

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 26 FEBRUARY 2010

09/0344/FL: EXTRACTION OF COAL BY SURFACE MINING METHODS INCLUDING THE DIVERSION OF THE PONESK BURN WITH ASSOCIATED RIPARIAN HABITAT IMPROVEMENTS AND RESTORATION TO FORESTRY, FARMLAND AND NATURE CONSERVATION INTERESTS WITH ENHANCED PUBLIC ACCESS

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning Permission is sought for the extraction of coal by surface mining methods including the diversion of the Ponesk Burn. The applicant has termed this development site as the Ponesk Remainder and this proposal will allow the recovery of approximately 1.05 million tonnes of coal mainly for the power generation industry and the production will be at a rate of up to approximately 7,500 tonnes per week. The application site is approximately 473 hectares with the extraction and associated soils and overburden storage and water treatment occurring in three specific phases within the site. Only 69.9 ha of the site will be subject to the extraction of coal, the remainder of the site will be utilised for temporary overburden storage, water treatment lagoons and coal processing.

1.2 The lower reaches of the Ponesk Burn were previously diverted approximately 25 years ago to facilitate coal extraction from the Ponesk / Spireslack opencast mine site. Hard engineering techniques and features created by this previous diversion continue to have an adverse effect on fish population, riparian corridor habitat and ecology along this lower stretch of the Ponesk Burn. The applicant now wishes to re-divert the Ponesk Burn back close to its original alignment with the aim of significantly improving ecology, hydraulic and geomorphic performance of the river channel. This proposed 1.4km permanent river diversion will also enable continued extraction of high quality coal from the existing Spireslack opencast complex whilst offering a unique opportunity to locally improve the riparian habitat and the spawning and nursery potential of the Ponesk Burn.

1.3 There are 10 seams of coal of varying thickness present within the Ponesk Remainder site which will be extracted to a maximum depth of 80 metres below original ground level. The coals will be worked in three distinct phases described as follows:

(i) **Area A** extends to an area of 30.2 ha and is anticipated to yield 580,000 tonnes of coal. Workings are proposed to commence in the north-eastern part of the area and progress towards the south-west, coal recovery is scheduled to take approximately 24 months. The overburden will be hauled to the existing overburden mound forming part of the Spireslack operations.

(ii) **Area B** extends to an area of 14.7 ha and is anticipated to yield 105,000 tonnes of coal. The excavation, running north to south, is essentially a long

narrow corridor, the main purpose is not the recovery of coal but the formation of the new Ponesk Burn Permanent Diversion corridor. It is expected that excavation/construction works will take 12 months to complete and they will be undertaken concurrent with the first year of mining in Area A. Upon completion of the mining in Area B a further 3 months will be allowed to prepare the burn bed and resolve any geotechnical issues before undertaking the final diversion of the existing burn. The timing of the change over is linked to the salmon spawning season and can only take place between the months of June to October (inclusive).

(iii) **Area C** extends to an area of 19.8 ha and is anticipated to yield 365,000 tonnes of coal. In addition there is a potential to win another 7,500 tonnes of coal adjacent to the A70. It is proposed that workings will commence in the southern end of the area and progress towards the north. The coal lies in a relatively narrow corridor between the former Ponesk surface mine, lying to the west, and the former Airdsgreen surface mine, lying to the east which were mined between 12 and 25 years ago. It will take 12 months to complete mining excavations in this area.

1.4 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.

1.5 In terms of timescale, following commencement of operations at the Ponesk Remainder, 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. It is anticipated that 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. The applicant seeks to commence initial operations in May 2010.

1.6 The existing coal processing facilities and site establishment currently serving the Spireslack Complex will be used as part of the Ponesk remainder development. It is proposed to use the same hours of operation and shift system as per the existing Spireslack 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.

1.7 Access to the Ponesk Remainder site will be the existing site access on the A70 Road. All coal from the Ponesk Remainder Area will be transported off site via the currently agreed haul route i.e. via the A70 to the Killoch rail disposal point. Almost 100% of the coal will be exported by rail from the Killoch rail disposal point and the remainder will be dispatched to final customers in the local area via the local road network. The Ponesk Remainder operations will result in an additional 1.5 loaded HGVs per hour leaving the Spireslack Complex over a three year period. (Currently the

Spireslack/Grasshill operations generate 7 HGV movements per hour (3.5 in and 3.5 out). This will mean a total of 5 loaded HGVs per hour leaving the site as a result of the Ponesk Remainder surface mine. The dispatch of minerals will be confined to between 0800 and 1700 hours Mondays to Fridays with no dispatch on Saturdays or Sundays.

1.8 The applicant has indicated that the Ponesk Remainder site is planned essentially as a replacement site for the Spireslack Complex which is currently operational. The site is planned to commence in May 2010 to tie in with the completion of coaling within the Chalmerston/Pennyvenie site, which is expected to cease during the early part of 2010. The proposal will ensure the continuation and creation of up to 70 jobs i.e. the current labour force of 50 employed at the Spireslack Complex with an additional 20 persons, plus coal haulage. The total number employed will be dependent on market conditions, speed of operation, and the particular phase of the scheme being worked. From the experience gained at the current operational site, approximately 85% of employees reside within a 10 km radius of the site and these employees currently contribute in excess of £1.50 million into the local economy each year. In addition to direct employees, a number of indirect jobs will either be created, or existing indirect jobs supported, with the need to service the site with the use of (specialist) sub-contractors. The applicant has a policy of utilising local services and suppliers on its surface mines

1.9 Following completion of coaling operations, final restoration and replanting works are expected to take approximately 24 months to complete. The overall aims and objectives of the restoration scheme for Ponesk Remainder are as follows:

- Restore the farm holding at Airdsgreen through the reinstatement of the original farmhouse and outbuildings;
- Re-establishment of large grazing compartments separated by fence-lines in order to reinstate the original landscape character and provide a functional farm unit. Creation of large field sizes without enclosure by hedgerows will enhance potential for ground nesting birds;
- Enhance the habitat of the new Ponesk Burn corridor through appropriate planting including the creation of pools and scrapes, reinstatement of pasture and/or species-rich grasslands and wet heath and the planting of shrubs and native riparian trees;
- Create greater connectivity between the Ponesk Remainder Area and surrounding areas (in terms of character, visual aspects, ecology, and physical features);
- Replace existing conifer plantations at the north of the site with a mixture of conifers and native broad-leaved woodland, avoiding oak and other large seed bearing trees to deter grey squirrels;
- The creation of two areas of wetlands/reedbeds to manage and treat the ferruginous discharges arising from the former deep coal mines in the vicinity of the site and provide additional suitable wading bird habitat;
- Enhance existing habitats and create new habitats for wildlife centred around the Ponesk Burn corridor; and,
- Provide additional public access to the restored site through the creation of a new network of paths linking in to the existing River Ayr Way.

1.10 These aims and objectives have been developed from an evaluation of existing habitats within the Ponesk Remainder site and an assessment of the aims and objectives of the restoration plan for the main Spireslack Complex. This Masterplan approach aims to draw upon, enhance and compliment the aims and objectives of the

existing restoration scheme. This coordinated restoration approach will ensure that both the Ponesk Remainder site and the wider Spireslack Complex will deliver significant habitat and biodiversity enhancements benefiting a wide range of species in the medium to longer term. Following final restoration, the site will be subject to an aftercare period of five years. This will involve ongoing maintenance operations to ensure the successful establishment of tree plantings, and grassland and other habitats over the site.

1.11 The Ponesk Remainder 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.

1.12 Although not a statutory requirement for this particular 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 MIN3 and MIN30 (iii) 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 objection raised is not of sufficient weight to justify refusal of the application.

3.2 The proposals will involve the extraction of approximately 1.05 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. The proposed development has not attracted a significant

body of objection to the proposal and the site lies at some distance from the nearest community of Muirkirk.

3.3 This proposal will not result in any significant adverse effects on any local community and will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan. Consequently it is considered that the operations proposed can be undertaken within acceptable environmental standards.

3.4 The proposed Ponesk Remainder site is planned essentially as a replacement site for the Spireslack surface mine which is currently operational. The site is planned to commence to tie in with the completion of coaling within the Spireslack site, which is expected to cease in sometime during the early part of 2010. The proposal will provide or retain approximately 50 jobs for directly employed staff, together with an additional 20 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. Part of the Ponesk Remainder site falls within the High Amenity Value "designation" along the A70 route. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term.

3.6 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 the re-diversion of the Ponesk Burn and the enhancement of its riparian corridor. The proposed river diversion offers a unique opportunity to locally improve the riparian habitat and the spawning and nursery potential of the Ponesk Burn. There is significant opportunity for environmental enhancement of the valley slopes and new river corridor by careful design of the proposed diversion. Planting schemes will focus on creating a mosaic of habitats typical of upland heath that compliment habitat found in the surrounding area and offer additional habitat for species such as black grouse. Such enhancements should therefore provide a valuable contribution to the objectives of the Ayrshire Biodiversity Action Plan.

3.7 The restoration of the site would contribute positively to the landscape and visual quality of the area. 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.

3.8 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 extension of the remit of the existing Technical Working Group for the Spireslack site to cover the proposed Ponesk Remainder 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 extension of the remit of the existing Spireslack Community Liaison Committee to cover the proposed Ponesk Remainder site in accordance with established practice.

(iii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement, the Supplementary Environmental Information and the Ponesk Burn Permanent Diversion Method Statement 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 Technical Working Group.

(iv) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Ponesk 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 or for animal welfare purposes, 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 current 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 A70 public road haulage route between the Spireslack / Ponesk Remainder site access and Killoch DP, with the Roads Authority under section 96 of the Roads (Scotland) Act 1984. The applicant shall enter into discussion with the Planning Authority and Roads Authority regarding existing road infrastructure commitments to reasonably agree appropriate

implementation and timescales for such works in relation to the wider Spireslack Complex.

(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, which 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 Ponesk Remainder site transported on the public road network within East Ayrshire.

(xiii) The undertaking of the applicant to adopt the mitigation measures required in order to protect the water environment as set out in Younger and Sapsford's report, "Evaluating the potential impact of opencast coal mining on water quality (Groundwater Regulations 1998)". Where considered to be reasonably necessary in the interests of groundwater management, the applicant shall provide such additional water treatment and management areas, off site if necessary, as may be required by SEPA.

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development then the application would not require to be referred to the Full Council as such a decision would not represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 26 FEBRUARY 2010

09/0344/FL: EXTRACTION OF COAL BY SURFACE MINING METHODS INCLUDING THE DIVERSION OF THE PONESK BURN WITH ASSOCIATED RIPARIAN HABITAT IMPROVEMENTS AND RESTORATION TO FORESTRY, FARMLAND AND NATURE CONSERVATION INTERESTS WITH ENHANCED PUBLIC ACCESS

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation because it represents 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 **Site Description:** The application site is located approximately 2.5 km to the east of Muirkirk and lies to the north of the A70 in the upper Muirkirk valley just west of the location of the former village of Glenbuck. The site extends to approximately 473 hectares and the land generally falls from the high point at the north boundary at approximately 300m AOD towards the south at an elevation of approximately 245m AOD along the Lane Burn which marks the southern boundary of the site. The site is comprised of a current (the Spireslack / Grasshill complex) and former surface mine (Ponesk) with an area restored to rough grazing land. The area is drained by the Ponesk and Lightshaw Burns which flow to the south and west respectively into the River Ayr. All of the land involved in the application site is owned by the applicant.

2.2 In terms of land use, the application site contains areas of poor agricultural grassland in fields bounded by stock fencing, areas of exposed ground from mineral extraction, internal haulage roads, overburden storage mounds, the Ponesk Burn, screen embankments on the southern boundary (with sparse young trees and shrubs) and coniferous forestry plantation in the northern sector of the site. The Spireslack Complex processing area and associated buildings and offices lie near the south-western boundary of the application site. Remnants of the now disused old A70 road, which used to pass through Glenbuck lie close to the southern boundary also. Significant previous coal mining has taken place within the site, using both deep and surface methods. The site is located between two former surface mine sites, Ponesk to the west and Airdsgreen to the east.

2.3 **Proposed Development:** Planning Permission is sought for the extraction of coal by surface mining methods including the diversion of the Ponesk Burn. The applicant has termed this development site as the Ponesk Remainder and this proposal will allow the recovery of approximately 1.05 million tonnes of coal mainly for the power generation industry and the production will be at a rate of up to approximately 7,500

tonnes per week. The application site is approximately 473 hectares with the extraction and associated soils and overburden storage and water treatment occurring in three specific phases within the site. Only 69.9 ha of the site will be subject to the extraction of coal, the remainder of the site will be utilised for temporary overburden storage, water treatment lagoons and coal processing.

2.4 The lower reaches of the Ponesk Burn were previously diverted approximately 25 years ago to facilitate coal extraction from the Ponesk / Spireslack opencast mine site. Hard engineering techniques and features created by this previous diversion continue to have an adverse effect on fish population, riparian corridor habitat and ecology along this lower stretch of the Ponesk Burn. The applicant now wishes to re-divert the Ponesk Burn back close to its original alignment with the aim of significantly improving ecology, hydraulic and geomorphic performance of the river channel. This proposed 1.4km permanent river diversion will also enable continued extraction of high quality coal from the existing Spireslack opencast complex whilst offering a unique opportunity to locally improve the riparian habitat and the spawning and nursery potential of the Ponesk Burn.

2.5 There are 10 seams of coal of varying thickness present within the Ponesk Remainder site which will be extracted to a maximum depth of 80 metres below original ground level. The coals will be worked in three distinct phases described as follows:

(i) **Area A** extends to an area of 30.2 ha and is anticipated to yield 580,000 tonnes of coal. Workings are proposed to commence in the north-eastern part of the area and progress towards the south-west, coal recovery is scheduled to take approximately 24 months. The overburden will be hauled to the existing overburden mound forming part of the Spireslack operations.

(ii) **Area B** extends to an area of 14.7 ha and is anticipated to yield 105,000 tonnes of coal. The excavation, running north to south, is essentially a long narrow corridor, the main purpose is not the recovery of coal but the formation of the new Ponesk Burn Permanent Diversion corridor. It is expected that excavation/construction works will take 12 months to complete and they will be undertaken concurrent with the first year of mining in Area A. Upon completion of the mining in Area B a further 3 months will be allowed to prepare the burn bed and resolve any geotechnical issues before undertaking the final diversion of the existing burn. The timing of the change over is linked to the salmon spawning season and can only take place between the months of June to October (inclusive).

(iii) **Area C** extends to an area of 19.8 ha and is anticipated to yield 365,000 tonnes of coal. In addition there is a potential to win another 7,500 tonnes of coal adjacent to the A70. It is proposed that workings will commence in the southern end of the area and progress towards the north. The coal lies in a relatively narrow corridor between the former Ponesk surface mine, lying to the west, and the former Airdsgreen surface mine, lying to the east which were mined between 12 and 25 years ago. It will take 12 months to complete mining excavations in this area.

2.6 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.

2.7 In terms of timescale, following commencement of operations at the Ponesk Remainder, 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. It is anticipated that 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. The applicant seeks to commence initial operations in May 2010.

2.8 The existing coal processing facilities and site establishment currently serving the Spireslack Complex will be used as part of the Ponesk remainder development. It is proposed to use the same hours of operation and shift system as per the existing Spireslack 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.

2.9 Access to the Ponesk Remainder site will be the existing site access on the A70 Road. All coal from the Ponesk Remainder Area will be transported off site via the currently agreed haul route i.e. via the A70 to the Killoch rail disposal point. Almost 100% of the coal will be exported by rail from the Killoch rail disposal point and the remainder will be dispatched to final customers in the local area via the local road network. The Ponesk Remainder operations will result in an additional 1.5 loaded HGVs per hour leaving the Spireslack Complex over a three year period. (Currently the Spireslack/Grasshill operations generate 7 HGV movements per hour 3.5 in and 3.5 out). This will mean a total of 5 loaded HGVs per hour leaving the site as a result of the Ponesk Remainder surface mine. The dispatch of minerals will be confined to between 0800 and 1700 hours Mondays to Fridays with no dispatch on Saturdays or Sundays.

2.10 The applicant has indicated that the Ponesk Remainder site is planned essentially as a replacement site for the Spireslack Complex which is currently operational. The site is planned to commence in May 2010 to tie in with the completion of coaling within the Chalmerston/Pennyvenie site, which is expected to cease during the early part of 2010. The proposal will ensure the continuation and creation of up to 70 jobs i.e. the current labour force of 50 employed at the Spireslack Complex with an additional 20 persons, plus coal haulage. The total number employed will be dependent on market conditions, speed of operation, and the particular phase of the scheme being worked. From the experience gained at the current operational site, approximately 85% of employees reside within a 10 km radius of the site and these employees currently contribute in excess of £1.50 million into the local economy each year. In addition to direct employees, a number of indirect jobs will either be created, or existing indirect jobs supported, with the need to service the site with the use of (specialist) sub-contractors. The applicant has a policy of utilising local services and suppliers on its surface mines

2.11 Following completion of coaling operations, final restoration and replanting works are expected to take approximately 24 months to complete. The overall aims and objectives of the restoration scheme for Ponesk Remainder are as follows:

- Restore the farm holding at Airdsgreen through the reinstatement of the original farmhouse and outbuildings;
- Re-establishment of large grazing compartments separated by fence-lines in order to reinstate the original landscape character and provide a functional farm unit. Creation of large field sizes without enclosure by hedgerows will enhance potential for ground nesting birds;
- Enhance the habitat of the new Ponesk Burn corridor through appropriate planting including the creation of pools and scrapes, reinstatement of pasture and/or species-rich grasslands and wet heath and the planting of shrubs and native riparian trees;
- Create greater connectivity between the Ponesk Remainder Area and surrounding areas (in terms of character, visual aspects, ecology, and physical features);
- Replace existing conifer plantations at the north of the site with a mixture of conifers and native broad-leaved woodland, avoiding oak and other large seed bearing trees to deter grey squirrels;
- The creation of two areas of wetlands/reedbeds to manage and treat the ferruginous discharges arising from the former deep coal mines in the vicinity of the site and provide additional suitable wading bird habitat;
- Enhance existing habitats and create new habitats for wildlife centred around the Ponesk Burn corridor; and,
- Provide additional public access to the restored site through the creation of a new network of paths linking in to the existing River Ayr Way.

2.12 These aims and objectives have been developed from an evaluation of existing habitats within the Ponesk Remainder site and an assessment of the aims and objectives of the restoration plan for the main Spireslack Complex. This Masterplan approach aims to draw upon, enhance and compliment the aims and objectives of the existing restoration scheme. This coordinated restoration approach will ensure that both the Ponesk Remainder site and the wider Spireslack Complex will deliver significant habitat and biodiversity enhancements benefiting a wide range of species in the medium to longer term. Following final restoration, the site will be subject to an aftercare period of five years. This will involve ongoing maintenance operations to ensure the successful establishment of tree plantings, and grassland and other habitats over the site.

2.13 The Ponesk Remainder 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.

2.14 Although not a statutory requirement for this particular 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 to the proposed development subject to the imposition of appropriate conditions in any consent granted for the proposed development as follows:

(i) The applicant will require to agree road maintenance contributions towards repair works which require to be carried out on the East Ayrshire section of the A70 public road coal haulage route between the site access east of Muirkirk and Killoch DP west of Ochiltree with the Roads Authority under Section 96 of the Roads (Scotland) Act 1984. The simplest method to attribute maintenance costs is by a contribution by Scottish Coal under section 96 of the Roads (Scotland) Act 1984 incorporated into a Section 75 planning agreement. Scottish Coal's contribution on this route will be £0.30p pence per tonne of coal or other minerals extracted from the site by road haulage. This will be payable to the Roads Authority on a quarterly basis to assist in the ongoing maintenance of the route.

(ii) There was an obligation on the Airdsgreen Planning Application that the C38 public road that was stopped up to allow opencast operations would require to be reinstated once operations ceased. This was reiterated in Roads comments on the 96/0670/FL Spireslack opencast application in that as this reinstatement was no longer considered necessary, the cost saving to the company should be assessed and paid to the Roads Authority to carry out improvement work on the A70 haulage route. There was also a requirement to provide a turning area at the end of the remaining public section of the C38 by Scottish Coal. Both still require to be done. The amount of structural patching repair work or re-surfacing work required on the route would be determined by inspection surveys carried out by the Roads section and the work would be included within the annual structural maintenance programme with contribution payments made to the Council by the applicant on a 3 monthly basis depending on mineral haulage by road from the site. Existing section 50/75 agreements/planning conditions for previous sites at this location will require to be honoured during the operation and restoration phases of this application.

The requirements of the Roads and Transportation Division can be secured either by conditions or through obligations within a Section 75 Agreement associated with the Ponesk Remainder site.

3.3 The Scottish Environment Protection Agency states that, given that Scottish Coal are now prepared to adopt a precautionary approach, in line with our assessment that future operations at the site pose a high risk to the water environment, and install

appropriate on-site mitigation measures, we are now in a position to remove our objection in principle to this proposal. However, SEPA continues to object to this planning application **unless** the planning conditions (set out below) in conjunction with a Section 75 agreement, if necessary, are attached to any consent granted. Given that the need for additional treatment has been established, another area within Phase C has now been identified as being available and suitable for this purpose, although no plans or proposals have been supplied. The applicant has agreed to adopt the mitigation measures required in order to protect the water environment as set out in Younger and Sapsford's report, "Evaluating the potential impact of opencast coal mining on water quality (Groundwater Regulations 1998)".

While SEPA welcomes these latest proposals and Scottish Coal's commitment to work with us in developing appropriate mitigation, we see this very much as a starting point and would anticipate early and ongoing discussions based on submission of detailed mitigation measures and review of the Backfill Risk Assessment (BRA) in conjunction with our comments detailed in our letter of 5th February 2010. Scottish Coal suggests that they prepare a Ground Water Mitigation and Management Plan (GWMMP) to be agreed with us and prior to commencement of operations on site. We would agree with Scottish Coal that the GWMMP should be under constant review and subject to change based on evolving conditions on site which will be established by ongoing monitoring. It is assumed that Scottish Coal, or the land owner, will be responsible for ensuring protection of the water environment through the GWMMP for as long as is necessary, and beyond the lifetime of development of the site if required. It is assumed that mitigation measures comprising all available techniques including but not exclusively, passive water treatment technologies, will be installed and maintained, to ensure protection of the water environment in perpetuity.

SEPA would request the following conditions are attached to any planning permission granted:

- Prior to any operations commencing on site, a Ground Water Mitigation and Management Plan (GWMMP) 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 on-going reporting mechanism of this interpreted data; and an on-going mechanism to secure appropriate mitigation of impacts to ensure protection of the water environment in perpetuity.
- Prior to any operations commencing on site the applicant must submit a Construction Management Plan (CMP) to the satisfaction of the local authority in agreement with SEPA. It is essential that any CMP is fully implemented by all operators on site.

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

In addition to the comments above, we would refer you to our previous responses (PCS/101474 26 August 2009, and PCS/105574 5 February 2010) for other issues relating to this proposal and which affect our interests. This advice is given without prejudice to any decision made on elements of the proposal regulated by us, which may take into account factors not considered at the planning stage.

Noted.

3.4 Muirkirk Community Council has agreed to support the proposed development.

3.5 Scottish Natural Heritage originally indicated that the proposed development could have potentially serious adverse impacts on otters which are European Protected Species and that there was not sufficient information for SNH to assess these impacts fully. The natural heritage interests were considered to be of such importance as to justify a precautionary approach. SNH therefore objected to the proposal, with the objection being reviewed on receipt of an up to date otter survey of the watercourses, carried out in appropriate conditions and by an experienced ecologist.

Since the original consultation response from SNH, the applicant has carried out the requisite further survey work, including an otter survey, a bat survey and a water vole survey. This has been formally lodged as Supplementary Environmental Information.

Following an assessment of this further information, SNH has advised that it provides sufficient information to ascertain what the impact will be on otters and thus SNH no longer objects to the proposals on this point. The results show that 2 places of shelter for otters will be destroyed by the proposals which would be an offence. If the Council is minded to approve this application despite this possible offence you should ensure that, prior to any approval, all the tests for a licence are likely to be met. If the tests are not likely to be met, there is a risk that the developer would be unable to make practical use of the planning permission if a licence is not forthcoming. With reference to the third test, we advise that the development will not be detrimental to the maintenance of the population of otters at a favourable conservation status in their natural range.

Noted. An assessment against the provisions of The Conservation (Natural Habitats, &c.) Regulations 1994 is set out in Section 6 below.

SNH had also previously recommended that the following conditions are attached to any consent granted for the development:

- (i) A water vole survey of the watercourses is carried out in appropriate conditions, in the correct season, by an experienced ecologist. The river bank vegetation should not be mown or strimmed prior to the survey.

Such a survey was carried out by the applicant and submitted for consideration as part of the submitted Supplementary Environmental Information.

- (ii) A bat survey, by an experienced surveyor, should be carried out prior to works which might affect any potential roost sites including those identified in the report (mature trees, two culverts, and a collapsed railway bridge) and mitigation agreed should bats be found.

Such a survey was carried out by the applicant and submitted for consideration as part of the submitted Supplementary Environmental Information.

- (iii) A suitably qualified Ecological Clerk of Works should be employed to supervise the proposed re-diversion and restoration of the Ponesk Burn.
- (iv) No tree felling, vegetation clearance, soil stripping or building demolition should take place during the bird breeding season (March – July inclusive) unless with the approval of the Planning Authority.
- (v) Mitigation and restoration proposals, including the two year aftercare period, as outlined in the Environmental Statement, should be adhered to and enforced using planning conditions.
- (vi) A habitat restoration bond should be secured covering the 2 year aftercare period.

Conditions can be attached to any consent granted for the proposed development or obligations secured by means of a section 75 Agreement to address the above matters raised by SNH in (iii) to (vi) inclusive.

3.6 The Royal Society for the Protection of Birds (Scotland) has not responded to the consultation letter.

3.7 The West of Scotland Archaeology Service states that there are two probable farmstead sites affected by the above planning application. However, the new information clearly shows that “Sunnyside” located at NGR 272944 629022 has been destroyed by former open cast operations. The second site named “Cairniebottom” located at NGR 272409 629509 is still extant and is visible on Google Maps aerial photographs. The site consists of a single long building and attached enclosure and may also have an associated field system. The site lies just North of the former open cast workings and is within the Northern half of Area A of the current application. It will be destroyed by the proposals. WOSAS advises that a basic investigation is made of this site in the first instance before it is affected by any proposals. This should consist of a recording survey of the extant remains of the farmstead and a wider walkover of the area around about the site (bounded by the former open cast area to the South and the current application boundary to the North) to see if a visible field system or other remains exist. This should be followed up by an intrusive evaluation of the building to investigate its date and function. The results of this initial work would dictate the requirement, if any, for further intrusive investigations.

WOSAS advises the attachment of a condition to the consent if granted in order to ensure the relevant investigations are undertaken. The appropriate form of condition in these circumstances would be a negative suspensive condition such as that suggested in paragraph 34 of PAN 42, although the wording in the model suggested in the PAN is now out-of-date and can be misleading to developers and their agents. I therefore recommend the following draft, which reflects recent experience and current best practice:

“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 use of such a condition on any consent allows the potentially complex archaeological issues to be addressed in detail after the principle of development has been accepted, but of necessity, limits the opportunities to amend designs or operations to achieve the preferred preservation of remains in situ. As the site lies within the middle of a proposed extraction area (Area A) I have assumed that it cannot be preserved in situ. This means that it is more likely that any important remains found within the development boundary will have to be excavated under archaeological conditions prior to their destruction by the approved development.

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 developer should be required to carry out routine noise monitoring at the site, to determine actual levels of exposure at the nearest noise-sensitive locations and results submitted on a quarterly basis for scrutiny. The developer should also, in the event of complaint regarding noise, be requested to cease operations until the cause of complaint has been abated.

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.

In addition, any private water supplies in the area of the development, or which may be affected by the development, should be identified and protection measures introduced to ensure integrity of these supplies.

The protection of existing water abstractions can be secured by means of an obligation within a Section 75 Agreement.

3.9 Historic Scotland is content that the proposed development is not likely to have a direct impact on any sites of national importance. However, there is one scheduled monument (Glenbuck Ironworks) that lies to the east of the proposed site boundary. It is noted that this monument lies within the boundary of the existing Spireslack site. HS is content that on this occasion, the proposed development is unlikely to have such a significant impact on the setting of the monument that it warrants an objection.

Noted.

3.10 The Scottish Government (Climate Change and Water Industry Directorate) notes that the proposed development is within the catchment of the River Ayr. This river is designated as a salmonid water and requires certain, mainly chemical, standards to be met for the quality of the water. It is further noted that the operations proposed at Ponesk Remainder have a number of possible dust sources but with mitigation measures implemented on site to ensure minimal dust impact to the local area, the majority of dust generated will be controlled at source. It is also noted that the predicted noise levels do not exceed the levels recommended in PAN50 and that assessment has concluded there will be no significant adverse vibrations arising from blasting operations at the proposed site.

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 confirms that it has no strategic objection to the proposed development.

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 River Ayr Salmon Fishery Board has not responded to the consultation letter.

3.15 The Forestry Commission Scotland has no adverse comments to make on the proposed development but states that in relation to design and tree species, the new woodland would have to meet the current UK Forestry Standard. Therefore, when replanting post restoration in this upland situation, the following prescription is recommended: sitka spruce 70-80%, other conifers 5%, native broadleaves at least 5% and designed open ground 10-20%.

Noted.

4. REPRESENTATIONS

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

4.2 Water supplies to an existing farm are likely to be severely affected if deep mining takes place so close to it. The water to the farmhouse and steading comes from a spring situated to the west of the boundaries of the proposed development. In addition farm stock of cattle and sheep rely on burn water, from both the Lightshaw Burn and the Ponesk Burn. The prospective mining operations are likely to affect the flow of water which the stock requires throughout the year.

It would be normal practice to secure an obligation for the operator to maintain water supplies / abstractions to properties by means of a Section 75 Agreement. In the event of loss of supply attributable to site operations, the operator would be required to provide alternative means of supplies. In response to the concerns raised the applicant has responded indicating that they will endeavour to ensure their operations do not cause a loss of flow to the water in the Lightshaw and Ponesk Burns. Prior to any operations commencing on site the applicant would agree to an emergency protocol in discussion with the objectors to provide an alternative supply of water in the unlikely event that there is no water flow in either the burns. This is likely to take the form of a provision of a water bowser to ensure that there is a supply of water for livestock at agreed locations. This protocol could be secured by means of a legal obligation in a Section 75 Agreement including a requirement to notify both the Planning Authority and SEPA should such an event occur.

4.3 Concerns are raised about the effects of blasting on buildings. If consent is granted, then the applicant should be requested to pay for a photographic record of the present condition of the buildings, for reference in the future, if damage is caused by blasting.

The Environmental Statement recognises that the objectors' farm is a vibration sensitive receptor but, given the location of the farm to the minimum potential distance from blasting operations (940 metres), and subject to appropriate blast design following the recommendations of the ES, it is unlikely that blasting operations within Ponesk Remainder site will give rise to concerns due to induced vibration at any of the dwellings or structures in the vicinity.

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. 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 Ponesk Remainder application has been assessed and determined against the stated criteria. The 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 Ayrshire Joint Structure Plan Steering Group has indicated in its consultation response that it has no strategic objections to the proposed development.

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

East Ayrshire Opencast Coal Subject Plan

5.3 Policy MIN1 states 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 Ponesk Remainder development does not fall within a Potential Coal Extraction Area. This is due primarily to the fact that it represents a re-working of an area which has previously be the subject of surface mining operations. In the identification of PCEAs, both existing operations and historic site of surface workings were excluded from the identification process. The site is also partly excluded due to the High Amenity Value "designation" along the A70 road corridor. Notwithstanding this, the application is more appropriately assessed against Policy MIN3, as it represents, in effect, an extension to the Spireslack Complex.

5.4 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 certain criteria.

The Ponesk remainder development is not considered to represent a new site, but an extension to the Spireslack Complex.

5.5 Policy MIN3 is pertinent to the application, the policy stating that, subject to detailed consideration, the Council will generally be supportive of any proposal to extend an existing operative opencast site within the Potential Coal Extraction Areas provided that all of the following criteria are met:

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

The Ponesk Remainder operation is effectively a stand-alone excavation area but detailed consideration has been given to the phasing of operations in the Spireslack complex to ensure that the whole site is worked and restored in a logical and structured manner.

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

The development will utilise existing site facilities and infrastructure.

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

The scale of operations, rate of extraction and number of vehicle movements generated by the Ponesk Remainder development will not result in any significant increase in the rate of output from the site or number of vehicle trips generated in comparison to that of the existing Spireslack Complex.

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

The proposed Ponesk Remainder will result in part of the current overburden area being extended for the purposes of soils and overburden storage and retention of site infrastructure for the processing and dispatch of coals. However, it is considered that this will not significantly prejudice plans for the restoration as the existing Spireslack Complex site will be progressively restored.

However, the proposed Ponesk Remainder area does not fall within a Potential Coal Extraction Area.

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

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

There are no existing areas of dereliction removed as a result of the proposed extension.

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

The working of the proposed northern extension area will result in direct employment of 70 additional jobs being provided at the House of Water site for a further period of 5 years.

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

See comments below.

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

Operations at the Spireslack Complex site have been carried out over a period of some 25 years with operations having first commenced in the early 1980s. 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. As indicated within this report there are significant local and community benefits to be accrued from the proposed development in socio-economic terms.

It should be further noted that having assessed the Ponesk Remainder site against the criteria for identification of the Potential Coal Extraction areas in the Opencast Coal Subject Plan, the site has been excluded primarily due to the fact that it represents a re-working of an area which has

previously be the subject of surface mining operations. In the identification of PCEAs, both existing operations and historic site of surface workings were excluded from the identification process. The site is also partly excluded due to the High Amenity Value “designation” along the A70 road corridor.

It is considered that the proposal represents a minor technical departure from Policy MIN3

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

The applicant has provided information based on current knowledge of the geology of the area. 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 with the possibility of lateral extensions to the Ponesk / Spireslack Complex site.

5.8 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.

5.9 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 are no areas of peat bog within the proposed site.

5.10 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 Ponesk Remainder 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

Operations at the Spireslack Complex site have been carried out over a period of some 25 years with operations having first commenced in the early 1980s. 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. As indicated within this report there are significant local and community benefits to be accrued from the proposed development in socio-economic terms.

- (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 not result in any significant increase in traffic volumes along the agreed A70 haul route.

- (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.

5.11 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 existing Technical Working Group for the Spireslack site.

5.12 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 Ponesk Remainder 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. In this regard the re-diversion of the Ponesk Burn, back to a course nearer its original route, presents a unique opportunity.

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

There are no defined rights of way within the application site. However the applicant seeks to increase public access to the area once the site is restored which will form an integral part of East Ayrshire's "Core Path Network" of which the applicant is a participating partner.

5.14 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 A70 haul route to the Killoch Rail Disposal Point. Thereafter almost 100% of the coal will be dispatched to markets by rail.

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

5.16 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.

5.17 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 Ponesk Remainder 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 Ponesk Remainder site has an expected life of 5 years. It is recognised that it lies adjacent to the Spireslack mining complex where surface mining operations have taken place over a considerable number of years. 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.

- (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.

5.18 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 that lie within 500 metres of the working faces of the proposed Ponesk Remainder site.

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

The Ponesk Remainder 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.

The Ponesk Remainder development would not present any conflict with this criterion.

- (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.

5.19 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 the proposed Ponesk Remainder development will result in the destruction of two places of shelter for otters and an assessment of the implications of this is given in Section 6 below. Nonetheless, SNH has withdrawn its objection to the development and has indicated that the proposed development would not be detrimental to the maintenance of the population of the species concerned (otters) at a Favourable Conservation Status in their natural range.

There are no built heritage resources affected by the proposed development.

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

There are no areas of peat within the site.

5.20 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:

- (iii) the open views obtained from the A70.

The Ponesk Remainder site falls outwith the identified Potential Coal Extraction areas partly as a result of the High Amenity Value “designation” along the A70 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. 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 particularly the Ponesk Burn riparian corridor. The restoration of the site would contribute positively to the landscape and visual quality of the area. 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.

The greater part of the Ponesk remainder site is excluded as a Potential Coal Extraction Area primarily because of the fact that it represents a re-working of an area which has previously be the subject of surface mining operations. In the identification of PCEAs, both existing operations and historic site of surface workings were excluded from the identification process.

5.21 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.

5.22 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 Ponesk Remainder site.

5.23 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.

5.24 Policy MIN38: Establishment of liaison committees.

The applicant already operates Local Liaison Committees, when required, at existing operational sites. Should planning permission be granted for the Ponesk remainder site, it is proposed to continue the existing Spireslack site liaison committee drawing membership from the most closely located community of Muirkirk along with other neighbours.

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

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, Scottish Planning Policy (insofar as it relates to 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 can be addressed through the imposition of appropriate planning conditions or by means of a Section 75 Agreement.

Scottish Planning Policy

6.4 Guidance on surface coal mining has been given in the “Scottish Planning Policy” document (SPP) issued in February 2010 which is the statement of the Scottish Government’s policy on nationally important land use planning matters. Subject policy on surface coal mining is given in paragraphs 239-247 inclusive. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coaling may take place.

6.5 Many of the provisions of SPP relating to surface coal mining are already addressed within the adopted East Ayrshire Opencast Coal Subject Plan such as the proximity of workings to local communities, repeated extensions, cumulative landscape and visual impacts, protection of natural and built heritage and the preference for rail transport. Nonetheless SPP indicates that Planning Authorities should use their development plans to identify areas where opencast coal extraction may be acceptable. There should be a presumption against development outwith these areas.

While the proposed Ponesk Remainder site does not fall within a Potential Coal Extraction Area, it has been excluded primarily due to the fact that it represents a re-working of an area which has previously been the subject of surface mining operations. In the identification of PCEAs, both existing operations and historic sites of surface workings were excluded from the identification process. 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 SPP also indicates, in applying the principles of sustainable development and environmental justice to opencast coal extraction, that there should be a presumption against development unless the proposal would meet one of two tests:

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

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

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

Test 2 is also considered to be met as the proposed Ponesk Remainder development will result in the continuation of 50 direct jobs and 20 additional 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 Ponesk Remainder 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.

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

6.8 As indicated in the consultation response from SNH, the otter survey carried out shows that two places of shelter for otters will be destroyed by the proposals which would be an offence. Consequently the proposed development, even with the inclusion of the proposed mitigation, is likely to result in one or more actions which are contrary to the species protection elements of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) and therefore cannot proceed unless a licence is obtained from Scottish Government.

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

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

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

- **At the local level, the proposed extension would make a direct contribution to the East Ayrshire economy through the sustained employment of the current staff and personnel directly employed in the surface mining (50 jobs) together with the creation of up to 20 additional jobs. The majority of the staff employed in the operations live within the communities of East Ayrshire. The proposed extension would also contribute to the sustained indirect employment in the local area for numerous workers, and subcontractors in connection with the onward haulage, handling and disposal of the coal produced.**
- **The retention and creation of employment is considered to be of overriding public interest in the current economic climate.**
- **The extension presents what is likely to be the only opportunity to extract the 1.05m tonnes of coal which underlie the Ponesk Remainder area. If the coal is not worked as part of this current scheme an undesirable consequence may be that the coal is permanently sterilised. National planning guidance in SPP cautions against the sterilisation of coal reserves.**

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

Test 2: “that there is no satisfactory alternative”

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

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

The interim guidance issued to planning authorities indicates that SNH is the main body to advise on whether the granting of a licence would be “detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range” and so be capable of meeting Test 3. In its consultation response to the Supplementary Environmental Information, SNH advises that, subject to matters to mitigate the impacts of the proposed development being addressed by conditions or by planning legal agreement, the proposed development would not be detrimental to the maintenance of the population of the species concerned at a Favourable Conservation Status in their natural range. This advice, therefore, satisfies the third test as described in the document “European Protected Species, Development Sites and the Planning System: Interim Guidance for Local Authorities on Licensing Arrangements, (October 2001)”.

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

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement to 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 MIN3 and MIN30 (iii) 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 objection raised is not of sufficient weight to justify refusal of the application.

8.2 The proposals will involve the extraction of approximately 1.05 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. The proposed development has not attracted a significant body of objection to the proposal and the site lies at some distance from the nearest community of Muirkirk.

8.3 This proposal will not result in any significant adverse effects on any local community and will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan. Consequently it is considered that the operations proposed can be undertaken within acceptable environmental standards.

8.4 The proposed Ponesk Remainder site is planned essentially as a replacement site for the Spireslack surface mine which is currently operational. The site is planned to commence to tie in with the completion of coaling within the Spireslack site, which is expected to cease in sometime during the early part of 2010. The proposal will provide or retain approximately 50 jobs for directly employed staff, together with an additional 20 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. Part of the Ponesk Remainder site falls within the High Amenity Value “designation” along the A70 route. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term.

8.6 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 the re-diversion of the Ponesk Burn and the enhancement of its riparian corridor. The proposed river diversion offers a unique opportunity to locally improve the riparian habitat and the spawning and nursery potential of the Ponesk Burn. There is significant opportunity for environmental enhancement of the valley slopes and new river corridor by careful design of the proposed diversion. Planting schemes will focus on creating a mosaic of habitats typical of upland heath that compliment habitat found in the surrounding area and offer additional habitat for species such as black grouse. Such enhancements should therefore provide a valuable contribution to the objectives of the Ayrshire Biodiversity Action Plan.

8.7 The restoration of the site would contribute positively to the landscape and visual quality of the area. 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.

8.8 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 extension of the remit of the existing Technical Working Group for the Spireslack site to cover the proposed Ponesk Remainder 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 extension of the remit of the existing Spireslack Community Liaison Committee to cover the proposed Ponesk Remainder site in accordance with established practice.
- (iii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement, the Supplementary Environmental Information and the Ponesk Burn Permanent Diversion Method Statement 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 Technical Working Group.

- (iv) The establishment of noise, air quality, dust and vibration monitoring programs, including locations to be used for monitoring, for the Ponesk 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 or for animal welfare purposes, 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 current 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 A70 public road haulage route between the Spireslack / Ponesk Remainder site access and Killoch DP, with the Roads Authority under section 96 of the Roads (Scotland) Act 1984. The applicant shall enter into discussion with the Planning Authority and Roads Authority regarding existing road infrastructure commitments to reasonably agree appropriate implementation and timescales for such works in relation to the wider Spireslack Complex.
- (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, which 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 Ponesk Remainder site transported on the public road network within East Ayrshire.

- (xiii) The undertaking of the applicant to adopt the mitigation measures required in order to protect the water environment as set out in Younger and Sapsford's report, "Evaluating the potential impact of opencast coal mining on water quality (Groundwater Regulations 1998)". Where considered to be reasonably necessary in the interests of groundwater management, the applicant shall provide such additional water treatment and management areas, off site if necessary, as may be required by SEPA.

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 then the application would not require to be referred to the Full Council as such a decision would not represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

19 February 2010
HM/HM
FV/DVM

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. Scottish Planning Policy (February 2010)
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	Ponesk remainder, Spireslack Complex, Glenbuck
Nature of Proposal:	09/0344/FL: extraction of coal by surface mining methods including the diversion of the Ponesk Burn with associated riparian habitat improvements and restoration to forestry, farmland and nature conservation interests with enhanced public access
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 Ponesk Remainder 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 Ground Water Mitigation and Management Plan (GWMMP) developed through prior discussion and agreement with the Scottish Environment Protection Agency (SEPA) and submitted to the Planning Authority for approval in consultation with SEPA. The scope of the GWMMP 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 SEPA, 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 any operations commencing on site the applicant shall submit a Construction Management Plan (CMP) to the satisfaction of the Planning Authority in consultation with SEPA. Thereafter, the CMP shall fully implemented by all operators on site.

REASON – In the interests of environmental protection.

6. Prior to the commencement of operations on site, the applicant shall establish a comprehensive restoration programme and plan for the proposed Ponesk Remainder site and the associated Spireslack / Grasshill Complex and shall submit the details of this programme and plan to the Planning Authority for approval. The required programme and plan shall be the subject of prior consultation with the Spireslack Technical Working Group.

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

7. 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.

8. Immediately prior to the commencement of operations on site including deforestation, the developer shall carry out further 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 any additional mitigation and habitat improvements for protected species. The results of these surveys shall be submitted to the Planning Authority for consideration in consultation with SNH.

REASON – In the interests of environmental protection.

9. Prior to works commencing on site, the developer shall submit to and have approved by the Planning Authority, an improved and enhanced landscaping scheme for the site service area which shall be implemented in conjunction with commencement of operations on the Ponesk Remainder development and thereafter maintained to the satisfaction of the Planning Authority.

REASON - In the interests of amenity.

10. All demolition of structures, vegetation clearance, tree and forest felling and soil stripping shall be carried out outwith the bird breeding season (March to July inclusive). Where this is not possible, surveys for nesting birds shall be carried out and suitable mitigation measures put in place, as approved by the Planning Authority in consultation with the Spireslack Technical Working Group.

REASON – In the interests of environmental protection.

11. Except in the case of emergency and with the prior agreement of the Planning Authority, the hours of operation for the Ponesk Remainder 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.

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

REASON – In the interest of residential amenity.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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

REASON - In the interest of safety.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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

46. 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.

47. 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.

48. 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

49. 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.

50. 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.

51. 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.

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

REASON - To secure appropriate restoration features and habitat enhancement.

53. 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 Spireslack Technical Working Group.

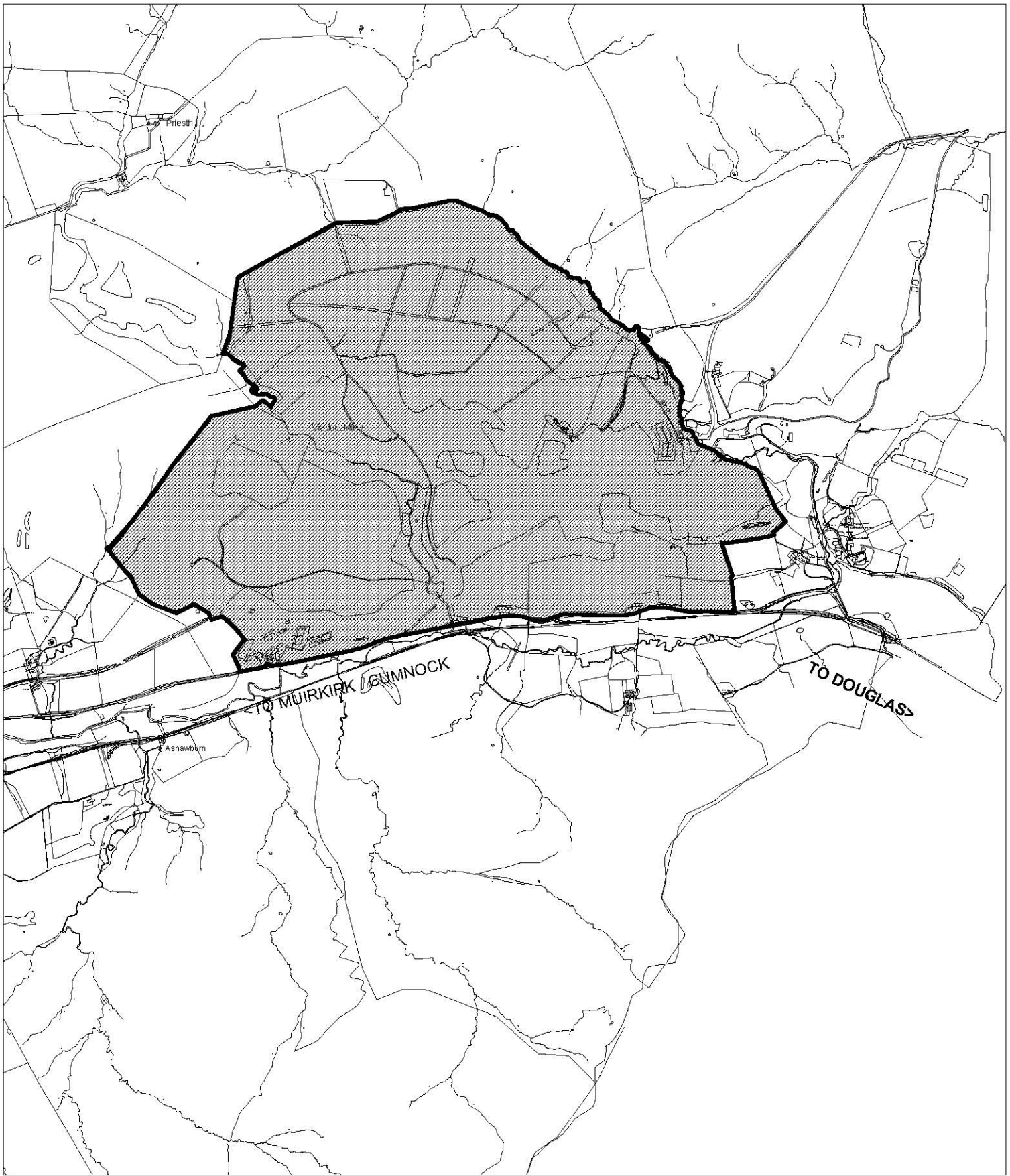
REASON - In the interests of securing appropriate afteruse of the site.

54. 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. The first review shall take place within one year of the commencement of operations on the site.

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.

55. 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.



Title/Location

Spireslack OCCS

Glenbuck Cumnock

Application No. 09/0344/FL

Key



Application Site

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: 26/2/2010

Checked By

