

EAST AYRSHIRE COUNCIL

SPECIAL SOUTHERN LOCAL PLANNING COMMITTEE: 17 DECEMBER 2009

08/0783/FL: EXTRACTION OF COAL BY SURFACE MINING METHODS WITH RESTORATION TO FORESTRY, PARKLAND, PUBLIC ACCESS AND NATURE CONSERVATION INTERESTS, DUNSTONHILL, LETHANHILL, PATNA

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

EXECUTIVE SUMMARY

1. DEVELOPMENT DESCRIPTION

1.1 Planning Permission is sought for the winning and working of coal and fireclay by surface mining methods. This proposal will allow the recovery of approximately 1.2 million tonnes of coal mainly for the power generation industry and the production will be at a rate of up to approximately 10,000 tonnes per week. The seams of coal present within the Dunstonhill site will be extracted to a maximum depth of 80 metres below original ground level. The coals will be worked in four distinct phases described as follows:

- (i) Phase A: This phase is made up of two excavation areas A1 and A2 with a combined potential of around 530,000 tonnes. Most of the coal is medium or low volatile in the Pennyvenie Splint or Pennyvenie Low seams. Potential coal reserves continue southwards from Phase A across the area of the old Lethanhill Village (under trees). However, this area is a scheduled ancient monument and is therefore excluded from the site.
- (ii) Phase B: This phase is potentially one excavation area, although the geology varies considerably within it. This phase comprises three excavation areas, B1, B2 and B3. A single excavation will be required to get down to depth in B2 and B3, and will probably result in some barren dig between the areas. This phase will have a yield of approximately 600,000 tonnes.
- (iii) Phase D: With the removal of areas D1 and D2 from the original scheme, only area D3 remains in this phase. It is possible that old workings will be present in the phase, which could mean that coal reserves may be less than expected (around 40,000 tonnes).
- (iv) Phase E: This phase comprises 3 excavation areas, E1, E2 and E3 and while the coal seams within this phase are described as being thin, it is expected that around 150,000 tonnes of coal will be recovered from this part of the site.

1.2 Approximately 118 hectares of the site will be subject to coal extraction, and a further 162 hectares stripped and used to accommodate the storage of soils and overburden, the access and site support area and water treatment lagoons. The remainder of the site will largely remain undisturbed. Overburden mounds will be constructed to a maximum height of 25 metres above original ground levels. The proposal will involve limited blasting operations to fracture overburden. Other infrastructure work will include the formation of a new internal haul road to link the

Dunstonhill site to the consented Kyle Forest overland haul route (presently under construction) to existing internal haul roads in the Chalmerston site.

1.3 The principal operational phases will be:

- (i) the progressive removal of the overlying soils and their placement either in storage bunds or for restoration of previously excavated and backfilled areas;
- (ii) the progressive removal of overburden and placement initially in the above ground storage mounds or into previously excavated areas; and
- (iii) the extraction of coal and its processing within the site support area.

The winning of the coal reserves will involve limited blasting. The site will be worked in the order A1, A2, E1, E2, E3, B1, B2, B3 and D3, although various phases and areas will be worked concurrently. The 4 coal extraction phases will each be progressively restored, re-vegetated and subject to aftercare following exhaustion of the coal reserves.

1.4 In terms of timescale, following commencement of operations at Dunstonhill, site preparation and start up works will take approximately 6-12 months while extraction of minerals is estimated to take 3 years to complete. This will be followed by approximately 12 months of backfilling and final site restoration works i.e. a total operational life of 5 years. The final timescale will be dependent on a number of factors including the exact rate of production, the coal tonnage recovered and weather experienced during the life of the site.

1.5 It is proposed to use the same hours of operation and shift system to the existing Chalmerston site in that it is proposed to work a 24 hour basis i.e. from 0700 hours on a Monday though to 1600 hours on a Saturday. No operations are to be undertaken on Sundays or Public Holidays with the exception of routine maintenance and emergency works.

1.6 Staff and light delivery vehicles will access Dunstonhill via the B730 Patna - Rankinston Road at the north of the site where the site offices and compound will be located. No coal traffic will use this access. The dispatch of minerals, primarily along the Kyle Forest overland haul route to access either the Chalmerston railhead facility or via Piperhill to the Killoch railhead facility, will be confined to between 0800 and 1700 hours Mondays to Fridays with no dispatch on Saturdays or Sundays. As the majority of coal will be transported by rail from the railheads at Chalmerston and Killoch, there will be very few coal vehicles on the road network. Up to 1,000 tonnes of coal per week (up to 10% of the total extracted) will be exported by HGV to local end users, following the currently consented haul route.

1.7 The proposed Dunstonhill site is planned essentially as replacement site for the Chalmerston/Pennyvenie surface mine which is currently operational. The site is planned to commence to tie in with the completion of coaling within the Chalmerston/Pennyvenie site, which is expected to cease in during 2010/11. The proposal will provide or retain approximately 120 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. The applicant estimates that total jobs could be 276 including these indirect jobs. In line with existing trends, the applicant predicts that in excess of 85% of employees would live within 15 km of the site.

1.8 As stated above progressive restoration will be integral to the proposed development, with worked areas being backfilled with newly excavated overburden, and re-vegetated as work progresses. Restoration operations and replanting of the site are weather dependent but are expected to take approximately 12 months. The applicant has submitted plan information indicating the proposed restoration of the site which has been designed to complement the habitat restoration being carried out by the Coalfield Environment Initiative at Chalmerston and restoration at the applicant's other sites within the area.

1.9 Notwithstanding these aims, the overall strategy for the restoration of the Dunstonhill Surface Mine is to create a wildlife-enhanced forest and moor land landscape with areas of pasture. Some of the Sitka spruce plantation will be replaced with a greater diversity of species. Restoration will also include the replacement of habitats with high wildlife conservation value such as marshy grassland, woodland edge, wet heath and river and wetland habitats. Public access within the site area and connection to the surrounding path network and the wider landscape will also be included. Following completion of restoration works, the site will be the subject of aftercare and land management for a period of 5 years.

1.10 The Dunstonhill application has been accompanied by an Environmental Statement together with the subsequent submission of Supplementary Environmental Information following initial consultations. The information provided in both documents suggests that, subject to the implementation of a range of mitigation measures as described in the Environmental Statement and Supplementary Environmental Information, the development can take place without significant adverse, long term impacts on the environment or more particularly on local communities.

1.11 Although not a statutory requirement for this major application, the applicant has voluntarily 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.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet but that the issue of the decision notice should be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 8.8 of this report.

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 it represents a minor departure from Policy MIN1 and MIN30 (ii) of the EAOCSP. 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 proposals represent the development of a new opencast site in the Doon Valley which will involve the extraction of approximately 1.2 million tonnes of coal which in environmental terms is considered to present no long term significant adverse impacts in relation to the proposed operations, and this is essentially borne out by the consultation process. Despite lying in proximity to the communities of Rankinston, Patna and Waterside, the proposed development has not attracted a significant body of objection to the proposal and of those objections received, the major concerns related to the previously proposed Phase C development which, along with other parts of the scheme, has now been excluded from the proposals.

3.3 It is considered that as the majority of coals and fireclay will be dispatched from the site via the Kyle Forest overland haul route, this proposal will not result in any significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it is considered that the operations proposed can be undertaken within acceptable environmental standards.

3.4 The proposed Dunstonhill site is planned essentially as a replacement site for the Chalmerston/Pennyvenie surface mine which is currently operational. The site is planned to commence to tie in with the completion of coaling within the Chalmerston/Pennyvenie site, which is expected to cease in sometime during 2010/11. The proposal will provide or retain approximately 120 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. The applicant estimates that total jobs could be 276 including these indirect jobs. In line with existing trends, the applicant predicts that in excess of 85% of employees would live within 15 km of the site. This is considered to be of significant ongoing community benefit.

3.5 In landscape and visual amenity terms, the proposed development will have significant, albeit temporary adverse impacts. The part of the Dunstonhill site that falls outwith the identified Potential Coal Extraction areas is excluded primarily as a result of the High Amenity Value "designation" along the A713 tourist route. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term. The site is currently considered partly derelict and also a significant area is covered with coniferous plantation woodland. Overall it is considered that the long-term landscape would be enhanced by restoration proposals through the introduction of more native tree planting and re-establishment of field boundaries and riparian corridors.

3.6 The restoration of the site would contribute positively to the landscape and visual quality of the area. Excavation operations and backfilling of the areas that fall within the High Amenity Value area would be undertaken and completed within 12 months of the commencement of operations. While the proposal is considered to be a departure from policy, this is not considered to be significant given the short term and temporary impacts and the longer term benefits that would be achieved through the restoration strategy.

3.7 It is accepted that a number of established rights of way and other established footpaths within the proposed development area will be significantly affected and these will require to be temporarily stopped up. Temporary diversions will be provided where required. However, these paths will require to be re-instated on restoration of the site. It is also intended to re-instate a previous right of way which was extinguished as part of the forestry operations on the site.

3.8 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 but subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

Section 75 Agreement

- (i) The establishment of a Technical Working Group for the Dunstonhill site with the provision that the group shall meet at least bi-annually. The TWG shall generally include representatives from Scottish Natural Heritage, RSPB Scotland, the Scottish Environment Protection Agency, the Ayrshire Rivers Trust, the Planning Authority and the site operator, but may be extended to include other bodies with particular interest in relation to the restoration of the site.
- (ii) The establishment of a Community Liaison Committee for the site in accordance with established practice.
- (iii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement and the Supplementary Environmental Information that accompanied the planning application. The applicant shall prepare a Mitigation Plan / Environmental Enhancement and Restoration Strategy for the site. The details of the MP/EERS shall be the subject of agreement with the Planning Authority in consultation with SNH. Thereafter the implementation of this plan will be undertaken by the applicant and guided by an appropriately qualified specialist (Ecological Clerk of Works) employed either directly or indirectly by the applicant. The MP/EERS shall be the subject of an annual audit with a monitoring report provided to the Planning Authority assessing the effectiveness of mitigation measures and site restoration. This monitoring report shall also be the subject of consultation with the Dunstonhill Technical Working Group. The MP/EERS shall take account of and incorporate the recommendations contained within Appendix 1 of the consultation letter from SNH dated 04 February 2009 and the consultation letter from RSPB Scotland dated 09 September 2009.
- (iv) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Dunstonhill site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (v) The undertaking of an assessment of the fish population in the burns proposed for diversion with an appropriate fish rescue plan implemented if necessary, to be undertaken prior to diversion of the burns.

- (vi) 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.
- (vii) 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;
- (viii) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.
- (ix) The securing of agreed road maintenance contributions, towards repair works to be carried out on the A713 between the Chalmerston site access and the South Ayrshire Council boundary, and also the A70, B730, B7046 and U728 public road haulage route between the Piperhill site access and Killoch DP, with the Roads Authority under section 96 of the Roads (Scotland) Act 1984.
- (x) 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.
- (xi) 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 shall only 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.
- (xii) 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 Dunstonhill site transported on the public road network within East Ayrshire.

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development in terms of the principle of the development, other than as expressed within the terms of Policies MIN1 and MIN30 (iii) of the EAOCSP, then the application would require to be referred to the Full Council as such a decision would 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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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 a major application in terms of the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 which is not significantly contrary to the Development Plan.

2. APPLICATION DETAILS

2.1 **Background:** On 03 September 2008, the applicant submitted this planning application (and an accompanying Environmental Statement) for the extraction of coal by opencast methods for a site at Dunstonhill, near Patna. The estimated coal reserve was 1.6 million tonnes, which was to be extracted over 3-5 years, with a start up phase of some 6-12 months and 12 months for final restoration. The proposed Dunstonhill site, extended to some 1209 hectares of which some 460 hectares would be disturbed either through excavation or through soils and overburden storage. The proposal at that time consisted of five distinct excavation phases, similar to the existing surface mine site at Chalmerston and Pennyvenie nearby at Dalmellington.

2.2 However, the consultation process and statutory publicity procedures raised a number of significant issues in respect of the proposed development, both on environmental issues and the proximity of some of the proposed excavation areas to the village of Rankinston. As a consequence of this, it also presented conflict with the policy provisions of the East Ayrshire Opencast Coal Subject Plan. In consideration of these issues, the applicant has made significant amendments to the scheme, primarily in relation to:

- Removal of operational Phases C and D1 and D2 which were in close proximity to the village of Rankinston;
- Reduction of the site boundary from 1209 hectares to 776 hectares;
- Removing the proposed site access from the A713 to the immediate north of Patna;
- Amending the proposed coal haulage route so that coal will be dispatched along the Kyle Forest haul Road (a consented overland haul route) removing the need to construct a new road along the line of the former railway running along the east site of the Doon Valley between Lethanhill and Dalmellington;
- Relocation of the peat storage area at the southern end of the site away from the Knockkippen Moss area of Blanket Bog.

2.3 The amended application details and associated Supplementary Environmental Information were submitted for consideration during July 2009 and assessment of the amended application is set out below.

2.4 **Site Description:** The application site lies at the northern end of the Doon Valley in the rural south of East Ayrshire some 4.5 km north-west of Dalmellington, 1.0 km east of Patna and 0.9 km to the south-west of Rankinston. Dunstonhill sits on a hillside comprising substantial commercial plantation under the management of the Forestry Commission, pasture and low-grade moor land given over to sheep grazing. It is surrounded by upland landscape with a series of hills and vast areas of coniferous woodland plantations to the east, south and west.

2.5 The site lies on generally moderate sloping land between approximately 158 metres AOD at the site entrance and 400 metres AOD. Most of the site lies between 220 metres and 340 metres AOD. In total the land take within the application boundary covers an area of 776 hectares, although only approximately 118 hectares will be excavated to mine coal. A further 162 hectares will be used for other site operations such as storage of topsoil, subsoil, haul roads and overburden, water treatment lagoons and site compound facilities which will necessitate the disturbance of soils. However, there will be approximately 496 hectares of land within the application boundary that will not be disturbed. This is predominantly rough hill land or commercial forestry.

2.6 There are twelve minor burns flowing through or adjacent to the site including the Bow Burn, Carline Burn, Tongue Burn, Smithston Burn and the Polnessan Burn that flow to the north and west as tributaries of both the Water of Coyle and the River Doon. Although no previous surface coal mining has taken place within the site, pits from previous workings within and near to the site are apparent. The area has been mined for ironstone and coal, and bings and settlement/subsidence depressions within the site boundary are remnants of deep mining operations. The southern portion of the site also falls within a Sensitive Landscape Area as identified by the East Ayrshire Local Plan and an area of High Visual Amenity as indicated in the East Ayrshire Opencast Coal Subject Plan.

2.7 The development area lies within an area of mining and other industrial workings that date to between the 19th and mid-20th century, with some nationally important and well-preserved industrial remains and mining settlements connecting with and adjacent to the site. Within the development area there are a large number of industrial workings, in the form of railway tracks, mines and tips that relate to this industrial activity, together with the extension of a settlement that was occupied between 1851 and 1954 – the main part of which, adjoining the site, is now a Scheduled Ancient Monument. There are also sites relating to farming. Although the individual sites recorded are generally unremarkable examples of mining workings and infrastructure, as a whole they are considered to be of regional importance. The site also contains a number of established rights of way and other recognised paths.

2.8 **Proposed Development:** Planning Permission is sought for the winning and working of coal and fireclay by surface mining methods. This proposal will allow the recovery of approximately 1.2 million tonnes of coal mainly for the power generation industry and the production will be at a rate of up to approximately 10,000 tonnes per week. The seams of coal present within the Dunstonhill site will be extracted to a maximum depth of 80 metres below original ground level. The coals will be worked in four distinct phases described as follows:

- (i) Phase A: This phase is made up of two excavation areas A1 and A2 with a combined potential of around 530,000 tonnes. Most of the coal is medium or low volatile in the Pennyvenie Splint or Pennyvenie Low seams. Potential coal reserves continue southwards from Phase A across the area of the old Lethanhill Village (under trees). However, this area is a scheduled ancient monument and is therefore excluded from the site.
- (ii) Phase B: This phase is potentially one excavation area, although the geology varies considerably within it. This phase comprises three excavation areas, B1, B2 and B3. A single excavation will be required to get down to depth in B2 and B3, and will probably result in some barren dig between the areas. This phase will have a yield of approximately 600,000 tonnes.
- (iii) Phase D: With the removal of areas D1 and D2 from the original scheme, only area D3 remains in this phase. It is possible that old workings will be present in the phase, which could mean that coal reserves may be less than expected (around 40,000 tonnes).
- (iv) Phase E: This phase comprises 3 excavation areas, E1, E2 and E3 and while the coal seams within this phase are described as being thin, it is expected that around 150,000 tonnes of coal will be recovered from this part of the site.

2.9 Approximately 118 hectares of the site will be subject to coal extraction, and a further 162 hectares stripped and used to accommodate the storage of soils and overburden, the access and site support area and water treatment lagoons. The remainder of the site will largely remain undisturbed. Overburden mounds will be constructed to a maximum height of 25 metres above original ground levels. The proposal will involve limited blasting operations to fracture overburden. Other infrastructure work will include the formation of a new internal haul road to link the Dunstonhill site to the consented Kyle Forest overland haul route (presently under construction) to existing internal haul roads in the Chalmerston site.

2.10 The principal operational phases will be:

- (i) the progressive removal of the overlying soils and their placement either in storage bunds or for restoration of previously excavated and backfilled areas;
- (ii) the progressive removal of overburden and placement initially in the above ground storage mounds or into previously excavated areas; and
- (iii) the extraction of coal and its processing within the site support area.

The winning of the coal reserves will involve limited blasting. The site will be worked in the order A1, A2, E1, E2, E3, B1, B2, B3 and D3, although various phases and areas will be worked concurrently. The 4 coal extraction phases will each be progressively restored, re-vegetated and subject to aftercare following exhaustion of the coal reserves.

2.11 In terms of timescale, following commencement of operations at Dunstonhill, site preparation and start up works will take approximately 6-12 months while extraction of minerals is estimated to take 3 years to complete. This will be followed by approximately 12 months of backfilling and final site restoration works i.e. a total operational life of 5 years. The final timescale will be dependent on a number of factors

including the exact rate of production, the coal tonnage recovered and weather experienced during the life of the site.

2.12 It is proposed to use the same hours of operation and shift system to the existing Chalmerston site in that it is proposed to work a 24 hour basis i.e. from 0700 hours on a Monday through to 1600 hours on a Saturday. No operations are to be undertaken on Sundays or Public Holidays with the exception of routine maintenance and emergency works.

2.13 Staff and light delivery vehicles will access Dunstonhill via the B730 Patna - Rankinston Road at the north of the site where the site offices and compound will be located. No coal traffic will use this access. The dispatch of minerals, primarily along the Kyle Forest overland haul route to access either the Chalmerston railhead facility or via Piperhill to the Killoch railhead facility, will be confined to between 0800 and 1700 hours Mondays to Fridays with no dispatch on Saturdays or Sundays. As the majority of coal will be transported by rail from the railheads at Chalmerston and Killoch, there will be very few coal vehicles on the road network. Up to 1,000 tonnes of coal per week (up to 10% of the total extracted) will be exported by HGV to local end users, following the currently consented haul route.

2.14 The proposed Dunstonhill site is planned essentially as replacement site for the Chalmerston/Pennyvenie surface mine which is currently operational. The site is planned to commence to tie in with the completion of coaling within the Chalmerston/Pennyvenie site, which is expected to cease in during 2010/11. The proposal will provide or retain approximately 120 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. The applicant estimates that total jobs could be 276 including these indirect jobs. In line with existing trends, the applicant predicts that in excess of 85% of employees would live within 15 km of the site.

2.15 As stated above progressive restoration will be integral to the proposed development, with worked areas being backfilled with newly excavated overburden, and re-vegetated as work progresses. Restoration operations and replanting of the site are weather dependent but are expected to take approximately 12 months. The applicant has submitted plan information indicating the proposed restoration of the site which has been designed to complement the habitat restoration being carried out by the Coalfield Environment Initiative at Chalmerston and restoration at the applicant's other sites within the area.

2.16 Notwithstanding these aims, the overall strategy for the restoration of the Dunstonhill Surface Mine is to create a wildlife-enhanced forest and moor land landscape with areas of pasture. Some of the Sitka spruce plantation will be replaced with a greater diversity of species. Restoration will also include the replacement of habitats with high wildlife conservation value such as marshy grassland, woodland edge, wet heath and river and wetland habitats. Public access within the site area and connection to the surrounding path network and the wider landscape will also be included. Following completion of restoration works, the site will be the subject of aftercare and land management for a period of 5 years.

2.17 The Dunstonhill application has been accompanied by an Environmental Statement together with the subsequent submission of Supplementary Environmental Information following initial consultations. The information provided in both documents suggests that, subject to the implementation of a range of mitigation measures as

described in the Environmental Statement and Supplementary Environmental Information, the development can take place without significant adverse, long term impacts on the environment or more particularly on local communities.

2.18 Although not a statutory requirement for this major application, the applicant has voluntarily 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.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Consultations have been carried out both in respect of the Environmental Statement and the Supplementary Environmental Information. 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 Division has no objections in principle to the proposed development but has raised concerns regarding the suitability of the junction of the junction of the B730 Polnessan to Drongan Road (from which access to the site will be taken) with the A713 Dalmellington – Ayr Road. This junction is currently sub-standard and intensification of its use, particularly by HGV's is not considered acceptable in road safety terms. At present, the applicant is seeking to secure junction improvements and is in discussion with the respective land owners. In this regard, the Roads and Transportation Division will accept a proposed condition that limits use of the site access on the B730 road into the Dunstonhill site to cars and light vehicles only, until such times as improvement works are undertaken to the sub-standard junction. This would mean that HGV's would access the Dunstonhill site via the Chalmerston access and via the Kyle Forest overland haul route. The applicant will also require to agree road maintenance contributions towards maintenance works to be carried out on the A713 between the Chalmerston site and the South Ayrshire Council boundary and also the A70, B7046 and U728 public road haulage route between the Piperhill site access and the Killoch DP with the Roads Authority under Section 96 of the Roads (Scotland) Act 1984 and in line with the original Kyle Forest overland haul route.

The requirements of the Roads and Transportation Division can be secured either by condition or through an obligation within a Section 75 Agreement associated with the Dunstonhill site.

3.3 The Scottish Environment Protection Agency objects to this planning application **unless** the planning condition indicated below is attached to any consent. There is no quantitative or qualitative indication in the Supplementary Environmental Information of predicted groundwater abstraction volumes and only limited information is supplied in respect of the proposed discharge rates. Without this information the impacts on existing spring abstractions and on surface waters cannot be fully assessed. An abstraction licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) may be required for the dewatering of the voids, though details

of proposed abstraction rates have still not been provided. Without the proposed abstraction rates, SEPA is unable to comment on whether the dewatering abstraction requires a CAR licence. SEPA would request the following condition is attached to any planning permission granted:

“A groundwater monitoring plan should be developed to the satisfaction of the local authority in agreement with SEPA. The scope should include the collection and interpretation of baseline data; the on-going collection and interpretation of data; the reporting mechanism of this interpreted data; and a mechanism to secure mitigation of impacts should this prove necessary.”

The condition proposed by SEPA, to secure its non-objection to the proposed development, can be attached to any consent granted and the applicant has indicated acceptance of the proposed condition.

In terms of air quality SEPA has stated that the removal of operational phases C, D1 and D2 has largely addressed its concerns regarding air quality and more specifically the possibility of Rankinston being declared an Air Quality Management Area (AQMA). The proposal for the development of an opencast coal site at Dunstonhill would highlight a number of significant sources of particulate matter, including fugitive dust from the materials handling, site operations and also from transport sources and unpaved haul roads. The SEI makes an approximation of background PM10 levels of 10ug/m³ without references to normal sources, such as the national inventory background maps, which are designed to assist in prediction of impact of PM10 on local air quality. Having considered the proximity of possible receptors, the local authority may wish to request that the developer conduct ambient background air monitoring prior to commencement of operations at these receptors, to assess likely impact on air quality, as a consequence of this development. If it is considered necessary, these locations should be monitored for PM10 using a particulate monitor which is compliant with Local Air Quality Management Technical Guidance TG(09) and not referenced to TG(03) as mentioned in the SEI, rather than the proposed use of dust gauges which are more synonymous with dust nuisance monitoring.

It is considered that if this development is approved, then appropriate air quality and dust monitoring programmes should be secured by means of planning conditions and obligations within a section 75 Agreement.

At a meeting on 4 April 2009 attended by SEPA, the local authority and Scottish Coal it was agreed that as part of proposed mitigation, the applicant would conduct atmospheric dispersion modelling and propose a monitoring programme for particulates which would be used to validate modelled outputs. Given the removal of the working phases adjacent to Rankinston, East Ayrshire Council may wish to review the need for such a monitoring programme.

It is considered that the need for the modelling and a monitoring programme is no longer required in light of removal of the phase of development in proximity to Rankinston.

3.4 The Ayrshire Rivers Trust welcomes the comprehensive nature of the Environmental Statement although it contains some errors. The ES concludes that there will be significant impacts on a number of watercourses draining from the site, some of which will be permanent. These changes will be detrimental to the ecology of the receiving watercourses. The River Doon in particular supports notable populations

of ecological interest including pearl mussels. Both the Ayr and the Doon support important salmonid populations and fisheries. It is not the role of ART to prevent legitimate development of any economic activity; rather it seeks to provide advice and mitigation advice so that watercourses and riparian habitats are fully protected. Where an ES identifies impacts which cannot be mitigated then the onus is on the developer to work with stakeholders to resolve issues of concern.

The impact of the proposed development on the watercourses present within the application site is recognised within the ES. In this regard the Supplementary Environmental Information contains further information regarding watercourse diversions. Following receipt of these more detailed water management plans, SEPA has indicated that it is broadly satisfied that there will be no significant impacts on surface water resources. One of the water course diversions (Bow Burn) will result in runoff which would normally drain to the Water of Coyle, being diverted to the Doon catchment. However it is thought that the resultant reduction in flows to the Water of Coyle would be insignificant given the small catchment area diverted. Furthermore the diversion is temporary and the original course of the Bow Burn is to be reinstated. Notwithstanding this it is considered that the input of ART would be helpful in relation to the establishment of a site Technical Working Group, should consent be granted for the proposed development.

3.5 Scottish Natural Heritage objected to the proposed development as originally proposed, primarily in relation to the loss of blanket bog and issues regarding haul roads or introduction of a conveyor system. Having studied the further information provided, SNH is now content with the applicant's revision of the proposed development. SNH has now withdrawn its objection but recommends that the following issues be addressed by conditions on any consent granted:

- (i) Where possible restoration of any blanket bog on the site which is currently afforested. It seems likely from the Drift Geology map that such areas do exist, and restoration of afforested peatland is now a well-established practice.
- (ii) A revision should be undertaken of the species choices for restored woodland, moorland and wetland habitats to ensure that only native species appropriate to the location are selected.
- (iii) A Peat Slide Risk Assessment should be carried out given the proposed excavation and loading of areas of deep peat.
- (iv) Turf from the lost areas of fen basin mire should be used to help to propagate the "new" areas of fen basin mire which are to be created as mitigation.
- (v) When creating "new" fen basin mires, the hydrology as well as the topography of the "new" areas must be taken into account.
- (vi) Soils or peat stripped from different agricultural and forest areas should not be mixed as this would preclude the opportunities for blanket bog restoration.
- (vii) Turf stripped from different agricultural and forest areas should be stored separately to maximise its potential for appropriate future use.

- (viii) Any culvert to be constructed on the site shall be designed so as to ensure the free passage of fish, as well as otters.
- (ix) Immediately prior to any development works, including deforestation, a suitably qualified ecologist shall carry out protected species surveys, including European Protected Species (EPS), and in accordance with SNH guidelines. The findings of this work will inform the company as to mitigation and habitat improvements for protected species.
- (x) Immediately prior to work beginning for tree clearance, areas of suitable red squirrel habitat, even if they are known to be used by grey squirrels, should be resurveyed for the presence of red squirrels.
- (xi) No tree felling, scrub removal or ground clearance will take place within the main bird breeding season (April to July inclusive) unless with the written approval of the planning authority.
- (xii) A legally binding Restoration Bond should be established prior to consent. This should cover all site restoration and decommissioning costs from the end of the current application.
- (xiii) No construction work shall commence until a method statement for road or track construction work has been submitted to and approved by the planning authority. The method statement shall be submitted no less than 3 months prior to the proposed commencement of the development unless the planning authority agrees otherwise. Thereafter, the approved method statement shall be implemented by the applicant. The method statement shall fully detail the following considerations:-
- The role of the Ecological Clerk of Works (ECoW) in decisions over location and construction methodologies for each section of track;
 - Method of defining track route and location (track corridors should be pegged out 500 – 1,000 m in advance of operations);
 - Track design approach: maps of tracks indicating double and single tracks and position of passing places. Full extent of anticipated track 'footprint(s)' including extent of supporting 'geogrid' below roadstone and cabling at the edges of the track;
 - Track construction: floating track construction over peat >1 m deep and gradients of 1:10 or less;
 - Track construction for peat <1 m deep, or on gradients of >1:10, cross slopes or other ground unsuitable for floating roads. Where it is concluded that there is a high risk of instability, identification of the circumstances under which non-engineering solutions such as alternative routes would be considered;
 - Procedures to be followed when, during track construction, it becomes apparent that the chosen route is more unstable or sensitive than was previously concluded, including ceasing work until a solution, informed with reference to advice from ECoW, is identified;
 - Extent, design, treatment and reinstatement of embankments, track edges and other areas affected by track construction;
 - Drainage treatments;
 - Design of crossing points for water courses such as culverts and bridges;

- Methods to deal with failing roads, sinking/sunken roads, peat rotation at road edges etc; and
 - Procedure for early reporting to the planning authority of all major departures from the agreed method statement and design parameters for the tracks.
- (xiv) Re-turfing of disturbed ground will be undertaken using local sources of turf.
- (xv) Any reseeded will use species local to the area and appropriate to surrounding conditions.
- (xvi) SNH would wish to reserve the opportunity to comment on any future haul road or conveyor planning application associated with this development.

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

3.6 The Royal Society for the Protection of Birds (Scotland) states that its primary concern with the Dunstonhill application as previously submitted was the resulting destruction of 14.1 hectares of blanket bog, a Habitats Directive Annex 1 habitat. This resulted in an objection from RSPB. The further information now supplied by the applicant shows that the site layout has been amended to ensure that this area of blanket bog will not be destroyed by the proposed operations. RSPB therefore confirms that it does not object to the application subject to:

- (i) A condition being attached to any consent granted to ensure that soil stripping and vegetation clearance occurs outwith the bird breeding season. If this proves impossible, the site would need to be checked in advance by a suitably qualified ecologist and appropriate mitigation put in place to prevent damage to nests or nesting birds.
- (ii) The inclusion of conditions to ensure establishment of a Technical Working Group for the site, approval of a restoration and management plan by the TWG prior to the commencement of operations and the creation of a restoration bond.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of RSPB. The establishment of a Technical Working Group for the site can be secured by means of an obligation within a Section 75 Agreement.

3.7 The West of Scotland Archaeology Service states that the reduction in the application development area will certainly lessen the amount of archaeological mitigation required before and during the operation of the site as there are substantially fewer recorded archaeological sites affected. WOSAS welcomes this. Relevant mitigation will still be required for those sites that remain affected by the proposals and this will be developed for agreement in a written scheme of investigation to be submitted. In this case WOSAS is content to advise on the attachment of a negative suspensive condition which is based on PAN 42 but is worded to reflect current circumstances and in light of experience elsewhere, is as follows:

'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.'

The written scheme of investigation referred to in this condition will be produced by the developer and shall reflect the information and mitigation contained in the ES.

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

3.8 East Ayrshire Council Environmental Health Division has no objections in principle to the proposed development but indicates that the ongoing monitoring of noise levels at sensitive receptors should be carried out by the applicant and results submitted on a quarterly basis for scrutiny.

Should consent be granted for the proposed development, an appropriate noise monitoring scheme can be secured by means of a condition and an obligation within a Section 75 Agreement.

3.9 Historic Scotland had expressed its concerns regarding the Dunstonhill application as originally proposed, particularly in relation to the potential of the development to impact on the Scheduled Ancient Monument comprising the miner's villages and mineral railways north of Waterside. The revised proposals as set out in the SEI suggests that the railway forming part of the SAM will no longer be crossed to take coal to the coal preparation area on site. However we note that changes in the use of the area to the west of area A2 for storage and water treatment. This element would impact directly on the dismantled railway forming part of the SAM. HS therefore advises that this aspect of the proposal is revised to take account of this. HS also notes that the SEI indicates that the restoration will return the site close to existing ground levels and is content that this addresses its concerns. HS is confident that the developer will undertake a detailed risk assessment prior to works commencing on site to protect the fabric of the monument and this will address any previous concerns about potential damage from the extraction of coal, lasting and subsidence. Consequently, HS is broadly content that any impacts are not at such a level of significance to warrant an objection to the proposals.

It is considered that a condition can be attached to any consent granted to ensure that an appropriate risk assessment is carried out and that if necessary, further mitigation measures be introduced to protect the integrity of the SAM.

3.10 The Scottish Government (Climate Change and Water Industry Directorate) notes that noise impacts will be monitored continuously and working practices controlled to ensure that noise levels are likely to be of minor significance for the duration of the project and that the site operations will be conducted in accordance with a Noise Management Plan, with a programme of noise monitoring proposed to demonstrate compliance. The CCWID also notes that the results of the air quality assessment indicate that the proposed site can be operated without exceeding the annual mean air quality objective; and that it is proposed to adopt a dust management

plan to ensure that air quality limits and objectives are achieved at all times. CCWID offers no further comments on the SEI.

3.11 Transport Scotland (TRNMD) states that the proposed development represents an intensification of the use of this site; however the percentage increase in traffic on the trunk road is such that the proposed development is likely to have no impact on the trunk road network. On that basis, TRNMD has no comments to make.

3.12 The Ayrshire Joint Planning Unit states that the proposal falls within a Potential Coal Extraction Area identified within the East Ayrshire Opencast Coal Subject Plan and therefore raises no objection to the principle of development. There are however a number of environmental impacts which are significant and where agreements on appropriate mitigation will be necessary. In particular AJPU would draw your attention to the recently approved “Ayrshire Biodiversity Action Plan”, which identifies a number of farmland birds as key species whose habitat require protection (identified as a significant species in the EIA), has witnessed a 53% decline in the period 1970/2004. It is noted that this proposal will result in a progressive loss of breeding habitat.

The loss of breeding habitat is recognised within the ES. However it is considered that the overall benefits that would accrue from the site restoration strategy would outweigh the temporary loss.

The EIA recognises that there will be significant adverse landscape and visual effects. These impacts will adversely impact on local communities and be visible from designated sensitive regional landscapes during the operational period (5 years).

The landscape impacts are temporary in nature and again, through the restoration strategy for the site, it is considered that there will be long term positive benefits to the landscape character and visual quality of the area.

It is also noted that within the development area there are nationally important and well-preserved industrial remains and mining settlements connected with and adjacent to the site. These include a large number of former workings, railway tracks, mines and tips etc. As a whole these groupings are of regional significance.

The issues relating to these important industrial archaeological features are set out in the consultation responses from Historic Scotland and WOSAS, neither of which has formally objected to the proposed development.

In the light of further comment and advice you receive on this application the Council must consider carefully whether the principles set out in policy STRAT 1 Schedule 1- Environmental Quality & Development Obligations, the requirements of policies ENV 6 (which seeks to safeguard archaeological locations and landscapes); ENV7 (which recognises the work being undertaken within the context of the LBAP in protecting natural heritage); and ENV1 and ENV2 (which give protection to landscape quality and character) have been met. In the absence of any agreement on future mitigation the Council should adopt the precautionary principle set out in STRAT1 and consider the proposal contrary to the policies of the Structure Plan outlined above.

It is considered that with the revised proposals, there is sufficient mitigation proposed to ensure that the development is undertaken in an

environmentally sensitive manner that minimises or negates impacts on both natural and built heritage resources.

3.13 The Health and Safety Executive, Scottish Power Energy Networks, Scottish Water and Scotland Gas Networks have either no objections or comments to make with respect to the proposed development.

3.14 The Scottish Wildlife Trust, Patna Community Council, Drongan Rankinston and Stair Community Council have not responded to the consultation letters.

4. REPRESENTATIONS

4.1 A total of six letters of representation, from 10 signatories, have been received objecting to or raising concerns regarding the proposed development. One letter of representation is signed on behalf of Rankinston Community Opencast Action Group and one is signed on behalf of the Mining and Environment Group: Ayrshire. With the exception of one letter, all the representations were received in relation to the original submitted proposals for the Dunstonhill site. While all objectors were informed of the submission of the revised proposals in October 2009, only one of the objectors submitted further representations.

4.2 The letters of representation make significant reference to Phase C of the development, given its proximity to the village of Rankinston. However, the amended proposals result in the removal of those areas within the Dunstonhill site lying in close proximity to Rankinston i.e. the whole of Phase C and Areas D1 and D2 of Phase D. As two of the submitted letters of representation relate specifically the Phase C development area, which has now been excluded from the revised Dunstonhill scheme, the comments contained therein are regarded as being no longer material to the consideration of the revised application. No additional representations were received following statutory publicity on the revised scheme. The main points of objection or concern are summarised as follows:

4.3 Our dwelling is in close proximity to Phase B and this will affect the air quality and raise noise pollution.

The objectors' property lies some 750 metres away from the limit of excavation in Phase B with the nearest operation feature (soil storage mounds) lying 600 metres away. With the imposition of appropriate mitigation measures to minimise noise and dust nuisance, secured by planning conditions and with appropriate monitoring, it is considered that the proposed development can meet acceptable environmental standards.

4.4 Our current access roads are single track with very little visibility and are not suited for increased traffic.

Subject to the imposition of appropriate conditions in any planning consent granted for the proposed development, the Roads and Transportation Division does not object to the proposal. In the main, coal will be taken from the Dunstonhill site via the Kyle Forest overland route to existing railheads at Chalmerston and Killoch.

4.5 The Broomfield fishing pond will be affected. The pond has two tributaries which run through the opencast areas before depositing water into the pond. The quality of water in these burns will be impossible to maintain.

The fishing ponds at Broomfield are located some 1250 metres away from the proposed Dunstonhill site. It is considered that with the water management proposals for the site, together with the necessary standards that will be required to secure SEPA authorisations and discharge consents, there should be no significant adverse impacts on the fishery.

4.6 Blasting may result in projectiles which may affect local areas including our house.

Blasting requirements within Dunstonhill are described as being limited in nature. Any blasting will require to be undertaken in accordance with regulatory requirements, and subject to planning conditions limiting vibration and air overpressure impact. Given the distance of the objectors' property to the nearest point of the site excavations (750 metres), any incident arising from a fly rock incident is considered to be unlikely.

4.7 Blasting may affect the structure of houses in close proximity to the site.

Comments generally as above. It is considered that in the interests of establishing baseline conditions, the undertaking of structural surveys of those properties lying within proximity of the excavation areas should be secured by means of a Section 75 Agreement, and where consent is given by the property owners.

4.8 The proposals will have a detrimental effect on the value of all the housing around the site.

The claimed devaluation of property is not a valid ground of objection to the proposed development and not material to the consideration of this application.

4.9 The site boundary is at 0 metres to Rankinston and this boundary is at the edge of our property. We would request that the boundary is taken back to the established 500 metre buffer zone as stated in SPP16 and the East Ayrshire Opencast Coal Subject Plan.

As indicated above, Phase C and Areas D1 and D2 of Phase D have now been omitted from the proposed Dunstonhill scheme. In this regard, the 500m metre buffer from has now been re-established.

4.10 The applicant has promised us trees, walks and even cycle routes and the Environmental Statement indicates wonderful regeneration projects and amenity. We are in fact going to have 'neutral grassland' and 'scrubland will be developed in the north section of the site'.

Neutral grassland and scrubland are only two components of a diverse mosaic of habitats proposed in the restoration strategy for the Dunstonhill site. This is aimed at developing and enhancing the visual amenity and setting of the site and the surrounding area, restoring the landscape to a

character appropriate to its setting, creating a diversity of habitats to encourage wildlife and enhance the conservation value of the site and the local area, and improving and augmenting existing and retained woodland structure across the site by connecting woodlands of mixed coniferous and broadleaf species.

4.11 An area of concern is the effect of dust particulates on the new fishery and while unsure of the effects of blasting and PM10 etc, the dust on fishing ponds can not be a good thing.

With the removal of Phase C from the development proposals, the fishing ponds at Broomfield, lie some 1250 metres from the nearest excavations in Phase B. In this regards, subject to appropriate mitigation measures being put in place and subject to best practice in the control of fugitive dust, it is considered that there would be no significant adverse impact on the fishery.

4.12 Concerns have been raised regarding the amount of noise disturbance as Rankinston is such a very quiet area and it will be susceptible to low level noise at such close proximity.

Noise sensitive receptors in the vicinity of the proposed development at Dunstonhill include the communities of Rankinston, Patna and Waterside and isolated dwellings on the B730 between Polnessan and Littlemill. The original assessment in the ES confirmed that the impact from the proposed mine was likely to be of minor significance throughout the life of the proposed site. The main potential noise impact is likely to occur at the latter stages of the proposal when workings approach Rankinston Village.

However, with the amended proposals, no part of the site will be within 900m of Rankinston. It is anticipated that the advisory limits would not be exceeded at Rankinston, throughout the life of the mine. Night-time operations are no longer likely to cause sleep disturbance to residents of nearby dwellings.

Nonetheless, noise impacts will be the subject of appropriate monitoring and working practices controlled to ensure that noise levels are likely to be of minor significance for the duration of the project. The site operations will be conducted in accordance with a Noise Management Plan. It is further considered that a right to suspend operations be included in a Section 75 Agreement with the applicant, in the event of statutory noise nuisance arising from the development.

4.13 We are told there will be continuity of 120 jobs. Rankinston has one resident employee of the applicant. What other benefits does this bring to the village?

While noting the concerns raised, surface mining is a significant employer in the area, which has relatively high unemployment. The proposed surface mine at Dunstonhill will provide or retain approximately 120 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. It is estimated that total jobs could be 276 including these indirect jobs. In line with existing trends, it is

predicted that in excess of 85% of employees would live within 15 km of the site. Local communities are likely to benefit from employment created or retained by the proposals. Following restoration, the site will be returned to existing conditions, with increased opportunities for access, which will be a gain for local communities in terms of environmental enhancement and improvements in public accessibility.

4.14 Most of the westerly side of Rankinston looks onto the proposed site from their back windows resulting in significant visual intrusion.

With the removal of Phase C and Areas D1 and D2 from Phase D, the visual impact of the Dunstonhill project will be significantly reduced for those properties on the west side of Rankinston. Nonetheless, there would be landscape and visual effects during the proposed operations, which is mainly due to the large-scale landform changes involved. Views of some extraction Phases are shielded from visual receptors through retention of large blocks of coniferous plantation. However, the scheme is temporary and in the long-term, the proposed restoration scheme would have a positive effect on the landscape of the site, reducing the current dominance on site of coniferous plantation woodland.

4.15 Any plans of promoting Rankinston as a place to visit for walking will need to be put on hold for the duration of the opencast working. This will have a detrimental effect on the regeneration plans for the village by the village itself.

It is accepted that a number of established rights of way and other established footpaths within the proposed development area will be significantly affected and these will require to be temporarily stopped up. Temporary diversions will be provided where required. However, these paths will require to be re-instated on restoration of the site. It is also intended to re-instate a previous right of way which was extinguished as part of the forestry operations on the site.

The applicant further seeks to increase public access to the area once the site is restored in line with other existing access commitments such as the creation of a multi user path that originates in Dalmellington and ends at Coalburn in South Lanarkshire. Construction works on various sections of this path have already commenced and it will form an integral part of East Ayrshire's "Core Path Network" of which the applicant is a participating partner.

4.16 The open countryside around Rankinston is used by the local youth as an extended playground. This leaves local children at risk from injury and from traffic risks on non-fenced internal roads.

While respecting the points of concern, the amended proposals result in operations taking place at a greater distance from the community of Rankinston. The applicant will still require to undertake appropriate measures, under Mines and Quarries and Health and Safety legislation to ensure the well-being and safety not only of its operatives, but also that of the public in general.

4.17 With regard to badgers, information in the ES is confidential. We would like to ensure that full attention is given to the effects on badger setts.

SNH has been consulted on the original and revised proposals for the Dunstonhill site. Subject to the imposition of appropriate conditions in any consent granted, SNH does not object to the proposed development.

4.18 We object to yet another opencast development associated with Chalmerston / Pennyvenie. If development is approved, opencasting will not be complete until 2017. This further extension to the Chalmerston complex should not be allowed when Chalmerston itself is not properly back to what it was.

While there are relationships with the adjacent Chalmerston/ Pennyvenie opencast mining complex through the use of the Chalmerston railhead, and the fact that there would be continuity of employment issues, the Dunstonhill project is a new opencast development site that requires to be considered on its own merits.

4.19 The proposed development site at Dunstonhill is 1029 hectares. This is the size of Ayr Burgh. Although the applicant states that half the site will be undisturbed, the whole site will be sterilised and public access denied.

The revised Dunstonhill site extends to 776 hectares, of which only approximately 118 hectares will be excavated to mine coal. A further 162 hectares will be used for other site operations such as storage of topsoil, subsoil, haul roads and overburden, water treatment lagoons and site compound facilities which will necessitate the disturbance of soils. However, there will be approximately 496 hectares of land within the application boundary that will not be disturbed. This is predominantly rough hill land or existing commercial forestry.

It is recognised that the temporary stopping up of rights of way will impact of public access to the area, temporary diversions or alternative paths will be provided to ensure reasonable, safe access during the operational life of the site. See also comments in paragraph 4.15 above.

4.20 The site is not within what was previously shown diagrammatically in the Structure Plan as a preferred area for opencast coal extraction.

The objector is incorrect in this statement; it does lie within a Preferred Area of Search. Indeed, the Potential Coal Extraction Area identified in the East Ayrshire Opencast Coal Subject Plan would not have been designated as such in the event that it has not been identified within the Preferred Areas of Search within the Structure Plan.

4.21 With other surface mining sites within 5 kilometres of the Dunstonhill site, including several potential wind farm sites and the landfill at Garlaff, the cumulative environmental impact on this part of East Ayrshire is unacceptable.

Potential cumulative impacts have been thoroughly considered in the ES. Whilst there are other developments within 5km of the Dunstonhill site, the working of this site at the same time as others will not have significant cumulative impacts on local communities.

4.22 Continuity of employment is again used as a justification. This can be provided through continuous restoration and aftercare. We request that elected members and residents are updated as to restoration progress both at Chalmerston / Pennyvenie and all other opencast sites in East Ayrshire.

Surface mining is a significant employer in the area which has relatively high unemployment. It is also an activity that is important to the economy within East Ayrshire. The proposed surface mine at Dunstonhill is intended as a replacement site for the Chalmerston surface mining complex and will provide or retain approximately 120 jobs for directly employed staff. Businesses in the local area will also continue to be supported through its presence. It is estimated that total jobs could be 276 including these indirect jobs.

A report on restoration of opencast coal sites was requested by the Southern Local Planning Committee at its meeting on 30 October 2009. This report will appear on the agenda for the meeting at which this application will also be presented for consideration.

4.23 East Ayrshire Council is on record indicating its strong concerns about the disproportionate burden on its local communities in satisfying the energy needs of the wider community.

The comments were made in response to a consultation from the Scottish Government in relation to a large scale wind farm development. However it was also made in the context that the wider area in which the wind farm was to be sited had already been identified as Potential Coal Extraction Areas where there would be a presumption in favour of coal extraction in these areas, subject to general compliance with the East Ayrshire Opencast Coal Subject Plan.

4.24 The development would have an impact on an EU protected habitat at Knockkippen Moss, a bog area containing peat. Concern is raised about a potential bog burst.

The application has been the subject of formal consultation with both SNH and RSPB, which do not object to the proposed development subject to the imposition of appropriate conditions in any consent granted for the proposed site. One of the conditions recommended by SNH relates to the provision of a Peat Slide Risk Assessment.

4.25 The site has complicated hydrology with most drainage heading west to join the River Doon near Patna at a point where flood risk has been identified. A very large lagoon is shown at the centre of the site. Streams have to be diverted and this adds risk of flooding and contamination. Further risks are associated with old minewaters which are best left undisturbed.

SEPA has been formally consulted regarding the proposed development and has not raised any objection to the development on grounds of flood risk. Subject to the imposition of a condition in any consent granted regarding ground water monitoring, SEPA does not object to the proposal. Water management within the Dunstonhill site will require further

discussion and agreement with SEPA before appropriate authorisations can be granted by SEPA.

4.26 It is not know how many bird surveys have been carried out but at least two of the species are on the Red List of Protected Birds.

As indicated above, RSPB Scotland and SNH have been formally consulted on the proposed development and have not objected to the proposed development subject to the imposition of appropriate conditions on any consent granted. Conservation of these species through improvement of existing habitat is one of the objectives of the restoration strategy for Dunstonhill.

4.27 If the northern part of East Ayrshire has Settlement Protection Areas identified in the emerging Local Plan, the threat of spreading opencasting further south should also have some limitations.

The revised Dunstonhill scheme is compliant with respect to the 500 metres buffer zone from local communities as required by the policy provisions of the adopted East Ayrshire Opencast Coal Subject Plan. There are no proposals at this stage to alter the provisions of this Development Plan.

4.28 Part of the current application site is not within a Potential Coal Extraction Area and is therefore contrary to adopted policy. It is also classified as being within a Sensitive Landscape Character Area in the adopted local plan where the Council will give priority and prime consideration to the protection and enhancement of the landscape. Protection does not mean destruction. The proposal contravenes ENV11 and ENV12 as it will be visually intrusive.

The proposed development requires to be assessed in terms of the East Ayrshire Opencast Coal Subject Plan. The part of the Dunstonhill site that falls outwith the identified Potential Coal Extraction areas is excluded primarily as a result of the High Amenity Value “designation” along the A713 tourist route. The ES states that although there would be temporary adverse effects on this area, it is considered there would be overall benefit and enhancement of the landscape in the longer term. The site is currently considered partly derelict and also a significant area is covered with coniferous plantation woodland. Overall it is considered that the long-term landscape would be enhanced by restoration proposals through the introduction of more native tree planting and re-establishment of field boundaries and riparian corridors. The restoration of the site would contribute positively to the landscape and visual quality of the area. Excavation operations and backfilling of the areas that fall within the High Amenity Value area would be undertaken and completed within 12 months of the commencement of operations. While the proposal is considered to be a departure from policy, this is not considered to be significant given the short term, temporary landscape and visual impacts and the longer term benefits that would be achieved through the restoration strategy.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 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 Dunstonhill 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 Dunstonhill 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 Dunstonhill application has been assessed and determined against the stated criteria. The amended proposals promoted by the application, if approved, can be implemented under appropriate planning controls or under obligations secured by means of Section 75 Agreement for the site and subject to requirements referred to elsewhere in this report. It is considered that the proposed development 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 MIN1 is pertinent to the application, the policy stating that all future opencast developments will be directed towards the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

The Dunstonhill development site falls generally within the identified Potential Coal Extraction Area in the locality, and while parts of the site do not coincide with the boundaries of the PCEA, these tend to be the areas where the site will remain undisturbed. The proposed 4 development phases where extraction will occur significantly relate to the identified PCEA. The exception to this is that the southern part of Area A1 and Area A2 fall outwith the PCEA. This area, while containing identified coal reserves, has been excluded from the PCEA primarily due to potential impacts on the Sensitive Landscape Character Area and the industrial archaeological resource in this part of Phase A. This represents a minor departure from Policy MIN1, given that the major part of the development site at Dunstonhill would be consistent with Policy MIN1. Assessment is therefore necessary against the provisions of Policy MIN2 for this part of the site.

5.5 Policy MIN2: There will be a presumption of refusal of applications for new opencast coal development outwith the potential coal extraction areas with the exception of small scale, short term extraction proposals which meet the following criteria:

- (i) there is clearly demonstrated environmental benefit to be removed through the removal of existing areas of dereliction;

The proposed development will result in removal of areas of dereliction.

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

The proposed surface mine at Dunstonhill will provide or retain approximately 120 jobs for directly employed staff which is considered to be of considerable benefit to local employment. Furthermore, it is considered that positive environmental benefit to the landscape character and enhanced biodiversity will result through the restoration strategy for the site.

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

It is considered that there are no significant areas of conflict with other policies as indicated below.

There will be a presumption of refusal of other opencast developments outwith Potential Coal Extraction Areas unless there are positive reasons of sufficient weight to overcome the presumption of refusal and justify the grant of planning permission. 'Small scale' proposals relate to proposals of less than 25 hectares of total site area. 'Short term' proposals relate to proposals with a total extraction and restoration period of less than two years.

It is noted that the area of encroachment outwith the PCEA at Dunstonhill is less than 25 hectares and excavation and backfilling for the southern part of Area A1 and Area A2 will be undertaken within the first 12 months of the commencement of operations on site. In this regard it is considered that the part of the Dunstonhill site that falls outwith the identified Potential Coal Extraction Areas would meet the provisions of Policy MIN2

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

The applicant has provided information based on current knowledge of the geology of the area. In this regard, the applicant has indicated that consideration has been given to the likelihood of further reserves of coal in proximity to the site but the possibility of lateral extensions to the Dunstonhill site are unlikely given the geology of the area and proximity to local communities.

5.7 Policy MIN 7: All applicants for opencast coal developments will be required to demonstrate conclusively to the Council that their proposals will not pose a potential risk to the amenity of communities or to the local environment. In order to protect communities and the local environment from the unacceptable consequences of opencast working, the Council will assess all new applications for opencast developments against the following criteria:

- (i) whether the proposal is environmentally acceptable or can be made so by the use of appropriate planning conditions and/or agreements designed to mitigate any adverse impacts, and if not:
- (ii) whether the proposal provides any local or community benefits related to the proposal which sufficiently outweigh any material risk of disturbance or environmental damage.

See conclusions stated in Section 8 of this report.

5.8 Policy MIN11: The Council will seek, wherever possible, to conserve all areas of active peat bog within the boundaries of an opencast coal development site. All peat that requires to be removed in order to access the coal reserves on site will require to be retained on site for future use in restoration of the area.

There is a limited area of peat bog within the site area that is degraded. The Ecology chapter in the ES covers this issue and concludes that no significant adverse impacts will arise as a result of the proposed operations. Furthermore with the removal of Phase C in the amended proposals, SNH does not object to the proposed development subject to appropriate conditions.

5.9 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

The proposed development at Dunstonhill will not result in a third operative site within 3km radius of any particular community.

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

The proposed development is a new development and will last for a period of five years.

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

The proposed development will utilise existing railheads at Chalmerston and or Killoch accessed via the consented Kyle Forest haul Road and will therefore not increase existing traffic impacts on communities or groups of dwellings.

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

The proposed development will not result in the any significant adverse impacts upon international or national designated sites of nature conservation interest, as borne out by the consultation process.

5.10 Policy MIN13: Planning applications to contain details of operational procedures including restoration proposals and aftercare.

Full details of the method of working and restoration are contained within the application and supporting documents submission, albeit that it is proposed that the fine detail of the restoration proposals will continue to be developed through the establishment of a Technical Working Group for the site.

5.11 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 strategy for the proposed Dunstonhill site is aimed at developing and enhancing the visual amenity and setting of the site and the surrounding area, restoring the landscape to a character appropriate to its setting, creating a diversity of habitats to encourage wildlife and enhance the conservation value of the site and the local area, and improving and augmenting existing and retained woodland structure across the site by connecting woodlands of mixed coniferous and broadleaf species.

5.12 Policy MIN16: Requirement to re-instate rights of way and provide improved access to restored sites for local communities.

It is accepted that a number of established rights of way and other established footpaths within the proposed development area will be significantly affected and these will require to be temporarily stopped up. Temporary diversions will be provided where required. However, these paths will require to be re-instated on restoration of the site. It is also intended to re-instate a previous right of way which was extinguished as part of the forestry operations on the site.

The applicant further seeks to increase public access to the area once the site is restored in line with other existing access commitments such as the creation of a multi user path that originates in Dalmellington and ends at Coalburn in South Lanarkshire. Construction works on various sections of this path have already commenced and it will form an integral part of East Ayrshire's "Core Path Network" of which the applicant is a participating partner.

5.13 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. The Council will also encourage the provision of a network of off-road haulage routes and covered conveyors linking opencast sites with any existing or proposed railhead for the transportation of extracted materials

The dispatch of minerals will be primarily along the consented Kyle Forest overland haul route to access either the Chalmerston railhead facility or via Piperhill to the Killoch railhead facility, consistent with Policy MIN18.

5.14 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 Dunstonhill site will be taken to the coal preparation areas via internal haul roads.

5.15 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 applicant is willing to enter into a Section 75 Agreement encompassing the above stated matters.

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

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

The proposed Dunstonhill site does not encroach within 500 metres of any settlement.

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

The Dunstonhill site is a new site with an expected life of 5 years. It is recognised that it lies adjacent to the Chalmerston mining complex. However it is considered that the current proposal will not result in any perpetuation of disturbance to a local community given the location of the site, its relationship to local communities and in light of the proposed coal transportation arrangements.

- (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.

It is considered that the current proposal will not, in itself, result in perpetuation of disturbance to local communities.

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;

There are no residential properties outwith the control of the applicant that lie within 500 metres of the working faces of the proposed Dunstonhill site with the exception of The Schoolhouse residential property at Lethanhill which lies approximately 400 metres west of the Area A2 excavation. The

applicant has entered into a 'Good Neighbour' agreement with the owners and no objections have been received from the owners with respect to the proposed development.

- (ii) the total period of extraction and restoration within a distance of 500 metres from any sensitive establishment or dwelling does not exceed a period of 12 months.

The Dunstonhill development would not present any conflict with this criterion.

- (iii) the proposed extraction does not involve any blasting operations within a distance of 500 metres from any sensitive establishment or dwelling.

Again, the only dwelling potentially affected by this issue is the Schoolhouse. In this regard it is considered necessary to impose a condition restricting blasting operations within 500 metres of this property, unless the applicant can demonstrate a legal control over this property or enter into a legal agreement with the owners in respect of this issue.

- (iv) 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 that lie within 100 metres of the operational areas of the site.

5.18 Policy MIN27: the Council will ensure that opencast coal proposals do not have unacceptable adverse impact on the natural and built environment. In particular, development proposals will not be supported where they would, amongst other things:

- (ii) cause permanent adverse impact or cause irreparable damage to heritage resources requiring conservation;

It is accepted that there are a significant number of features of industrial archaeological importance within the development site some of which will be removed as a result of the operations at Dunstonhill. However neither WOSAS nor Historic Scotland has formally objected to the proposed development subject to conditions and appropriate archaeological mitigation.

- (v) result in the destruction of any areas of peat which are considered to be of significant ecological value.

As a result of the amended proposals for Dunstonhill, there are no areas of peat within the site considered to be of significant ecological value.

5.19 Policy MIN30: Protection of Landscape and Visual Amenity: the Council will not be supportive of proposals which could be considered to be detrimental to the visual amenity and appearance of an area or which would be visually prominent or create visual intrusion on the skyline when viewed from the area communities or from the main A class road network. In particular, developments will not be acceptable where these would be detrimental to the landscape and scenic quality of:

- (ii) the Doon Valley Tourism Gateway when viewed from the A713 tourist route into the area.

As indicated above, the part of the Dunstonhill site that falls outwith the identified Potential Coal Extraction areas is excluded primarily as a result of the High Amenity Value “designation” along the A713 tourist route. The ES states that although there would be temporary adverse effects on this area, it is considered there would be overall benefit and enhancement of the landscape in the longer term. The site is currently considered partly derelict and also a significant area is covered with coniferous plantation woodland. Overall it is considered that the long-term landscape would be enhanced by restoration proposals through the introduction of more native tree planting and re-establishment of field boundaries and riparian corridors. The restoration of the site would contribute positively to the landscape and visual quality of the area. Excavation operations and backfilling of the areas that fall within the High Amenity Value area would be undertaken and completed within 12 months of the commencement of operations. While the proposal is considered to be a departure from policy, this is not considered to be significant given the short term and temporary impacts and the longer term benefits that would be achieved through the restoration strategy.

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 applicant has expressed a willingness to enter into a Section 75 Agreement as considered appropriate to the terms of this report.

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 and would contribute in respect of the Dunstonhill site.

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

The applicant already provides Restoration Bonds for existing operations in East Ayrshire and it is proposed that should planning permission be granted for this development that a suitable bond will be provided.

5.23 Policy MIN38: Establishment of liaison committees.

The applicant already operates Local Liaison Committees, when required, at existing operational sites. Should planning permission be granted at Dunstonhill it is proposed to set up a site liaison committee drawing membership from the most closely located communities of Rankinston, Waterside and Patna along with other neighbours.

It is therefore considered that the proposed development is generally consistent with the relevant EAOCS policies pertinent to this application with the exception of the minor departures from Policy MIN1 and Policy MIN30 (ii).

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received, SPP16 on Opencast Coal and the associated PAN50.

Consultation Responses

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

Representations

6.3 It is considered that the points of objection are not of sufficient weight to merit refusal of the application, on the basis that the points of objection have not been substantiated through the comprehensive consultation process with statutory and non-statutory consultees or can be addressed through the imposition of appropriate planning conditions or by means of a Section 75 Agreement, or are not of sufficient weight to justify refusal of the application.

Scottish Planning Policy

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

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

The adopted East Ayrshire Opencast Coal Subject Plan has identified Potential Coal Extraction Areas and in this regard the greater part of the Dunstonhill development lies within such an area. Of the part that lies outwith the PCEA, this has been excluded primarily for landscape and visual amenity reasons. However, in this regard, although there would be temporary adverse effects on this area, it is considered there would be overall benefit and enhancement of the landscape in the longer term. While the proposal is considered to be a departure from policy, this is not considered to be significant given the short term and temporary impacts and the longer term benefits that would be achieved through the restoration strategy.

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

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

The consultation and policy assessment process indicates that the Dunstonhill development does meet this first test.

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

It is considered that Test 2 is also considered to be met as the proposed Dunstonhill development will result in the continuation of 120 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 Dunstonhill development.

Planning Advice Notes

6.7 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.

Noted.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement to conclude a Section 75 Agreement as required by the terms of this report and in respect of the temporary stopping up of existing rights of way within the development site.

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 it represents a minor departure from Policy MIN1 and MIN30 (ii) of the EAOCSP. 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 proposals represent the development of a new opencast site in the Doon Valley which will involve the extraction of approximately 1.2 million tonnes of coal which in environmental terms is considered to present no long term significant adverse impacts in relation to the proposed operations, and this is essentially borne out by the consultation process. Despite lying in proximity to the communities of Rankinston,

Patna and Waterside, the proposed development has not attracted a significant body of objection to the proposal and of those objections received, the major concerns related to the previously proposed Phase C development which, along with other parts of the scheme, has now been excluded from the proposals.

8.3 It is considered that as the majority of coals and fireclay will be dispatched from the site via the Kyle Forest overland haul route, this proposal will not result in any significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it is considered that the operations proposed can be undertaken within acceptable environmental standards.

8.4 The proposed Dunstonhill site is planned essentially as a replacement site for the Chalmerston/Pennyvenie surface mine which is currently operational. The site is planned to commence to tie in with the completion of coaling within the Chalmerston/Pennyvenie site, which is expected to cease in sometime during 2010/11. The proposal will provide or retain approximately 120 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. The applicant estimates that total jobs could be 276 including these indirect jobs. In line with existing trends, the applicant predicts that in excess of 85% of employees would live within 15 km of the site. This is considered to be of significant ongoing community benefit.

8.5 In landscape and visual amenity terms, the proposed development will have significant, albeit temporary adverse impacts. The part of the Dunstonhill site that falls outwith the identified Potential Coal Extraction areas is excluded primarily as a result of the High Amenity Value "designation" along the A713 tourist route. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term. The site is currently considered partly derelict and also a significant area is covered with coniferous plantation woodland. Overall it is considered that the long-term landscape would be enhanced by restoration proposals through the introduction of more native tree planting and re-establishment of field boundaries and riparian corridors.

8.6 The restoration of the site would contribute positively to the landscape and visual quality of the area. Excavation operations and backfilling of the areas that fall within the High Amenity Value area would be undertaken and completed within 12 months of the commencement of operations. While the proposal is considered to be a departure from policy, this is not considered to be significant given the short term and temporary impacts and the longer term benefits that would be achieved through the restoration strategy.

8.7 It is accepted that a number of established rights of way and other established footpaths within the proposed development area will be significantly affected and these will require to be temporarily stopped up. Temporary diversions will be provided where required. However, these paths will require to be re-instated on restoration of the site. It is also intended to re-instate a previous right of way which was extinguished as part of the forestry operations on the site.

8.8 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 but

subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

Section 75 Agreement

- (i) The establishment of a Technical Working Group for the Dunstonhill site with the provision that the group shall meet at least bi-annually. The TWG shall generally include representatives from Scottish Natural Heritage, RSPB Scotland, the Scottish Environment Protection Agency, the Ayrshire Rivers Trust, the Planning Authority and the site operator, but may be extended to include other bodies with particular interest in relation to the restoration of the site.
- (ii) The establishment of a Community Liaison Committee for the site in accordance with established practice.
- (iii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement and the Supplementary Environmental Information that accompanied the planning application. The applicant shall prepare a Mitigation Plan / Environmental Enhancement and Restoration Strategy for the site. The details of the MP/EERS shall be the subject of agreement with the Planning Authority in consultation with SNH. Thereafter the implementation of this plan will be undertaken by the applicant and guided by an appropriately qualified specialist (Ecological Clerk of Works) employed either directly or indirectly by the applicant. The MP/EERS shall be the subject of an annual audit with a monitoring report provided to the Planning Authority assessing the effectiveness of mitigation measures and site restoration. This monitoring report shall also be the subject of consultation with the Dunstonhill Technical Working Group. The MP/EERS shall take account of and incorporate the recommendations contained within Appendix 1 of the consultation letter from SNH dated 04 February 2009 and the consultation letter from RSPB Scotland dated 09 September 2009.
- (iv) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Dunstonhill site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (v) The undertaking of an assessment of the fish population in the burns proposed for diversion with an appropriate fish rescue plan implemented if necessary, to be undertaken prior to diversion of the burns.
- (vi) 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.
- (vii) 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;
- (viii) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.

- (ix) The securing of agreed road maintenance contributions, towards repair works to be carried out on the A713 between the Chalmerston site access and the South Ayrshire Council boundary, and also the A70, B730, B7046 and U28 public road haulage route between the Piperhill site access and Killoch DP, with the Roads Authority under section 96 of the Roads (Scotland) Act 1984.
- (x) 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.
- (xi) 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 shall only 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.
- (xii) 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 Dunstonhill site transported on the public road network within East Ayrshire.

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 should be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 8.8 of this report.

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development in terms of the principle of the development, other than as expressed within the terms of Policies MIN1 and MIN30 (iii) of the EAOCSP, then the application would require to be referred to the Full Council as such a decision would represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

08 December 2009
HM/HM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Environmental Statement and Supplementary Environmental information
3. Statutory Notices and Certificates.
4. Consultation Responses.
5. Letters of representation
6. Adopted East Ayrshire Opencast Subject Plan (2003)
7. Approved Ayrshire Joint Structure Plan (2007)
8. SPP16: Opencast Coal
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	Dunstonhill, Lethanhill, Patna
Nature of Proposal:	Extraction of coal by surface mining methods with restoration to forestry, parkland, public access and nature conservation interests
Name and Address of Applicant:	The Scottish Coal Company Limited Castlebridge Business Park Gartlove ALLOA
Name and Address of Agent	Phil Rayson (Planning Manager) The Scottish Coal Company Limited Garan House 28 Main Street MUIRKIRK KA18 3RA

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 5 years of the date of commencement of operations on the Dunstonhill 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 a mechanism to secure mitigation of impacts should this prove necessary.

REASON – In the interests of environmental protection.

4. Prior to the commencement of operations on site, the applicant shall submit to, and have had approved by the Planning Authority in consultation with the Scottish Environment Protection Agency, details of proposals for the proposed water management system for the site including a detailed Work Method Statement. The detailed water management and treatment proposals shall include provisions to collect, store and return intercepted waters to the natural environment in a manner that is acceptable to the Planning Authority and SEPA.

REASON – To prevent pollution of watercourses and minimise risk of flooding.

5. Prior to the commencement of operations on site, the applicant shall establish a comprehensive restoration programme and plan for the proposed Dunstonhill site 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 Dunstonhill Technical Working Group.

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

6. 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.

7. Prior to the commencement of operations on site, the developer shall undertake a Peat Slide Risk Assessment for the site the details of which shall be submitted to the Planning Authority for consideration in consultation with SNH. The assessment shall consider, as may be appropriate, further mitigation measures to be undertaken to minimise identified risks.

REASON – In the interests of environmental protection.

8. Prior to the commencement of operations on site, the developer shall undertake a Risk Assessment in relation to site operations in the proximity of the Waterside (miner's villages and mineral railways) Scheduled Ancient Monument. In particular, the Risk Assessment shall have particular regard to the operations within Phase A, Area A2, and shall be used to inform of further mitigation necessary including potential relocation of soil storage areas and water treatment lagoons associated with this part of the proposed development area. The Risk Assessment and its recommendations shall be submitted to the Planning Authority for consideration and approval in consultation with Historic Scotland.

REASON – In order to ensure minimal disturbance and impact on the Scheduled Ancient Monument.

9. No works shall commence on site until a Method Statement for road or track construction work has been submitted to and approved by the Planning Authority in consultation with SNH. The Method Statement shall be submitted no less than 3 months prior to the proposed commencement of the development unless the Planning Authority agrees otherwise. Thereafter, the approved Method Statement shall be implemented by the developer. The Method Statement shall fully detail the following considerations:

- The role of the Ecological Clerk of Works (ECoW) in decisions over location and construction methodologies for each section of track;
- Method of defining track route and location (track corridors should be pegged out 500 – 1,000 m in advance of operations);
- Track design approach: maps of tracks indicating double and single tracks and position of passing places. Full extent of anticipated track 'footprint(s)' including extent of supporting 'geogrid' below roadstone and cabling at the edges of the track;
- Track construction: floating track construction over peat >1 m deep and gradients of 1:10 or less;
- Track construction for peat <1 m deep, or on gradients of >1:10, cross slopes or other ground unsuitable for floating roads. Where it is concluded that there is a high risk of instability, identification of the circumstances under which non-engineering solutions such as alternative routes would be considered;
- Procedures to be followed when, during track construction, it becomes apparent that the chosen route is more unstable or sensitive than was previously concluded, including ceasing work until a solution, informed with reference to advice from ECoW, is identified;
- Extent, design, treatment and reinstatement of embankments, track edges and other areas affected by track construction;
- Drainage treatments;
- Design of crossing points for water courses such as culverts and bridges;
- Methods to deal with failing roads, sinking/sunken roads, peat rotation at road edges etc; and

- Procedure for early reporting to the planning authority of all major departures from the agreed method statement and design parameters for the tracks.

REASON – In the interests of environmental protection.

10. 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. Immediately prior to work beginning for tree clearance, areas of suitable red squirrel habitat, even if they are known to be used by grey squirrels, shall be resurveyed for the presence of red squirrels. 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.

11. Prior to the commencement of operations on site, the applicant shall submit details of the proposed layout of the coal preparation area including the details of any structures to be located within this area. Details of the means of illumination of this area shall also be submitted 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 interest of amenity.

12. Prior to works commencing on site, the developer shall submit to and have approved by the Planning Authority, the layout and a detailed landscaping scheme for the site service area which shall be implemented and thereafter maintained to the satisfaction of the Planning Authority.

REASON - In the interests of amenity.

13. All demolition of buildings, 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 Dunstonhill Technical Working Group.

REASON – In the interests of environmental protection.

14. Except in the case of emergency and with the prior agreement of the Planning Authority, the hours of operation for the Dunstonhill site shall be confined between 0700 and 1600 hours Mondays through Saturday inclusive (24 hours working). 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.

15. Except in the case of emergency and with the prior agreement of the Planning Authority, the dispatch of coal from the site by road, including via the Kyle Forest overland haul route, 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.

16. The site access road shall, prior to the commencement of operations on site, be constructed to the standards required in the Roads Development Guide 1996, for industrial use and shall provide for the following:
 - (i) The access to/from the site off the B730 Polnessan to Drongan Road shall require visibility sightline splays of 2.5 metres by 160 metres with no obstruction greater than 1m in height within the splay areas which will require to be maintained during the life of the site. This will require the removal of hedging, small trees and shrubs to either side of the access.
 - (ii) The access to/from the site off the B730 Polnessan to Drongan Road shall require a standard open cast access road of 7.3 metres width which is kerbed with 15 metres radii on either side and kerbed opposite the access for a minimum length of 25 metres to either side of the centre line.

(iii) A 40mm HRA structural overlay will be required on the B730 at the access point over the full width of the road for the kerbed length of 50 metres.

(iv) The internal access road must be constructed to East Ayrshire Councils Roads Development Guide standards for an Industrial Road for a distance of 20 metres from the nearside edge of the B730.

(v) Drainage shall be installed by the applicant to prevent ponding on the B730 in the vicinity of the access point and also on the access road to prevent water discharging from the site onto the public road.

The applicant shall not utilise the proposed site access on to the B730 for any traffic other than light vans and cars, until such time as improvements to the junction of the B730 and the A713 have been secured and implemented to the satisfaction of the Planning Authority in consultation with the Roads and Transportation Service.

REASON - In the interest of road safety and to prevent any overcarry of loose material onto the public road.

17. No drainage connection shall be made to the B730 road drainage system without the prior approval of the Roads Authority. No surface water shall be allowed to discharge from the development site on to this public road.

REASON - In the interest of public road safety.

18. Appropriate measures shall be taken to prevent mud, dirt, dust, slurry, coal or stones being carried onto the highway and such steps shall include the provision and use of hardstanding areas and a full wheel and body vehicle wash facility for the cleaning of all lorries, dump trucks, other heavy vehicles and plant leaving the site. The vehicle wheel and body wash shall be installed for operational use prior to the stripping of soils within the excavation area and shall be maintained in effective operation during construction and operation of the site.

REASON - In the interest of road safety.

19. The access road and public road adjacent to the site shall be kept clear of mud or other deposited materials at all times by means of mechanical brushing as appropriate.

REASON - In the interest of road safety.

20. Prior to any road vehicle loaded with coal or other minerals leaving the site, the load shall be suitably hopped to ensure there is no escape of materials. A hardstanding area shall be provided within the coal preparation area to facilitate the hopping of haulage vehicles. Vehicles returning to the site shall also be hopped to minimise traffic noise associated with empty vehicles.

REASON - In the interests of road safety and minimising noise impact.

21. Prior to excavation works commencing on site statutory undertakers' apparatus shall be protected and diverted as required, to the satisfaction of the respective statutory undertakers and at the expense of the developer.

REASON - In the interest of public safety.

22. The developer shall make stock-proof and maintain, until the restoration of the site is completed, all the existing perimeter hedges and fences and shall protect these from damage during operational works. Where the site boundary does not coincide with an existing hedge or fence, then the developer shall provide and maintain stock-proof fencing with gates or cattle grids at every opening. Where the developer has the right to do so, undisturbed hedgerows, within or bounding the site, shall be maintained, the hedgerows to be cut and trimmed at the proper season throughout the period of working and restoration of the site. Where dry stone dykes are to be removed, the stone shall be stored and later re-used in the restoration of these dykes.

REASON - In the interest of preserving the rural landscape.

23. Topsoil and sub-soil shall only be stripped when the soils are sufficiently dry so that when moved no damage will be done to the structure of the soils. Apart from the works required to enclose the

site, no operations shall be carried out until the top soil is fully stripped and stored in the designated areas within the site, in accordance with the phased programme of extraction as described in the Project Description which forms part of the planning application.

REASON - To ensure that the top soil and sub-soil will be suitable for the restoration of the site following storage.

24. Topsoil shall be stripped to full available depth from all areas within the site except those areas designated in the approved plans as topsoil dumps. Following topsoil stripping operations from any areas of land, sub-soil shall be stripped as a separate operation to a depth, where possible, to achieve top soil and sub-soil not less than 0.9 metre at restoration.

REASON - In the interests of achieving maximum restoration potential.

25. The developer shall give at least two working days notice to the Planning Authority before work commences on the stripping of topsoil and/or sub-soil. The Planning Authority reserves the right to suspend operations during adverse weather conditions.

REASON - To prevent damage to soils and to ensure that the topsoil and sub-soil to be stored will be suitable for use during restoration of the site.

26. Bind-free soil forming material found during the course of the operations shall be reserved where practicable and stored for later use in the final restoration of the land. This material shall be used to replace shortages of sub-soil or topsoil, or otherwise used to cap overburden mounds.

REASON - To ensure that sufficient soils are available during restoration of the site.

27. Topsoil, sub-soil and overburden shall be carefully stored in separate mounds with appropriate separation of storage mounds to prevent soils from mixing. Topsoil mounds shall not exceed 7 metres in height; sub-soil mounds shall not exceed 10 metres in height respectively above ground level. Overburden mounds shall not exceed 25 metres in height above ground level. Topsoil and sub-soil mounds shall be evenly graded and tops shaped to prevent water ponding.

REASON - To prevent damage occurring to soils and in the interests of visual amenity.

28. In the first available seeding season following their formation, all mounds of topsoil, sub-soil and soil making materials shall be seeded in grass and shall be so maintained until the soils are required for use in the restoration of the site except as may be otherwise agreed with the Planning Authority. Overburden mounds shall be seeded in grass until commencement of restoration of the site.

REASON - In the interests of visual amenity.

29. All weeds on the site, particularly those on the topsoil and sub-soil storage mounds, shall be treated with weed killer or cut to prevent spreading within the site or onto adjoining agricultural land.

REASON - To prevent weed contamination of soils in the interests of proper site restoration.

30. The location of baffle embankments shall generally be as indicated on the approved plans. Their specific location shall be chosen to assist in the visual screening of the site and their form should be such as to present a natural looking feature.

REASON - In the interest of visual amenity.

31. Sub-soil and overburden storage mounds shall be so formed as to have minimal visual intrusion on the surrounding landscape.

REASON - In the interest of visual amenity.

32. Where the soils are to be used in the restoration of land to forestry, then the stripping and storage of soils, details of the manner of stripping and storage having been agreed with the Forestry Commission, shall be to the general requirements and specifications of the Forestry Commission.

REASON - In the interests of site restoration.

33. All water treatment areas / settlement lagoons shall be enclosed by a 1.2 metres high stock proof fence.

REASON - In the interest of public safety.

34. Throughout the period of site working, agricultural restoration and after-care, the developer shall protect and maintain or divert any ditch, stream, watercourse or culvert passing through the site so as not to impair the flow nor render less effective drainage onto and from adjacent lands. Any culvert to be constructed on the site shall be designed so as to ensure the free passage of fish, as well as otters.

REASON - To prevent a detrimental effect upon adjacent agricultural and other operations and in the interests of environmental protection.

35. Appropriate provision shall be made at all times to ensure that under drainage is maintained for land outwith the working areas. Standing water must not be allowed to gather in any area where the topsoil and sub-soil has not been stripped.

REASON - To prevent damage to adjacent land and soils.

36. In parallel with the development of the site, alternative arrangements shall be made for any interruption of adjacent drainage systems. New interceptor leaders shall be laid, or ditches cut, where required, to ring the site and bleed in existing lateral drains from adjoining undisturbed land.

REASON - To prevent damage to adjacent land and soils.

37. Prior to commencement of development, details of the steps to be taken to prevent all contaminated drainage and run-off from the site roadways, interception ditches, overburden and other tips, coal handling and stocking areas, the working areas of the excavations and pump mine water shall be submitted to and approved by the Planning Authority in consultation with SEPA.

REASON - To prevent contamination of watercourses.

38. Prior to commencement of development, details of the steps to be taken to prevent the discharge of oil from fuelling, oil, storage plant maintenance and vehicle wash areas within the site, shall be submitted to and approved by the Planning Authority.

REASON - To prevent contamination of watercourses.

39. All fuel, oil or other chemical storage tanks on the site shall be sited on impervious bases and surrounded by tank bund walls. The bunded areas shall be capable of containing 110% of the tank's volume and shall enclose all fill and draw pipes. If the storage tanks are to be sited at a single compound, the bund wall shall be capable of containing 110% of the volume of the largest storage tank. All fill and draw points shall be padlocked when not in use.

REASON - In the interest of public safety and to prevent any pollution of watercourses.

40. All foul drainage from sanitary facilities, canteens, etc. shall be treated prior to discharge to a soakaway system. In the event that percolation tests indicate that the ground is not suitable for discharge to soakaway system then additional treatment will be undertaken prior to any discharge of sewage effluent to any watercourse.

REASON - To ensure proper drainage of the site.

41. No surface water from the site shall be permitted to discharge onto public roads and all surface water from the topsoil, sub-soil and overburden mounds shall be prevented from reaching these roads by cut-off ditches or other means outwith the highway boundary. These cut-off drains and ditches must not connect into the roadside drainage.

REASON - In the interest of road safety.

42. The formation of overburden areas shall be carried out, as far as practicable, behind mounds in order to reduce noise nuisance to a minimum and, whenever possible, during the hours of darkness, warning lights shall be used instead of beepers as a warning device on plant and maintenance vehicles, or other appropriate warning devices the details of which shall be submitted to and approved by the Planning Authority.

REASON - In the interest of minimising noise impact.

43. The operational conduct of the site shall be in accordance with the Project Description / Written Statement which forms part of the approved details of the application.

REASON - To ensure that the development is undertaken in accordance with the details approved.

44. The conduct of the site and method of operation shall comply with British Standards 5228 and Part 3 of the 1984 Code of Practice for Noise Control Application to Surface Coal Extraction by Opencast Methods. Except during the formation and removal of baffle mounds and the stripping and replacement of soils, the noise limit during daytime (0700 to 1900 hours) shall not exceed 55dB Laeq,1h and 42dB Laeq,1h during night-time (1900 to 0700 hours) at noise sensitive properties. During the formation and removal of baffle mounds and the stripping and replacement of soils, the noise limit shall not exceed 70dB Laeq,1h at noise sensitive properties with such works only taking place during daylight hours.

REASON - n the interests of residential amenity.

45. An appropriate noise monitoring programme shall be undertaken during the operational life of the site, using appropriate equipment and recording devices, the details of which shall be agreed with the Planning Authority and the results of which shall be submitted to the Planning Authority on a monthly basis during the operational life of the site. The noise monitoring programme shall be agreed and in place prior to the commencement of works on site.

REASON - To monitor noise levels and ensure that appropriate environmental standards are maintained throughout the life of the site.

46. A dust monitoring programme shall be agreed with the Planning Authority in consultation with the Environmental Health Authority and undertaken using appropriate equipment and recording devices. The results and records shall be made available to the Planning Authority on a monthly basis during the operational life of the site. The dust monitoring programme shall be agreed and in place prior to the commencement of operations on site.

REASON - To monitor dust emissions and ensure that appropriate environmental standards are maintained throughout the life of the site.

47. Except in cases of emergency or as otherwise may be agreed with the Planning Authority, blasting operations shall be carried out between 1000 to 1500 hours Mondays to Fridays (and between 1000 to 1300 hours on Saturdays). No blasting operations shall take place on Sundays, or on recognised East Ayrshire Public Holidays, during the hours of darkness or during periods of adverse visibility.

REASON - In the interest of amenity and public safety.

48. Blasting operations shall be carried out in such a manner that no component of the peak particle velocity attributable to any blast, measured at any point immediately adjacent to any building outside the boundaries of the site, exceeds a vibration criterion of 6 mm/second at a 95% confidence level.

REASON - In the interests of protecting residential and other buildings from any potential damage.

49. 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.

50. Any explosives magazine required for the storage of explosives shall be located, designed and bunded to the satisfaction of the Planning Authority.

REASON - In the interests of public safety

51. An appropriate blast monitoring scheme shall be undertaken during the operational life of the site the details of which shall be agreed with the Planning Authority in consultation with the

Environmental Health Authority. The scheme shall allow for the use of appropriate equipment and recording devices, the results from which shall be submitted to the Planning Authority on a monthly basis. The blast monitoring scheme shall be agreed and in place prior to any blast operations being undertaken on site.

REASON - To monitor blasting operations and ensure that appropriate environmental standards are maintained throughout the life of the site.

52. All opencast machinery not in use shall be parked, as far as practicable, in an inconspicuous position and shall not be astride soil or overburden mounds.

REASON - In the interests of visual amenity.

53. Any plant or machinery which becomes redundant from use during the operational life of the site shall be permanently removed from the site.

REASON - In the interests of visual amenity

54. Any rubbish and scrap materials generated on the site shall, as far as is practicable, be kept in a screened position until disposed of in an approved manner to the satisfaction of the Planning Authority.

REASON - In the interest of visual amenity.

55. The site shall be progressively restored in accordance with the scheme submitted with the planning application. The procedures for replacement of overburden, sub-soil and topsoil shall accord with those indicated in the Project Description / Written Statement and to the satisfaction of the Planning Authority.

REASON - To ensure appropriate restoration of the site.

56. No materials for filling shall be introduced to the site from sources external to it without the formal approval of the Planning Authority.

REASON - To enable the Planning Authority to retain control over development of the site.

57. The restored site shall be progressively landscaped in accordance with the afteruse scheme to be developed in consultation with the Dunstonhill Technical Working Group and approved by the Planning Authority.

REASON - To secure appropriate restoration features and habitat enhancement.

58. The restored site shall be subsequently managed in accordance with the aftercare scheme, the details of which shall be submitted for approval by the Planning Authority in consultation with the Dunstonhill Technical Working Group.

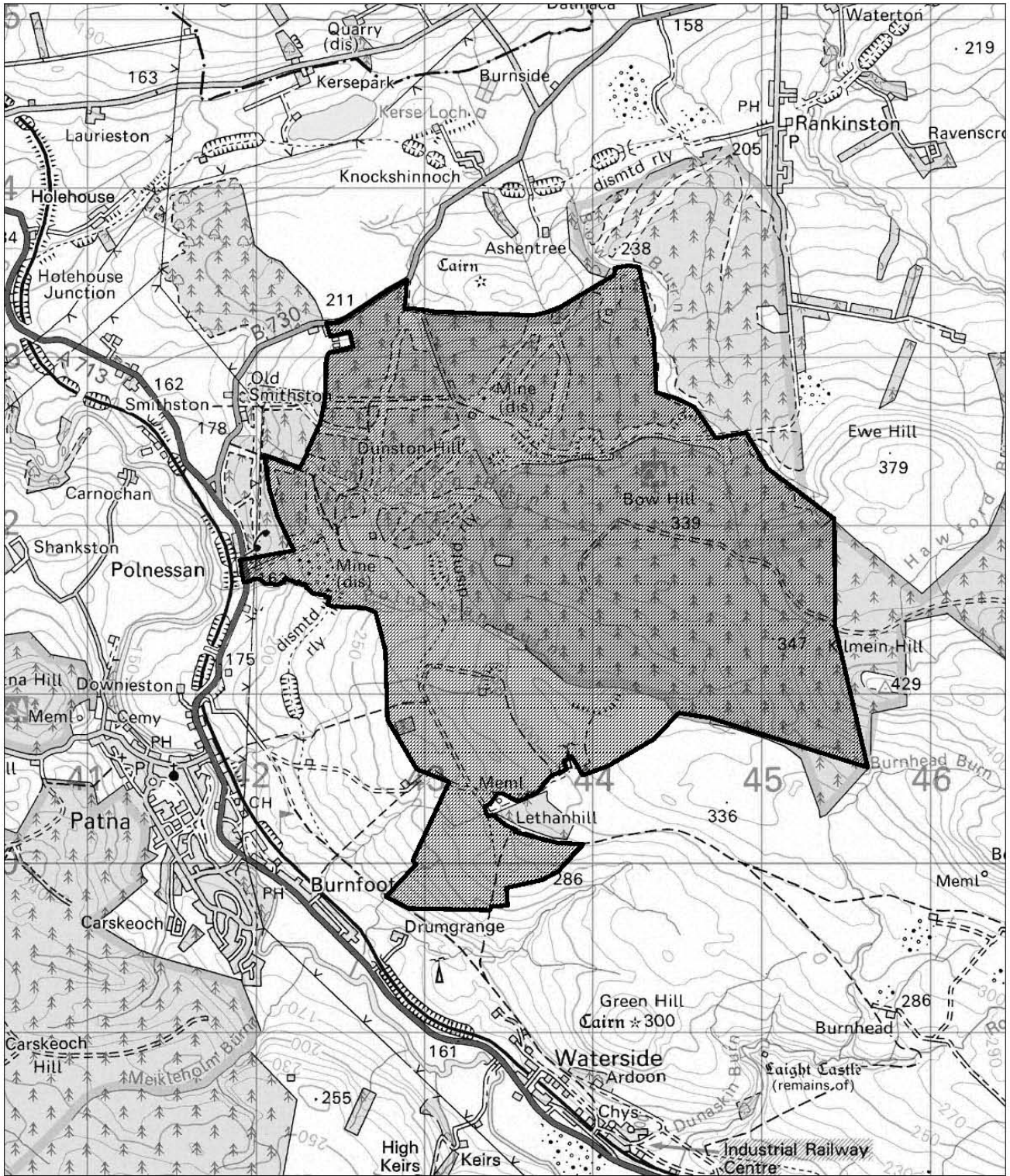
REASON - In the interests of securing appropriate afteruse of the site.

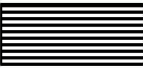

59. There shall be an annual formal review to consider all the operations which have taken place on the site during the previous year, and to consider the programme for the ensuing year. The parties involved in the review shall include the applicant, the Mineral Operator, the owners of the land and the Planning Authority.

REASON - To enable the Planning Authority to be updated regarding the operation of the site in the light of any difficulties encountered and to monitor progress of site operations.

60. Two weeks prior to the annual formal review an updated plan will be forwarded to the Planning Authority indicating the previous years work on the site and showing the anticipated work programme for the ensuing year.

REASON - To assess and monitor the operational status of the site.



<p>Title/Location Lethanhill Near Patna Application No. 08/0783/FL</p>	<p>East Ayrshire Council Planning & Economic Development Division. 6 Croft Street Kilmarnock KA1 1JB Tel: (01563) 576790 Fax: (01563) 576774 E-Mail : Planning@east-ayrshire.gov.uk Com Date: 17/12/2009 Checked By</p>
<p>Key</p>  <p>Application Site</p>	

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