

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 10 AUGUST 2007

**07/0448/FL: VARIATION TO APPROVED SITE LAYOUT AT AREA P (SOUTH) TO
EXTEND APPROVED LIMIT OF EXCAVATION
AT CHALMERSTON NORTH/PENNYVENIE OCCS BY DALMELLINGTON**

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning permission is sought to vary the existing permitted excavation limits of Area 'P' to allow the recovery of an additional 90,000 tonnes of high quality coal from the currently consented opencast site. However, before each individual phase of the operations is worked additional exploratory drilling is undertaken to further define the limits of the coal deposits and to allow detailed geotechnical appraisals to be completed. Following on from such a recent appraisal it has been determined that additional coal reserves are present to the south of the existing permitted Area 'P' extraction area that lie wholly within the planning boundary of the current permitted site.

1.2 The various Chalmerston sites have a complex geological structure and the Chalmerston North area is no exception to this with the strata being severely faulted and folded, occasionally interrupted by intrusive igneous activity. While this has made coal recovery more challenging, it has proved to be possible to successfully recover the coal from the Chalmerston North/Pennyvenie site. The geology of the area is difficult to predict and is compounded by access difficulties for exploratory drilling due to the presence of blanket commercial forestry cover over the majority of the northern part of the Chalmerston North/Pennyvenie site and that is why the excavation areas were described as 'proposed excavation areas' in the original planning application.

1.3 The additional reserve to the south of the permitted Area 'P' excavation area is estimated to be 90,000 tonnes and contained within an area of 7.9ha. It is proposed to work this additional reserve as a direct follow on to the existing Area 'P' excavation over a period of 8 weeks. This will have no impact on the overall duration of the site and works if approved can be completed within the existing permitted timescale for the Chalmerston North/Pennyvenie site where operations are conditioned to be completed by 18th June 2009. The site will assist in the continued employment for 128 local persons.

1.4 The existing site area is already fenced off and stock and trespass proof. Cut-off and drainage ditches, along with any additional water treatment facilities required by SEPA will be installed prior to the commercial plantation being felled. The soils will be removed and either placed in storage tips for re-use during the restoration phase or placed directly onto the progressive restoration being undertaken on site.

1.5 Excavations will commence at the eastern edge of the site and progress in a generally westerly direction reaching a maximum depth of 44 metres in the south western corner. Overburden removed from the excavation will be used to complete restoration works in adjacent Area 'O' excavation. It is anticipated that the final restoration contours will reflect the existing situation.

1.6 In accordance with the provisions of SPP16 (Opencast Coal) the applicant is making the Council aware that additional reserves of coal may be available in adjacent areas but due to a variety of circumstances they have yet to be fully investigated. They were included in the original Chalmerston North/Pennyvenie planning application and are:-

- i) Located within the existing site boundary and identified on the approved plan number 01/W/0749 as being within the 'limit of coal interest' and;
- ii) Dunstonhill Complex – this area of coal reserves is already known to the Council as it is located within the 'area of search' identified in the East Ayrshire Opencast Coal Subject Plan and has been scoped for the purposes of undertaking an environmental impact assessment.

1.7 Following discussions on the implications of the proposed variation to excavation Area 'P' of the permitted site with the Planning Section, it was agreed that this application should review the previously submitted Environmental Statement for Chalmerston North/Pennyvenie. In this regard the planning application is accompanied by a Supporting Statement addressing these issues.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet.

3. SUMMARY OF ANALYSIS

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

3.2 The proposals represent the extraction of additional coals within the existing consented site at Chalmerston North/Pennyvenie which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. There should be no additional impact as the extraction of the resource can be undertaken with minimum impact on the visual amenity of the area.

3.3 It is considered that, given the relatively remote area in which the Chalmerston North/Pennyvenie site is located, the proposal to extract an additional 90,000 tonnes of coal will have no significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it

is considered that the extended operations can be undertaken within acceptable environmental standards.

3.4 The principle of opencast development in this area has already been established through the existing consent for the Chalmerston North/Pennyvenie site. It is considered that the proposals under the current application will have no significant additional impact on existing residential properties in the locality through noise, dust or vibration as this site is located in a remote location and the proposal is in general accordance with the existing permitted site operations.

3.5 The amendment to the current site phasing plan will allow Scottish Coal to work and extract an additional reserve of 90,000 tonnes of good quality coal from a discrete area of 7.9ha and will assist with the continuing employment for 128 people.

3.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are environmental and community benefits which would outweigh any temporary adverse impacts. Consequently it is considered that the application should be approved.

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 Parent Planning Committee because it would not be a significant departure from the East Ayrshire Opencast Coal Subject Plan.

Alan Neish

Head of Planning, Development and Building Standards

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.

SOUTHERN LOCAL PLANNING COMMITTEE: 10 AUGUST 2007

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(SOUTH) TO EXTEND APPROVED LIMIT OF EXCAVATION
AT CHALMERSTON NORTH/PENNYVENIE OCCS BY DALMELLINGTON**

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

Report by Head of Planning & 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 because it represents an extension of working for an existing opencast site which represents a major application under the Scheme of Delegation.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located approximately 4km to the north-east of the village of Dalmellington on a heavily afforested plateau located above the northern side of the Doon Valley.

2.2 The current application area which extends to 21.2ha is wholly contained within the existing permitted Chalmerston North/Pennyvenie opencast coal site and is located within an extensive area of commercial Sitka Spruce plantation which will be felled as part of the existing site operations. The actual additional excavation area extends to 7.9ha.

2.3 Dalmellington and Burnton are the only settlements in close proximity to the site, no public highways cross the land and access is gained via the existing site haul roads and timber roads that criss-cross the Kyle Forest.

2.4 Scottish Coal commenced operations at the Chalmerston North/Pennyvenie extension (97/0582/FL) in June 1998 as a follow on to the original operations at Chalmerston (CD/87/92). The operations have been progressing in accordance with the approved phasing and layout plans for the past 9 years.

2.5 Proposed Development: Planning permission is sought to vary the existing permitted excavation limits of Area 'P' to allow the recovery of an additional 90,000 tonnes of high quality coal from the currently consented opencast site. However, before each individual phase of the operations is worked additional exploratory drilling is undertaken to further define the limits of the coal deposits and to allow detailed geotechnical appraisals to be completed. Following on from such a recent appraisal it has been determined that additional coal reserves are present to the south of the existing permitted Area 'P' extraction area that lie wholly within the planning boundary of the current permitted site.

2.6 The various Chalmerston sites have a complex geological structure and the Chalmerston North area is no exception to this with the strata being severely faulted and folded, occasionally interrupted by intrusive igneous activity. While this has made coal recovery more challenging, it has proved to be possible to successfully recover the coal from the Chalmerston North/Pennyvenie site. The geology of the area is difficult to predict and is compounded by access difficulties for exploratory drilling due to the presence of blanket commercial forestry cover over the majority of the northern part of the Chalmerston North/Pennyvenie site and that is why the excavation areas were described as 'proposed excavation areas' in the original planning application.

2.7 The additional reserve to the south of the permitted Area 'P' excavation area is estimated to be 90,000 tonnes and contained within an area of 7.9ha. It is proposed to work this additional reserve as a direct follow on to the existing Area 'P' excavation over a period of 8 weeks. This will have no impact on the overall duration of the site and works if approved can be completed within the existing permitted timescale for the Chalmerston North/Pennyvenie site where operations are conditioned to be completed by 18th June 2009. The site will assist in the continued employment for 128 local persons.

2.8 The existing site area is already fenced off and stock and trespass proof. Cut-off and drainage ditches, along with any additional water treatment facilities required by SEPA will be installed prior to the commercial plantation being felled. The soils will be removed and either placed in storage tips for re-use during the restoration phase or placed directly onto the progressive restoration being undertaken on site.

2.9 Excavations will commence at the eastern edge of the site and progress in a generally westerly direction reaching a maximum depth of 44 metres in the south western corner. Overburden removed from the excavation will be used to complete restoration works in adjacent Area 'O' excavation. It is anticipated that the final restoration contours will reflect the existing situation.

2.10 In accordance with the provisions of SPP16 (Opencast Coal) the applicant is making the Council aware that additional reserves of coal may be available in adjacent areas but due to a variety of circumstances they have yet to be fully investigated. They were included in the original Chalmerston North/Pennyvenie planning application and are:-

- i) Located within the existing site boundary and identified on the approved plan number 01/W/0749 as being within the 'limit of coal interest' and;
- ii) Dunstonhill Complex – this area of coal reserves is already known to the Council as it is located within the 'area of search' identified in the East Ayrshire Opencast Coal Subject Plan and has been scoped for the purposes of undertaking an environmental impact assessment.

2.11 Following discussions on the implications of the proposed variation to excavation Area 'P' of the permitted site with the Planning Section, it was agreed that this application should review the previously submitted Environmental Statement for Chalmerston North/Pennyvenie. In this regard the planning application is accompanied by a Supporting Statement addressing these issues.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division has no objection to the proposal.

Noted.

3.2 The Scottish Environment Protection Agency has no objections in principle to the proposal. SEPA has received an application for settlement lagoons to treat the drainage from the Chalmerston North extension area which is currently being progressed.

Noted.

3.3 Scottish Natural Heritage has no objection to the proposal subject to the tree felling being carried out outwith the main bird breeding season (March to July inclusive) and the restoration for the site is carried out within the approved timescales.

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

3.4 Power Systems, Transco and Scottish Water have no objections to the proposed development.

Noted.

3.5 Dalmellington Community Council has not responded to the consultation letter.

Noted.

3.6 The Royal Society for the Protection of Birds has no objections to the proposal, provided that a formal restoration plan for the site is agreed as part of the consent for Chalmerston North via the Technical Working Group.

The present Technical Working Group for the Chalmerston North/Pennyvenie site would continue to support and oversee the restoration proposals to extend the current limit of excavation.

3.7 Forestry Commission Scotland has no objection or comment to make.

Noted.

3.8 The River Ayr Salmon Fisheries Board has not responded to the consultation letter.

Noted.

3.9 East Ayrshire Council Environmental Health Division has no objections to approval of the application with the proviso that existing noise limits imposed on the site are contained in any consent issued.

A condition can be attached to any consent granted for the proposed development to meet the requirements of the Environmental Health Division.

4. REPRESENTATIONS

4.1 There were no third party representations received in relation to this application.

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 (1999) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

Ayrshire Joint Structure Plan

5.2 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the Chalmerston North/Pennyvenie development site lies within a Preferred Area of Search which represents an area which has few environmental constraints and is isolated from local communities. The proposed development requires to be assessed against Policy E14 which states:

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

The proposed variation falls within a Preferred Area of Search.

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

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

The proposed variation to the excavation area has been assessed and determined against the stated criteria. The proposals promoted by the current application will be implemented under the existing planning controls within the existing consent and Section 75 Agreement for the existing Chalmerston North /Pennyvenie site and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed variation to excavation area would not conflict with the stated criteria in terms of its operational conduct as the proposed variation is wholly contained within a site that already benefits from planning permission and does not extend the area of land to be disturbed.

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

East Ayrshire Opencast Coal Subject Plan

5.4 Policy MIN3: Is pertinent to the application, the policy stating that, subject to detailed consideration, the Council will generally be supportive of any proposal to extend an existing operative opencast site within the Potential Coal Extraction Areas provided that all of 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 site.

Extraction will be carried out as a sequential phase of development of the overall site.

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

The development will utilise 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.

It is proposed to continue the use of the dedicated railhead located at the original Chalmerston site.

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

The current proposed variation will not increase the overall timescale for site operations at Chalmerston North/Pennyvenie which are scheduled to be completed by 18 June 2009.

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

There is a long history of mineral working in the local area that has left a legacy of spoil heaps, derelict mines, quarries and redundant mineral railways, that are being removed and restored by the ongoing site operations.

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

Variation to the existing excavation area will offer increased employment security for the local workforce employed at the site.

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

There are no conflicts with any other Subject Plan policies.

Any extension to an existing opencast operation that would perpetuate any existing disturbance to a local community for a total extraction period in excess of 10 years will not generally 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 application relates to a minor alteration to an excavation area within the consented opencast site. It is considered that the development will not have any significant adverse impact on nearby communities and that with the benefits of increased employment security the proposal is considered acceptable in planning policy terms.

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

The information required to address the above issues has been provided by the applicant.

5.6 Policy MIN7: Within potential coal extraction areas, all applicants for opencast coal development will be required to demonstrate to the Council that their proposals will not have any significant adverse effect on the community or create any permanent adverse effect on the environment. Proposals which are likely to have any such effect are unlikely to be accepted unless there are counter balancing benefits. In assessing opencast coal proposals the Council will apply the following criteria:

- (i) Whether the proposal is acceptable in planning terms with the use of appropriate planning conditions or legal agreements; or
- (ii) Whether the proposal carries benefit to the affected community or the environment which sufficiently outweighs any adverse effects; or
- (iii) Exceptionally, whether the proposal is of such importance that it should be granted planning permission even though it fails to meet either of the previous criteria. Such a proposal might, for example, propose the rehabilitation of substantial areas of dereliction or the remediation of major problems left over from previous mining operations.

Applications which do not meet any of these criteria will not be acceptable to the Council and are unlikely to receive planning permission.

The continuation of the existing monitoring regimes dictated by planning conditions will allow the proposed development to continue to operate within environmentally acceptable standards.

5.7 Policy MIN12: 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

The proposed variation to the scheme of working at excavation Area 'P' will not increase the overall lifespan of the Chalmerston North/Pennyvenie site. The proposed variation to excavation Area 'P' will only take 8 weeks to complete. Planning consent for the original site was granted on 11th June 1998 for a period of 11 years and operations commenced one week later. The site has operated continuously since that date with no adverse impacts to either the amenity or the environment of local communities or individual dwellings. The current proposed variation will not increase the overall timescale for site operations at Chalmerston North/Pennyvenie which are scheduled to be completed by 18 June 2009.

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

The proposed development will continue to utilise the existing dedicated railhead at Chalmerston and will therefore not increase existing traffic impacts on communities or groups of dwellings.

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

The proposed development is wholly contained within an already consented site and will not extend the overall time period for those operations. Further, it does not lie within an area of international or national significance.

5.8 Policy MIN15: All developers are required to restore their operational sites progressively to the highest possible standards. Developers will be required to provide for the creation of new habitats appropriate to the particular after uses of the site concerned as an integral part of their detailed restoration and aftercare proposals.

The overall restoration proposals for the Chalmerston North/Pennyvenie site are subject to development and review through the existing Technical Working Group.

5.9 Policy MIN16: Developers are required, wherever possible, to divert and re-route any existing rights of way affected by opencast operations and to ensure that any rights of way or other public footpaths disrupted by opencast operations are fully reinstated as an integral part of site restoration proposals. Improved public access and the provision of additional facilities for local communities in the restoration of opencast sites are also strongly advocated by the Council.

There are no formal rights of way identified within the proposed amended development site. However, Scottish Coal indicates that it will seek to increase public access to the area once the site is restored in line with other existing access commitments such as the creation of a multi-user path that originates in Dalmellington and ends at Coalburn in South Lanarkshire that will pass through the restored Chalmerston North/Pennyvenie site. Construction works on various sections of this path have already commenced and it will form an integral part of East Ayrshire's 'Core Path Network' of which Scottish Coal is a participating partner.

5.10 Policy MIN17: Developers are required, as an integral part of a submitted planning application, to submit detailed restoration and aftercare plans for the development site.

Although full restoration plans have been approved for the existing operations the overall restoration proposals for the Chalmerston North/Pennyvenie site are subject to ongoing development and review through the existing Technical Working Group and an emerging Management Plan.

5.11 Policy MIN18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

The proposed development will continue to utilise the existing dedicated railhead at Chalmerston for the transportation of coal.

5.12 Policy MIN22: All opencast operators are required to give proper consideration to mitigating the likely impact of their proposed developments on local communities and nearby properties.

The proposed development is a minor amendment, lasting 8 weeks, to an already permitted remote development site, which is considered not to significantly impact on nearby communities.

5.13 Policy MIN23: In order to ensure that opencast operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council is likely to consider opencast developments unacceptable where:

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

The proposed variation to excavation area does not encroach within 500 metres of any settlement. The closest occupied dwelling is in excess of 1850 metres away.

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

The proposed development will not increase the permitted coaling operations beyond the existing life of 11 years.

(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 proposed development will not increase the existing timescale for the permitted operations.

5.14 Policy MIN25: 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.

In fact no part of the development site falls within 1850 metres of any sensitive establishment, local community, group of dwellings or individual dwellinghouses.

5.15 Policy MIN28 and MIN30: Protection of landscape value and visual amenity of areas from opencast developments.

The proposed variation to the scheme of working at Area 'P' is wholly contained within an existing permitted site and is located within the Kyle Forest and totally hidden from all lines of public view and will not be visible to any sensitive receptors.

5.16 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.

The proposals do not present a significant alteration to the previous hydrological assessment undertaken for the area and submitted in support of the existing planning consent for Chalmerston North/Pennyvenie. In addition, Scottish Coal has confirmed that they will continue to liaise closely and work in partnership with SEPA.

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

Scottish Coal already contributes into the Mineral Trust Fund in respect of the existing Chalmerston North/Pennyvenie site and it is proposed that this situation would remain unchanged.

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

A Restoration Bond is already in place for the existing Chalmerston North/Pennyvenie sites.

5.19 Policy MIN37: Establishment of Liaison Committees.

There is a Liaison Committee already in place for this site. This regular forum for communication is considered to be one of the reasons that the site has operated for many years without any significant adverse impacts to either the amenity or the environment of local communities or individual dwellings.

It is therefore considered that the proposed development is consistent with the relevant East Ayrshire Opencast Coal Subject Plan policies pertinent to this application.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are Scottish Planning Policy Guideline 16 – ‘Opencast Coal’, Planning Advice Notes, consultation responses, the relevant planning history for the site and the Finalised Draft Ayrshire Joint Structure Plan 2006.

Consultation Responses

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

Scottish Planning Policy Guideline 16: Opencast Coal

6.3 Recent guidance on opencast coal extraction has been given in SPP16: ‘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.

6.4 Many of the provisions of SPP16 are already addressed within the adopted East Ayrshire Opencast Coal Subject Plan with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. Nonetheless SPP16 indicates that Planning Authorities should use their development plans to identify areas where opencast coal extraction may be acceptable. There should be a presumption against development outwith these areas.

The proposal is considered to be consistent with SPP16.

6.5 SPP16 also indicates that in applying the principles of sustainable development and environmental justice to opencast coal extraction, there should be a presumption against development unless the proposal would meet one of two tests:

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

The consultation and policy assessment process indicates that the variation of the existing permitted excavation limits meets this first test.

(ii) does the proposal provide local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission?

It is considered that Test 2 is also met as the variation of the existing permitted excavation limits will allow reinforcement of employment which is particularly beneficial in those areas where the extraction takes place. It is therefore considered that both tests are satisfied in assessing this proposal.

Planning Advice Notes

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

Noted.

Planning Application History

6.7 Planning permission for the winning and working of coal by opencast methods from the original Chalmerston OCCS was granted on 27th August 1987 under planning application CD/87/92/Q.

6.8 Planning permission for an alteration to an excavation area within the Chalmerston OCCS was granted on 14th July 1993 under planning application CD/93/0025/MIN.

6.9 Planning permission for the extraction of coal by opencast methods on land adjacent to Chalmerston OCCS was granted on 15th October 1996 under planning application 96/0076/FL.

6.10 Planning permission to extract coal by opencast and augering methods with enhancement of the landscape at Chalmerston North/Pennyvenie was granted on 10th June 1998 under planning application 97/0582/FL.

6.11 A planning application (reference number 06/0685/FL) for the extraction of coal by opencast methods to the currently operational Chalmerston North OCCS was presented to the Council's Development Services Committee on 6th March 2007 and was agreed in principle. However, the issuing of the planning decision notice is being withheld until the Solicitor to the Council has satisfactorily concluded a formal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants.

Finalised Ayrshire Joint Structure Plan

6.12 There are no policy changes with regard to opencast coal mining being promoted in the new Finalised Joint Structure Plan and the current provisions of the approved Structure Plan remain relevant to this application.

Noted.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. It is considered that the proposed development will not necessitate an amendment to the existing Section 75 Agreement relative to the Chalmerston North/Pennyvenie site.

8. CONCLUSIONS

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

8.2 The proposals represent the extraction of additional coals within the existing consented site at Chalmerston North/Pennyvenie which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. There should be no additional impact as the extraction of the resource can be undertaken with minimum impact on the visual amenity of the area.

8.3 It is considered that, given the relatively remote area in which the Chalmerston North/Pennyvenie site is located, the proposal to extract an additional 90,000 tonnes of coal will have no significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it is considered that the extended operations can be undertaken within acceptable environmental standards.

8.4 The principle of opencast development in this area has already been established through the existing consent for the Chalmerston North/Pennyvenie site. It is considered that the proposals under the current application will have no significant additional impact on existing residential properties in the locality through noise, dust or vibration as this site is located in a remote location and the proposal is in general accordance with the existing permitted site operations.

8.5 The amendment to the current site phasing plan will allow Scottish Coal to work and extract an additional reserve of 90,000 tonnes of good quality coal from a discrete area of 7.9ha and will assist with the continuing employment for 128 people.

8.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are environmental and community benefits which would outweigh any temporary adverse impacts. Consequently it is considered that the application should be approved.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet.

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 Parent Planning Committee because it would not be a significant departure from the East Ayrshire Opencast Coal Subject Plan.

Alan Neish
Head of Planning & Economic Development

1st August 2007
CG/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Adopted East Ayrshire Opencast Subject Plan (2003)
5. Approved Ayrshire Joint Structure Plan (1999)
6. Finalised Ayrshire Joint Structure Plan (2006)
7. Previous applications CD/87/92 and 97/0582/FL
8. Application 07/0448/FL
- . SPP16: Opencast Coal
11. PAN50 and Annexes.

Any person wishing to inspect the background papers listed above should contact Mr Colin Graham on 01563 555482.

Implementation Officer: Dave Morris

Location	Chalmerston North/Pennyvenie OCCS by Dalmellington
Nature of Proposal:	Variation to Approved Site Layout at Area 'P' South to extend Approved Limit of Excavation.
Name and Address of Applicant:	Scottish Coal Company Limited Ayrshire Office Garan House 28 Main Street MUIRKIRK KA18 3RA
Name and Address of Agent:	Mr Phil Rayson, Planning & Development Manager (Address as above)

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

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

1. The proposed variation to the approved site layout at Area 'P' South to extend the approved limits of excavation shall be worked in accordance with the approved plans and supporting statement received by the Council on 27th May 2007. All works must be completed within the existing permitted timescale for the Chalmerston North/Pennyvenie site where operations are to be completed by 18th June 2009.

REASON - To retain effective planning control over the proposed development in accordance with the current consent relating to the Chalmerston North/Pennyvenie opencast site.

2. The applicant shall submit to and have approved by the planning authority, a detailed restoration scheme for the site that shall be the subject of prior consultation with the Chalmerston North/Pennyvenie Technical Working Group.

REASON - To ensure that the site is restored to the highest possible standards in the interests of habitat creation.

3. No tree felling shall be carried out during the main bird breeding season (March to July inclusive).

REASON - To ensure that breeding birds are protected from disturbance and nesting sites are protected from destruction.

4. The existing noise monitoring programme and limits imposed shall continue in accordance with the existing Chalmerston North/Pennyvenie site (97/0582/FL) using appropriate equipment and recording devices, the results and records of which shall be made available to the Planning Authority throughout the operational life of the site.

REASON - In the interests of residential amenity.

5. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 97/0582/FL dated 10 June 1998.

REASON - To retain effective planning control over the proposed development in accordance with the current consent relating to the Chalmerston North/Pennyvenie opencast site.

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