

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 10 AUGUST 2007

**070211/FL: PROPOSED EXTENSION OF OPENCAST COAL SITE
AT GREENBURN OPENCAST COAL SITE, NEW CUMNOCK**

APPLICATION BY KIER CONSTRUCTION LIMITED

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for an extension of the existing Greenburn site for the winning and working of coal, fireclay and other minerals by opencast method. The North Extension will be developed as a sequential phase of the existing Greenburn operations using predominantly the same plant and infrastructure. In particular the existing coal treatment area, railhead and railway line will be used to process and transport coal extracted from the North Extension, with all extracted coal transported to the railhead via internal haul roads.

1.2 This proposal will allow the recovery of up to a further 200,000 tonnes of high quality coal, distributed mainly via the new dedicated railhead and line to the power generation industry. Production at the Greenburn site is currently at a rate of around 500,000 tonnes per annum, and the proposed North Extension will not impact on the current production rate. The North Extension will be stripped, worked and progressively restored as a consecutive phase of the existing Greenburn operation. No further storage of overburden above ground will be required as part of the North Extension operation. The applicant indicates that operations will involve an additional 25 weeks of excavation.

1.3 The current coaling operations at Greenburn are anticipated to cease by the end of 2009 although the proposed Dalgig Extension (for which a resolution to approve subject to a Section 75 Agreement was made by the Council on 12 December 2006) is phased to commence in 2009 in order for the applicant to achieve a continuous supply of coal to the market. The Dalgig Extension is expected to have an operational life of 7 years coaling with a further 18 months being required to complete the progressive restoration programme. The current Greenburn operation is consented until mid 2014 and with the adjustments to the phasing of the Greenburn operation, and should the Dalgig operation be subsequently implemented, will result in an additional 3 years operation beyond the current consented date i.e. 2017.

1.4 At the current rate of production, the applicant estimates that the Greenburn operations will first encounter the North extension area during the early part of 2008. It is proposed to use the same hours of operation and shift system as currently used at the Greenburn site i.e. between 0700 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No haulage of minerals from the excavation area to the coal processing area will take place between 1900 and 0700 hours during the 24 hour working period. Coal processing and dispatch of minerals via the railhead will be limited to between 0700 and 1900 Mondays to Fridays and between 0800 and 1300 hours on Saturdays. The dispatch of minerals by road will be confined between 0800 and 1800 hours Mondays to Fridays with no dispatch on Saturdays and Sundays.

With the exception of essential site maintenance no work shall take place on Sundays or on recognised Public Holidays in East Ayrshire.

1.5 The Greenburn operation provides full time direct employment for 72 staff and operatives, with a further 10 contractors employed at the site on a full-time basis. As of March this year, some 1.6 million tonnes of coal and 18,000 tonnes of fireclay have been won from the Greenburn site, with over 98% of all minerals having been dispatched by rail to markets.

1.6 A comprehensive Supporting Statement has been provided by the applicant which essentially contains environmental information to suggest that the proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology. The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the existing Section 75 Agreement for the Greenburn site.

1.7 Disturbed areas within the Greenburn site are progressively being restored and the restoration of the North Extension site will tie into the agreed restoration strategy for the overall Greenburn site. The main aim of the strategy relative to the proposed extension site is to enhance the habitat to support amphibians, small mammals, invertebrates and breeding warders by removing the effect of historic agricultural drainage and management practices. The restoration of the extension will be informed by input from the Technical Working Group which has been set up for the Greenburn site

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 8.5 of this report.

3. SUMMARY OF ANALYSIS

3.1 As is indicated in Section 5 of the 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 refused 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 generally supportive of the proposed development as it is considered that the objections raised are either not of sufficient weight to justify refusal of the application or are not relevant to the proposal.

3.2 The proposals represent a modest extension to the existing consented site at Greenburn but this conflicts with the policies relating to extensions to existing sites and the safeguarding of sites of nature conservation value. However, it will involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by

the consultation process. Notwithstanding the fact that the application site falls within a Provisional Listed Wildlife site, there are no significant objections from SNH, SEPA or RSPB. In addition, the proposed development has not attracted a significant body of objection to the proposal.

3.3 It is considered that, given the relatively remote and sparsely populated area in which the existing Greenburn site and the proposed North Extension site are located, the proposal to extend the existing consented site 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 proposed can be undertaken within acceptable environmental standards.

3.4 In this regard although the proposal does conflict with policy, the degree of conflict is considered to be minor in nature and that the material considerations in this regard would support a departure from policy.

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

Section 75 Agreement

(i) The extension of the remit of the existing Greenburn Technical Working Group to embrace the proposed North Extension.

(ii) The production of a comprehensive Conservation Management Plan for the Greenburn site as extended by the Dalgig Extension, this plan to be agreed by the Greenburn Technical Working Group and shall incorporate the requirements of Scottish Natural Heritage and the Royal Society for the Protection of Birds (Scotland) as indicated in their respective consultation responses. The CMP shall explore opportunities to restore the blanket bog habitat of the site as part of the mitigation measures in addition to avoiding damage to the blanket bog that remains. A revised schedule of monitoring for the site should be developed in consultation with the Greenburn TWG as part of the CMP. This should include extension areas with ongoing bird breeding surveys.

(iii) A clay bund, or similar impermeable barrier shall be constructed along the northern boundary of the extension wherever a peat face greater than 0.5 metres in depth is encountered unless other measures as considered appropriate have been considered and agreed by the Greenburn Technical Working Group.

(iii) The involvement of an ecologist for detailed operational and restoration design and consideration of wider ornithological interests.

(iv) The proposed watercourse diversion shall be considered within the remit of the Greenburn TWG and its restoration considered in conjunction with the CMP for the site.

(v) The introduction of independent noise monitoring scheme for the site, as may be agreed between the applicant and the Planning Authority in consultation with the Environmental Health Authority.

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.

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APPLICATION BY KIER CONSTRUCTION LIMITED

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 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 Greenburn opencast coal site lies approximately 5 kilometres west of New Cumnock and approximately 6 kilometres south of Cumnock and comprises the farmlands of Greenburn, Fardenreoch and Auchincross, together with an area of derelict land at the site of the former Coalburn Colliery, covering a total area of 226.5 hectares. The application site relates to the approved Greenburn Opencast Coal Site, works for which commenced in August 2003. Planning permission for the extraction of 3.5 million tonnes of coal by opencast method from the application site was granted on 06 August 2002 under planning application 00/0793/FL. Full permission was also granted at that time for the construction and operation of a new dedicated railhead and rail link to serve the proposed opencast site.

2.2 The current application site which the applicant has termed the Greenburn North extension extends to approximately 16.9 hectares and lies to the north of the existing Greenburn site. The southern and eastern boundaries of the Greenburn North extension site directly abut the existing Greenburn site boundary and its north-eastern boundary is formed by a ridge stretching from Green Hill to Canivan Hill, although there are no specific features that define this boundary. The application site also fall within the Glaisnock Moss and Canivan Hill Provisional Wildlife Site

2.3 The topography of the site slopes in a general south to south easterly direction with an average elevation of approximately 280 metres AOD. The application site comprises mainly marshy grassland, although there is evidence that there have been attempts in the past to reclaim the area for productive agricultural grassland with the existence of drainage ditches and field drains. The more freely draining areas within the application site support limited productive grassland which is used for informal grazing.

2.4 **Proposed Development:** Permission is sought for an extension of the existing Greenburn site for the winning and working of coal, fireclay and other minerals by opencast method. The North Extension will be developed as a

sequential phase of the existing Greenburn operations using predominantly the same plant and infrastructure. In particular the existing coal treatment area, railhead and railway line will be used to process and transport coal extracted from the North Extension, with all extracted coal transported to the railhead via internal haul roads.

2.5 This proposal will allow the recovery of up to a further 200,000 tonnes of high quality coal, distributed mainly via the new dedicated railhead and line to the power generation industry. Production at the Greenburn site is currently at a rate of around 500,000 tonnes per annum, and the proposed North Extension will not impact on the current production rate. The North Extension will be stripped, worked and progressively restored as a consecutive phase of the existing Greenburn operation. No further storage of overburden above ground will be required as part of the North Extension operation. The applicant indicates that operations will involve an additional 25 weeks of excavation.

2.6 The current coaling operations at Greenburn are anticipated to cease by the end of 2009 although the proposed Dalgig Extension (for which a resolution to approve subject to a Section 75 Agreement was made by the Council on 12 December 2006) is phased to commence in 2009 in order for the applicant to achieve a continuous supply of coal to the market. The Dalgig Extension is expected to have an operational life of 7 years coaling with a further 18 months being required to complete the progressive restoration programme. The current Greenburn operation is consented until mid 2014 and with the adjustments to the phasing of the Greenburn operation, and should the Dalgig operation be subsequently implemented, will result in an additional 3 years operation beyond the current consented date i.e. 2017.

2.7 At the current rate of production, the applicant estimates that the Greenburn operations will first encounter the North extension area during the early part of 2008. It is proposed to use the same hours of operation and shift system as currently used at the Greenburn site i.e. between 0700 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No haulage of minerals from the excavation area to the coal processing area will take place between 1900 and 0700 hours during the 24 hour working period. Coal processing and dispatch of minerals via the railhead will be limited to between 0700 and 1900 Mondays to Fridays and between 0800 and 1300 hours on Saturdays. The dispatch of minerals by road will be confined between 0800 and 1800 hours Mondays to Fridays with no dispatch on Saturdays and Sundays. With the exception of essential site maintenance no work shall take place on Sundays or on recognised Public Holidays in East Ayrshire.

2.8 The Greenburn operation provides full time direct employment for 72 staff and operatives, with a further 10 contractors employed at the site on a full-time basis. As of March this year, some 1.6 million tonnes of coal and 18,000 tonnes of fireclay have been won from the Greenburn site, with over 98% of all minerals having been dispatched by rail to markets.

2.9 A comprehensive Supporting Statement has been provided by the applicant which essentially contains environmental information to suggest that

the proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology. The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the existing Section 75 Agreement for the Greenburn site.

2.10 Disturbed areas within the Greenburn site are progressively being restored and the restoration of the North Extension site will tie into the agreed restoration strategy for the overall Greenburn site. The main aim of the strategy relative to the proposed extension site is to enhance the habitat to support amphibians, small mammals, invertebrates and breeding waders by removing the effect of historic agricultural drainage and management practices. The restoration of the extension will be informed by input from the Technical Working Group which has been set up for the Greenburn site.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division indicates that it has no objections to the proposed development

Noted.

3.2 The Scottish Environment Protection Agency has not raised any objections to the proposed development. SEPA states that the current OCCS at Greenburn is permitted by SEPA in terms of the Pollution Prevention and Control Regulations 2000 in respect of emissions to air. This permit is fairly standard for sites of this nature save that monitoring was required for particulates less than 10mm diameter (PM10) following consultations with the local health board. SEPA advises that the overall situation pertaining to the requirement for PM10 monitoring has been fully considered and accepts that Kier Mining has demonstrated in respect of its current operations, that the PM10 concentrations generated from the Greenburn site do not and will not exceed the 2004 and 2010 Air Quality Objectives at nearby sensitive receptors. In order to facilitate removal of this requirement, Kier mining should now formally apply for a variation of the permit.

Noted.

SEPA should be advised if the extension is permitted as this may require a review of the existing permit conditions.

Noted.

SEPA states that in general the proposals seem to have little impacts on terrestrial and transitional habitat biodiversity present on the site; however more consultation is required on the restoration aims and it is considered that

the Technical Support Group should be involved in agreeing the final restoration aims and plans.

The remit of the Greenburn Technical Working Group will be extended by a variation of the existing Section 75 Agreement, to encompass the proposed Greenburn North extension site.

3.3 The Scottish Wildlife Trust has not responded to the consultation letter.

Noted.

3.4 Scottish Natural Heritage states that it has no objection to the proposed extension on ecological issues but recommends conditions to minimise any adverse impacts arising from the proposal as follows:

- opportunities should be explored to restore the blanket bog habitat of the site as part of the mitigation measures in addition to avoiding damage to the blanket bog that remains; and
- a clay bund, or similar impermeable barrier should be constructed along the northern boundary of the extension wherever a peat face greater than 0.5 metres in depth is encountered

Conditions can be attached to any consent granted for the proposed development or by means of obligations in a Section 75 Agreement to meet the requirements of SNH.

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

Noted.

3.6 New Cumnock Community Council has not responded to the consultation letter.

Noted.

3.7 The Royal Society for the Protection of Birds does not object to the development subject to mitigation measures being implemented through appropriate planning conditions or a legal agreement. RSPB indicates that the extension site is of limited ecological interest and is satisfied with the conclusion that the development will not lead to significant ornithological impacts. Restoration of the site should be targeted to benefit breeding waders through the creation of marshy grassland. It will also be crucial to ensure that during progressive restoration of the Greenburn site, grazing management is put in place as soon as possible to ensure this type of habitat is brought into a condition that can be used by these species.

Noted.

RSPB's non-objection is conditional on:

- Involvement of an ecologist for detailed operational and restoration design and consideration of wider ornithological interest;
- Vegetation clearance and soil stripping being carried out outwith the bird breeding season; where this is not possible, surveys for nesting birds must be carried out and suitable mitigation measures put in place, as agreed by the TWG; and
- Mitigation measures to prevent dewatering of peat to the north of the site being implemented if necessary, as proposed by the applicant.

Conditions can be attached to any consent granted for the proposed development or by means of obligations in a Section 75 Agreement to meet the requirements of the RSPB.

The success of any restoration plan is dependant on the details of implementation and the TWG should be given a key role during finalisation and implementation of the restoration plan which must be backed up by a full Conservation Management Plan. RSPB notes that while it submitted comments on the original CMP for Greenburn, these were never incorporated. It is crucial that a CMP for the whole site is agreed by the TWG and that successful implementation of this plan is ensured through appropriate conditions or legal agreement. East Ayrshire Council must see monitoring of this work as part of their enforcement role at the site. A revised schedule of monitoring for the site should be developed in consultation with the TWG as part of the CMP. This should include extension areas within ongoing bird breeding surveys. Reports should be written up and reported to the TWG annually.

Conditions can be attached to any consent granted for the proposed development or by means of obligations in a Section 75 Agreement to meet the requirements of the RSPB.

3.8 National Air Traffic Services has no objections to the proposed development.

Noted.

3.9 The West of Scotland Archaeology Service has no adverse comments to make on the proposed development.

Noted.

3.10 The Nith District Salmon Fishery Board states that having been associated with the applicant at the Greenburn site since its commencement the Board has been satisfied that the applicant has fulfilled all environmental commitments. This has ensured that the aquatic environment has been safeguarded and that this has been validated by annual electro-fishing surveys conducted by the Board. The NDSFB is re-assured by the applicant's commitment to continue with the monitoring programme in this current application to extend the Greenburn site and looks forward to continuing to

work with the applicant and contributing to the operations via attendance at the regular TWG meetings.

Noted.

3.11 East Ayrshire Council Environmental Health Division has no objections to the proposed development in principle. However, the existing noise limits for the site should be adopted as the noise limits for the extension area. It is further recommended that given there is a history of noise complaint associated with this site, a programme of independent noise monitoring should be introduced and funded by the applicant.

An obligation to this effect can be incorporated in any variation to the existing Section 75 Agreement for the Greenburn site.

4. REPRESENTATIONS

One letter of representation has been received objecting to the proposed development. The main points of objection are summarised as follows:

4.1 This incremental extension should be the subject of Environmental Assessment in view of its cumulative impact with the last, as yet un-issued, planning consent for Dalgig. Given that the proposal encroaches on land not identified as a Potential Opencast Coal Area in the Subject Plan, a site which could have an adverse ecological impact on the Glaisnock Moss to the north, it requires further scrutiny.

The present application comprises a Schedule 2 Development in terms of the Environmental Impact Assessment (Scotland) Regulations 1999. However, due to the size of the area of the proposed extension (16.9 ha) and the assessment that it would be unlikely that significant environmental impacts would arise from the proposed development, a formal Environmental Statement was not required in this case. Nonetheless, the applicant has submitted a comprehensive Supporting Statement that does consider and assess environmental impacts, including ecological impacts, associated with the proposed development.

4.2 MEGA objects to the excuse regarding the coal extraction areas in that the applicant questions the methodology for defining such areas and excluding ecologically sensitive areas. If the presence of coal is to be used to inform the decision making process then the environmental / ecological sensitivity of the area, which would have informed those originally limiting areas suitable for opencast coal extraction, should be fully examined.

The objector is correct in the view expressed. Notwithstanding this, the application site has been assessed in terms of potential

impacts and has been fully consulted upon as indicated elsewhere in this report.

4.3 We note that the applicant also own Canivan Hill, north-west of the proposed extension. Will this be the next encroachment? Has there been drilling on this sensitive site?

The applicant has provided information within the Supporting Statement regarding potential future interests around the existing operational site at Greenburn. Due to the presence of an igneous intrusion to the north of the proposed extension site, and due to the quality of coal to the north-west, it is very unlikely that any further extension towards Glaisnock Moss will be possible.

4.4 We object to any hydrological disturbance at the south end of the blanket bog. The temporary watercourse re-alignment of a tributary of the already troubled River Nith in not even included in the red line application site which requires to be corrected to include this stream. The alteration to the topography after the extraction of 1 million tonnes of coal will alter the microclimate, rainfall patterns and thus local hydrology.

It is notable that SEPA, SNH, RSPB and the NDSFB have not objected to the proposed development on hydrological impacts subject to appropriate conditions. It is noted that the watercourse diversion does not fall within the red-line site boundary, but this will be addressed through a variation to the Section 75 Agreement to provide for its restoration to its original route following coaling operations. The applicant has indicated that the temporary realignment is subject to topographical constraints and is essentially an act of land drainage within their land holding.

4.5 The installation of clay bunds may solve the applicant's potential hydrological problems but they will upset the fine and fragile ecological balance of blanket bogs and other marshy areas.

It is notable that SEPA, SNH, RSPB and the NDSFB have not objected to the proposed development on hydrological impacts subject to appropriate conditions. Indeed the use of an impermeable clay bund is advocated in this instance by both SNH and RSPB.

4.6 There is no estimate of the amount of fireclay expected to be extracted.

Fireclay is being extracted at a nominal rate which is determined by the applicant's contracts. Due to the nature of the material and location of end users, fireclay is dispatched by road. Greenburn is consented to dispatch up to 80,000 tonnes of minerals by road per annum and therefore fireclay is limited to this rate. Fireclay

amounts to just over 1% of minerals sales from Greenburn with 23,300 tonnes having been dispatched as of April 2007.

4.7 This latest application fails both tests in SPP16. There is no local community benefit and the environmental acceptability of continuing opencast higher and higher into the hillside is questionable.

Assessment against the tests of SPP16 is given in Section 6 below.

4.8 Overburden heights are not given in the application.

The application details indicate that these will be no requirement for additional overburden to be stockpiled above ground. It should be noted at this time the applicant has already commenced reducing the southern part of the existing overburden mound as part of the progressive restoration programme for the Greenburn site.

4.9 The application should be refused; is it contrary to the Opencast Coal Subject Plan (Policies MIN1, MIN2, MIN4 and MIN12. It does not remove dereliction and no environmental benefit has been clearly demonstrated and it will produce an unacceptable cumulative impact on the amenity of the area. We note that some planning reports on opencasting contain rather selective information when it comes to compliance or non-compliance with all listed criteria.

An assessment of the proposed development against all relevant policies of the East Ayrshire Opencast Coal Subject Plan is given in section 5 below. The relevant policy regarding extensions to existing opencast coal sites is Policy MIN3, not MIN1 and MIN2. Policy MIN4 lists the criteria against which all applications for opencasting will be assessed i.e. an advisory policy not a prescriptive one. The more relevant policy in this instance is Policy MIN26, which is not addressed in the objection but is addressed in section 5 below.

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 Greenburn development site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads. The proposed development requires to be assessed against Policy E14 which states:

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

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

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

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

The proposed North Extension application 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 (as may be amended) for the existing Greenburn site and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed extension would not conflict with the stated criteria in terms of its operational conduct.

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

East Ayrshire Opencast Coal Subject Plan

5.4 Policy 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 approved site.*

Extraction will be carried out as a sequential phase of development of the overall Greenburn 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; and*

The scale of operations, rate of extraction and number of vehicle movements generated by the extended site will be commensurate with those as existing currently on site.

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

The proposed extension will not significantly prejudice plans for the restoration as the site will be progressively restored.

However, the proposed North Extension area does not fall within a Potential Coal Extraction Area.

5.5 Policy MIN3 further states that outwith the Potential Coal Extraction Areas, the Council will assess any extension on its own merits against the above criteria, and will not generally be supportive of such developments except where:

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

There will be no existing dereliction removed as a result of the proposed extension.

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

The working of the proposed extension area will sustain the continued direct employment of 72 people and 10 dedicated

contractors at the Greenburn site for the extended 25 weeks of operations.

(vii) *there are no conflicts with any other Subject plan policies*

See comments below.

The North Extension application site has been excluded as a Potential Coal Extraction Area due to the application site falling within the Glaisnock Moss and Canivan Hill Provisional Wildlife Site.

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 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.

Although the overall lifespan of the Greenburn operation as proposed to be extended by the Dalgig Extension would be a total of 13 years, it is considered that the North Extension proposal will not result in any perpetuation of disturbance to a local community given the location of the site and its relative remoteness from local communities. Other impacts such a mineral transportation through local communities is considered to be acceptable given that to date some 98% of the minerals recovered from the existing Greenburn operation have been dispatched via the dedicated railhead at Greenburn. In addition as indicated within this report there are local and community benefits to be accrued from the proposed development.

It is considered that the proposal is contrary to the provisions of Policy MIN3.

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

The applicant has provided information based on current knowledge of the geology of the area and is included in the Supporting Statement accompanying the application. In this regard, the applicant has indicated an interest in land to the south of the existing Greenburn site.

5.7 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 development is not a new site but an extension to the existing Greenburn site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12 with respect to the stated criteria.

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

The restoration of the existing Greenburn site and the proposed North Extension is designed to improve the wildlife conservation value of the land that would provide for greater benefits to the area both in bio-diversity terms. Restoration to high standards will be overseen by the Technical Working Group which has been set up, and is operational, as part of the existing Section 75 Agreement for the current operational Greenburn site. The remit of the TWG can be extended to include overseeing of the North Extension.

5.9 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.

A minimum of 90% of coals won from the proposed extension area requires to be dispatched via the existing dedicated railhead

facilities at the Greenburn site, as per the current Section 75 Agreement for Greenburn. To date, some 98% of minerals won from the site have been dispatched to markets by rail.

5.10 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 internal haul roads.

5.11 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.

Contributions by the operator to the maintenance of public roads are secured through the existing Section 75 Agreement for the Greenburn site and this will be extended to encompass the North Extension.

5.12 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 Section 75 Agreement for the Greenburn site contains an obligation in respect of this matter which will be amended to encompass the North Extension.

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

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

The proposed Dalgig Extension area does not encroach within 500 metres of any settlement.

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

Although the overall lifespan of the Greenburn operation as proposed to be extended by the Dalgig Extension would be a total of 13 years it is considered that the proposal will not result in any perpetuation of disturbance to a local community given the location of the site and its relative remoteness from local communities. Other impacts such as mineral transportation through local communities is considered to be acceptable given that to date some 98% of the minerals recovered from the existing Greenburn operation have been dispatched via the dedicated railhead at Greenburn. In addition as indicated within this report there are significant local and community benefits to be accrued from the proposed development.

(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 site operator is currently exploring the potential for further extraction of coal in the vicinity of the existing site as indicated in the Supporting Statement. However, it is considered that the current proposal will not, in itself, result in perpetuation of disturbance to local communities.

5.14 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;

The applicant states that there are no residential properties, outwith its potential ownership or control that lie within 500 metres of the amended working face of the site.

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

There are no residential properties, outwith the applicant's potential ownership or control that lie within 100 metres of the amended working face of the site.

5.15 Policy MIN26(iii): In order to ensure that areas of nature conservation interest are adequately protected from any direct or indirect adverse effects of opencast developments...developments likely to have an adverse effect on local nature reserves and listed wildlife sites will be discouraged and all sites of recognised nature conservation value will be safeguarded wherever possible. Where development is approved for such sites, appropriate measures should be taken to conserve and manage, as far as possible, the site's biological or geological interest and to provide for replacement habitats or features where damage is unavoidable.

The Greenburn North Extension falls within the Glaisnock Moss / Canivan Hill Provisional Wildlife Site and in this regard, the proposal conflicts with the provisions of Policy MIN26(ii) which seeks to safeguard such areas. However, following specialist surveys undertaken in consultation with statutory and non-statutory stakeholders, the development currently proposed in this application has been restricted to an area of low conservation value as acknowledged through the consultation process. It is considered that with the proposed mitigation measures and use of conditions, the site can be operated to acceptable environmental standards.

5.16 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 existing Greenburn opencast site is the subject of a current Section 75 Agreement that would be extended and amended to encompass the proposed North Extension.

5.17 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 currently a contributor to the Mineral Trust Fund in respect of the existing Greenburn opencast site and would contribute in respect of the North Extension.

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

The existing Greenburn opencast site is subject to a Section 75 Agreement encompassing the above matters and appropriate amendments to this Agreement would ensure that safeguards to site restoration and aftercare would be in place for the North Extension.

It is therefore considered that while the proposed development is generally consistent with the relevant EAOCS policies pertinent to this application it represents a minor departure from Policies MIN3 and MIN26(iii).

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representation received, SPP16 on Opencast Coal and associated the associated PAN50, relevant planning history and the Finalised Ayrshire Joint Structure Plan 2006.

Consultation Responses

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

Representations

6.3 It is considered that with the mitigation measures promoted within the Supporting Statement, many of the points of objection can be addressed either by condition or by means of a Section 75 Agreement or are not of sufficient weight to merit refusal of the application, with the exception of where the development conflicts with the policy provisions of the EAOCS.

Scottish Planning Policy

6.4 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 coal mining may take place.

6.5 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 adopted East Ayrshire Opencast Coal Subject Plan has identified Potential Coal Extraction Areas and in this regard the North Extension development lies outwith such an area.

6.6 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 in the main, the North Extension would meet this first test, given the lack of formal objection by statutory consultees (subject to appropriate conditions or Section 75 obligations), the short timescale for the operations in the proposed extension area and the relatively small additional uptake of land (16.9 ha) .

(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 would also be met as the proposed North Extension will allow continuation of employment albeit for a short period of time.

It is therefore considered that both tests are satisfied in assessing the proposed North Extension.

Planning Advice Notes

6.7 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 History

6.8 Planning permission for the extraction of 3.5 million tonnes of coal by opencast method from the application site was granted on 06 August 2002 under planning application 00/0793/FL. Full permission was also granted at that time for the construction and operation of a new dedicated railhead and rail link to serve the proposed opencast site.

6.9 Planning permission for a variation of conditions 7 and 35 of consent 00/0793/FL to allow the formation of a vehicle underpass within the application site was approved on 10 October 2003.

6.10 Planning permission for a variation to condition 39 of consent 00/0793/FL to allow extended haulage hours between the excavation area and the coal processing area was approved on 25 June 2004.

6.11 Planning permission for an extension to the excavation area (Ref. No. 04/0717/FL) was approved on 08 October 2004.

6.12 A planning application (Ref. No. 05/0583/FL) for the recovery of minerals other than coal at the Greenburn site was approved on 13 April 2006.

6.13 A planning application (Ref. No. 06/0538/FL) for the Dalgig extension to the Greenburn site has been approved by the Council on 12 December 2006 subject to a Section 75 Agreement that has not yet been concluded with the applicant.

Finalised Ayrshire Joint Structure Plan

6.14 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. Legal implications will arise through the requirement to amend the existing Section 75 Agreement for the site to include the North Extension and as required to be amended by the terms of this report.

7.2 In terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2007, certain categories of development require to be formally notified to the Scottish Ministers should the Planning Authority be minded to approve such developments. This includes development subject to Environmental Impact Assessment, any development which, in the opinion of the planning authority, would be significantly contrary to the development plan for the area and development consisting of works connected with the extraction of coal by opencast methods, and other

minerals extracted in association with works to extract opencast coal, where the site boundary falls within 500 metres from the edge of an existing community or sensitive establishment.

The current application is not the subject of a formal Environmental Impact Assessment. Further, although the proposal conflicts with some provisions of the EAOCSP, for the reasons stated below, approval of the application would not be considered a significant departure from the development plan. The proposed extension site boundary does not encroach within 500 metres from the edge of an existing community or sensitive establishment. The application will not therefore require to be notified to the Scottish Ministers in accordance with the 2007 Direction.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused 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 generally supportive of the proposed development as it is considered that the objections raised are either not of sufficient weight to justify refusal of the application or are not relevant to the proposal.

8.2 The proposals represent a modest extension to the existing consented site at Greenburn but this conflicts with the policies relating to extensions to existing sites and the safeguarding of sites of nature conservation value. However, it will involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. Notwithstanding the fact that the application site falls within a Provisional Listed Wildlife site, there are no significant objections from SNH, SEPA or RSPB. In addition, the proposed development has not attracted a significant body of objection to the proposal.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the existing Greenburn site and the proposed North Extension site are located, the proposal to extend the existing consented site 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 proposed can be undertaken within acceptable environmental standards.

8.4 In this regard although the proposal does conflict with policy, the degree of conflict is considered to be minor in nature and that the material considerations in this regard would support a departure from policy.

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

Section 75 Agreement

(i) The extension of the remit of the existing Greenburn Technical Working Group to embrace the proposed North Extension.

(ii) The production of a comprehensive Conservation Management Plan for the Greenburn site as extended by the Dalgig Extension, this plan to be agreed by the Greenburn Technical Working Group and shall incorporate the requirements of Scottish Natural Heritage and the Royal Society for the Protection of Birds (Scotland) as indicated in their respective consultation responses. The CMP shall explore opportunities to restore the blanket bog habitat of the site as part of the mitigation measures in addition to avoiding damage to the blanket bog that remains. A revised schedule of monitoring for the site should be developed in consultation with the Greenburn TWG as part of the CMP. This should include extension areas with ongoing bird breeding surveys.

(iii) A clay bund, or similar impermeable barrier shall be constructed along the northern boundary of the extension wherever a peat face greater than 0.5 metres in depth is encountered unless other measures as considered appropriate have been considered and agreed by the Greenburn Technical Working Group.

(iii) The involvement of an ecologist for detailed operational and restoration design and consideration of wider ornithological interests.

(iv) The proposed watercourse diversion shall be considered within the remit of the Greenburn TWG and its restoration considered in conjunction with the CMP for the site.

(v) The introduction of independent noise monitoring scheme for the site, as may be agreed between the applicant and the Planning Authority in consultation with the Environmental Health Authority.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 8.5 of this report.

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 and Economic Development

31 July 2007
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letter of representation
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (1999)
7. Finalised Ayrshire Joint Structure Plan (2006)
- 8.. Previous applications 00/0793/FL, 03/0726/FL, 04/0263/FL, 04/0717/FL, 05/558/FL and 06/0538/FL.
- 9.. SPP16: Opencast Coal
10. PAN50 and Annexes.

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

Implementation Officer: Dave Morris

Location	Greenburn OCCS, New Cumnock
Nature of Proposal:	Extension of Opencast Coal Site (North Extension)
Name and Address of Applicant:	Kier Construction Limited Tempsford Hall SANDY Beds. SG19 2BD
Name and Address of Agent	Mark Harrington Per Kier Mining Tempsford Hall SANDY Beds. SG19 2BD

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

The above [FULL](#) application should be granted subject to the following conditions:

1. The total mineral haulage from the site, as extended, on the public road system shall not exceed a total of 80,000 tonnes per annum at an average daily rate of 12 -16 HGV's per day.

REASON –In the interests of residential amenity and road safety.

2. All vegetation clearance, forest felling and soil stripping shall be carried out outwith the bird breeding season. Where this is not possible, surveys for nesting birds shall be carried out and suitable mitigation measures put in place, as approved by the Planning Authority in consultation with the Greenburn Technical Working Group.

REASON – In the interests of environmental protection.

3. Except in compliance with the proposals hereby approved, the proposed development shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 00/0793/FL dated 06 August 2001 as amended by planning consent 03/0726/FL dated 10 October 2003, as amended by planning consent 04/0263/FL dated 24 June 2004, as amended by planning consent 04/0717/FL dated 28 October 2004 and as amended by planning consent 05/0583/FL dated 13 April 2006.

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

Note to Applicant

1. The applicant is advised to make early contact with the Scottish Environment Protection Agency with regard to any amendments to existing authorisations in place for the Greenburn site in respect of legislation administered by that body.

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