

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 13 JUNE 2008

**06/0480/FL: DEVELOPMENT WITHOUT COMPLYING WITH PLANNING
CONDITION NO. 1 OF PLANNING PERMISSION CD/95/0058/MIN FOR
LANDFILL WASTE SITE TO ACCEPT CONTROLLED WASTE AND CIVIC
AMENITY CENTRE TO BE COMPLETED WITHIN 10 YEARS
AT FORMER DARNCONNER OPENCAST COAL SITE, AUCHINLECK**

APPLICATION BY VIRIDOR WASTE MANAGEMENT

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for a change to the amended condition 1 of planning consent CD/95/0058/MIN to extend the life of the planning consent to allow for a further 10 year period for landfill operations to take place. The amended condition 1 currently reads:

“The development hereby permitted shall enure for the benefit of VWM (Scotland) Limited, or its legal successor only, that it shall be commenced within six months of the date of issue of the decision notice and that the approved operations shall be completed within 10 years of the commencement date of operations or at such other times as may be agreed with the Planning Authority.

REASON: In order to retain effective planning control over the site, and to ensure that works are commenced and completed to an agreed timescale.”

1.2 The applicant now seeks not to comply with the terms of condition 1 in respect of the 10 year timescale limitation. While Condition 1 makes the consent personal to the applicant and operations did commence within 6 months of the date of consent (March 1997), the period of consent was due to expire on 31 March 2007. However the present application to extend the timescale of the consent until September 2016 was lodged prior to this expiry date.

1.3 In essence the applicant seeks to vary condition 1 to read:

The development hereby permitted shall enure for the benefit of VWM (Scotland) Limited, or its legal successor only, and that the approved operations shall be completed by 30 September 2016 or at such other times as may be agreed with the Planning Authority.

1.4 The applicant in support of the application has stated that since acquiring the ownership and interest in the application site, it has not been possible to restore the site in the original 10 year time frame and therefore a further 10 year life period is sought until September 2016. Without an extension of time in which to import materials it will not be possible to meet the restoration obligations under planning permission CD/95/0058/MIN and the accompanying Section 50 Agreement. The present application seeks only to vary condition 1 of the extant planning permissions. In all other aspects the remaining planning conditions and accompanying Section 50 Agreement will remain the same as originally intended. With a realistic further 10 year period in which to infill the site, it will be possible for Viridor to start to “market” and open up the site, so as to successfully achieve the restoration of the land over the extended time frame.

2. RECOMMENDATION

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

3. SUMMARY OF ANALYSIS

3.1 As is indicated in Section 5 of the report, there are no specific policies within the development plan of relevance to the proposed extension of the timescale of the previously consented landfill site at Darnconner. In such circumstances greater weight should be attached to the material considerations relevant to the application. As is indicated in Section 6 above, there are material considerations relevant to this application and in many respects the material considerations, insofar as planning history, infrastructure and nature conservation interests are concerned, would tend to be supportive of an extension to the previous grant of planning consent.

3.2 While it is noted that the proposed development has attracted objections from local community councils, the objections in the main seem to take no account of the fact that the Darnconner site has been the subject of a previous extant planning permission, or they raise issues which are based on incorrect information. It is accepted that there is a significant body of concern regarding the unrestored condition of the Darnconner site and the fact that landfill operations to progress restoration have not taken place within the consented 10 year period.

3.3 Concern is also raised at the prospect of yet a further 10 year period of consent when an appropriate PPC permit has not yet been sought by the applicant. It is accepted and agreed that any approval of an extension of timescale must be conditioned in such a way that should the applicant fail to secure appropriate waste disposal authorisations and commencement of landfill operations, then the consent should lapse and the site restored to an appropriate condition to the satisfaction of the Planning Authority.

3.4 There is also conflict within the representations received concerning site restoration where some objectors wish to see the site fully restored while others would wish the water body (void) to be retained and the site left to 'naturalise'. It is considered that leaving the site in its current condition is not an acceptable option.

3.5 The present application seeks to extend the life of a site which already has the benefit of a planning consent and there is no suggestion of significant changes that would require to be made in respect of the operational aspects, planning conditions or obligations attached to the previous consent. In respect of site restoration, the applicant requires the extended timescale in order to meet the terms of the existing Section 50 Agreement covering the site. While acknowledging that the applicant has failed to secure an operational status for the site within the consented timescale, refusal of this present application would have significant consequences for the restoration of the site and potentially impact on the ability of the Council to call in the restoration bond.

3.6 In this instance, taking into cognisance all material considerations pertinent to the application it is considered that the application should be approved but that the consent should be conditioned to ensure that operations are commenced within a reasonable timescale, failing which the applicant shall require to restore the site to a condition acceptable to the Planning Authority.

CONTRARY DECISION NOTE

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

Alan Neish
Head of Planning and Economic Development

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

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APPLICATION BY VIRIDOR WASTE MANAGEMENT

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 has attracted in excess of 10 letters of representation.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 3.5 km north of Cumnock, 3 km south east of Auchinleck and is located immediately west of Darnconner Farm. The application site accesses directly onto the C22 Commonloch Road which in turn accesses onto the A70 Cumnock – Muirkirk Road. The application site extends to approximately 35 hectares of which some 15 hectares forms the landfill site itself and comprises the former Darconner opencast coal site. The former opencast void is currently full of water and represents a significant water body in the locality. The site is effectively un-restored although other parts of the former opencast coal site have been restored.

2.2 Planning permission for a landfill waste disposal site for controlled waste and the formation of a Civic Amenity Centre was previously approved by East Ayrshire Council on 11 September 1996 under planning application CD/95/0058/MIN. This approval was subject to a Section 50 Agreement under The Town and Country Planning (Scotland) Act 1972 including a site restoration bond in the sum of £875,000. The consent granted for the development was also personal to the applicant at that time, S.B. Minerals. Although the planning permission for the landfill site was effectively commenced in March 1997 through the engineering of the site and installation of a clay liner to the opencast void, no landfill operations have yet taken place, with no formal waste management licence having been obtained for deposition of controlled waste.

2.3 A further application (Ref. No. 00/0228/FL) for a Variation of Condition 1 of this consent to allow a transfer of the personal consent from S.B.

Minerals to VWM (Scotland) Limited was approved on 12 April 2006. The Council currently holds a replacement restoration bond for the site from Viridor Waste Management in the sum of £875,000.

2.4 Proposed Development: Permission is now sought for a change to the amended condition 1 of planning consent CD/95/0058/MIN to extend the life of the planning consent to allow for a further 10 year period for landfill operations to take place. The amended condition 1 currently reads:

“The development hereby permitted shall enure for the benefit of VWM (Scotland) Limited, or its legal successor only, that it shall be commenced within six months of the date of issue of the decision notice and that the approved operations shall be completed within 10 years of the commencement date of operations or at such other times as may be agreed with the Planning Authority.”

REASON: In order to retain effective planning control over the site, and to ensure that works are commenced and completed to an agreed timescale.”

2.5 The applicant now seeks not to comply with the terms of condition 1 in respect of the 10 year timescale limitation. While Condition 1 makes the consent personal to the applicant and operations did commence within 6 months of the date of consent (March 1997), the period of consent was due to expire on 31 March 2007. However the present application to extend the timescale of the consent until September 2016 was lodged prior to this expiry date.

2.6 In essence the applicant seeks to vary condition 1 to read:

The development hereby permitted shall enure for the benefit of VWM (Scotland) Limited, or its legal successor only, and that the approved operations shall be completed by 30 September 2016 or at such other times as may be agreed with the Planning Authority.

2.7 The applicant in support of the application has stated that since acquiring the ownership and interest in the application site, it has not been possible to restore the site in the original 10 year time frame and therefore a further 10 year life period is sought until September 2016. Without an extension of time in which to import materials it will not be possible to meet the restoration obligations under planning permission CD/95/0058/MIN and the accompanying Section 50 Agreement. The present application seeks only to vary condition 1 of the extant planning permissions. In all other aspects the remaining planning conditions and accompanying Section 50 Agreement will remain the same as originally intended. With a realistic further 10 year period in which to infill the site, it will be possible for Viridor to start to “market” and open up the site, so as to successfully achieve the restoration of the land over the extended time frame.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division indicates that it has no objections to the current planning application.

Noted.

3.2 The Scottish Environment Protection Agency states that landfilling was approved as a land use in the void at Darnconner opencast site in 1996, but land filling has not occurred. There is no prospect that the site could be filled and restored within the timescales of the existing condition 1. SEPA has no objections to the proposal to extend the timescale for landfill and restoration for a further 10 years.

Noted.

SEPA further states that since planning permission was originally granted for this land use, there have been changes in the regulatory regime for waste disposal. The operation of this site as a landfill will now require a Pollution Prevention and Control Part A permit. The permit will regulate the site operations and environmental emissions within the site boundary. The site design and engineering must meet the standards of the Landfill Directive. The permit will not address issues such as visual impact, final land form details and use, site access or traffic management. Landfill techniques have developed since the original application and it may therefore be appropriate to review other conditions also.

Noted. The applicant is aware of the requirements under the PPC permit. This present application is made under section 42 of the 1997 Planning Act and there is no scope to review the terms of other conditions attached to the site under this application.

3.3 RSPB Scotland, in its original consultation response of 17 July 2006, objected to the proposed development as insufficient information had been provided to assess the impacts on the Muirkirk and North Lowther Uplands Special Protection Area, as required by Regulation 48 of the Conservation (Natural habitats &c.) Regulations 1994 as amended. The two principle concerns of RSPB were the potential increase in predator number which could affect ground nesting birds and potential disturbance impacts on hen harrier winter roost within Airds Moss.

Although the application site does not fall within the SPA itself, its proximity to it (within 400 metres) required an assessment to be undertaken of potential impacts and for this assessment to be taken into consideration in the determination of this application.

RSPB Scotland confirms that it now concurs with the conclusion reached in the assessment report that disturbance to the hen harrier roost will not be a significant issue because of the distance from the site and buffering landscape features. RSPB Scotland also agrees that potential effects on satellite roosts will not be significant or affect the ability of the SPA to support the roost.

Noted.

RSPB Scotland indicates that the analysis of predator numbers in the assessment report suggests that impacts can be mitigated through control of mammalian predators and good practice measures to cover waste during operation of the site. Pollution impacts could also be addressed through suitable site design. RSPB Scotland therefore withdraws its objection subject to these measures being implemented using appropriate planning conditions.

The applicant has been advised of the comments of RSPB Scotland, although it should be noted that it will be the Pollution Prevention and Control permit that will regulate the design and site operations under legislation administered by SEPA.

3.4 Scottish Natural Heritage in its consultation response dated 05 July 2006 objected to the proposed development due to insufficient information and concerns that there could be an adverse impact on the Muirkirk and North Lowther Uplands Special Protection Area. The concerns were predominantly due to the potential increase in predator numbers visiting the landfill site and the subsequent impact this may have on ground nesting birds within the SPA.

Although the application site does not fall within the SPA itself, its proximity to it (within 400 metres) required an assessment to be undertaken of potential impacts and for this assessment to be taken into consideration in the determination of this application.

SNH has considered the survey work carried out by the applicant's consultants and is satisfied with the conclusions provided in the assessment that there is not likely to be a significant effect on the SPA. SNH is therefore able to remove its objection to this application.

Noted.

SNH endorses the recommendation in paragraph 11.2 of the assessment for fox control to be carried out around the site and for normal operating procedures to be followed (i.e. working in small cells at any one time and covering cells with soils at the end of each day). SNH advises that these recommendations should be included as planning conditions.

The applicant has been advised of the comments of SNH, although it should be noted that it will be the Pollution Prevention and Control permit that will regulate the design and site operations under legislation administered by SEPA.

3.5 East Ayrshire Environmental Health Division states that given that the site is already the subject of planning consents relative to the proposed activities, it has no objection in principle to this application, subject to certain safeguards to ensure satisfactory environmental controls and the avoidance of nuisance.

Noted.

The Division indicates that any proposed landfill or civic amenity site operations will require to be licensed through SEPA and operate in accordance with specified conditions. The applicant will be required to submit a detailed plan covering all aspects of site operations and satisfy SEPA as to the physical preparation of the site to receive waste, how it will be operated, the types and quantities of waste which will be dealt with, measures taken to control leachate and precautions to mitigate the creation of any nuisance (e.g. odour, noise, dust). The licence should also specify hours and days of operation, and will also stipulate conditions in respect of any civic amenity site operations.

The applicant is fully aware of the requirements relating to the PPC permit process.

The Division further indicates that whilst there will undoubtedly be some overlap of planning conditions with SEPA licensing conditions, this should not present any significant problems and indeed is infinitely preferable to the alternative of having differing enforcement conditions. It is assumed that any planning consent issued will take cognisance of the stated issues in conjunction with any relevant comments from SEPA.

Noted.

The Division notes from the location plan that the site access is opposite Common Farm on the Auchinleck – Cronberry Road. While access from either direction will be via this rural road, it may well be that the Roads and Transportation Division has some recommendation as to the preferred route for access to the site which can be offered to the applicant for agreement.

The Roads and Transportation Division has no objections to make on the proposed development. Routing of vehicles to and from the site is covered within the terms of the planning consent previously granted for the development.

3.6 Cronberry, Logan and Lugar Community Council states that although the site is not within its area, since the lorries servicing the site will be passing through our communities, it feels justified in objecting to this application for an extension. The Community Council feels that since a considerable time has passed since permission was first granted and since policies regarding waste disposal have changed dramatically, there should at least be a re-advertisement of the application.

The application has been the subject of two statutory press notices in June 2006 and April 2008.

The Community Council objects on the following grounds:

(i) There will be an unacceptable vehicular movement through our community and that routes originally proposed will not now be suitable given the current size of lorries.

The Roads and Transportation Division has not objected to the proposed development either in terms of road capacity or road condition for access routes to and from the site.

(ii) This will produce unnecessary over-capacity of landfill provision in our area (this will fail to match waste targets required by E.U. regulation and by the Scottish Government).

The Darnconner site is the subject of an extant planning consent for landfill operations albeit it is recognised that the existing landfill facility at Garlaff, near Skares has the capacity to meet the landfill needs for the area for the present time. Nonetheless the principle of landfill at this location has been established by the previous planning consent. It should be further noted that Scottish Planning Policy 10: Planning and Waste Management states that:

“Planning authorities should make long term provision in development plans for the safeguarding of potential landfill sites, focusing on opportunities for restoration of brownfield, contaminated or despoiled land, having regard to Area Waste Plan revisions and the National Waste Plan.”

(iii) The source of material will not be local and will not therefore satisfy the ‘proximity principle’ (a key principle of the National Waste Strategy).

This point is completely erroneous as the extant planning consent for the Darnconner site has a condition that states that only waste arising from within East Ayrshire shall be deposited within the site. The current application seeks only to extend the life of the site, no other changes to the existing consent are proposed.

3.7 Muirkirk Community Council has not responded to the consultation letter.

Noted.

3.8 Mauchline Community Council indicates that it was brought to its attention of proposals to bring waste from the City of Glasgow and transport it to the landfill site at Darnconner. The Community Council protests if this is the case, as the Council must be aware of the amount of traffic already travelling through these villages. This proposal would only add to the congestion of traffic especially in Mauchline itself. What type of waste is involved? How many vehicles would be travelling along this route?

As indicated above the Darnconner site has a condition that states that only waste arising from within East Ayrshire shall be deposited within the site. The current application seeks only to extend the life of the site, no other changes to the existing consent are proposed. There is no suggestion within the application that waste would be transported from the City of Glasgow.

The extant planning consent for the Darnconner landfill operation restricts the deposition of waste to domestic, commercial, industrial and inert waste only.

The original planning consent documentation indicated that an average of between 30 – 50 vehicles would be accessing the site on a daily basis along the approved transport routes. It is not considered that this raises any significant traffic issues and this is borne out in the consultation response from the Roads and transportation Division.

3.9 Ochiltree Community Council objects to the proposed development on the following grounds:

(i) Due to the nature of the development a full plan should be submitted as the original plan is out of date.

The present application represents an alteration to an extant planning consent and requires to be considered on its merits.

(ii) As there is an existing waste disposal service in the vicinity at Garlaff, the Community Council feels that there is no need for another site to deal with locally produced waste, particularly in light of the concerns already expressed over air quality from the existing Garlaff site.

The Darnconner site is the subject of an extant planning consent for landfill operations albeit it is recognised that the existing landfill facility at Garlaff, near Skares has the capacity to meet the landfill needs for the area for the present time. Nonetheless the principle of landfill at this location has been established by the previous planning consent.

(iii) Planning documentation clearly states that any waste generated in an area should be disposed of as near to that area as possible. Why then is there the need for a further waste disposal site in East Ayrshire.

As indicated above the Darnconner site has a condition that states that only waste arising from within East Ayrshire shall be deposited within the site. The main point at issue here is that the Darnconner site is not a new site, but one which has the benefit of

an existing planning consent, albeit that to date no waste has been deposited within the site.

(iv) The provision of a further waste disposal site flies in the face of the drive to reduce landfill as much as possible. Allowing a further site sends out the wrong message environmentally.

The point is again missed in that the site has the benefit of an extant planning permission. Notwithstanding this, Scottish Planning Policy 10: Planning and Waste Management states that:

“Planning authorities should make long term provision in development plans for the safeguarding of potential landfill sites, focusing on opportunities for restoration of brownfield, contaminated or despoiled land, having regard to Area Waste Plan revisions and the National Waste Plan.”

3.10 Catrine Community Council wishes to register its strong concerns regarding this development. It is of the opinion that the road infrastructure is incapable of supporting the existing heavy traffic. The Community Council believes that since the waste is said to originate from as far away as Glasgow and Edinburgh, traffic and heavy loads would be greatly increased through villages which are already experiencing almost gridlock situations at various times through the day.

The extant planning consent for the Darnconner site has a condition that states that only waste arising from within East Ayrshire shall be deposited within the site. Again there is no suggestion within the current application that waste would be transported from Glasgow or Edinburgh to the Darnconner site. It is not considered that the daily traffic to the site would generate significant road transportation issues.

The Community Council would like more detailed information on the type of waste which would be transported as well as information on risk assessment procedures which should be carried out on lorries and a detailed copy of Method Statements on how operations would be carried out safely.

As indicated above the extant planning consent for the Darnconner landfill operation restricts the deposition of waste to domestic, commercial, industrial and inert waste only. Detailed risk assessments and method statements would require to be submitted by the applicant as part of the PPC permit process administered by SEPA.

The Community Council indicates that many people are of the opinion that land previously used for opencast mining is not suitable as a landfill site due to disturbance of the sub-stratum which in turn exacerbates the ease of contamination of the water table.

This is clearly not the view of statutory consultees, particularly SEPA which has not objected to the proposed development. Indeed Planning Advice Note 63 on Waste Management Planning indicates that in terms of potential site assessment, potential locations may include working and worked out quarries. Landfill is commonly used in quarry restoration. Indeed the current operational landfill site at Garlaff Extension is utilising a former opencast void.

The Community Council states that East Ayrshire Council is making huge efforts to encourage tourism in this area which will be greatly enhanced by the excellent plan to create an eco-village. This negative approach would most certainly be detrimental to the local tourist industry and could seriously affect the viability of green projects in the future.

Given the relative remoteness of the Darnconner site, it is not considered that the development will have any significant adverse impact on tourism in the locality. However, the development of the eco-village will in itself add to the pressures for additional resources to deal with waste streams within East Ayrshire.

3.11 Auchinleck Community Council indicates that, given the state of the surrounding area and the fact that Viridor has made no attempt to implement the permission since they received it in 1995, and as the permission expired in 2006, a new application for full planning permission should be made. This current application appears to be a back door method to circumvent the planning process.

The applicant in support of the application has stated that since acquiring the ownership and interest in the application site, it has not been possible to restore the site in the original 10 year time frame and therefore a further 10 year life period is sought until September 2016. Without an extension of time in which to import materials it will not be possible to meet the restoration obligations under planning permission CD/95/0058/MIN and the accompanying Section 50 Agreement. The present application seeks only to vary condition 1 of the extant planning permissions.

It should be noted that the transfer of the personal planning consent from the original applicant to Viridor Waste Management was only effected on 12 April 2006. Notwithstanding this, the planning permission was partly implemented during March 1997 with the opencast void having been engineered to accept waste together with the installation of a clay liner. While the 10 year life of the site was due to expire by 31 March 2007, the submission of this current application prior to the expiry date effectively keeps the consent live until the determination of this planning application.

The Community Council feels that due to the sensitivity of this area and the impact that the landfill will have, no decision should take place until further consultation has been carried out with all interested parties (e.g. anglers, walkers bird watchers etc.) and suggests that the application be re-advertised with the full proposal so that people realise just how much is at stake.

The application has been the subject of two statutory press notices in June 2006 and April 2008.

The Community Council has also submitted a commentary on the Assessment Report in relation to the potential impacts on the SPA. The commentary, which provides no information on its author or the scientific basis on which the commentary is made, states in summary:

'The RPS Report contains much interesting and hard won information although its credibility is repeatedly called into question by superficial throw-away comments and claims. In several instances it bears all the hallmarks of a report that sets out to provide answers for the questions that its authors know its commissioners want answered. It does not read like an impartial, independent document.'

The Assessment Report was carried out by the applicant's consultants following discussion and agreement with both SNH and RSPB Scotland on the conduct and extent of survey work to be undertaken in respect of potential impacts on the SPA. This was to allow the particular concerns raised by these consultees to be fully considered and evaluated in the Assessment Report. In essence the report was tailored to consider and answer the specific concerns raised by SNH and RSPB Scotland, not the applicant as the Community Council has suggested.

In this regard, having considered fully the findings and conclusions contained within the Assessment Report, both SNH and RSPB Scotland have indicated that they agree with its conclusions and have formally withdrawn their objections to the proposed development.

4. REPRESENTATIONS

4.1 In addition to the 5 letters of objection from the Community Councils as indicated above, a further ten letters of representation have been received from 9 signatories, all objecting to the proposed development. The main points of objection are as follows:

4.2 Part of the application site relates to land within the ownership of our client and it is part of Roundshaw Farm. Our client has a strong objection to this.

The current application site relates to that for which planning permission for the landfill operations at Darnconner was granted under application CD/95/0058/MIN. While the objector disputes the ownership of part of the application site, this is a legal matter for the applicant and the objector to resolve and has no bearing on the planning merits or the determination of this current application.

4.3 This planning application was previously awarded some time ago despite our and some of the neighbouring landowners objections.

The original application file records only one letter of objection, from a neighbouring land owner, having been received at the time of that application.

4.4 The area has filled with water and has become a haven for water birds and has several varieties of fish including trout, perch and sticklebacks. The water in this new loch is completely clear, different from all the other burns and lochs in the surrounding area, suggesting that the water table has been breached. Any landfill could infiltrate and contaminate the water table.

Landfill operations will require to be carried out strictly in accordance with the requirements of SEPA through the PPC permit process. The landfill site will require to be engineered to ensure that there is no leachates escape from the landfill.

4.5 The area in question has a breeding pair of Hen Harriers and a multitude of other wildlife and birds, especially wildfowl. The disruption during operation of a landfill site will disturb and probably frighten off most of the existing wildlife and will attract scavengers such as rats and gulls.

Both RSPB Scotland and SNH agree with the findings of the Assessment Report on potential impacts on the SPA and its qualifying features (particularly Hen Harrier) in that there would be no significant adverse impact on the SPA or the Hen Harrier roost. Subject to conditions regarding predator control, RSPB Scotland and SNH do not object to the proposed development.

4.6 We lease the loch at Roundshaw Farm and stock annually mainly with rainbow trout and we have concerns that the influx of rats and gulls could introduce disease to our loch making our fish unfit for human consumption or indeed killing them off. The smell from the site and the probability of litter escaping from the site will also adversely affect our members and make it very unpleasant to participate in our sport.

As part of the PPC permit process, the applicant will require to demonstrate to SEPA that the site design and engineering meets the standards of the Landfill Directive. The permit will regulate the site operations and environmental emissions within the site

boundary and ensure that the operational conduct of the site meets appropriate environmental standards.

4.7 This site will only be yards away from my house and has been left like this for the last 10 years. We have a variety of bird life namely Buzzards (a protected species), Hen Harrier, Heron as well as the garden variety.

As indicated above, neither RSPB Scotland nor SNH has objected to the proposed development. It is acknowledged however that Darnconner Farmhouse lies in very close proximity to the proposed development.

4.8 What happened to the £1 million bond lodged with the Council for the purpose of backfilling the site when they were finished?

The Council still holds a restoration bond in the original sum of £875,000 provided by the applicant.

4.9 Compared to other opencast coal sites, Darnconner is a shambles. The previous operators also dug up a tarmac road which was to be re-instated and it has not been done. We are left with a rough road which we have to maintain.

It is agreed that the present condition of the site is not acceptable. However, the fact remains that the site has an extant consent for landfill. This was considered to be an acceptable land use for this site to ensure that the site was restored to an agreed plan involving landfill operations. It is agreed that it has not been carried out within what would be considered a reasonable timescale of 10 years.

There is no provision within the restoration proposals under the previous application CD/95/0058/MIN for the re-instatement of the tarmac road leading to Darnconner Farm.

4.10 The site as we see it now is a site of natural interest and we feel it should be left as a peaceful haven for wildlife to use. As a landfill site, it would spoil an area that has recently opened access for the public to the countryside. Trees have been planted near the area with walks. A landfill would be detrimental to the beauty that is there, it would simply be a blight on the countryside.

Notwithstanding the decision in respect of an extension to the timescale for a landfill operation, the site will require to be restored, a process which in itself will disturb any existing wildlife found within the site. While restoration has taken place within the wider Darnconner opencast site, measures will require to be undertaken to ensure that the site is restored to an acceptable condition, with or without landfill.

4.11 The four access roads that lead to the site are currently in a dangerous state of repair and totally inadequate for the current levels of traffic and would not be suitable for the increase in traffic, particularly HGV movements. The roads are not of a suitable width with three of them being single track roads with passing points and there are several narrow bridges which would not be suitable for the likely increase in traffic volume.

The Roads and Transportation Division has not objected to the proposed development on road capacity or road safety grounds.

4.12 We live less than 1km from the proposed development and the resultant air pollution, in the form of obnoxious stench that will inevitably be produced by rotting bio-matter and the high likelihood of the site catching fire will pose a health hazard. As my mother suffers from asthma this would be particularly dangerous.

As indicated above, as part of the PPC permit process, the applicant will require to demonstrate to SEPA that the site design and engineering meets the standards of the Landfill Directive. The permit will regulate the site operations and environmental emissions, including odorous emissions, within the site boundary and ensure that the operational conduct of the site meets appropriate environmental standards.

4.13 The process of waste disposal in landfill produces flammable gases such as methane and there is a danger that these gases will take a path of least resistance and seep into the myriad of abandoned mine workings that are present in the area. This would pose a severe threat of explosion.

Comments as per paragraph 4.12 above.

4.14 There will be a dramatic increase in noise pollution due to the traffic visiting the site, the equipment used on site and the visiting birds.

Notwithstanding the comments in paragraph 4.12 above, the extant planning consent for the Darnconner landfill site has a condition attached requiring a programme of noise monitoring to be undertaken during the life of the landfill site to address issues of noise nuisance.

4.15 In recent years there have been a number of rural walks established in the local area which are popular with local people many of whom walk their dogs in these areas. The proposed development would destroy the good work that has been done in providing these walks.

The proposed development would not physically impact on such footpaths or walks in the locality. However, it is accepted that if the Darnconner site became operational, this would, by the nature

of the development, restrict public access within the application site.

4.16 The objector states that the proposed development would not comply with the Alteration to the East Ayrshire Local Plan Finalised Draft: December 2007 and lists specific extracts and proposed policies where the proposed development would not comply with the provisions of the Finalised Plan.

While noting the specific comments of the objector, the Finalised Plan is not yet a material consideration in the determination of this or any other planning applications at this time. The current application requires to be determined in accordance with the current development plan. In terms of the adopted East Ayrshire Local Plan (2003), paragraph 8.10 states that most waste generated in East Ayrshire is disposed of in landfill sites and it is considered that sufficient capacity is available in the existing operational site at Garlaff to meet demand for the local plan period and beyond. However it is further recognised that the existing opencast coal site at Darnconner near Auchinleck also has an existing planning consent for the deposition of controlled waste, although the site is not yet operational.

4.17 A previous local plan in Policy ENV6 states that because of the dominance of the extractive industries in East Ayrshire there is a considerable legacy of dereliction in the rural parts of the area. Untreated bings associated with past mining activity, derelict industrial buildings and land all have a severe detrimental impact on the countryside. Rehabilitation of these sites is urgently required. The use of this site for landfill clearly contravenes this requirement.

The comments of the object are noted. However, the comments do not take cognisance of the fact that there is an extant planning consent for landfill operations at this location. It is agreed that the site requires to be restored.

4.18 The hydro-geology gives us great concern bearing in mind the amount of water that remains in the void and what effects the chemical / organic content of the waste that will be deposited in the proposed landfill site will have on the environment due to lateral displacement of this water.

Comments as per paragraph 4.12 above. Clearly before any waste deposition could take place, the void would require to be emptied of water and this would require to be carried out in a safe and controlled manner, under the auspices of SEPA, to ensure that the operation was undertaken in accordance with acceptable environmental standards.

4.19 We appreciate that waste has to be disposed of and are not of the “not in my back yard” mentality but this environment has suffered enough over the

years. Please leave this abused brownfield site alone and allow it to recover from the centuries of exploitation.

Whilst respecting the view of the objectors, the Darnconner site requires to be restored, with or without landfill operations. To leave the site as it is to recover naturally is not an option in this case.

4.20 If this application is granted, this area will not be restored for a period of approximately 30 years after development was started. This is an unacceptable time period.

The objector is correct in this regard, opencast operations having first commenced in the Darnconner area in 1995. The lack of progress in landfill operations and the consequent delay in site restoration is clearly one of the main issues for consideration in the determination of this application, as approval will indeed mean that the site would not be restored for a further 10 year period, albeit that restoration will be progressive with the landfill operations.

4.21 There is no justification for continuing a consent for landfill when such a scheme has not been commenced for some 10 years since originally approved.

The applicant in support of the application has stated that since acquiring the ownership and interest in the application site, it has not been possible to restore the site in the original 10 year time frame and therefore a further 10 year life period is sought until September 2016. Without an extension of time in which to import materials it will not be possible to meet the restoration obligations under planning permission CD/95/0058/MIN and the accompanying Section 50 Agreement.

4.22 There is no justification for another landfill site when Garlaff as adequate capacity for waste generated within the area covered in the approved Area Waste Plan.

The Darnconner site is the subject of an extant planning consent for landfill operations albeit it is recognised that the existing landfill facility at Garlaff, near Skares has the capacity to meet the landfill needs for the area for the present time. Nonetheless the principle of landfill at this location has been established by the previous planning consent. It should be further noted that Scottish Planning Policy 10: Planning and Waste Management states that:

“Planning authorities should make long term provision in development plans for the safeguarding of potential landfill sites,

focusing on opportunities for restoration of brownfield, contaminated or despoiled land, having regard to Area Waste Plan revisions and the National Waste Plan.”

4.23 The site is not identified in any local plan for landfill purposes.

In terms of the adopted East Ayrshire Local Plan (2003), paragraph 8.10 states that most waste generated in East Ayrshire is disposed of in landfill sites and it is considered that sufficient capacity is available in the existing operational site at Garlaff to meet demand for the local plan period and beyond. However it is further recognised that the existing opencast coal site at Darnconner near Auchinleck also has an existing planning consent for the deposition of controlled waste, although the site is not yet operational.

4.24 Any further consideration of the suitability of this site for landfill will now require a flood risk assessment because of the alteration of the course of the Dippol Burn.

The consultation process, with particular regard to the response of SEPA, has not identified the need for such an assessment.

4.25 The void is now flooded and any water displacement could cause flooding and may also impact on Airds Moss and other environmentally sensitive areas within its catchment. It may also have a detrimental impact on recent tree planting through water logging.

Clearly before any waste deposition could take place, the void would require to be emptied of water and this would require to be carried out in a safe and controlled manner, under the auspices of SEPA, to ensure that the operation was undertaken in accordance with acceptable environmental standards and to prevent any of the suggested impacts stated by the objector.

4.26 The void has now become habitats for various insects and organisms. Trout are now found in this water body and it may be that mammals such as otters now pass through this area.

It should be noted that both RSPB Scotland and Scottish Natural Heritage have not objected to the proposed development. With or without landfill operations, the restoration of the site will result in disturbance to flora and fauna that may have established within the site over the last 10 years.

4.27 The Assessment Report fails to fully address the potential impacts on the Airds Moss Special Area of Conservation and the Muirkirk Uplands SPA. Information is flawed or survey information is limited and cannot be used to formulate any conclusions.

The Assessment Report was carried out by the applicant's consultants following discussion and agreement with both SNH and RSPB Scotland on the scope, conduct and extent of survey work to be undertaken in respect of potential impacts on the SPA and Airs Moss SAC. This was to allow the particular concerns raised by these consultees to be fully considered and evaluated in the Assessment Report. In this regard, having considered fully the findings and conclusions contained within the Assessment Report, both SNH and RSPB Scotland have indicated that they agree with its conclusions and have formally withdrawn their objections to the proposed development.

4.28 It is stated that planning consent was granted in 1995 for 10 years and that the permission has been implemented. If there has been no waste management licence granted, how has the consent been implemented?

Planning consent for the Darnconner landfill site was granted by East Ayrshire Council on 11 September 1996 under planning application CD/95/0058/MIN. This approval was subject to a Section 50 Agreement under the Town and Country Planning (Scotland) Act 1972, including a site restoration bond in the sum of £875,000. The consent granted for the development was also personal to the applicant at that time, S.B. Minerals. The planning permission for the landfill site was effectively commenced in March 1997 with the commencement of works through undertaking engineering of the site and installation of a clay liner to the opencast void. Although no landfill operations have yet taken place, with no formal waste management licence having been obtained for deposition of controlled waste, the planning consent is extant in this regard.

4.29 It should be noted that in the case of a further two letters of representation putting forward holding objections pending the submission of further comments, the objectors have not subsequently lodged their reasons for objection.

Noted.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

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

Ayrshire Joint Structure Plan

5.2 There are no applicable policies within the structure plan relating to the extension of timescale for landfill developments.

Noted.

East Ayrshire Local Plan

5.3 The application relates to an extension of the permitted period for the deposition and management of waste on the site, extending the life of the site for a further 10 year period. There are no policies in the adopted East Ayrshire Local Plan which relate specifically to extending the operational life of consented waste management sites and consequently there are no objections from a policy point of view.

Noted.

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, SPP10 on Planning and Waste Management and the associated PAN63: Waste Management Planning, PAN64: Reclamation of Surface Mineral Workings, and relevant planning history.

Consultation Responses

6.2 There are no consultation responses from an infrastructure point of view that would indicate that the application should be refused. It is acknowledged that 5 Community Councils have objected to the development albeit that part of these objections arise from a misunderstanding of the current status of the site or indeed mis-information on the proposed development.

Scottish Planning Policy 10: Planning and Waste Management

6.3 While the current application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (determination of applications to develop land without compliance with conditions previously attached), it should be noted that SPP10 indicates that planning authorities should make long term provision in development plans for the safeguarding of potential landfill sites, focusing on opportunities for restoration of brownfield, contaminated or despoiled land, having regard to Area Waste Plan revisions and the National Waste Plan.

While not specifically safeguarded for landfill purposes in the adopted East Ayrshire Local Plan (although the site is identified in the local plan as having a valid planning consent for land fill), it is considered that the proposed extended use of the Darnconner site

for landfill purposes would be consistent with the aims of SPP10 in terms of potential waste disposal sites.

Planning Advice Notes

6.4 PAN63: Waste Management Planning, in relation to site assessment, states in paragraph 22:

In general, the most appropriate locations will be those with the least adverse impacts on the local population and the environment. While there are clear advantages in combining facilities, the planning authority should consider the cumulative impact of co-location on the local community. All locations need to be considered against the principles of sustainable waste management. There are numerous factors which may influence the location of new waste management facilities. Taking account of the advice in paragraph 21 above, potential locations for larger facilities may include the following examples:

Working and worked out quarries. Landfill is commonly used in quarry restoration but there may be opportunities for other types of waste management facilities.

While the present application is for the extension of timescale for a previously consented landfill operation, it is considered that in land use planning terms the Darnconner site remains suitable for such operations in accordance with the conditions of the existing planning consent and the obligations within the existing Section 50 Agreement.

6.5 PAN64: Reclamation of Surface Mineral Workings states that voids created by surface mineral workings have in the past been used for landfill. Demand for landfilling of these voids is expected to diminish in the future as waste treatment and minimisation increases. However, where the reclamation of a surface mineral working includes landfilling, it is vital that the requirements are integrated with the requirements and objectives for reclamation. A separate planning permission is likely to be required for landfilling.

6.6 Any proposal for mineral working which includes infilling the mineral void with controlled wastes currently requires either a waste management licence under the Environmental Protection Act 1990, as amended, or a permit under the Pollution Prevention and Control (Scotland) Regulations 2000, as well as planning permission.

Noted.

Planning History

6.7 There have been as number of previous planning applications relating to the Darnconner opencast coal site, more pertinent of which are as follows:

- (i) CD/ 84/81/Q – Winning and working of coal and fireclay, approved by the Secretary of State on appeal in March 1995.
- (ii) CD/85/148/Q – Proposed 12 hectare extension to Darnconner opencast site, approved in January 1986.
- (iii) CD/87/153/Q – Proposed 27 hectare extension to Darnconner opencast site approved in September 1987.
- (iv) CD/89/241/Q – Proposed 187 hectare extension to Darnconner opencast site, approved in November 1991.
- (v) CD/91/169/Q – Proposed 40 hectare extension to Darnconner opencast site. Approved in November 1991.
- (vi) CD/95/0058/MIN – Proposed use of existing opencast site for infill with controlled waste and associated Civic Amenity Centre at Darnconner, approved on 11 September 1996.
- (vii) CD/95/0230/DPP: Restoration of existing opencast site, Darnconner Opencast Coal Site, by Auchinleck, approved 11 December 1995
- (viii) 00/0228/FL – Variation of Condition 1 of planning consent CD/95/0058/MIN to transfer to VWM (Scotland) Ltd, approved on 12 April 2006.

6.8 Under planning application CD/95/0230/DPP listed above, restoration of the Darnconner site was amended essentially to approve two restoration options. Option 1 promoted a scheme which covered full restoration of the opencast site. Option 2 promoted a scheme of restoration which also allowed for landfill operations to take place within the opencast void (i.e. the development being simultaneously pursued at the same time under application CD/95/0058MIN). Option 2 would only apply, under the conditions attached to the planning consent, if the applicant at that time was able to enter into a Section 50 Agreement in relation to the proposed landfill operations.

6.9 As the requisite Section 50 Agreement was subsequently secured, the approved restoration scheme to be implemented on the site was Option 2. Due to the fact that the planning consent was legally commenced in March 1997, the approved Option 2 scheme remains as the only current enforceable restoration scheme for the Darnconner site, and this scheme wholly depends on the current void being restored by landfill operations.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications would arise through the requirement to secure site restoration with the potential for enforcement action and the possible calling in of the restoration bond, should the Committee be minded to refuse the application. However, as indicated in paragraph 6.9 above, the current approved and enforceable restoration scheme could not be achieved in the absence of landfill given the present condition of the site.

7.2 In the circumstances of a refusal of this application, this Division would require initially to negotiate an alternative restoration scheme with the applicant that would see the void possibly being retained as a water feature.

7.3 It should be noted that this present application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997, which relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. In respect of such applications, the 1997 Act states that the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and:

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly; or

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

Noted.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, there are no specific policies within the development plan of relevance to the proposed extension of the timescale of the previously consented landfill site at Darnconner. In such circumstances greater weight should be attached to the material considerations relevant to the application. As is indicated in Section 6 above, there are material considerations relevant to this application and in many respects the material considerations, insofar as planning history, infrastructure and nature conservation interests are concerned, would tend to be supportive of an extension to the previous grant of planning consent.

8.2 While it is noted that the proposed development has attracted objections from local community councils, the objections in the main seem to take no account of the fact that the Darnconner site has been the subject of a previous extant planning permission, or they raise issues which are based on incorrect information. It is accepted that there is a significant body of concern regarding the unrestored condition of the Darnconner site and the fact that landfill operations to progress restoration have not taken place within the consented 10 year period.

8.3 Concern is also raised at the prospect of yet a further 10 year period of consent when an appropriate PPC permit has not yet been sought by the applicant. It is accepted and agreed that any approval of an extension of timescale must be conditioned in such a way that should the applicant fail to secure appropriate waste disposal authorisations and commencement of

landfill operations, then the consent should lapse and the site restored to an appropriate condition to the satisfaction of the Planning Authority.

8.4 There is also conflict within the representations received concerning site restoration where some objectors wish to see the site fully restored while others would wish the water body (void) to be retained and the site left to 'naturalise'. It is considered that leaving the site in its current condition is not an acceptable option.

8.5 The present application seeks to extend the life of a site which already has the benefit of a planning consent and there is no suggestion of significant changes that would require to be made in respect of the operational aspects, planning conditions or obligations attached to the previous consent. In respect of site restoration, the applicant requires the extended timescale in order to meet the terms of the existing Section 50 Agreement covering the site. While acknowledging that the applicant has failed to secure an operational status for the site within the consented timescale, refusal of this present application would have significant consequences for the restoration of the site and potentially impact on the ability of the Council to call in the restoration bond.

8.6 In this instance, taking into cognisance all material considerations pertinent to the application it is considered that the application should be approved but that the consent should be conditioned to ensure that operations are commenced within a reasonable timescale, failing which the applicant shall require to restore the site to a condition acceptable to the Planning Authority.

9. RECOMMENDATION

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

Alan Neish
Head of Planning and Economic Development

CONTRARY DECISION NOTE

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

05 May 2008
HM/HM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of representation
5. Adopted East Ayrshire Local Plan (2003)
6. Approved Ayrshire Joint Structure Plan (2007)
7. Previous applications as described in Section 6.7
8. SPP10: Planning and Waste Management
9. PAN 63: Waste management Planning.

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

Implementation Officer: Dave Morris

Location Former Darnconner Opencast Site, near Auchinleck

Nature of Proposal:

Name and Address of Applicant: Viridor Waste Management
Great Western House
Station approach
TAUNTON
TA1 1QW

Name and Address of Agent

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

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

1. Condition 1 of planning consent CD/95/0058/MIN dated 11 September 1996, as amended by planning application 00/0228/FL dated 12 April 2006, is hereby varied to read:
 - (i) The development hereby permitted shall enure for the benefit of VWM (Scotland) Limited, or its legal successor only, and the approved landfill operations and the approved restoration scheme shall be completed by 30 September 2016 or by such other time as may be agreed formally in writing by the Planning Authority; and
 - (ii) The consent as hereby varied by this application shall be deemed to have lapsed if:
 - (a) the applicant fails to secure an appropriate Pollution Prevention and Control permit from the Scottish Environment Protection Agency, to allow the deposition of controlled waste in the Darnconner site, within 18 months from the date of this consent; and
 - (b) the applicant fails to commence the approved landfill operations within 6 months of the grant of the requisite Pollution Prevention and Control permit; or
 - (c) if there is a continuous period in excess of six months, at any time after the commencement of landfill operations, during which such operations have ceased or have declined to a volume averaging less than 4000 tonnes of waste deposited per month.
 - (iii) From the date of commencement of landfill operations, the applicant shall submit to the Planning Authority on a quarterly basis, details of the amount of waste brought into the site during the preceding quarterly period

REASON – In order to retain effective planning control over the site and to ensure that the approved landfill operations are commenced and completed within an acceptable timescale to allow for restoration of the application site.