

EAST AYRSHIRE COUNCIL

SPECIAL SOUTHERN LOCAL PLANNING COMMITTEE: 13 AUGUST 2010

**09/0906/PP: PROPOSED RECOVERY OF COAL USING SURFACE MINING
TECHNIQUES WITH RESTORATION TO AGRICULTURE WITH NATURE
CONSERVATION AND IMPROVED PUBLIC ACCESS
AT AUCHINCROSS FARM, NEW CUMNOCK
(PROPOSED GREENBURN SOUTH DEVELOPMENT)**

EXECUTIVE SUMMARY SHEET

Click for application details

<http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=09/0906/PP>

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for a significant extension of the existing Greenburn site for the winning and working of coal, fireclay and other minerals by opencast method. The Greenburn South extension will be developed as a sequential phase of the existing Greenburn site 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 Greenburn South extension, with all extracted coal transported to the railhead via internal haul roads or potentially by a conveyor system.

1.2 The proposed development will involve mineral recovery from three excavation areas totalling an area of approximately 218 hectares. The Lanemark excavation area (Area A), stretches from 100 metres north of the Burnfoot Road northwards to the Afton Brickworks. The Braehead excavation area (Area B) is situated between the Lane Burn and westwards to the eastern edge of the Dalricket Coup. The Dalricket excavation area (Area C) is located to the west of the Dalricket Coup. The proposal will allow the recovery of up to a further 2.8 million tonnes of high quality coal, distributed mainly via the new dedicated railhead and line to the power generation industry. Production will be at a rate of between 450,000 to 650,000 tonnes per annum, similar to the current annual production rate of the existing operational site.

1.3 The current coaling operations at Greenburn are anticipated to cease by the early part of 2012 and the proposed operations in the Greenburn South extension are to be phased to commence around this time in order for the applicant to achieve a continuous supply of coal to the market and continuity of employment. The Greenburn South extension is expected to have an operational life of 7 years coaling with a further 1 year being required to complete the progressive restoration programme. It is therefore anticipated that the Greenburn South extension will be fully completed and restored

during 2020. A five year aftercare programme will continue beyond this date.

1.4 In terms of site infrastructure and maintenance, the existing coal processing and rail loading facilities situated north of the River Nith in the existing Greenburn site will be retained for use by the proposed Greenburn South development together with the rail link connection to the main rail network. The site will be accessed through two locations:

- (i) Access Point A – existing access into the Greenburn Coal Preparation Area; and
- (ii) Access Point B – from the south via the Dalricket to Dalleagles Road (U720).

The U720 road from Dalricket to Dalleagles will be temporarily suspended during the working of Area B and will be reinstated during restoration. The temporary suspension of the road will require to be the subject of a formal road closure order promoted in terms of the Town and Country Planning (Scotland) Act 1997.

1.5 Several watercourses, burns and drainage channels will require realigning or suspending due to site operations during the life of the site. Phasing of the diversions will minimise the time any particular watercourse is offline. Principle realignments include the Lane Burn and the River Nith. It is proposed to divert the Lane Burn along the western boundary of Area A for a period of approximately five years, after which, it is proposed to reinstate the Lane Burn along its original alignment. Early works will be required to provide the local realignment of the River Nith in the north east of the site necessary for the working of Area B. An additional realignment of the River Nith west of the Dalricket Bridge will be required later in the site timescale to allow the excavation of Area C. These realignments will both be permanent. The permanent realignments will be constructed well in advance of requirements to ensure a suitable rehabilitation period prior to accepting flows. A technical working group is to be formed to oversee the construction, rehabilitation and opening of the permanent realignments.

1.6 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). However, during the initial phase of the site and until PAN50 standard night-time noise criteria can be adhered to, the general hours of working will be restricted to 0700 hours until 2300 hours from Monday to Friday and 0700 hours until 1600 hours on Saturday. 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 1600 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 and the maintenance of plant and machinery, no work shall take place on Sundays or on recognised Public Holidays in East Ayrshire.

1.7 The existing Greenburn operation provides full time employment for 107 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 7 year working life of the Greenburn South extension. In addition to direct employment, a number of indirect and induced jobs (approximately 113) will also continue to be supported in terms of site servicing. The projected annual wage bill during the life of the proposed development is some £3.9 million, a large proportion of which will contribute towards the local economy. In addition in excess of £3 million per year will be expended with local businesses and over £325,000 contributed through business rates.

1.8 The Greenburn South application has been accompanied by an Environmental Statement and the information provided suggests that, subject to the implementation of a range of mitigation measures as described in the ES documents, the development can take place without significant adverse, long term impacts on the environment or more particularly on local communities.

1.9 As part of the statutory requirements for this major application, the applicant has undertaken pre-application consultation with the local community with regard to the proposed development. The applicant has undertaken a full programme of engagement involving different sectors of the community in order to elicit views on the development proposals and issues which should be considered in the EIA process. Regard has been had to PAN81 and to the Scottish Government's Regulations on planning application consultation in respect of engaging with the community. As far as possible the applicant has taken community comments on board in bringing forward this planning application and this is documented in the Pre-Application Consultation Report which also accompanies the application. The main points of change to the scheme resulting from this process were:

- Following the discovery of an area of old illegal fly tipping/landfill, the southern limits of the Lanemark area were re-designed and pulled back to prevent any disturbance. This area was not required for the development plan but was within the landholding boundary.
- Following the redesign of the excavation limits, the opportunity was taken to pull the screening mound back, away from the Burnfoot Road, in order to minimise its impact on Burnside whilst retaining its effectiveness as a visual screen and noise barrier.
- Following comments at the public exhibition, from the residents of Burnside, the screening mound was extended towards the east.
- Following comments from the residents of Burnside, the proposed restoration contours in the south of the Lanemark area were modified and lowered in order to maintain long distance views.

- Restoration landform contours were also modified to incorporate a flood plain associated with the re-instated Lane Burn.
- Further screening and noise attenuation bunds were added in response to noise predictions prepared by consultants.
- A final restoration strategy plan was drawn up which attempted to balance the wishes of the local residents, who did not want any more wetlands in the area, and the wishes of environmental stakeholders, who did.
- Proposed tree and hedge planting opposite Burnside was kept to a minimum as residents felt that, over time, their long distance views would otherwise be compromised.

2. RECOMMENDATIONS

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:

- (i) 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; and**
- (ii) the application has been notified to and cleared by the Scottish Ministers under the Notification of Applications Direction 2009.**

3. CONCLUSIONS

3.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan albeit that it represents a technical departure from Policy MIN3. 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 as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

3.2 The proposal represents a significant extension to the existing consented site at Greenburn. 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. In addition, the proposed development has not attracted any significant level of objections.

3.3 It is considered that, given the relatively remote and sparsely populated area in which the existing Greenburn site and the proposed Greenburn South

extension site are located, the proposal to extend the existing consented site will not have any significant adverse effects on any local community, particularly where the owners of properties lying within close proximity to operational parts of the site have secured formal agreements with the applicant. In this regard the breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan have been addressed by the agreements made and therefore it is considered that the extended operations proposed can be undertaken within acceptable environmental standards.

3.4 The existing Greenburn operation provides full time employment for 107 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 8 year working life of the proposed Greenburn South extension. This is considered to be of significant community benefit.

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

Section 75 Agreement

(i) An agreement to an ongoing road maintenance regime to continue to maintain roads in a safe and serviceable condition during the future term of the haulage of materials from the site over the route (U720/U719/C36) between the site access and the A76. This will be achieved by:

- (a) The applicant completing, at their expense, road improvements identified along the haulage route in conjunction with East Ayrshire Council, in order to ensure the road is maintained in a safe and serviceable condition. The applicant shall also agree an ongoing road maintenance contribution of £0.15p per tonne of mineral hauled via the public road system, with the Council to continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route (U720/U719/C36) between the site access and the A76.
- (b) The carrying out a joint annual detailed inspection of the route U720, U719 and C36 to identify any programmed remedial work required to be done due to deterioration of the road surface. The work identified could comprise of re-surfacing, including lengths at property frontages, potholing, patching, edge strengthening, kerbing, drainage/verge repair work, road markings and additional signage.

- (c) The applicant shall pay all costs associated with the formal temporary closure of the U720 road including the provision of turning points at each end of the road closure and any signage required for alternative routing during the period of closure.
- (d) The provision of signage and road markings on the B741, at the applicant's expense, prior to the closure of the U720 road.
- (ii) The subscription of the applicant to the Council's Transportation Protocol to provide for agreement on routing, timing and marking of vehicles for minerals won within the Greenburn South site transported on the public road network within East Ayrshire.
- (iii) The extension of the remit of the existing Greenburn Technical Working Group to embrace the proposed Greenburn South extension.
- (iv) The monitoring of the restored Greenburn and Greenburn extension sites through to the final aftercare period ending during 2025, as overseen by the Greenburn Technical Working Group.
- (v) The production of a comprehensive Conservation Management Plan for the comprehensive Greenburn complex as extended by the Greenburn South extension, this plan to be agreed by the Greenburn Technical Working Group and to incorporate
- (vi) The preparation Protected Mammals Management Plan (PMMP), as approved by the Planning Authority to cover the impacts on protected mammals (otters, bats, badgers,) arising as a result of the Greenburn South development. This PMMP shall be agreed with SNH prior to the commencement of works and shall include, in relation to the timing and phasing of operations:
- The undertaking of a bat survey prior to the demolition of any building or removal of trees.
 - The undertaking of an otter survey prior to any works excavating the streams.
 - The undertaking of a badger survey prior to any works.
 - The undertaking of a barn owl survey prior to any works.

Such surveys and associated mitigation proposals shall be undertaken in cognisance of the comments of SNH in its consultation response dated 03 August 2010.

- (vii) The appointment of an Ecological Clerk of Works (ECoW) by the applicant and approved by the Planning Authority in consultation with SNH for the period from commencement of development to the completion of aftercare or such earlier date as may be agreed in writing with the Planning Authority. The scope of work of the ECoW shall be agreed by the Council and will include:

- agreeing monitoring for the PMMP and reporting results to the TWG;
- advising and implementing restoration works; and
- monitoring and reporting during restoration and aftercare period to the TWG.

(viii) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Netherton site following consultation with the Planning Authority and the Environmental Health Service, such monitoring schemes to be in place prior to the commencement of operations associated with this development;

(ix) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.

(x) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the East Ayrshire Opencast Coal Subject Plan 2003, including the establishment and implementation of an appropriate independent monitoring regime.

(xi) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;

(xii) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site;

(xiii) The undertaking of structural surveys of residential properties lying in close proximity to the proposed excavation areas, the identification of properties considered for survey being the subject of discussion and agreement with the Planning Authority, and only to be required where the property owners give consent for such surveys. Copies of the requisite surveys shall be made available to the Planning Authority and to respective property owners.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, it would not require to be referred to the Full Council because it would not represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been

the basis for recommendation preparation or decision making by the Planning Authority.

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(PROPOSED GREENBURN SOUTH DEVELOPMENT)**

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 under the scheme of delegation because it represents an extension of working for an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan and will require to be notified to the Scottish Ministers.

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. 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 present application site which the applicant has termed the Greenburn South extension extends to approximately 440 hectares and lies immediately to the south of the existing operational Greenburn site and to the east of the existing House of Water Opencast site. The eastern boundary extends towards Bank Glen, New Cumnock and the southern boundary lies immediately north of the B741 New Cumnock – Dalmellington Road at Burnside. The area generally sits on moderately sloping land between approximately 190 metres Above Ordnance Datum (AOD) and 240 metres AOD, the most elevated parts of site being on the southern boundary immediately to the north of Auchingee Farm (240 metres AOD) and the southern and eastern parts of the Lanemark area (230 metres AOD).

2.3 The proposed site comprises both improved and marginal agricultural land, as well as unimproved moor land, with land uses of livestock grazing with some land used for grass conservation. Four farm steadings and one cottage are enclosed within the boundary. Remnants of former collieries are present in the centre and north-eastern parts of the site and a disused railway line bisects the site from the north east to south west. Historical land-uses have included deep mining, clay extraction and dairy farming. The former Dalricket Municipal Waste Disposal Site lies wholly within the Greenburn South application site but is wholly excluded from the development site and proposals.

2.4 The principal habitats are improved and semi-improved acid and neutral grasslands, which account for approximately 50% and 20%, respectively. Areas of marshy grassland and areas of wet modified bog and swamp make up the majority of the other 30%. There are two small strips of broad-leaved woodland which cover approximately 1ha as well as occasional scattered broad-leaved trees. Most of the field boundaries are formed by fences with occasional stone dykes and hedgerows. Two watercourses, the River Nith and the Lane Burn cross the site and a number of ditches and minor watercourses flow within it. The River Nith flows along the northern boundary of the site and the Lane Burn flows south to north, joining the Nith close to Riggfoot Farm in the north of the site and almost bisecting the site into two equal halves. There are also a number of derelict areas and structures across the proposed site consisting of old colliery spoil tips, old mine entrances and disused railway embankments,

2.5 **Proposed Development:** Permission is sought for a significant extension of the existing Greenburn site for the winning and working of coal, fireclay and other minerals by opencast method. The Greenburn South extension will be developed as a sequential phase of the existing Greenburn site 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 Greenburn South extension, with all extracted coal transported to the railhead via internal haul roads or potentially by a conveyor system.

2.6 The proposed development will involve mineral recovery from three excavation areas totalling an area of approximately 218 hectares. The Lanemark excavation area (Area A), stretches from 100 metres north of the Burnfoot Road northwards to the Afton Brickworks. The Braehead excavation area (Area B) is situated between the Lane Burn and westwards to the eastern edge of the Dalricket Coup. The Dalricket excavation area (Area C) is located to the west of the Dalricket Coup. The proposal will allow the recovery of up to a further 2.8 million tonnes of high quality coal, distributed mainly via the new dedicated railhead and line to the power generation industry. Production will be at a rate of between 450,000 to 650,000 tonnes per annum, similar to the current annual production rate of the existing operational site.

2.7 The current coaling operations at Greenburn are anticipated to cease by the early part of 2012 and the proposed operations in the Greenburn South extension are to be phased to commence around this time in order for the applicant to achieve a continuous supply of coal to the market and continuity of employment. The Greenburn South extension is expected to have an operational life of 7 years coaling with a further 1 year being required to complete the progressive restoration programme. It is therefore anticipated that the Greenburn South extension will be fully completed and restored during 2020. A five year aftercare programme will continue beyond this date.

2.8 In terms of site infrastructure and maintenance, the existing coal processing and rail loading facilities situated north of the River Nith in the existing Greenburn site will be retained for use by the proposed Greenburn South development together with the rail link connection to the main rail network. The site will be accessed through two locations:

- (iii) Access Point A – existing access into the Greenburn Coal Preparation Area; and
- (iv) Access Point B – from the south via the Dalricket to Dalleagles Road (U720).

The U720 road from Dalricket to Dalleagles will be temporarily suspended during the working of Area B and will be reinstated during restoration. The temporary suspension of the road will require to be the subject of a formal road closure order promoted in terms of the Town and Country Planning (Scotland) Act 1997.

2.9 Several watercourses, burns and drainage channels will require realigning or suspending due to site operations during the life of the site. Phasing of the diversions will minimise the time any particular watercourse is offline. Principle realignments include the Lane Burn and the River Nith. It is proposed to divert the Lane Burn along the western boundary of Area A for a period of approximately five years, after which, it is proposed to reinstate the Lane Burn along its original alignment. Early works will be required to provide the local realignment of the River Nith in the north east of the site necessary for the working of Area B. An additional realignment of the River Nith west of the Dalricket Bridge will be required later in the site timescale to allow the excavation of Area C. These realignments will both be permanent. The permanent realignments will be constructed well in advance of requirements to ensure a suitable rehabilitation period prior to accepting flows. A technical working group is to be formed to oversee the construction, rehabilitation and opening of the permanent realignments.

2.10 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). However, during the initial phase of the site and until PAN50 standard night-time noise criteria can be adhered to, the general hours of working will be restricted to 0700 hours until 2300 hours from Monday to Friday and 0700 hours until 1600 hours on Saturday. 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 1600 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 and the maintenance of plant and machinery, no work shall take place on Sundays or on recognised Public Holidays in East Ayrshire.

2.11 The existing Greenburn operation provides full time employment for 107 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 7 year working life of the Greenburn South extension. In addition to direct employment, a number of indirect and induced jobs (approximately 113) will also continue to be supported in terms of site servicing. The projected annual wage bill during the life of the proposed development is some £3.9 million, a large proportion of which will contribute towards the local economy. In addition in excess of £3 million per year will be expended with local businesses and over £325,000 contributed through business rates.

2.12 The Greenburn South application has been accompanied by an Environmental Statement and the information provided suggests that, subject to the implementation of a range of mitigation measures as described in the ES documents, the development can take place without significant adverse, long term impacts on the environment or more particularly on local communities.

2.13 As part of the statutory requirements for this major application, the applicant has undertaken pre-application consultation with the local community with regard to the proposed development. The applicant has undertaken a full programme of engagement involving different sectors of the community in order to elicit views on the development proposals and issues which should be considered in the EIA process. Regard has been had to PAN81 and to the Scottish Government's Regulations on planning application consultation in respect of engaging with the community. As far as possible the applicant has taken community comments on board in bringing forward this planning application and this is documented in the Pre-Application Consultation Report which also accompanies the application. The main points of change to the scheme resulting from this process were:

- Following the discovery of an area of old illegal fly tipping/landfill, the southern limits of the Lanemark area were re-designed and pulled back to prevent any disturbance. This area was not required for the development plan but was within the landholding boundary.
- Following the redesign of the excavation limits, the opportunity was taken to pull the screening mound back, away from the Burnfoot Road, in order to minimise its impact on Burnside whilst retaining its effectiveness as a visual screen and noise barrier.

- Following comments at the public exhibition, from the residents of Burnside, the screening mound was extended towards the east.
- Following comments from the residents of Burnside, the proposed restoration contours in the south of the Lanemark area were modified and lowered in order to maintain long distance views.
- Restoration landform contours were also modified to incorporate a flood plain associated with the re-instated Lane Burn.
- Further screening and noise attenuation bunds were added in response to noise predictions prepared by consultants.
- A final restoration strategy plan was drawn up which attempted to balance the wishes of the local residents, who did not want any more wetlands in the area, and the wishes of environmental stakeholders, who did.
- Proposed tree and hedge planting opposite Burnside was kept to a minimum as residents felt that, over time, their long distance views would otherwise be compromised.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Consultations have been carried out both in respect of the Environmental Statement and the planning application. Where appropriate, the final letters of consultation from some consultees are summarised below, with initial responses available as background papers.

3.2 East Ayrshire Council Roads and Transportation Service indicates that it has no objections to the proposed development subject to the following conditions:

- (i) Prior to the commencement of any haulage of minerals/coal from the site via the existing public road network, the applicant will require to complete, at their expense, road improvements identified along the haulage route in conjunction with East Ayrshire Council, in order to ensure the road is maintained in a safe and serviceable condition. The developer must also agree an ongoing road maintenance contribution of £0.15p per tonne of mineral hauled via the public road system, with the Council to continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route (U720/U719/C36) between the site access and the A76. This will be achieved by carrying out a joint annual detailed inspection of the route U720, U719 and C36 to identify any programmed remedial work required to be done due to deterioration of the road surface. The work identified could comprise of re-surfacing, including lengths at property frontages, potholing, patching, edge

strengthening, kerbing, drainage/verge repair work, road markings and additional signage.

- (ii) The section of road U720 that will be temporarily closed will require to be stopped up by order under the provisions of the Town And Country Planning Act for permitted development with all costs paid by the applicant. On completion of site works, the road will require to be reinstated to East Ayrshire Council standards and Road Construction Consent will be required to allow it to be re-adopted as a through public road. Each end of the stopped up section of road will require a turning area to be formed to Council standards at the applicant's expense. All signage required indicating the road is no longer a through road, signing of the alternative route and any access gates etc. required must be provided at the applicant's expense.
- (iii) The total mineral haulage from the site on the public road system must not exceed that consented to previously (ie. 80,000T per annum) at an average daily rate of 12 to 16 HGVs per day as indicated in the Environmental Statement submitted.
- (iv) The Transportation Management Plan (incorporating the Transport Protocol) must continue to be implemented and observed by the applicant and their hauliers.
- (v) Two vehicle activated speed warning signs for "pedestrians in the road" must be provided at Roadside on the C36 at the developer's expense.
- (vi) Any new accesses onto the public road system will require to be agreed with the Council and meet the requirements of the Design Manual for Roads and Bridges in terms of visibility and construction.
- (vii) Signage and road markings identified in the ES at Burnside on the B741 must be provided at the applicant's expense prior to the closure of the U720.

The Roads and Transportation Service further indicates that works were previously identified to be carried out along the road haulage route and these were partially completed in conjunction with the Council. However, should the route now be considered for further road haulage of minerals, the route would require to be re-inspected and the work would require to be completed at the applicant's expense with a further contribution towards up-keep of the route by way of a mineral contribution of £0.15p per tonne of material hauled. This would require to be incorporated into a Section 75 agreement.

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 Roads and Transportation Service.

3.3 The Scottish Environment Protection Agency had previously commented on this proposal and raised some potential flooding concerns primarily relating to areas of the development lying within the functional floodplain (sparsely developed). Maintaining this view could have led to SEPA objecting in principle to the planning application; however aspects of this potential position related to matters out with our control, namely, they were land use planning decisions which required to be clarified by East Ayrshire Council. It has subsequently been confirmed by East Ayrshire Council that whilst some development may be proposed within the undeveloped floodplain they are minded to view this as an exception, as permitted within the terms of SPP due to operational reasons which is acknowledged. SEPA would reiterate that if East Ayrshire Council had not viewed this as an exception, we would have objected in principle to the proposal.

Notwithstanding the above comment on flood risk matters, SEPA advises that planning conditions be inserted into any consent granted which requires the information detailed in the Environmental Statement (sections 3.2.1 on hydrogeology) and 4.2 on ecology) to be submitted to the satisfaction of the Planning Authority in consultation with SEPA, prior to the commencement of the development. If any of these conditions are not applied, then please consider this representation as an objection. It should be noted, however, that we reserve the right to amend our position on the receipt of this additional information.

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

SEPA has the following advice for the Planning Authority:

(i) Flood Risk: We have no objection to the proposed development on flood risk grounds. Notwithstanding this, we would expect East Ayrshire Council to undertake their responsibilities as the Flood Prevention Authority. It has been confirmed by the Planning Authority that whilst some development may be proposed within the undeveloped floodplain they are minded to view this as an exception in SPP due to operational reasons which is acknowledged. Based on this, the temporary duration of the works (understood to be between 10-15 years) and the previous Flood Risk Assessment (FRA) provided in support of the application indicating a very localised increase in water levels (approximately 100mm) and no material increase in flood risk to properties we have no flooding objection. We are of the opinion that this proposal primarily represents a commercial flood risk to the applicant which can be minimised by appropriate flood management measures. As such we would recommend that any development in the undeveloped floodplain should be minimised as much as possible in line with the general principles of Sustainable Flood Management. Development zoning should be considered where possible along with the minimisation of any bridging structures and flood embankments. It is understood that compensatory storage and a site restoration scheme are also being proposed which is acknowledged.

(ii) Protection of the Water Environment: A number of meetings have occurred with the operator prior to submission of the planning application as significant river engineering activities are proposed in addition to the routine point source, hydrogeology and hydrology issues. We note that Kier Mining have liaised with our hydrology, geomorphology and planning departments in preparation of the application. All impacts identified in the initial scoping report have been successfully identified and mitigation proposed. We would highlight that stated issues can be addressed at the CAR licensing stage and are therefore not considered by us to be showstoppers. A significant point to note is the potential for a downgrade in water body status on account of the major diversions proposed to both the Lane Burn (one temporary diversion then subsequent realignment) and River Nith (two separate permanent diversions). Our general presumption is not to authorise proposals likely to result in adverse impacts to the water environment. Consequently, the derogation procedure as stipulated in SEPA's regulatory method (RM 34: Derogation Determination – Adverse impacts of the Water Environment) will require consultation at the point where the applicant applies to SEPA for authorisation under the Water Environment (Controlled Activities) Regulations (CAR). This process requires an assessment of the social, economic and environmental benefits within the context of sustainable development and climate change. Initial contact has been made with our economists and geomorphologists to discuss this. Prior to any decision being made, further consultation will be required between the operator and our regulatory staff.

The applicant is aware of the necessary regulatory processes in this regard.

(iii) Groundwater Environment: We would advise that conditions be inserted into any consent which address the following issues:

- Proposed additional works should be submitted to SEPA for consultation. Groundwater monitoring locations will be required up and down-gradient of the proposed excavation areas.
- Upon completion of any additional works a revised hydrogeological conceptual model is required.

Although not required to assess the risk to the water environment, the following recommendation should be carried out prior to works commencing and is likely to be required as part of any CAR application made:

- A long term groundwater monitoring plan should be developed in agreement with SEPA. The applicant anticipates this to be completed as part of the abstraction monitoring plan under the Controlled Activities Regulations.

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

The remaining are comments highlighting issues requiring to be addressed during and prior to site operations:

- Groundwater monitoring boreholes that are likely to be destroyed during operations should be correctly decommissioned to prevent them becoming direct pathways to groundwater.
- Step 6 of the backfill risk assessment should be completed whatever the outcome. This requires a contingency plan to be developed, and this should be done in consultation with SEPA.
- Consideration should be given to developing a contingency plan that considers the application area together with other consented development areas adjacent to the proposed site (e.g. House of Water), due to the potential for interaction between neighbouring areas and for cumulative impacts.
- All appropriate permits must be in place prior to works commencing on site.

(iv) Ecology: This section details the information that we require in order to fully assess the potential impact of the proposal on the ecology of the development site. We would advise that a condition is inserted in to any consent which requires the provision of the following information prior to any works commencing at the site:

- A National Vegetation Classification Survey (NVC).
- A Habitat Survey.
- An assessment of impact on wet modified bog.
- Information on the dependency of wetland habitats on high groundwater levels.
- Details of the translocation of habitats and monitoring proposals.
- Details of the amount of excavated peat, storage methods and proposed re-use options.

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

(v) Air Quality: The proposal for the extension of the Greenburn OCCS would highlight a number of significant sources of particulate matter including fugitive dust from the materials handling, site operations and from transport sources and unpaved haul roads, although the use of the coal conveyor will hopefully reduce the potential for such impact. There would appear to be relevant exposure sources within 1km of the site of which the Environmental Statement has correctly assessed. A previous monitoring programme to the

north of the site, requested by SEPA, would appear to show that operations were unlikely to result in exceedences of the PM10 Objective level; however the southern extension would appear to bring a number of receptors within 500 metres of the site boundary. The local authority should therefore consider requesting that the developer conduct ambient background air monitoring prior to commencement of operations at these receptors to assess likely impact on air quality as a consequence of this development. Furthermore, these locations should be monitored for PM10 using a particulate monitor which is compliant with Local Air Quality Management Technical Guidance TG(09) rather than dust gauges which are more synonymous with dust nuisance monitoring.

Appropriate dust monitoring and air quality monitoring schemes can be secured through obligations within a Section 75 Agreement, should consent be granted for the proposed development.

3.4 The Scottish Wildlife Trust states that it has no objections to the proposed development. The controls, objectives and guidelines as described appear to be appropriate to the site, the development and the proposed restoration. Monitoring of the works at the suite during excavation and during restoration will be crucial to the protection of the wildlife of the area.

3.5 Scottish Natural Heritage does not object to this proposal, but asks that the following comments are taken into consideration. While we have considered the impacts of this proposal on its own merits, we are concerned over the wider cumulative impacts of contiguous opencast operations in this part of the Nith valley. Overall there is an incremental simplification of the landscape and its character, and loss of semi-natural habitats and the biodiversity that they support. Although the opencast mining will bring welcome income in the short term, there is a very real risk that in the long term the countryside will be less able to sustain a diverse rural economy. This current application could be improved by amending the final restoration plan to more favourably reflect the existing extent, distribution and mix of semi-natural habitats.

Should the Council decide to approve this proposal, then we would recommend that great care is taken in conditioning a strictly managed phasing of works and the implementation of the wildlife mitigation plans and restoration proposals. Within this programme, essential tasks relating to the management of specially protected wildlife species should be clearly identified and adequate lead times should be built into the plan. It may be appropriate for some of these species management plans to be included in the approval as specific pre-start conditions. Existing experience has shown that the establishment of a technical support group can play a very useful role in monitoring progress of the development and helping the operators deal with un-planned circumstances should they occur.

The existing Greenburn site benefits from the operation of a Technical Working Group that provides invaluable input to the

monitoring and implementation of the progressive restoration of that site in terms of the agreed restoration strategy. The remit of this TWG would be extended to embrace the operations on the Greenburn South extension site, should permission be granted for the proposed development.

SNH makes the following comments:

(i) The proposed development will lead to the loss of the Lanemark wildlife site. This site was identified as a result of the 1990 habitat survey of Cumnock and Doon Valley. The site supports an assemblage of locally important wildlife habitats and dependent birds, mammals and invertebrates. The restoration proposals will not replace these habitats on a like for like basis, either in terms of area or distribution. Since this wildlife site was identified in 1990, there has been extensive mining of the surrounding area. This has increased the importance of the Lanemark site as a biodiversity hot spot and as a source for the re-colonisation of the previously worked land. We note that both the adapted Local Plan and minerals subject plan recognises the role of these local sites and provide policies for their protection.

(ii) Peatland: As submitted the proposals will impact on two locally significant areas of peatland. Although the applicants have made efforts to minimise the loss of habitat and disruption of their hydrology and integrity, the proposals do not give full protection. The loss of these habitats, which can not be re-created leads to the release of a significant amount of carbon to the atmosphere thus contributing to climate change.

(iii) We note the proposals for the permanent realignment of the River Nith. We are satisfied that the techniques proposed have proven to be successful, however, we urge that great care is taken to ensure that they are properly applied and that the diversion remains fully reversible until the Council are confident that it is safe to commit to the permanent change. We would recommend that the programme for the construction and implementation of the Nith should be clearly controlled through conditions and that the technical support group should be given a clear role in signing off the approval of the completed diversion.

(iv) Specially Protected Mammals and Birds: It is essential that the following advice is followed. In order to ensure that the appropriate licences are obtained and that the mitigation plans are implemented timeously, it may be appropriate to address these through pre-start conditions

- Otters: this development would add to the considerable extent of opencast operations which are currently impacting on this stretch of the River Nith which is known to host European Protected Species otters. As a result our advice on the potential impacts on otters, is that mitigation as detailed in chapter 7 of the Environmental Statement should be incorporated into any approval in order to avoid an offence that may occur under Regulation 39/43 of the Habitats Regulations 1994 as amended. The Otter mitigation plan

should outline the actions to be taken to protect otter's places of shelter as identified in the Environmental Statement. An application to Scottish Government for licence to disturb otter is required. You are reminded that if this application is approved without consideration of this information, the development could result in an offence under Regulation 39/43 of the Habitats Regulations 1994.

- Bats: we note that the proposals will require the destruction or disturbance of several bat roosts. Bats are protected as a European Protected Species. As a result our advice on the potential impacts on bats, is that mitigation as detailed in chapter 7 of the Environmental Statement should be incorporated into any approval in order to avoid an offence that may occur under Regulation 39/43 of the Habitats Regulations 1994 as amended. The Bat mitigation plan should outline the actions to be taken to protect bats and their places of shelter as identified in the Environmental Statement. An application to Scottish Government for licence to disturb bats is required. You are reminded that if this application is approved without consideration of this information, the development could result in an offence under Regulation 39/43 of the Habitats Regulations 1994
- Badgers: Our advice is that if this application is approved, even with the mitigation as detailed in the protection plan, then it may result in an offence under the Protection of Badgers Act (1992). We also consider that it is not practical to make further changes or apply further mitigation that would avoid such impacts. A licence is therefore required by the applicant from SNH before starting the development.
- Barn Owls. All wild birds, their nests and their eggs are protected by law. As a species protected under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended), if disturbance to the nesting birds is likely then a license would be required. It would also be useful for an ornithologist to be present to ensure resident birds are out of buildings before any demolition. In addition to the general protection afforded to birds, it is an offence to:
 - (a) disturb any barn owl while it is building a nest or is in, on or near a nest containing eggs or young
 - (b) disturb any dependent barn owl young.

As a result our advice on the potential impacts on barn owls, is that mitigation as detailed in chapter 7 of the Environmental Statement should be incorporated into any approval. In addition, Barn Owls are faithful to the roost/nest sites they use. Nest boxes should be well designed and should be erected somewhere on-site (within c.200 metres) at least 30 days before works begin. Ideally a new permanent nesting place should be provided, for example an existing small building which could be converted to provide long

term roost/nest sites; all sites that used to have Barn Owls should be maintained for future re-occupation. Thus, even if there is no evidence of current occupation, permanent provision should still be made.

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.

3.6 Power Systems and Scottish Water have no objections to the proposed development

3.7 New Cumnock Community Council and Transco have not responded to the consultation letters.

3.8 The Royal Society for the Protection of Birds has not responded to the consultation letter.

3.9 Glasgow Prestwick Airport has no objections to the proposed development on statutory safeguarding grounds.

3.10 The West of Scotland Archaeology Service finds that the Cultural Heritage section of the Environmental Statement is a reasonable assessment of the likely impacts of the proposed development in respect of known, that is visible, archaeological resources in the area. It is less useful in respect of an assessment of the potential of the area for recovery of unknown, sub-surface archaeological features and deposits. WOSAS assesses the archaeological potential of the development area as being moderate and would point out that in addition to the findings noted in the ES, there are a number of historical references which need to be taken into account in assessing the archaeological potential of the area. Their presence implies that there may have been settlement and land use in the valley of the Nith and its side valleys at least back to the early historic period. Little is known about settlement and land use before this period, but prehistoric use of the area is suggested by the few recorded sites of this period which are known. Should planning consent be granted for this proposed development, there will be a need to design a strategy of archaeological trial trenching to assess the issue of archaeological potential beyond the already identified sites, as part of any written scheme of archaeological investigation required by condition attached to planning consent. WOSAS has not previously requested wider archaeological trial trenching in relation to opencast coal exploitation in this general area because of the heights above Ordnance Datum of the opencast operations (the higher the land, the less chance of past settlement because of exposure) but wish the issue of potential to be addressed in this case, as this proposed opencast operation appears to be located on better quality and lower lands closer to New Cumnock, with a consequent higher risk that there may be sub-surface archaeological resources.

WOSAS recommends that should the Council determine to grant planning consent for the proposed development, the following condition should be

attached. WOSAS would be happy to liaise with the developer's archaeological agents in respect of the written scheme of investigation.

“No development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.”

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

3.11 The Nith District Salmon Fishery Board states that in principle it does not object to the proposals on the basis that it recognises the limitations and failings of the existing aquatic habitats with regard to fish productivity. That said, the Board acknowledges that migratory salmonids do utilise the watercourses in the vicinity of the Greenburn South proposals. Therefore, the Board has responded to this application by adopting the precautionary principle and ensuring that long term benefits will be achieved which will promote sustainable fish populations in the future.

The Board must therefore be satisfied that:

- (i) Sufficient fisheries data has been gathered prior to the construction activities commencing;
- (ii) Migratory salmonid species of fish present prior to this proposal materialising are still present during and after completion of the coaling operations;
- (iii) Any fish residing in watercourses are rescued and placed in a safe environment prior to any construction activity commencing;
- (iv) Adequate monitoring has been incorporated into any aftercare to measure the effectiveness of restoration;
- (v) Where potential losses of localised populations of fish are perceived then those losses will be countered by means of compensation; and
- (vi) Any newly created habitats are re-stocked at the earliest opportunity with genetically suitable strains of fish sourced from the River Nith Catchment;

The NDSFB has had a long association with the applicant and is assured that the applicant's commitments to environmental protection and habitat restoration are sound. Via the Board's representation on the Greenburn Technical Working Group, we have contributed to the working methodology and design of the proposed diversion channels associated with this project in relation to the Board's specific requirements. Following previously agreed

protocol where the applicant has proposed river diversions within the Nith Catchment, we have a written agreement with the applicant covering all aspects of fisheries mitigation. The Board is confident that the applicant will fulfil all necessary mitigation measures to ensure a suitable fishery habitat is created in all watercourses within the Greenburn South proposal.

In order to ensure that, in the unlikely event, the applicant abandoned the Greenburn site prematurely due to unforeseen circumstances, a degree of assurance could be achieved by the Council insisting that a financial bond was put in place to guarantee the restoration of any watercourse which has been temporarily diverted. In relation to this proposal that would require a specific bond for the Lane Burn which would be to the value of the cost for any third party to complete the permanent diversion channel.

An appropriate Restoration Bond, secured by a Section 75 Agreement, will be required should the Committee be minded to approve the application. The Restoration Bond will require to be provided in terms of Policies 36 and 37 of the East Ayrshire Opencast Coal Subject Plan, as referred to in Section 5 below.

If this proposal is successful in achieving planning permission the Board welcomes the opportunity to work with the applicant to assist in achieving the very best possible environmental solutions to the aquatic issues associated with this site.

The present Technical Working Group for the Greenburn site would continue to support and oversee the restoration proposals for the Greenburn South extension and in this regard, the NDSFB is presently a member of the Greenburn TWG.

3.12 East Ayrshire Council Environmental Health Service states that the current application limits coal extraction up to the boundary of the landfill. However there is still an issue with potential environmental impacts from the waste contained in the landfill. The Greenburn South Environmental Statement produced by Kier Mining noted that SEPA advised as follows:

“Although the site (Dalricket landfill) was never formerly licensed by SEPA, (the ‘resolution’ in terms of the Control of Pollution Act 1974 being rescinded in September 1996) the site was inspected by SEPA in 1996. These inspections revealed that, at that time, the site was actively gassing and producing leachate. Therefore, any proposals to deal with the site should take account of the impacts that the landfill gas and leachate may have had, or be continuing to have, beyond the immediate boundary of the site. SEPA would therefore expect to be fully consulted regarding any proposed remedial actions regarding the former landfill site if and when the development proceeds.”

The applicant has advised that the watercourse which receives the leachate from the landfill and discharges to the River Nith may have to be re directed to facilitate the development proposal. Although it is the Council's

responsibility to address the potential impacts the landfill may have on environmental receptors on and adjacent to the site, the leachate run off from the site to the River Nith is directed through the application area. Therefore there may be the opportunity, in partnership with the applicant, to mitigate the risk of leachate release from the landfill site which may pose a risk to the River Nith and subsequently satisfy SEPA's concerns in this regard.

The landfill area which lies within, but does not form part of, the application site, was noted by the applicant. It was identified within the environmental impact assessment process that adjacent operations might have the potential to affect the landfill area and therefore further assessment and consideration of this potential impact was required. The Environmental Statement includes an assessment of the potential impacts of the mining scheme upon the landfill and concludes that the operations are unlikely to have an impact upon this site. As a precautionary measure, water monitoring of runoff and seepages are proposed by the applicant to ensure that if there are potential issues, then these will be identified at an early stage and appropriate mitigation can then be taken.

At present, there is a small ditch that runs from the landfill area to the River Nith. The ditch carries surface water runoff collected within the landfill site area at a small pond in the northwest corner of the site, as well as surface water runoff from the surrounding fields. This ditch runs through a proposed excavation area and will require diverting around the perimeter of the excavation during the operations. The proposed diversion operations lie wholly outwith the landfill area and are not anticipated to cause any impact upon the landfill itself. What they will do is convey the existing discharge along a different course. This is highly unlikely to have any impact upon the landfill or the quality of the discharge from the landfill. It should be noted that if the project was to proceed, then this ditch, and the surrounding land affected by the ditch, would be under the ownership of Kier.

It should be noted that surface water monitoring from this discharge and in the wider area conducted by the Council for a period of 30 months from 2005 concluded that significant pollution was not being caused by this discharge to the receiving environment. Along with other watercourses of more major nature, SEPA would be fully consulted about the diversion proposals closer to the time and appropriate licensing would be obtained under the Water Environment (Controlled Activities) (Scotland) Regulations 2005, if considered necessary. If requested, the applicant has stated that they would be happy to extend this consultation to include the Council and would welcome opportunities to benefit the environment and to discuss if they can play any part in working with the Council in order to

help achieve respective obligations to minimise the potentially polluting effects of the landfill.

3.13 Historic Scotland states that it has undertaken an appraisal of the Environmental Statement and its comments concentrates on its statutory remit at the national level for:

- (i) scheduled monuments and their settings;
- (ii) category A listed buildings and their settings; and
- (iii) gardens and designed landscapes appearing in the inventory.

The ES does not identify any impacts on any of the above types of sites. HS is content to agree with this assessment and consequently offers no objection to the proposed development. The Council's Conservation and Archaeology Services will be able to advise the developer on the adequacy of the assessment of the likely impacts and mitigation proposed for any sites of regional or local importance.

WOSAS has been consulted on this application as indicated in paragraph 3.10 above.

3.14 Transport Scotland (Trunk Road Network Management Directorate) indicates that the proposed development represents an intensification of the use of this site and will increase the associated traffic movements on the local road network. However the percentage increase in traffic is such that the proposal is likely to cause minimal environmental impact on the trunk road network and as such, the TRNMD has no comment to offer.

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

3.16 The Scottish Government (Climate Change and Water Industry Directorate) states, in respect of the responsibilities for water supply, water protection, sewerage, flood prevention, waste disposal, soils, air quality and noise, that it is content that air quality / dust and noise / vibration have been fully considered in the ES with appropriate mitigation measures proposed where necessary.

3.17 The Coal Authority has no objection to the proposal but draws your attention to the following comments:

- (i) The Coal Authority will process any subsequent application for an operating licence under Part II of the Coal Industry Act 1994 in accordance with its statutory duties.
- (ii) As owner of the coal the Authority encourages and supports the working of coal in environmentally and socially acceptable ways to meet the market requirements. This forms part of the Government's policy framework for a diverse and secure energy supply and incorporates the principles of sustainable development. This framework was incorporated into SPP16 which sets out the national

planning policy framework for the working of opencast coal. SPP16 sets the most challenging standards for surface coal mining in Scotland and the Coal Authority believes that the coal industry can successfully operate within these principles provided they are applied equitably by all mineral planning authorities.

- (iii) It is essential that the planning process takes account of the occurrence of minerals which can only be worked where they occur. The role of surface mining is critical to the continued supply of good quality coal for the market in the UK and it should be recognised that coal currently provides the basis for up to half of the electricity generated in the UK.
- (iv) The Coal Authority believes that the coal supply in the UK should contain a significant proportion of indigenous production. The electricity generators have made similar statements in their submissions to the Energy Review. Coal supplied from the UK offers security against the volatility of international coal prices, freight rates, exchange rates and a reliance on port capacity. It should, therefore, be recognised that the importation of coal from many thousands of miles away has its own environmental footprint by way of increased transport related carbon and sulphur emissions.
- (v) The ability of the industry to continue its significant contribution to the energy supply in the UK is dependent equally on success in an extremely competitive energy market place and success through a rigorous planning regime. With site life varying typically between one and five years it is essential to bring environmentally acceptable new sites on stream to replace exhausted sites on a regular basis. There is no shortage of coal in the ground, the ground rules have been laid out in SPP16 and the Coal Authority believe that the industry can find sites that meet the strict criteria provided that the planning system is conducted fairly and professionally.
- (vi) SPP16 recognises that it is essential that any unnecessary sterilisation of coal reserves through permanent development should be avoided and in principle it is desirable to secure extraction prior to permanent development above coal reserves. The active recognition of this will allow the sustainable development of an important national resource in accordance with Government policy. The working of coal prior to such developments should be encouraged.
- (vii) Surface mining frequently assists in the removal of surface dereliction but the Coal Authority believes that the local benefits of mining go well beyond the removal of this dereliction. Whilst the advantages of removing dereliction on the surface may be obvious, the benefits of treatment of surface and sub-surface contamination and instability may not be so well recognised or understood. In this proposal the removal of shallow old mine workings, shafts and adits with subsequent restoration may also provide a stable platform for future surface developments. Rather than divert investment away from an area, surface mining of coal has often created inward

investment particularly with improved transport infrastructure. Other local benefits include reduced hazard from mine gases and spontaneous combustion, improved water quality from treating minewater discharges and the recovery of minerals other than coal which helps to support the fireclay, building and brick clay industries.

- (viii) With regard to minewater, any site investigations and/or excavations on the site may have the potential to interfere with minewater pathways in the area. The applicant should be made aware of this and consult with the Coal Authority's Environment Department at the earliest opportunity to discuss these issues.
- (ix) The applicant should be reminded that any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

The applicant has been made aware of the comments of the Coal Authority.

3.18 Network Rail does not object to the proposal. The Route Freight Team has considered the proposal and is content that the weekly tonnage that is proposed to be dispatched from the existing rail terminal at Greenburn will not be a significant increase on what is dispatched at the moment. As the railway line in the area of the proposed works is privately owned by the applicant, Network Rail has no further comment to make.

4. REPRESENTATIONS

4.1 A total of 14 letters of representation have been received with regard to the proposed development. Three of these letters, from 4 signatories, raise objections to the proposed development while the remaining 11 letters either offer support or indicate no objections to the proposals. The main points of objection are as follows:

4.2 Over half this huge (440h) site is not identified in EAC's approved Open-Cast Subject Plan for open-casting. The developer states (erroneously) that its exclusion was due to a misunderstanding about the location of coal reserves in the area. This is not the case. Even if there had been 'an error', any interested party could have queried the designation or lack of it at the time of the PLI into this Subject Plan. No party did. In fact not all areas with coal reserves were identified, as some sites were excluded due to land/habitat quality etc.

The adopted East Ayrshire Opencast Coal Subject Plan has identified Potential Coal Extraction Areas and in this regard the

approximately half of the Greenburn South extension development lies within such an area. However, it should be noted that having assessed the Greenburn South site against the criteria for identification of the Potential Coal Extraction areas in the Opencast Coal Subject Plan, the remaining area has been excluded primarily on the basis that information provided by the British Geological Survey did not indicate the presence of coal reserves within this part of the extension site. It has not been specifically excluded for landscape, environmental, nature conservation or built heritage reasons. Part of the area has however been excluded due to the introduction of the 500 metres buffer zones around established communities, in this case at Burnside and Bank Glen

4.3 This development involves destruction of habitats, re-routing of a road, blocking access paths, stream and river diversion etc. The site includes a Provisional Wildlife Site, where there will be attempts to save its special mire habitats by bunding etc. The developer wrongly suggests that its designation is out of date as it was listed 30 years ago. As it has been shown in various approved plans since that time, such a suggestion is incorrect. In fact its importance is now even greater, given the loss of so many habitats in the area.

It is acknowledged that approximately 50% of the Riggfoot / Lanemark / Bogside Wetland Provisional Wildlife Site (PWS) will be lost as a result of the proposed Greenburn South development. It is further noted that part of this PWS falls within a Potential Coal Extraction Area as identified in the East Ayrshire Opencast Coal Subject Plan. Notwithstanding this, the ES provided by the applicant has provided a greater assessment of the ecological value of this PWS than has been carried out since the designation of the site. In this regard, the current proposal has been designed to ensure that potential impacts on the remaining area are adequately mitigated while ensuring that the restoration strategy will lead to enhancement of the habitat and improving on the biodiversity of the site as a whole.

4.4 Relocation of plants, artificial badger setts and otter holts, bird boxes etc are all proposed. The scale of displacement of habitats and wildlife is quite unacceptable when so much of the area surrounding the developer's workings has already been damaged by open-casting. 10 bird species of high conservation importance are found on this site. Over 50 bird species in all have been identified. With the growth in the number and size of open-cast sites and wind farms, their displacement increases.

The objector fails to recognise that progressive restoration is taking place on opencast sites, where restored and replacement habitats are being provided, all with the guidance and input from the respective Technical Working Groups set up to oversee this process. Appropriate mitigation measures will be undertaken to

minimise disruption and displacement of wildlife and habitats. In this regard, subject to the imposition of appropriate conditions and obligations secure by means of a Section 75 Agreement, it is noted that SNH, SEPA and the Scottish Wildlife Trust do not object to the proposed development

4.5 MEGA objects to permanent diversion of upper stretches of the River Nith. A river basin Management Plan for the River Nith has been prepared, but we find no reference to this; nor assessment of the impacts on the river system as a whole. Given the disappearance of the River Nith in 2003, due to mine-workings, then there is even more risk now that there have already been so many changes to hydrology locally since then. The varieties of fish species, salmon, brown trout, eel, grayling, rare lampreys etc are significant and should not be disturbed. The impact of any such disturbance will be felt well beyond East Ayrshire's boundaries.

The proposed permanent diversion of the River Nith has not raised any significant objections from the statutory consultees including SNH, SEPA and the Nith District Salmon Fishery Board, subject to the imposition of appropriate conditions and obligations secured by means of a Section 75 Agreement.

4.6 One of the justifications for continuing the destruction of the local landscape is the economic benefit to the area. There are few signs in New Cumnock of any permanent financial benefit accruing from open-casting.

The existing Greenburn operation provides full time employment for 107 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 7 year working life of the Greenburn South extension. In addition to direct employment, a number of indirect and induced jobs (approximately 113) will also continue to be supported in terms of site servicing. The projected annual wage bill during the life of the proposed development is some £3.9 million, a large proportion of which will contribute towards the local economy. In addition in excess of £3 million per year will be expended with local businesses and over £325,000 contributed through business rates.

4.7 We object to planning permission being granted for mining operations within 500 metres of Burnside.

The applicant has indicated that 30 residential properties will lie within 500 metres of the working face or operational area of the Greenburn South development and formal legal agreements have been concluded with the owners of 27 of these properties. The applicant is confident that agreements will be reached with the owners of the 3 remaining properties in due course. It is understood that this point of objection is from some of these parties.

4.8 The application fails both tests as set out in the document SPP16 on Opencast Mining.

SPP16 has been revoked and replaced by Scottish Planning Policy, which sets out national policy on opencast mining in paragraphs 239-247 inclusive. Nonetheless, the new SPP still indicates that, in applying the principles of sustainable development and environmental justice to opencast coal extraction, that there should be a presumption against development unless the proposal would meet one of two tests. An assessment against the two tests is set out in section 6.5 below.

4.9 As a father of three children, I do not wish to see them exposed to noxious dust and contaminants associated with this type of development.

It is considered that by applying the good practice promoted with Planning Advice Note 50 and its annexes, the potential nuisance through noise, dust and vibration can be minimised to meet acceptable environmental standards. This can be secured through the imposition of appropriate conditions, already in place as part of the existing consented Greenburn operations, and maintained through appropriate monitoring of site operations.

4.10 The area will suffer hugely from light pollution.

It is considered that the issue of potential light pollution can be addressed by appropriately locating and positioning lighting sets to minimise any adverse impacts.

4.11 The properties in Burnside are being asked to put up with extraction up to their front doors which flies in the face of SPP16.

An assessment against the terms of Scottish Planning Policy (SPP) is given in section 6.5 below. Comments also as per section 4.7 above.

4.12 SPP16 states that proposals are likely to be unacceptable where they are likely to result in a period of disturbance to communities that, including extensions, involves extraction for a period of more than 10 years. The applicant states that legal agreements are in place with the resident of Burnside and other properties within 500 metres of the main operational areas to protect their interests and offset any adverse effects which may arise from the proposed development. I believe that the boundary of my property is within this scope and, at present, I most certainly do not have a legal agreement with them.

SPP contains similar guidance in relation to the period of disturbance to communities. Although the overall lifespan of the Greenburn operation as extended by the proposed Greenburn

South extension would be a total of 16 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. The existing Greenburn operation has not resulted in any significant adverse disturbance to any local community primarily due to its relative remoteness from such community. While the Greenburn South extension area is substantial, the operations to be undertaken will not exceed the 10 year timescale in itself and the phasing of mining development will mean that operations will commence at its closest to the community of Burnside and thereafter will move away with progressive restoration operations following on.

Some 30 residential properties in Burnside and other rural properties lie within 500 metres of operational parts of the proposed Greenburn South development. In this regard, the applicant has indicated that legal agreements are in place with the residents of Burnside and other properties within 500 metres of the main operational areas to protect their interests and offset any adverse effects which may arise from the proposed operations.

4.13 The proposal is contrary to Policies MIN1, MIN2, MIN4, MIN7, MIN12, MIN16, MIN24, MIN25, MIN26, MIN29 and MIN31 of the East Ayrshire Opencast Coal Subject Plan.

The above EAOCS policies, where pertinent to the proposed Greenburn South development, are fully assessed in Section 5 of this report.

4.14 The 11 letters of support or non-objection to the proposed development are almost exclusively from residents in Burnside and Bank Glen whose properties lie within 500 metres of operational parts of the proposed Greenburn South development. Support has been given to the proposed development in relation to the employment opportunities that would arise from the proposals.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

Ayrshire Joint Structure Plan

5.2 There are no policy changes with regard to opencast coal mining being promoted in the new joint structure plan 2007 and the current provisions of

the 1999 approved structure plan remain relevant to this application. The Approved Ayrshire Joint Structure Plan 1999 indicates in its Key Diagram that the House of Water 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 Greenburn South 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 Greenburn South extension application has been assessed and determined against the stated criteria. The proposals promoted by the current application would 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 generally 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 / rail 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, a large part of the proposed Greenburn South 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 are existing areas of dereliction related to previous mining and industrial activities that will be 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 Greenburn South extension will result in continuing direct employment of 107 jobs for a further period of up to 8 years.

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

See comments below.

Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a total extraction period in excess of 10 years will not 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.

Operations at the Greenburn site have been carried out over a period of just over 6 years with mining operations having first commenced in February 2004. However it is considered that the current proposal for Greenburn South 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. The life of Greenburn South extension will extend to approximately 8 years and, with operations commencing at the closest point to the small community of Burnside and thereafter moving away from it, it is not considered that there would be any perpetuation of existing disturbance to communities.

With the proposal to direct over 90% of extracted minerals from the existing Greenburn site and the proposed Greenburn South extension to market via the dedicated rail disposal point, the potential for perpetuation of disturbance to local communities through the transportation of coal by road through local communities has essentially been avoided. In addition as indicated within this report there are significant local and community benefits to be accrued from the proposed development in socio-economic terms.

It should be further noted that having assessed the Greenburn South site against the criteria for identification of the Potential Coal Extraction areas in the Opencast Coal Subject Plan, the area has been excluded primarily on the basis that information provided by the British Geological Survey did not indicate the presence of coal reserves within this part of the extension site. It has not been excluded for landscape, environmental, nature conservation or built heritage reasons.

Nonetheless it is considered that the proposal represents a technical departure from Policy MIN3.

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

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

The Environmental Statement that accompanies the application indicates that the impact on the landscape character and quality of the site will be minimal, particularly given the temporary and reversible nature of the proposed development. Furthermore with the restoration proposed there will be a net benefit in landscape character and visual amenity of the site and net benefits to the natural environment, not least by the removal of existing areas of past mining and industrial dereliction. No statutory natural or built environment interests will be affected by the proposals although it is accepted that the development will result in the loss of part of a Provisional Wildlife Site. In this respect it is noted that the Scottish Wildlife Trust has not objected to the proposed development.

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

It is considered that in line with the existing controls imposed in the existing consents for the Greenburn site, the Greenburn South extension can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards, subject to the imposition of appropriate conditions / and or obligations secured by means of a Section 75 Agreement.

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

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

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

The proposed operations in the Greenburn South extension and subsequent restoration of the site will result in the rehabilitation of former remnants of previous mining operations in various locations within the site.

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

- (v) the opportunities to maximise transportation by rail;

Coals won from the Greenburn South extension will generally be transported by rail to markets via the Greenburn dedicated railhead.

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

The proposed Greenburn South extension will not result in any significant prejudice to the existing restoration plans for the site. It is not considered that there would be significant cumulative impact resulting from the proposed extension given the progressive restoration of the existing Greenburn site.

The Greenburn South extension area lies to the east of existing and consented operations and the House of Water site and given the proximity of the two sites, there will be cumulative impacts in terms of landscape and visual impacts. However, during to the respective timescales, timing and progressive restoration on both sites, these impact can be mitigated to some degree.

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

It is considered that it would have minimal impact on inward investment opportunities in the area.

- (viii) the period of extraction.

The proposed Greenburn South extension will be worked within an 8 year period which in itself is not considered to present any significant issues. The proposed operations will result in operations extending into 2020, resulting in an overall timescale for the Greenburn mining complex of 16 years. However, given the characteristics of the existing and proposed operations, their location and proximity to communities, there has been no significant detrimental impact on any local community. While the proposed Greenburn South extension will encroach within 500 metres of the small communities of Burnside and Bank Glen, the level of encroachment is not considered to be significant, and for those properties that lie within 500 metres of operational part of the site, the applicant has secured legal agreements with the occupiers to the effect of having a degree of legal control over these properties.

Notwithstanding this, it is considered that there are significant local community and environmental benefits to be secured by the proposed development as stated above.

5.7 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. The scheme presented in the Greenburn South development plan represents what the applicant believes is the maximum that it can work given current environmental and economic constraints.

5.8 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. It is considered that the proposed extension would not conflict with the provisions of policy MIN 12 with respect to the stated criteria.

5.9 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 Greenburn South extension is designed to improve the wildlife conservation value of the land and would provide for greater benefits to the area both in bio-diversity terms and also in general amenity 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 Greenburn South extension.

5.10 Policy MIN16: Developers are required, whenever possible, to divert and re-route any existing Rights of Way affected by proposed opencast operations.

A claimed Right of Way is recorded between Bank Glen and Auchincross Farm running through the Greenburn South extension area. The end of this footpath is currently suspended because of the Rigghead OCCS and the Greenburn Surface Mine. A majority of the land used for the path will be impacted by the development and there is little potential for any re-routing of the footpath for the duration of the works. The removed length of footpath will however be recreated and upgraded to a bridleway as part of the restoration plan, and be linked into a wider network of bridleways that will be reinstated across the site area thereby enhancing access to the restored area by the public. Formal procedures will require to be undertaken to promote the temporary suspension of this Right of Way under section 206 of The Town and Country Planning (Scotland) Act, 1997.

5.11 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 require 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.

5.12 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 and / or by a conveyor system.

5.13 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 Greenburn South extension in terms of the consultation response received from the Roads and Transportation Service.

5.14 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 Greenburn South extension.

5.15 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.

Similar to the existing Greenburn site, the Greenburn South site is located in a relatively isolated location approximately 2.5 kilometres from New Cumnock. While the southern boundary of the application site lies within 500 metres of Burnside, and part of the operational area will lie within that distance, particular operational and mitigation measures are to be put in place to minimise the impact of the proposal, in particular reduced operational hours to those which will be worked on the majority of the site more remote from the B741 Road. In addition, the extraction of coal within the 500 metres distance will be of short duration at approximately 24 months. The initial phase of site restoration and aftercare will take place closest to the B741. In addition, legal agreements are in place with the residents of Burnside and other properties within 500 metres of the main operational areas to protect their interests and offset any adverse effects which may arise from the proposed operations.

In relation to Bank Glen, there are no residential properties that lie within 500 metres of the working face or the main operational areas of the development. While the actual site boundary lies within 500 metres of Bank Glen it has been so located to enable comprehensive mitigation and attenuation measures to be provided for the environmental benefit of residents e.g. noise attenuation bunds. This approach is consistent with the provisions of SPP.

- (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 extended by the proposed Greenburn South extension would be a total of 16 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. The existing Greenburn operation has not resulted in any significant adverse disturbance to any local community primarily due to its relative remoteness from such community. While the Greenburn South extension area is substantial, the operations to be undertaken will not exceed the 10 year timescale in itself and the phasing of mining development will mean that operations will commence at its closest to the community of Burnside and thereafter will move away with progressive restoration operations following on.

Other impacts such as mineral transportation through local communities are considered to be entirely 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 applicant has provided information based on current knowledge of the geology of the area. The scheme presented in the Greenburn South development plan represents what the applicant believes is the maximum that it can work given current environmental and economic constraints.

5.16 Policy MIN24: The Council will require all opencast developers to demonstrate the measures they propose to minimise the effect of their operations on sensitive establishments including all individual or small scale groups of dwellinghouses, located outwith communities and not in the ownership or under the control of the developer.

There will be no sensitive, individual properties lying within 500 metres of the working face of the Greenburn South development outwith the control or ownership of the applicant.

5.17 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 has indicated that 30 residential properties will lie within 500 metres of the working face or operational area of the Greenburn South development and formal legal agreements have been concluded with the owners of 27 of these properties and is confident that agreements will be reached with the owners of the 3 remaining properties.

(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 proposed working face of the site.

5.18 Policy MIN26: The Council will ensure that areas of nature conservation interest are adequately protected from any direct or indirect adverse effects of opencast developments.

Given the nature and characteristics of the application site and the proposed restoration and mitigation measures, it is submitted that the proposed development will not result in any significant adverse impact or cause irreparable damage to any nature conservation within the site. Indeed, the restoration proposals include ecological improvement measures which will positively enhance the ecological interest in the area.

5.19 Policy MIN29: The Council will seek to ensure that opencast proposals and related development do not have an unacceptable adverse impact on existing rural tourism, leisure and recreational development potential. In particular, the Council will not be supportive of proposals which would impinge on, or adversely affect, the physical setting, operational viability or recreational quality of specific sites and resources considered to be of importance to the local economy or the enjoyment of local residents.

The Greenburn South extension will not result in any significant detrimental or unacceptable impact on existing rural tourism, leisure or recreational resources, or impact on areas of tourist or recreational potential. Opencast coal operations are an established part of the local environment and following restoration can positively contribute to local leisure and recreational activity in the local area through the provision of a network of footpaths, bridle paths, and enhanced areas of ecological interest.

5.20 Policy MIN30: The Council will not be supportive of any opencast proposals which would disrupt or otherwise adversely impact on water catchment areas, principal watercourses and their tributaries or other major water resources such as lochs and reservoirs through East Ayrshire. Where it is considered that opencast operations may impact on such water resources, the Council will not be supportive of the proposals unless:

- (i) adequate mitigation measures can be implemented, to the satisfaction of the Council and SEPA to prevent any pollution to the water resource concerned: and
- (ii) any changes to the levels of surface and ground water, changes to river flows and changes to water quality can be demonstrated

not have an unacceptable adverse impact on natural habitats, water abstraction schemes, or to give rise to an unacceptable increase in flood risk.

Subject to appropriate conditions being attached to any consent granted for the proposed development, SEPA does not object to the proposals.

5.20 Policy MIN32: 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 Greenburn South extension.

5.21 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.

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 Greenburn South extension.

5.22 Policies MIN35 and MIN36: 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 Greenburn South extension.

It is therefore considered that the proposed development is generally consistent with the relevant EAOCSP policies pertinent to this application but represents a technical from Policy MIN3.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, Scottish Planning Policy (SPP) and associated PAN50, the representations received, relevant planning history and The Conservation (Natural Habitats, &c.) Regulations 1994.

Consultation Responses

6.2 There are no consultation responses that would indicate that the application should be refused, subject to the imposition of appropriate conditions or through obligations secured by means of a Section 75 Agreement.

Scottish Planning Policy

6.3 Guidance on surface coal mining has been given in the “Scottish Planning Policy” document (SPP) issued in February 2010 which is the statement of the Scottish Government’s policy on nationally important land use planning matters. Subject policy on surface coal mining is given in paragraphs 239-247 inclusive. 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 SPP relating to surface coal mining are already addressed within the adopted East Ayrshire Opencast Coal Subject Plan such as the proximity of workings to local communities, repeated extensions, cumulative landscape and visual impacts, protection of natural and built heritage and the preference for rail transport. Nonetheless SPP 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 approximately half of the Greenburn South extension development lies within such an area. However, it should be noted that having assessed the Greenburn South site against the criteria for identification of the Potential Coal Extraction areas in the Opencast Coal Subject Plan, the remaining area has been excluded primarily on the basis that information provided by the British Geological Survey did not indicate the presence of coal reserves within this part of the extension site. It has not been specifically excluded for landscape, environmental, nature conservation or built heritage reasons.

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

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

The consultation and policy assessment process suggests that the Greenburn South development can meet this first test subject to the imposition of appropriate planning conditions and legal obligations secured through a Section 75 Agreement.

(ii) the proposal provides local or community benefits which clearly outweigh the likely impacts of the extraction.

The second test is also considered to be met as the proposed Greenburn South development will result in the continuation of 107 direct jobs, which is particularly beneficial in those areas where the extraction takes place.

It is therefore considered that both tests are satisfied in assessing the Greenburn South development.

Planning Advice Notes

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

Planning History

6.7 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 (02/0177/RM dated 10 May 2002).

6.8 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.

6.9 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.

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

6.11 Planning permission for an extension to excavation limits (Ref. No. 05/0452/FL) was approved on 13 April 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 The Development Services Committee on 12 December 2006 resolved to approve a planning application for an extension to the Greenburn site (Dalgig Extension) subject to a Section 75 Agreement which, to date, has not been formally concluded due to land ownership issues (Ref. No. 06/0538/FL – see also 6.16 below)

6.14 Planning permission for an extension to the Greenburn site (North Extension) was approved on 29 February 2008 (Ref. No. 07/0211/FL).

6.15 Planning permission for an extension to the Greenburn site (North East Extension) was approved on 29 February 2008 (Ref. No. 07/0745/FL).

6.16 Planning permission for an extension to the Greenburn site (Dalgig Farm Extension – alternative scheme) was approved on 05 September 2008 (Ref. No. 07/0908/FL).

Representations

6.17 It is noted that there has not been a significant number of objections to the proposed development and, in relation to those properties lying in closest proximity to the site, the majority property owners have submitted letters of support or non-objection to the development. It is considered that the points of objection are either not of sufficient weight to justify refusal of the application or raise matters that can be addressed by imposition of conditions or by means of obligations secured by a Section 75 Agreement.

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

6.18 As indicated in the consultation response from SNH, the proposal will result in the disturbance of protected species including bats, otters and badgers, despite the mitigation measures proposed by the applicant. As indicated by SNH, appropriate licences will require to be obtained in this regard.

Scottish Government interim guidance to planning authorities states that no planning decision may be made until the planning authority can assure itself that a licence may be forthcoming. An application for a licence will fail unless all of 3 tests on acceptability for a licence are satisfied. In summary these tests are:

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

It is considered that the licence (and the disturbance of the protected species that it would authorise) is necessary in order to allow work to proceed that is of overriding public interest of a social and economic nature. Furthermore, the development, through the restoration scheme will bring about beneficial

consequences for the environment. The strategic and economic importance of coal extraction is recognised in various statements and policies at national, regional and local level. The Planning Statement that was submitted with the planning application provides a robust assessment against those relevant policies and concludes that the development is in general terms compliant with those policies etc. In summary, the following points confirm the overriding public interest in the proposed extension:

- At the local level, the proposed extension would make a direct contribution to the East Ayrshire economy through the sustained employment of the current 107 staff and personnel directly employed in the surface mining operations. The majority of the staff employed in the operations live within the communities of East Ayrshire. The proposed extension would also contribute to the sustained indirect employment in the local area for numerous workers and subcontractors.**
- The retention of employment is considered to be of overriding public interest in the current economic climate.**
- The proposed development presents what is likely to be the only opportunity to extract the 2.8 million tonnes of coal which underlie the extension area. If the coal is not worked as part of this current scheme an undesirable consequence may be that the coal is permanently sterilised. National planning guidance in SPP cautions against the sterilisation of coal reserves.**

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

Test 2: “that there is no satisfactory alternative”

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

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

The interim guidance issued to planning authorities indicates that SNH is the main body to advise on whether the granting of a licence would be “detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range” and so be capable of meeting Test 3. In its consultation response SNH has indicated that the proposed development would be not detrimental to the maintenance of the populations of the protected species.

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

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council 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 Greenburn South extension area and as required to be amended by the terms of this report. In addition, formal procedures will require to be undertaken to promote the temporary stopping up of the existing U720 Dalricket Road and the suspension of the claimed Right of Way under the Town and Country Planning (Scotland) Act 1997.

7.2 In terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, certain categories of development require to be formally notified to the Scottish Ministers should the Planning Authority be minded to approve opencast proposals. This includes proposals for opencast coal workings which would occur within 500 metres from the edge of an existing community or sensitive establishment.

As the application boundary and operations will encroach within 500 metres of the community of Burnside, the application will require to be notified formally to the Scottish Ministers should the Committee be minded to approve the application.

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 albeit that it represents a technical departure from Policy MIN3. 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 as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

8.2 The proposal represents a significant extension to the existing consented site at Greenburn. 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. In addition, the proposed development has not attracted any significant level of objections.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the existing Greenburn site and the proposed Greenburn South extension site are located, the proposal to extend the existing consented site will not have any significant adverse effects on any local community, particularly where the owners of properties lying within close proximity to operational parts of the site have secured formal agreements with the applicant. In this regard the breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan have been addressed by the agreements made and therefore it is considered that the extended operations proposed can be undertaken within acceptable environmental standards.

8.4 The existing Greenburn operation provides full time employment for 107 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 8 year working life of the proposed Greenburn South extension. This is considered to be of significant community benefit.

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

Section 75 Agreement

(i) An agreement to an ongoing road maintenance regime to continue to maintain roads in a safe and serviceable condition during the future term of the haulage of materials from the site over the route (U720/U719/C36) between the site access and the A76. This will be achieved by:

- (a) The applicant completing, at their expense, road improvements identified along the haulage route in conjunction with East Ayrshire Council, in order to ensure the road is maintained in a safe and serviceable condition. The applicant shall also agree an ongoing road maintenance contribution of £0.15p per tonne

of mineral hauled via the public road system, with the Council to continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route (U720/U719/C36) between the site access and the A76.

- (b) The carrying out a joint annual detailed inspection of the route U720, U719 and C36 to identify any programmed remedial work required to be done due to deterioration of the road surface. The work identified could comprise of re-surfacing, including lengths at property frontages, potholing, patching, edge strengthening, kerbing, drainage/verge repair work, road markings and additional signage.
 - (ci) The applicant shall pay all costs associated with the formal temporary closure of the U720 road including the provision of turning points at each end of the road closure and any signage required for alternative routing during the period of closure.
 - (d) The provision of signage and road markings on the B741, at the applicant's expense, prior to the closure of the U720 road.
- (ii) The subscription of the applicant to the Council's Transportation Protocol to provide for agreement on routing, timing and marking of vehicles for minerals won within the Greenburn South site transported on the public road network within East Ayrshire.
- (iii) The extension of the remit of the existing Greenburn Technical Working Group to embrace the proposed Greenburn South extension.
- (iv) The monitoring of the restored Greenburn and Greenburn extension sites through to the final aftercare period ending during 2025, as overseen by the Greenburn Technical Working Group.
- (v) The production of a comprehensive Conservation Management Plan for the comprehensive Greenburn complex as extended by the Greenburn South extension, this plan to be agreed by the Greenburn Technical Working Group and to incorporate
- (vi) The preparation Protected Mammals Management Plan (PMMP), as approved by the Planning Authority to cover the impacts on protected mammals (otters, bats, badgers,) arising as a result of the Greenburn South development. This PMMP shall be agreed with SNH prior to the commencement of works and shall include, in relation to the timing and phasing of operations:
- The undertaking of a bat survey prior to the demolition of any building or removal of trees.
 - The undertaking of an otter survey prior to any works excavating the streams.

- The undertaking of a badger survey prior to any works.
- The undertaking of a barn owl survey prior to any works.

Such surveys and associated mitigation proposals shall be undertaken in cognisance of the comments of SNH in its consultation response dated 03 August 2010.

(vii) The appointment of an Ecological Clerk of Works (ECoW) by the applicant and approved by the Planning Authority in consultation with SNH for the period from commencement of development to the completion of aftercare or such earlier date as may be agreed in writing with the Planning Authority. The scope of work of the ECoW shall be agreed by the Council and will include:

- agreeing monitoring for the PMMP and reporting results to the TWG;
- advising and implementing restoration works; and
- monitoring and reporting during restoration and aftercare period to the TWG.

(viii) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Netherton site following consultation with the Planning Authority and the Environmental Health Service, such monitoring schemes to be in place prior to the commencement of operations associated with this development;

(ix) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.

(x) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the East Ayrshire Opencast Coal Subject Plan 2003, including the establishment and implementation of an appropriate independent monitoring regime.

(xi) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;

(xii) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site;

(xiii) The undertaking of structural surveys of residential properties lying in close proximity to the proposed excavation areas, the identification of properties considered for survey being the subject of discussion and agreement with the Planning Authority, and only to be required where the property owners give consent for such surveys. Copies of the requisite surveys shall be made available to the Planning Authority and to respective property owners.

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:

- (i) 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; and**
- (ii) the application has been notified to and cleared by the Scottish Ministers under the Notification of Applications Direction 2009.**

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

REASON FOR THE DECISION

In respect of all relevant matters and material considerations to be taken into account in the determination of this application, the Council considers that the proposed development is generally consistent with policy and that there are no significant environmental or community concerns regarding the proposal. Furthermore, there are no material considerations in respect of this application that would suggest refusal of the application.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, it would not require to be referred to the Full Council because it would not represent a significant departure from the development plan.

04 August 2010
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form, Plans and Environmental Statement.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of representation
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (2007)
7. Previous applications 00/0793/FL, 03/0726/FL, 04/0263/FL, 04/0717/FL, 0605/558/FL, 06/0538/FL, 070211/FL, 07/0745/FL and 07/0908/PP.
8. Scottish Planning Policy
9. 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:	Proposed recovery of coal using surface mining techniques with restoration to agriculture with nature conservation and improved public access at Auchincross Farm, New Cumnock
Name and Address of Applicant:	Kier Construction Limited Tempsford Hall SANDY Beds. SG19 2BD
Name and Address of Agent	

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

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

1. The development hereby permitted shall enure for the benefit of the applicant only, and the approved operations shall be completed within 8 years of the date of commencement of operations on the Netherton site, or by such other time as may be formally agreed in writing with the Planning Authority.

REASON –The development is acceptable only because of the individual circumstances pertaining to the applicant and on a temporary basis.

2. The applicant shall give notice in writing to the Planning Authority of the commencement of operations on site, one month prior to their commencement.

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

3. Prior to any works commencing on site, the applicant shall prepare a groundwater monitoring plan developed through prior discussion and agreement with SEPA and submitted to the Planning Authority for approval in consultation with SEPA. The scope of the plan shall include:
 - The collection and interpretation of baseline data; the on-going collection and interpretation of data; the reporting mechanism of this interpreted data; and an on-going mechanism to secure appropriate mitigation of impacts to ensure protection of the water environment in perpetuity;
 - The provision of additional information as requested by SEPA in its consultation response dated 05 August 2010.

- The arrangement and installation details of monitoring boreholes shall be approved by the Planning Authority in consultation with SEPA prior to operations commencing on site. Groundwater monitoring locations shall be required both up-gradient and down-gradient of the proposed excavation areas. It should be ensured that other monitoring points have been installed to adequate depths around the site to account for changes in water levels throughout the life of the works.
 - The submission of a revised hydrogeological conceptual model following the provision of additional information.
 - The completion of step 6 of the backfill risk assessment and the provision of a contingency plan produced in consultation with SEPA.
 - Details of the decommissioning of groundwater boreholes destroyed by ongoing excavation operations.
4. Prior to any works commencing on site, the applicant shall submit to, and have approved by the Planning Authority, in consultation with SNH and SEPA, information regarding the following matters:
- A National Vegetation Classification Survey.
 - A Habitat Survey
 - An assessment of impact on the wet modified bog.
 - Information on the dependency of wetland habitats on high groundwater levels.
 - Details of the translocation of habitats and monitoring proposals.
 - Details of the amount of excavated peat, storage methods and proposed re-use options.

REASON – In the interests of environmental protection.

5. The range of mitigation measures with respect to all protected species as identified in the Environmental Statement (Kier Construction Limited dated November 2009: Greenburn South) shall be adopted and implemented in full to the satisfaction of the Planning Authority.

REASON – In the interests of environmental protection.

6. Immediately prior to the commencement of operations on site including deforestation, the developer shall carry out protected species surveys including European Protected Species (EPS), these surveys to be undertaken by a suitably qualified ecologist and in accordance with SNH guidelines. The findings of this work will inform the developer as to mitigation and habitat improvements for protected species. The results of these surveys shall be submitted to the Planning Authority for consideration in consultation with SNH.

REASON – In the interests of environmental protection.

7. All demolition of structures, vegetation clearance, tree and forest felling and soil stripping shall be carried out outwith the bird breeding season (March to July inclusive). 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.

8. Prior to the commencement of operations on site, the applicant shall establish a comprehensive restoration programme and plan for the comprehensive Greenburn complex and shall submit the details of this programme and plan to the Planning Authority for approval. The required programme and plan shall be the subject of prior consultation with the Greenburn Technical Working Group. Any subsequent revisions

to the restoration and aftercare plan as approved shall be the subject of approval of the Planning Authority in consultation with the Greenburn Technical Working Group.

REASON – In the interests of environmental protection and to ensure a high standard of site restoration.

9. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.”

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

10. No operations shall commence on site until a Mining Waste Management Plan, in compliance with the provisions of The Management of Waste from Extractive Industries (Scotland) Regulations 2009, has been formally approved by the Planning Authority in consultation with SEPA.

REASON – To comply with statutory regulations in the interests of environmental protection.

11. Prior to the commencement of operations on site, the applicant shall submit details of the means of illumination of the working areas and this illumination shall be installed in a manner which minimises any potential nuisance. Operations shall not commence until the Planning Authority has approved the submitted details.

REASON - In the interests of amenity.

12. Except in the case of emergency and with the prior agreement of the Planning Authority, the hours of operation for the Greenburn South site shall be confined between 0700 and 1600 hours Mondays through Saturday inclusive (24 hours working) except in relation to the initial phase of development. In this case, the hours of operation shall be confined to 0700 hours until 2300 hours from Monday to Friday and 0700 hours until 1600 hours on Saturday until such time as the applicant can demonstrate compliance with night time noise standards as set out in PAN 50. No works shall take place on Sundays or recognised Public Holidays with the exception of essential site maintenance works.

REASON – In the interest of residential amenity.

13. Except in the case of emergency and with the prior agreement of the Planning Authority, the dispatch of coal and other minerals from the site by road shall be confined to between the hours of 0800 and 1700 hours Mondays to Fridays inclusive. No transportation of coal by road shall take place on Saturdays or Sundays except in cases of emergency as indicated.

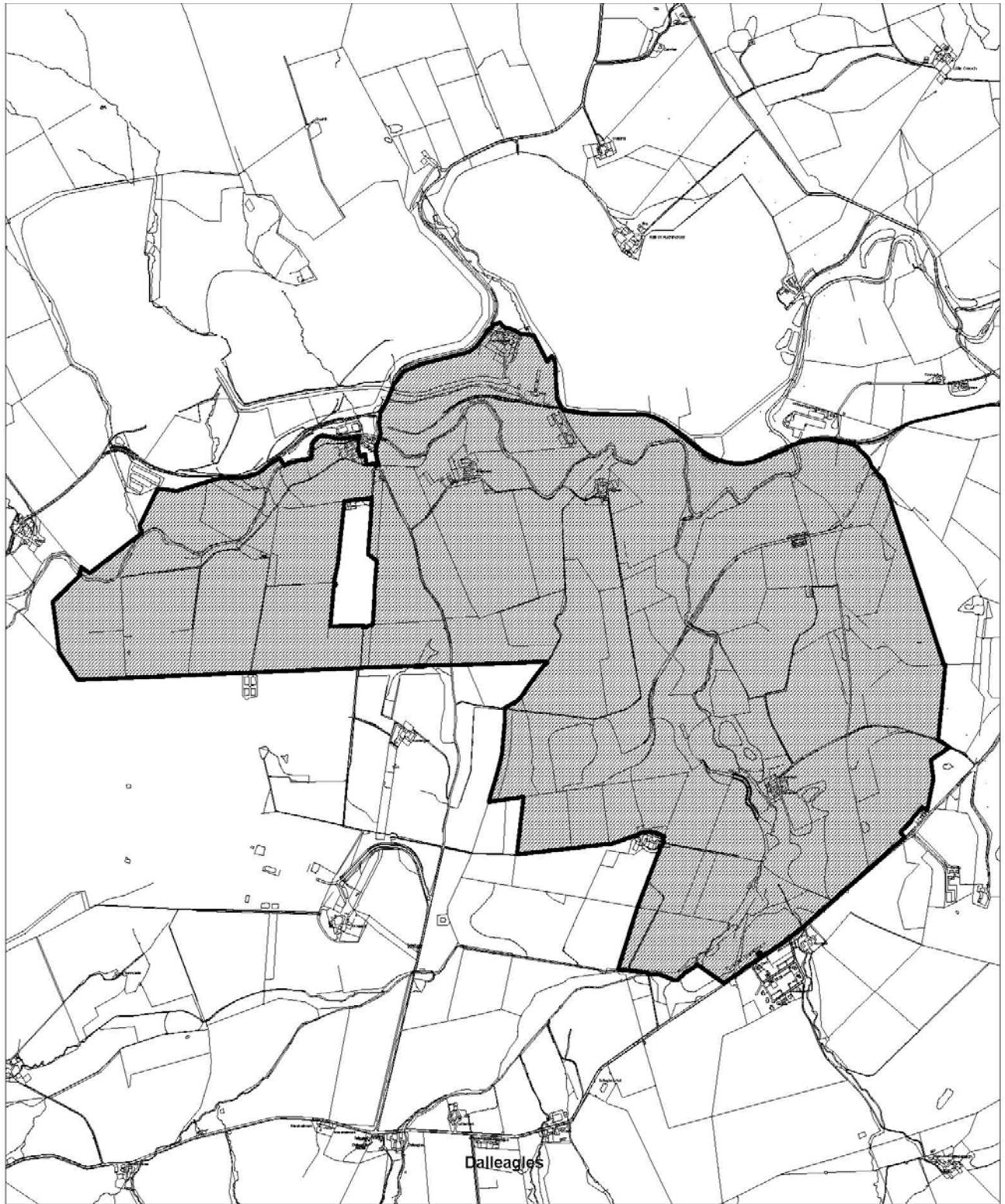
REASON – In the interest of residential amenity



14. No blasting operations shall take place within 500 metres of any occupied residential property, unless the developer is able to demonstrate a controlling interest in this property or has secured an appropriate legal agreement with respective property owners consenting to such operations.

REASON – In the interests of residential amenity.

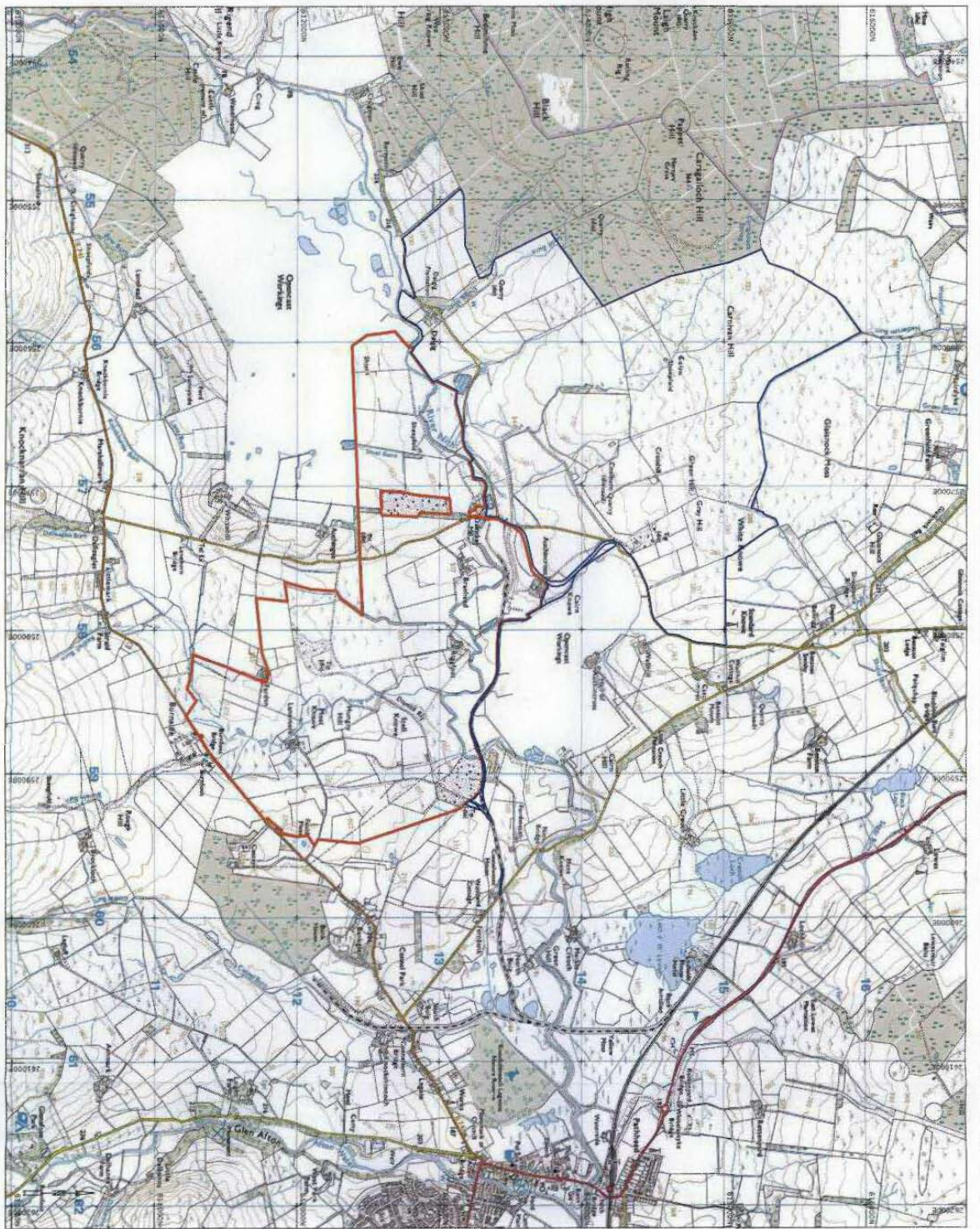
15. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 00/0793/FL dated 06 August 2001 as amended by planning consent 03/0726/FL dated 10 October 2003, as amended by planning consent 04/0263/FL dated 24 June 2004, as amended by planning consent 04/0717/FL dated 28 October 2004, as amended by planning consent 05/0583/FL dated 13 April 2006, as amended by planning consent 07/0211/FL dated 29 February 2008 as amended by planning consent 07/0745/FL dated 29 February 2008 and planning consent 07/0908/FL dated 05 September 2008.

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



<p>Title/Location Greenburn South, Auchincross Farm, New Cumnock Application No. 09/0906/PP</p>	<p>East Ayrshire Council Department of Neighbourhood Services Planning & Economic Development Service. 6 Croft Street Kilmarnock KA1 1JB Tel: (01563) 576790 Fax: (01563) 576774 E-Mail : Planning@east-ayrshire.gov.uk</p>
<p>Key</p> <p> Application Site</p>	<p style="text-align: right;"></p> <p>Com Date: 13/8/2010</p>

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- LEGEND**
- Application boundary
 - Kier Overalls Land and/or Application boundary

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 Greenbourn South
 5th Edition, 2005 (2005/01/01)

GREENBOURN SOUTH
 LOCATION PLAN

Scale	1:25000 @ A3
Date	05-Nov-2005
Drawn by	6212AKS/PA/002
Checked by	JH
Drawn by	CT



KIER
 Kier Mining
 Transport Road, Steyn, Boksburg 5213 280
 Tel: 011 717 641111 Fax: 011 717 641133
 www.kier.co.za