SEPA and the fact that the proposed diversion will require to be the subject of a CAR application which has already been the subject of discussions between the applicant and SEPA, the concerns of ART will be addressed.***

#### **4. REPRESENTATIONS**

4.1 A total of four letters of representations have been received, from 5 signatories, with two of the letters raising points of concern while the other two letters raise objections to the proposed development. The points of representation are summarised below.

4.2 The application is outwith the terms of current planning policy regarding the distance required from residential dwellinghouses. Our understanding is that financial incentive has been offered to individuals concerned; however we remain concerned regarding the detrimental affect to the area and our property.

***The respondents' property lies some 600 metres from the site boundary of the proposed Area D extension and some 700 metres from the proposed extraction area at its closest point. The proposed Area D extension has been tailored to meet acceptable environmental operational standards for the properties in Skares village that lie much closer to the proposed workings than the respondents property and in this regard it is unlikely that significant environmental impacts will be experienced in their case.***

4.3 The plans show that the Watson and Ward Burns will continue to be crossed and disrupted by the opencast workings, in particular the Ward Burn with this extension. During the current operations we have had to report the applicant on three separate occasions to SEPA regarding the Watson Burn. The burn disappeared altogether for a period of weeks at a time and affected the watercourses and supply of this natural resource to our fields and livestock. These burns are the only supply water to our land and for this reason we feel strongly that this should be taken into account regarding the environmental impact. The applicant has not met the terms of their previous application when our supply was disrupted. It was only through the involvement of SEPA that this was rectified.

***The current Section 75 Agreement for the Skares Road site contains an obligation for the operator to maintain water supplies / abstractions to properties and, in the event of loss of supply attributable to site operations, is required to provide alternative means of supplies. The Planning Authority has not previously been made aware of these incidents nor is it aware of the circumstances or remedies applied in these events. In response to the concerns raised the applicant has responded indicating that they will endeavour to ensure their operations do not cause a loss of flow to the water in the Watson and Ward Burns. Prior to any operations commencing on site the applicant would agree to an emergency protocol in discussion with the respondents to provide an alternative supply of water in the unlikely event that there is no water flow in either the Watson or Ward Burns. This is likely to take the form of a provision of a water bowser to ensure that there is a supply of water for livestock at agreed locations. This protocol could be secured by means of a legal obligation in a Section 75 Agreement including a requirement to notify both the Planning Authority and SEPA should such an event occur.***

4.4 We are concerned about the impact of noise to our property as currently we can hear the workings throughout the day and night and clearly this will increase. From the application no noise assessment has been carried out regarding our property and we feel that this is another reason the policy regarding distance should be adhered to.

***No noise assessment was undertaken at the respondents' property as it is not the nearest noise sensitive property to the proposed workings. The Area D extension scheme has been designed, with appropriate mitigation measures detailed in the Environmental Statement, to meet the required environmentally acceptable noise limits at the nearest property i.e. Whitesmuir. It is therefore considered that these noise levels will also be met at the respondents' property which is located a further 700 metres away from the limit of excavations in Area D. In addition, the noise monitoring locations were agreed with East Ayrshire Council. The applicant also proposes that workings will only take place as a single shift operation between the hours of 0700-1900 hours on weekdays and 0800-1200 hours on Saturdays.***

4.5 It is well known that there are underground mine workings in Skares and the surrounding area. We raise our concern that by extending the excavation to such close proximity of dwellinghouses and our property that damage could be incurred or underground workings disturbed. This should be taken into consideration that there may be an increased risk to individuals, property or livestock.

***The proposals do not include working or disturbance of any underground workings with 150 metres of any property, and***

***therefore it is considered that no damage will occur to any property within the village and certainly not the respondents' property which is located over 700 metres away. Furthermore no blasting operations will take place in the Area D extension. In addition it is considered that with the removal of old workings by the proposed excavations and then backfilling the area it will actually make the extension area safer from a mineral stability perspective. Prior to workings commencing on site, the applicant will require to undertake a full geotechnical assessment which is required by the Coal Authority for them to issue the requisite extraction licence.***

4.6 There has been a report of a Peat Bog Explosion at a site near New Cumnock which is mined by the applicant. This should be taken into account in considering this application due to the proximity of other private dwellings and our property. There are now a significant number of young children in the village and we have two of our own. Surely their safety must be made a deciding factor in considering this application and whether the current planning policy should be implemented fully and ensuring that the distance is maintained from property.

***There is no peat within the proposed extension area and therefore there is no chance of peat slippage occurring. The workings will be surrounded by fencing to comply with public safety requirements under both health and safety and mines and quarries legislation.***

4.7 We have concerns regarding the environmental impact of the extension, specifically to the watercourses which pass through Dumfries Estate prior to entering the Lugar Water on the Estate. We are especially concerned that the proposed activities will have a significant negative effect on the trout and salmon numbers in the burn, and hence the Lugar Water. The recent electro-fishing surveys have suggested the levels of parr are at severely worrying levels and it is understood that it is believed that the main contributing factor to this are the mine workings. We are further concerned by the number of pollution incidents presently occurring from the existing site, which does not fill us with confidence for such an extension.

***The applicant has stated that it has recently undertaken a review of its water management procedures at Skares and has now implemented a number of additional measures with an updated water management system to improve on the current situation that has caused previous concerns. The applicant acknowledges that some problems did occur at Skares last year which was partly due to the fact that a large part of the site was restored last year with soils put back on the land. Unfortunately this was too late for grass to grow albeit it had been seeded. This led to some dirty surface water run-off in times of high rainfall. This temporary problem was addressed by the construction of two further settlement lagoons to assist in slowing down the flow of water***

**and allow any suspended solids to settle out. It is anticipated that the establishment of the grass on the restored area in the Spring will alleviate the problem. The discharges from the Skares Road site are closely monitored by SEPA and the applicant has been working closely with SEPA to manage the water environment around Skares.**

4.8 There is a complete lack of detail regarding the diversion of the Ward Burn. The Ayrshire Rivers Trust biologist, who is also employed by the River Ayr Board, considers that there are major problems because of the lack of details that is to be adopted.

**In response the applicant has indicated that details of the Ward Burn diversion were not included in the planning application as it would be subject to a subsequent CAR application to SEPA where such detail would be provided. The applicant has met with SEPA to discuss the proposed diversion and an appropriate application prepared which has been circulated to ART for comments prior to formal submission.**

4.9 The surveys of fish on the lower Ward Burn next to the A70 show minimal catches. It is thought that discharges from opencast sites around are causing impurity. Any extension would result in further fish stocks being reduced.

**The comments of the respondent are noted. However, SEPA does not object to the proposed development on the basis of the mitigation measures proposed in the Environmental Statement and information supplied to SEPA to satisfy its former objection to the development.**

4.10 There has been no proper survey done on the fish population in the Ward Burn in the works area and if the burn needs to be diverted, a fish rescue scheme has to be implemented.

**The applicant has confirmed that an electro-fishing survey will be carried out in June of this year (a requirement also forming part of the response from SNH). The results of such a survey will determine whether fish are present and if so, a programme of relocation is to be implemented by the applicant.**

4.11 Head water at Skares Burn is subject to severe disruption during the Skares Road workings. There is a lack of controlled measures protecting this burn and the proposed extension would cause further problems. There is a history of pollution incidents from the Skares Road site and there is concern that further works will only increase this.

**Comments as per paragraph 4.7 above.**

4.12 We again read that the extension would provide continued employment for 37 ATH employees, thus doubtless ‘the foot in the door’ approach to continued extraction. However, the continuity of employment can be obtained through restoration; if not on this site then on other sites in the locality owned and operated by the developer.

***The objector is correct to recognise that employment can be obtained through site restoration. It must be appreciated however that the employment created through restoration is in addition to the 37 direct positions and the other indirect positions that the extension proposal will retain. The employment benefits that accrue through surface mining are repeated at several positions through the Development Plan and SPP16 as highlighted in Sections 5 and 6 below. The opportunity to retain local employment is clearly a material consideration in determining the planning application, particularly in the current economic climate.***

4.13 It is time that East Ayrshire Council had a thorough review of the state of opencast sites within its control. Some have not been restored, or work has ground to a halt.

***Monitoring of all current operational opencast sites in East Ayrshire is an ongoing process and will continue to be so. It is unclear which sites the objector is referring to in terms of lack of site restoration, although two sites (not operated by the present applicant) where coaling had ceased for a period of time have recommenced operations.***

4.14 Policy MIN39 requires the developer to present to the Council a formal mining progress plan every year. We request that such a plan be submitted to elected members for their examination before any such new application is determined. After 11 years of open-casting here, it is time for this company to demonstrate that restoration is up to speed and to the required quality.

***The submission of a Progress Plan is a predetermination requirement relative to the current planning application. Notwithstanding the requirement for annual mining progress plans, the Skares Road site has an active Community Liaison Committee which meet regularly and have community and Elected Member representation. Mining progress reports are a fixed feature of agendas of such meetings and provide more frequent, up to date information of site workings and restoration progress.***

4.15 As this development represents a significant development plan departure, we ask that it be referred to the main Development Services Committee. The application site is wholly outwith the potential opencast areas identified in the adopted opencast subject plan.

***For the reasons set out in Section 5 below, the proposed development is not considered to represent a significant***

***departure from the development plan and accordingly the route for determination under the Scheme of Delegation is through the Local Planning Committee.***

4.16 It will swamp and overwhelm the settlement of Skares which has endured quarrying, opencasting, landfill and sewage sludge dumping for almost a generation.

***The coexistence of the proposed extension with the settlement of Skares has been a material consideration in site design and has been a particular focus of the various assessments which are reported in the Environmental Statement. It is significant to note that in preparing the development scheme the applicant has undertaken local community consultation with the residents of Skares and that the extent of development proposed has taken cognisance of that consultation.***

4.17 The developer's statement that the effects of extraction almost up to the village boundaries 'would be seen in the context of disturbance associated with neighbouring operations at Skares SM and Garlaff landfill ' is outrageous if it implies that as they are already affected by dirty, industrial operations, they can put up with more.

***The comments of the objector are noted. However it is important, in assessing potential landscape and visual amenity impacts, that intended developments are put in the context in which the development would be seen. Paragraph 6.199 of the Environmental Statement to which the objector refers quite correctly describes that the intended development would not appear dissimilar to other local developments. The same paragraph goes on to summarise the landscape benefits that would arise through the development.***

4.18 The cumulative impact of opencasting west, south and east of Skares village, with the added known smell, dust and rubbish nuisance from Garlaff landfill site should presume immediately against the current proposal under policy MIN12.

***Assessment of the proposed development against the provisions of Policy MIN12 of the East Ayrshire Opencast Coal Subject Plan (EAOCSPP) is set out in Section 5 below. It is accepted that the proposed development would result in opencast operations extending in excess of 10 years, albeit the consented life of the Skares Road site is 12 years at present. However, the applicant has in effect secured a formal legal agreement with the residents of Skares that sanitises the issue of cumulative impact of opencast operations in terms of timescale. Moreover, Policy MIN 12 of the Subject Plan is directed principally to the establishment and proliferation of 'new opencast coal developments' as***

***opposed to the extension or alteration of existing sites. The current planning application is of course for an extension of an existing operation and so Policy MIN 12 is not directly applicable to this application. The potential for cumulative impacts to occur has nevertheless been considered at various points throughout the Environmental Statement and therefore forms part of the overall EIA as is required by Policy MIN 12 for new opencast coal developments.***

4.19 Policy MIN2 presumes against new developments outwith Potential Coal Extraction Areas (PCEA) unless they are small scale (less than 25 hectares) and will be short term (less than 2 years in total) and demonstrate clear environmental benefit for affected communities etc. This proposal contravenes this policy.

***Policy MIN 2 relates to new opencast coal development outwith PCEAs as identified in the EAOCSP. The present application under consideration is an extension to an existing opencast coal site and assessment under Policy MIN2 is not appropriate. Extensions to existing opencast coal sites require to be assessed under Policy MIN3 as set out in Section 5 below.***

4.20 Policy MIN4 (i), (ii), (iii), (iv), (v), (vi) and (viii) also cannot be satisfied.

***The objector does not clarify why the proposal cannot satisfy the provisions of Policy MIN4 but assessment of the proposal against this policy is also set out in section 5 below.***

4.21 The proposal is contrary to SPP16 which advises for the safeguarding of communities that proposals are likely to cause particular difficulty and may be unacceptable where they involve a substantial area for extraction over an extended period for more than 10 years; where they are likely to be the subject of repeated extensions perpetuating disturbance to local communities for a period substantially longer than 5 years; where it is in an area already subject to opencasting where cumulative impact would be unacceptable; and where associated road haulage passes through communities. To propose such extraction within 230 metres of Skares, with even more disturbance from noise and dust from soil stripping and bunding right up to the B7046 into the village is unacceptable.

***In the case of SPP16, paragraph 11 sets out a general rule that dissuades operations within a 500 metre separation distance from communities but acknowledges that the separation distance may be tailored to suit local circumstances. The proximity of workings to local residential receptors has been a key consideration at various parts of the Environmental Statement. The various assessments have concluded that the potential environmental effects of the workings in proximity to those receptors can be mitigated and controlled to acceptable levels.***

4.22 There used to be a Right of Way/ track running south by Knockdunder over the hill. Part of it has already been removed with no alternative or diversion. One of the routes up to the Martyr's Grave was to be destroyed by the extension to House of Water, so we would ask the Council to ensure that there is still an accessible route remaining.

***There are no identified Rights of Way affected by the proposed Area D extension.***

4.23 If Skares Road is programmed as part of the Core Paths network in the path / cycleway proposed by Scottish Coal, then a continuation of heavy coal HGVs running on this rural road should be viewed unfavourably. The road and verges continue to be damaged by coal lorries and the dirt and damaged drainage are not conducive to use by walkers or cyclists.

***The coal haulage route is an established route for the Skares Road site which is subject to ongoing repair and maintenance as indicated in the consultation response from the Roads and Transportation Division, significant contributions to which are made by the applicant. The proposed development does not impact on the Core Paths network.***

4.24 We have grave concerns regarding the applicant altering drainage patterns yet again i.e. proposing to divert the Ward Burn, as there have already been pollution problems resulting. It would appear as Garlaff is adjacent to the site that there will be run-off from the landfill which has to be considered as a further complication of pollution risk. The applicant's site plans show a chain of lagoons just east of their site boundary. If the Ward Burn is to be diverted further east, after 12 months working, into a restored area, then 2 streams and many lagoons will be close together increasing flood risk. The plans show a large lagoon the size of Skares village. There should always be concerns about flood risk particularly in an upland area with high rainfall and where run-off is greater than ground porosity.

***The issue of flood risk has been assessed in the consultation response received from SEPA, which indicates that flooding is not considered to be a significant issue in this proposed development.***

4.25 The Watson Burn will be affected as it runs through the area south of Skares village which is also proposed for opencast coal extraction.

***The impact of the proposed development on the Watson Burn is acknowledged. However, the consultation responses from SEPA no longer raise any objections in terms of hydrology and water catchments.***

4.26 The application will require to be notified to the Scottish Government as the distance of the site boundary, the overburden areas and the proposed

void all fall into the parameters required in Circular 20/1998, in relation to distances from an existing community or sensitive establishment.

***The application, should the Committee be minded to approve it, will require to be notified to the Scottish Government, not in terms of the above circular which has now been superseded, but in terms of Planning Circular 3 2009: Notification of Planning Applications which introduced the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.***

4.27 We ask that this application be refused and remind the Council yet again of the elected members' minuted statements forwarded to the Scottish Government less than a year ago, that East Ayrshire Council has 'done its bit' in satisfying national energy requirements in terms of coal and renewable energy production.

***Noted.***

## **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 The Approved Ayrshire Joint Structure Plan 2007, in paragraph 11.4, states that the extraction of coal by opencast methods is an important economic activity within East Ayrshire and is likely to remain so over much of the plan period. The previous structure plan identified preferred areas for opencast coal extraction and this remains relevant.

***The proposed Area D extension falls within a preferred Area of Search as previously identified in the Key Diagram of the Ayrshire Joint Structure Plan 1999.***

5.3 Paragraph 11.4 continues by stating that a subject plan has been prepared by East Ayrshire Council and approved. This will guide development over the next 10 years and no further preferred areas require to be identified.

***Noted.***

**It is considered that the proposed development does not conflict with the provisions of the approved Ayrshire Joint Structure Plan 2007.**

East Ayrshire Opencast Coal Subject Plan

5.4 The application requires to be assessed against relevant pertinent policies promoted within this subject plan. *Note that in the following paragraphs some of the policies are summarised.*

(i) Policy MIN 1: All future opencast coal developments will be directed towards and limited to the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

***The proposed Area D extension does not fall within a Potential Coal Extraction Area but no operational sites were identified as such in the preparation of the plan. Notwithstanding this, the application requires to be assessed as an extension to an existing operational site.***

(ii) Policy MIN 2: There will be a presumption of refusal of applications for any new opencast coal developments outwith the Potential Coal Extraction Areas with the exception of small scale, short term extraction proposals which meet the following criteria:

(i) there is clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction.

(ii) there is an overall benefit for communities affected including local employment; and

(iii) there are no conflicts with any other Subject Plan Policies.

***The proposed development represents an extension to the existing Skares Road operational opencast coal site and therefore requires to be assessed against Policy MIN3.***

(iii) Policy MIN 3: Subject to detailed consideration the Council will generally be supportive of any proposal to extend an existing operative opencast coal site within the Potential Coal Extraction Areas either laterally or through an increase in the depth of existing workings provided that the following criteria are met:

(i) that the proposed extraction operations are carried out as a sequential phase of development and not independently or in isolation from the extraction programme of the original approved site;

***The proposed development represents an extension to the existing operations and will be carried out as a sequential phase of the approved development in Areas C and F of the Skares Road site.***

(ii) that the extended operations utilise fully the facilities and site infrastructure serving the original opencast site; and

***The proposed development will be carried out utilising existing site facilities and infrastructure.***

(iii) that the scale of operations, rate of extraction and number of vehicle movements generated by the extended site are commensurate with those as existing on the original site.

***The scale of operations, rate of extraction and number of vehicle movements generated by the extended site operations will be commensurate with current site operations.***

(iv) that the proposed extension does not significantly prejudice plans for the restoration of the existing site.

***The proposed Area D extension will result in a delay in full restoration of part of Area C and the site establishment / coal processing areas. However, the proposal is not considered to impact significantly on the overall restoration programme of the existing operational site.***

***However part of the proposed extension area lies outwith a Potential Coal Extraction Area.***

Outwith the Potential Coal Extraction Areas, the Council will assess any extension proposal on its own merits and against the above criteria, and will generally not be supportive of such development except where

(v) there is a clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction.

***The proposed operations in Area D and subsequent restoration of the site will result in the rehabilitation of former surface mine operations in the north-eastern and western sections of the proposed extension area (not related to the consented Skares Road operation) and extensive old underground workings in the Lugar Main Seam from Dykes Colliery and Whitehill Colliery in the north-western part of the extension area.***

(vi) there is an overall benefit for communities affected, including local employment;

***The coaling within the proposed extension area will safeguard the jobs of approximately 37 employees, 20 hauliers and other contractors and service providers for approximately 3 years.***

(vii) there are no conflicts with any other Subject Plan Policies.

***It is considered that the proposed development does not present any significant conflict with the other Subject Plan Policies as clarified below.***

Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a total extraction period in excess of 10 years will not be considered acceptable, unless it can be clearly demonstrated that there are significant local community and local environmental benefits to be secured by the development.

***The existing Skares Road opencast site has a current consent for a 12-year period (2010). The proposed operations will result in operations extending into 2012, although extraction operations will cease during 2011. The Skares Road site covers an extensive geographical area and it should not be assumed that there has been disturbance to local communities throughout the operational life of the site to date. Notwithstanding this, it is considered that there are significant local community and environmental benefits to be secured by the proposed development as stated above. Furthermore the 'support' of the community of Skares for the Area D extension has been secured through the formal legal agreement reached with the applicant and by the proposed mitigation measures promoted within the Environmental Statement which seeks to minimise adverse impacts on this community.***

***It is considered therefore that the proposed development is consistent with the provisions of Policy MIN3***

(iv) Policy MIN 4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against the following criteria:

(i) the impact on agricultural land quality, the landscape character and visual amenity of the area, and the natural and built environment;

***The Environmental Statement that accompanies the application indicates that the impact on the landscape character and quality of the site will be minimal, particularly given the short term nature of the proposed development. Furthermore with the restoration proposed there will be a net benefit in landscape character and visual amenity of the site and net benefits to the natural***

**environment. No statutory or non-statutory natural or built environment interests will be affected by the proposals.**

(ii) the impact on the area of noise, dust and the contamination of ground and surface water and air quality;

***It is considered that in line with the existing controls imposed in the existing consents for the Skares Road site, the proposed Area D extension can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards. It is of particular note that the proposed operations in Area D do not include any blasting operations and that work will be undertaken on a single shift operation which removes 24 hour continuous working for this part of the Skares Road site.***

(iii) the impact of the development on local communities, groups of houses and individual dwellings;

***It is considered that in line with the existing controls imposed in the existing consents for the Skares Road site together with additional controls as detailed elsewhere in this report, the proposed Area D extension can be operated in such a manner as to minimise any adverse impacts on the village of Skares and other residential properties and can be undertaken to environmentally acceptable standards.***

(iv) the extent of any directly related community benefit to be derived from the development such as the enhancement and creation of landscapes and habitats, and the removal of dereliction;

***The proposed operations in Area D and subsequent restoration of the site will result in the rehabilitation of former surface mine operations in the north-eastern and western sections of the proposed extension area (not related to the consented Skares Road operation) and extensive old underground workings in the Lugar Main Seam from Dykes Colliery and Whitehill Colliery in the north-western part of the extension area.***

***The proposed development will also result in significant long term landscape improvements together with the creation and enhancement of natural habitats.***

(v) the opportunities to maximise transportation by rail;

***Coals won from the site extension will generally, with the exception of coals destined for local markets, be transported by road to the Killoch railhead for onward dispatch to the power generation market, consistent with the existing operations. On***

***occasions coals may also be transported to the Crowbandsgate railhead at New Cumnock which is operated by the applicant.***

(vi) any cumulative impact of the proposal in association with other existing or proposed opencast developments in the area, including any significant prejudice to restoration plans for any existing site;

***The proposed Area D extension will not result in any significant prejudice to the existing restoration plans for the site. It is not considered that there would be significant cumulative impact resulting from the proposed extension.***

(vii) any impact on inward investment opportunities in the area; and

***Given the short term nature of the extension operations, it is considered that it would have minimal impact on inward investment opportunities in the area.***

(viii) the period of extraction.

***The proposed Area D extension will be worked within a 3 year period which in itself is not considered to present any significant issues. The existing Skares Road opencast site has a current consent for a 12-year period (2010). The proposed operations will result in operations extending into 2012, although extraction operations will cease during 2011. Notwithstanding this, it is considered that there are significant local community and environmental benefits to be secured by the proposed development as stated above. Furthermore the 'support' of the community of Skares for the Area D extension has been secured through the formal legal agreement reached with the applicant and by the proposed mitigation measures promoted within the Environmental Statement which seeks to minimise adverse impacts on this community.***

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

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

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

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

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

***The proposed Area D extension operation is not a new site but an extension to the existing Skares Road site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12 for the reasons stated above.***

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

***Progressive restoration of the Area D site is a key feature of the restoration strategy. The creation and enhancement of natural habitats are also key factors in site restoration proposed under this development.***

(vii) Policy MIN 18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

***Coals won from the proposed extension area will be processed through the existing coal preparation area with the majority of coal thereafter being dispatched by road to the existing railhead facilities at Killoch Disposal Point.***

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

***All coals won from the proposed extension area will be taken to the coal preparation area via a new internal haul route linking in to the existing internal haul roads.***

(ix) Policy MIN 20: Haulage of opencast coal on the public road system to be along clearly defined haulage routes agreed with the Council. With the exception of the 'A' Class Roads throughout East Ayrshire, opencast operators will be required, at their own expense, to bring all roads used by their haulage vehicles up to an acceptable standard for haulage purposes, prior to the use of the route for dispatch purposes. Requirement for operators

to pay for any necessary upgrading and maintenance of routes used by opencast traffic.

***Improvement works on the B7046 Skares - Mote Toll road have already been secured through existing consents for the Skares Road opencast site. The recovery of extraordinary road maintenance costs from the applicant is already addressed in the existing Section 75 Agreement for the Skares Road site and this would be re-enforced, in line with the consultation response from the Roads and Transportation Division, should consent be granted for the proposed development.***

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

(i) to ensure the highest possible operational standards for the transportation of extracted minerals;

(ii) to ensure best operational practice regarding road safety and operational matters;

(iii) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes

(iv) to audit and record operational details of the transportation of coal on a regular basis; and

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

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

***The existing Skares Road opencast site is the subject of a Section 75 Agreement encompassing the above matters. The existing Agreement can be amended to encompass the proposed extension area to ensure the obligations are met by the developer.***

(xi) Policy Min 22: All opencast operators are required to give proper consideration to mitigating the likely impact of their developments on local communities and nearby properties.

***It is considered that the Environmental Statement provided by the applicant addresses the likely impact identified in the policy and has promoted mitigation measures that would result in operations***

***being conducted in an environmentally acceptable manner and with minimum adverse impact on the community of Skares.***

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

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

***The village of Skares and the dwellings at Whitesmuir are located within 500 metres of the proposed Area D operational areas and in normal circumstances opencast operations would most likely be unacceptable in terms of Subject Plan policy, particularly when any significant body of objections had been received. However, in this instance formal agreement to the proposed extension has been obtained from the owners of each property within that buffer zone and in effect the applicant has secured effective control over such properties. The consequence of this is that no formal objections have been received from any residents within the 500 metres buffer zone.***

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

***The proposed extension extraction area extends to 35 hectares. It is considered that the proposed development does not conflict with this policy provision.***

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

***The proposal under consideration is not likely to be the subject of any further extensions given the current proposed proximity to Skares village and the fact that the surrounding area has already been worked previously.***

***It should be noted that Policy MIN23, while seeking to safeguard communities and dwellings through the introduction of the buffer zone, does not wholly preclude development where encroachment is proposed.***

(xiii) Policy MIN 25: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, group of dwellings or individual dwellinghouses not in the ownership or under the control of the developer will only be entertained by the Council where the development can

be fully justified by the developer in environmental terms and where all of the following criteria are met:

- (i) the Council is satisfied that there are no objections which cannot be overcome through the expeditious use of conditions or planning agreements from residents, owners, tenants or occupiers of properties located within 500 metres of the proposed working face of the site;
- (ii) the total period of extraction and restoration within a distance of 500 metres from any sensitive establishment or dwelling does not exceed a period of 12 months
- (iii) the proposed extraction does not involve any blasting operations within the 500 metre buffer zone; and
- (iv) the extraction or operational areas do not encroach within 100 metres of any dwellings, individual dwelling(s) or sensitive establishment concerned.

***As indicated above, the applicant has confirmed that the company has undertakings from the owners of neighbouring properties, which for the purposes of assessing the proposal against the provisions of Policy MIN25 of the Subject Plan, effectively means that the applicant has a controlling interest for those respective properties. In such circumstances it is therefore considered that the four criteria set out in this policy are not required to be met. It should be noted in any event, that with the exception of criterion (ii), the other provisions of Policy MIN25 are in fact met. Criterion (ii) cannot be met given that the extraction period for the scheme would be two years (three years including restoration).***

- (xiv) Policy MIN28 and MIN30: Protection of landscape value and visual amenity of areas from opencast developments.

***Given the short term nature of the proposed Area D extension operations, it is not considered that there will be any long term detrimental impact on the landscape value and visual amenity of the locality in which the operations are to take place. On the contrary, the proposed restoration scheme is designed to deliver long term net benefits in landscape and visual terms.***

- (xv) Policy MIN31: The Council will not be supportive of any opencast proposals which would disrupt or otherwise adversely impact on water catchment areas, principle water courses and other tributaries or other major water resources such as lochs and reservoirs throughout East Ayrshire.

***With the information contained in the Environmental Statement and the consultation response from SEPA where its previous objections to the development has now been formally withdrawn, it is considered that there would be no significant impacts on***

***water catchment areas or watercourses subject to appropriate conditions and obligations through a Section 75 Agreement.***

(xvi) Policy MIN33: The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an applicant to enter into an agreement with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997 in order to regulate, by agreement, such matters as cannot adequately be regulated by the imposition of planning conditions.

***The applicant has indicated a willingness to enter into a Section 75 Agreement in respect of the matters that may require to be subject of such an agreement, and as specifically referred to in this report.***

(xvii) Policies MIN34 and MIN35: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

***The applicant is a significant contributor to the Mineral Trust Fund in respect of the existing Skares Road opencast site.***

(xviii) Policies MIN36 and MIN37: Requirement for operators to lodge restoration bonds and requirement to fund aftercare schemes.

***The existing Skares Road opencast site is subject to a Section 75 Agreement encompassing the above matters. The existing Agreement would be amended to include the proposed extension area.***

***It is therefore considered that the proposed development is generally consistent with the relevant EAOCS policies pertinent to this application.***

## **6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are SPP 16 – ‘Opencast Coal’, appropriate Planning Advice Notes, consultation responses, the representation received, relevant planning history and considerations in respect of the Conservation (Natural Habitats, &c.) Regulations 1994.

### Scottish Planning Policy

6.2 Recent guidance on opencast coal extraction has been given in Scottish Planning Policy 16: Opencast Coal. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coaling may take place.

Many of the provisions of SPP 16 are addressed within the EAOCSPP with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport.

6.3 In applying the principles of sustainable development and environmental justice to opencast coal extraction, SPP16 states that there should normally be a presumption against development unless the proposal would meet one of the following tests:

#### Test 1

Is the proposal environmentally acceptable, or can be made so by planning conditions and/or agreements?

***It is considered that the application and accompanying Environmental Statement satisfy Test 1 as the ES has confirmed the environmental acceptability of the proposed development and the mitigation measures promoted therein and as developed through the consultation process, can be reasonably be secured by planning conditions and or planning agreements.***

#### Test 2

Does the proposal provide local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission?

***Given that Test 1 is considered to be satisfied, it is not considered that a detailed reconciliation of the benefits and impacts of the development as outlined in the SPP is necessary to justify the development. Nonetheless, given that the environmental impacts associated with the proposed extension have been mitigated to acceptable levels and there will be a net community benefit from the extension, not least through the continuation of both direct and indirect employment from the extension, then it is implicit that Test 2 is also satisfied.***

#### Planning Advice Notes

6.4 The proposed operations have 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.

#### Planning History

6.5 The more relevant planning history of the Skares Road site and other relevant information is as follows:

- (i) CD/95/0254/MIN: Winning and Working of Coal by opencast methods at Skares Road approved on 13 March 1997

- (ii) 97/0596/FL: Revised application for winning and working of coal by opencast methods at Skares Road approved on 15 May 1998.
- (iii) 00/0010/FL: Modification of Consent 97/0596/FL to allow a nightshift operation at Skares Road opencast site approved on 08 June 2000.
- (iv) 00/0685/FL: Proposed extension to existing landfill site in Area B of Skares Road opencast site approved on 22 June 2001 subject to a Section 75 Agreement.
- (v) 01/0459/FL: Proposed modification of conditions 31 and 43 of consent 97/0596/FL to permit coal extraction beneath tips approved on 02 November 2001.
- (vi) 02/0691/FL: Proposed opencast coal mining with restoration to nature conservation uses at Hindsward approved on 07 April 2003.
- (vii) 05//0446/FL: Proposed southern extension to Skares Road opencast site approved on 03 October 2005.

#### Consultation Responses

6.6 There are now no consultation responses that would suggest refusal of the application is appropriate, subject to appropriate conditions or obligations in a Section 75 Agreement forming part of any consent granted for the proposed development.

#### Representations Received

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

#### The Conservation (Natural Habitats, &c.) Regulations 1994

6.8 As indicated in the consultation response from SNH, otter surveys from the Environmental Statement (ES) show two otter holt locations on the south western side of the site one of which will be destroyed as a result of the proposed open cast activity and one of which will be disturbed. Otters are a European Protected Species (Annex A) and it is the opinion of SNH that the proposed development will result in one or more actions which are contrary to the species protection elements of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) and therefore cannot proceed unless a licence is obtained from Scottish Government. Scottish Government interim guidance to planning authorities states that no planning decision may be made until the planning authority can assure itself that a licence may be forthcoming. An application for a licence will fail unless all of 3 tests on acceptability for a licence are satisfied. In summary these tests are:

*Test 1: The licence application must demonstrably relate to ... the purpose of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.*

***It is considered that the licence (and the disturbance to otters that it would authorise) is necessary in order to allow work to proceed that is of overriding public interest of a social and economic nature. Furthermore, the development, through the restoration scheme will bring about beneficial consequences for the environment. The strategic and economic importance of coal extraction is recognised in various statements and policies at national, regional and local level. The Planning Statement that was submitted with the planning application provides a robust assessment against those relevant policies etc. and concludes that the development is in general terms compliant with those policies etc. In summary, the following points confirm the overriding public interest in the proposed extension:***

- Table 4.1 in the Planning Statement identifies that Skares Surface Mine contributes in the order of 7% of all coal produced in Scotland annually. The total value of surface coal mining in Scotland is assessed (in 2006) as being in the order of £225 million pounds. Given that Skares SM produces in the order of 7% of the coal produced in Scotland, then the proportionate contribution that Skares SM makes to that overall value at a national level is significant in both supply requirements and in financial contribution. The proposed extension will allow for the continuance of that contribution.***
- At a more local level, the proposed extension would make a direct contribution to the East Ayrshire economy through the sustained employment of the current staff and personnel of 57 directly employed in the surface mining and haulage operations. The majority of the staff employed in the operations live within the communities of East Ayrshire. The proposed extension would also contribute to the sustained indirect employment in the local area for numerous workers and subcontractors in connection with the onward haulage, handling and disposal of the coal produced.***
- The retention of employment is considered to be of overriding public interest in the current economic climate.***
- The extension presents what is likely to be the only opportunity to extract the 650,000 tonnes of coal which underlies the extension area. If the coal is not worked as part of this current scheme an undesirable consequence may be that the coal is permanently sterilised. National planning guidance in SPP16 cautions against the sterilisation of coal reserves.***

**It is considered that that there is clear overriding public interest in permitting the development to proceed and that Test 1 can be clearly met.**

Test 2: “that there is no satisfactory alternative”

***With regard to Test 2, it is considered that there is no satisfactory alternative to the granting of a licence and to the consequent disturbance to otters. The ability to consider alternative locations for the extension is restricted given that the location of the extension is guided in the first instance by the geological occurrence of the coal at this location. There are also clear benefits of extending the supply of coal at existing sites rather than allowing that coal to be sterilised.***

Test 3: A licence cannot be issued unless Scottish Government is satisfied that the action proposed “will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range” (Scottish Government will, however, seek the expert advice of Scottish Natural Heritage on this matter).

***The interim guidance issued to planning authorities indicates that SNH is the main body to advise on whether the granting of a licence would be “detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range” and so be capable of meeting Test 3. The Otter Addendum submitted to SNH for consideration makes reference to Test 3 and concludes that ‘the favourable conservation status of otters at the local, regional and national level is considered to be unaffected by the proposals and as a result, the third licensing test can be met.’ It is further noted that SNH has subsequently removed its objection to the proposed development subject to matters to mitigate the impacts of the proposed development being addressed by conditions or by planning legal agreement***

***In this regard it is considered that for the reasons and justifications set out above it is a reasonable expectation that a licence would be granted and that in arriving at this conclusion the Council, as Planning Authority, has fulfilled the general requirement established under Regulation 3(4) to have regard to the provisions of the Habitats Directive, and in particular to the provisions of Articles 12 and 13 of the Directive and Regulations 39 and 43 of the 1994 Regulations.***

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial implications for the Council associated with the determination of this application. It is considered that the proposed development will necessitate an amendment to the existing Section 75 Agreement relating to the Skares Road site should the application be approved.

7.2 As the proposed Area D extension will result in operations falling within 500 metres of the edge of the community of Skares, the application will require to be notified to the Scottish Ministers, in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, should the Committee be minded to approve the application.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plan. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 above, there are material considerations relevant to this application, but in this regard, the proposed development is also considered to be acceptable.

8.2 It is noted that there is no significant body of objection to the proposed development with no objections from residents in Skares village. It is considered that in terms of the objections received, the points raised have been fully addressed by the applicant or are issues that can be addressed through the imposition of appropriate conditions and / legal obligations through a Section 75 Agreement. Consequently they are not considered to be of sufficient weight to justify refusal of the application in this instance.

8.3 The approval of the proposed extension will provide continuation of employment for the 57 employees currently working at the Skares Road site and will provide indirect employment for site contractors and service providers. It is accepted that this extension to the existing opencast operation could be considered to perpetuate disturbance to the community of Skares in terms of cumulative impact over time, as the total extraction period would exceed a period of 10 years. However, as indicated above, the proposed development has the support of the community of Skares to the extent that the applicant has effectively secured formal legal control over these properties. This has been instrumental in addressing EAOCSP policies which would otherwise preclude the development proposed. It is also considered that there are significant community benefits to be secured by the development through continuation of employment.

8.4 As described above, the development will result in the destruction of one otter holt and the disturbance of another, otters being an Annex A European Protected Species. Although SNH initially objected to the proposed development on this basis, the applicant has provided sufficient information and mitigation that has allowed SNH to withdraw its objection, subject to such

mitigation forming part of planning conditions and / or a legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997.

8.5 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is generally consistent with policy and that there are potential environmental and community benefits which would outweigh any temporary adverse impacts. It is considered that the Council's obligations under the Conservation (Natural Habitats, &c.) Regulations 1994 have been met with appropriate assessment having been undertaken as set out in Section 6 above, taking cognisance of the advice of SNH.

8.6 Consequently it is considered that the application should be approved. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the Skares Road site has been amended to extend its obligations, including the Restoration Bond, to the proposed Area D extension site and to include for the following additional matters:

#### Section 75 Agreement

(i) The implementation in full of the mitigation measures described in the Otter Addendum Report dated March 2009 (SLR Ref: 090309 413 1908 00002 R Otter Addendum) as amended by the comments of SNH in its letter dated 26 March 2009 and subsequent e-mail correspondence from SLR Consulting of 02 April 2009 (Jess Colebrook).

(ii) The production of a Protected Mammals Management Plan in respect of mitigation for otters and mitigation for all protected mammals including proposals for monitoring and reporting. The PMMP shall be produced in accordance with the requirements of SNH as detailed in Appendix 2 of its consultation letter dated 19 February 2009.

(iii) The appointment of a suitably qualified Ecological Clerk of Works, approved by the Planning Authority in consultation with SNH, to undertake the necessary protected species survey as part of the production of the PMMP described above and for continuing surveying, monitoring and reporting as detailed in Appendix 2 of the SNH consultation letter dated 19 February 2009.

(iv) The undertaking of a fish survey prior to any works commencing on site and the assessment of the impacts should populations be found and mitigation provided including the provision of a Method Statement for fish protection and translocation should this be necessary in relation to the diversion of the Ward Burn.

(v) The establishment and undertaking of air quality monitoring for Area D site operations, generally in accordance with the requirements of SEPA as indicated in its consultation response dated 25 February 2009.

(vi) The establishment of a Technical Working Group for the Area D extension site, including representatives from SNH, RSPB, SEPA and the Ayrshire Rivers Trust, to advise and inform on site restoration and monitoring.

(vii) The production and implementation of an Emergency Protocol to deal with the potential loss of private water supplies as a result of site operations. This protocol shall include a formal notification measures to the Planning Authority and SEPA in the event that the protocol requires to be invoked. This protocol shall be the subject of prior discussion with potentially affected parties.

## **9. RECOMMENDATIONS**

**9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice 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 applicant, in respect of the matters described in Section 8.6 of this report.**

**9.2 It is further recommended that the application and a copy of this report be referred to the Scottish Ministers in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.**

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, the application will not require to be referred to the Principal Planning Committee as this would not represent a significant departure from the development plan.

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

HM/HM  
16 April 2009

FV/DVM

## **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory notices and certificates.
3. Environmental Statement and Associated Reports
4. Consultation responses.
5. Letters of Representation
6. East Ayrshire Opencast Coal Subject Plan 2003
7. Approved Ayrshire Joint Structure Plan 2007
8. Previous application CD/95/0254/MIN.
9. Previous application 97/0596/FL.
10. Previous application 00/0010/FL.
11. Previous application 01/0459/FL.
12. Previous application 02/0691/FL.
13. Previous application 05/0446/FL
14. SPP 16: Opencast Coal.
15. PAN 50, Annexes A, B, C and D.
16. The Conservation (Natural Habitats, &c.) Regulations 1994

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

**Implementation Officer: Dave Morris**

## EAST AYRSHIRE COUNCIL

## TOWN &amp; COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 08/0752/FL

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Location	Skares Road Opencast Coal Site Darntaggart Farm, Skares Near Cumnock
Nature of Proposal:	Proposed extension of existing surface mine and retention of existing site infrastructure, plant and buildings for duration of extended operations
Name and Address of Applicant:	ATH Resources plc Richmonds House White Rose Way DONCASTER DN4 5JH
Name and Address of Agent	Colin Hume SLR Consulting Ltd. 4 Woodside Place GLASGOW G3 7Q

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

The above **FULL** application should be granted subject to the following conditions:-

1. No vegetation clearance including soil stripping operations or tree removal shall be undertaken within the main bird breeding season (March to June inclusive) without the written agreement of the Planning Authority in consultation with Scottish Natural Heritage and the Royal Society for the Protection of Birds.

REASON: In the interests of protection of natural heritage.

2. Prior to the commencement of works on site, the applicant shall submit to, and have approved by the Planning Authority, in consultation with the Skares Road Technical Working Group, a Habitat Restoration Plan based on the principles in the Outline Strategy in the Environmental Statement accompanying the planning application.

REASON: To ensure delivery of a high standard of site restoration for the benefit of habitat creation and enhancement.

3. Following restoration of the Ward Burn watercourse, the restored area shall be fenced off for a distance of at least five times the width of the watercourse and a trough provided for stock drinking. Gates shall be provided where necessary to allow light grazing to provide sward height and structure to be maintained in accordance with best practice as outlined in Scottish Natural Heritage's booklet "Grassland for plants and Animals".

REASON: To ensure delivery of a high standard of site restoration.

4. Within 3 months of the date of this consent, the applicant shall submit to, and have approved by the Planning Authority, in consultation with the Skares Road Technical Working Group, a detailed restoration plan for the Area D extension. The restoration plan shall generally adhere to the guidance in the 'Ayrshire Landscape Assessment – Land Use Consultants on behalf of SNH'.

REASON: To ensure delivery of a high standard of site restoration.

5. Existing landscape features around the proposed extension site shall be properly protected by being securely fenced off with sturdy and prominent material to ensure no plant or machinery or materials go within an agreed standoff with such protection being put in place prior to the commencement of works on site.

REASON: In the interests of safeguarding the landscape and visual amenity.

6. In respect of hydrology, the backfill risk assessment shall be revised as appropriate, once the results of the QXRD testing are available and this shall seek to demonstrate that backfilling will not lead to the direct discharge of List I substances to groundwater or to pollution of the groundwater by List II substances. This assessment shall be submitted to the Planning Authority and to the Scottish Environment Protection Agency. Ongoing monitoring shall be undertaken in advance of any excavation works and shall continue during mineral extraction and during the aftercare period. The overall scope of the monitoring shall provide for ammoniacal nitrogen as part of the quarterly monitoring suite. Surface waters shall also be subject to ongoing monitoring with results being regularly reviewed, and the monitoring plan amended and updated as necessary. The headworks for Borehole SLR5 shall be designed and constructed such that water does not overflow in an uncontrolled manner.

REASON: In the interests of pollution prevention and control.

7. Prior to the commencement of works on site, the applicant shall submit to, and have approved by the planning Authority in writing, in consultation with SEPA, a Construction Management Plan in accordance with the requirements set out the SEPA's consultation response dated 25 February 2009.

REASON: In the interests of proper site water management.

8. The Ward Burn diversion channel shall be engineered to have sufficient capacity to retain 0.5% annual probability flood without overtopping. The original slope and characteristics of the Ward Burn shall be reinstated during restoration of the watercourse to its original route.

REASON: To minimise potential flood risk.

9. No blasting operations shall be undertaken within the Area D extension site.

REASON: In the interests of public safety and residential amenity.

10. The operational hours for the Area D extension shall be confined to a single shift between the hours of 7 am to 7 pm on weekdays and between 8 am and 12 pm on Saturdays. No operations shall take place on Sundays or Bank Holidays.

REASON: In the interests of residential amenity.

11. Prior to the commencement of operations on site, the applicant shall submit to and have approved by the Planning Authority, the details of any lighting equipment to be used within the proposed Area D extension site, the siting of which should be in such a manner as to minimise impact on visual amenity.

REASON: In the interests of visual amenity.

12. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 97/0596/FL dated 15 May 1998 as amended by planning consent 00/0010/FL dated 08 June 2000, as amended by planning application 02/0691/FL dated 07 April 2003 and as amended by planning application 05/0446/FL dated 03 October 2005.

REASON: To retain effective planning control over the proposed development in accordance with current consents relating to the Skares Road opencast site.