

## EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 04 NOVEMBER 2011

**11/0535/PP: AMENDMENT OF CONDITION 47 OF PLANNING CONSENT  
09/0891/PP TO ALLOW BLASTING OPERATIONS BETWEEN THE HOURS OF  
10:00 AND 16:00 (MONDAY TO FRIDAY ONLY)**

**AT NETHERTON SURFACE MINE BY SKARES  
APPLICATION BY AARDVARK TMC LTD**

### **Report by Head of Planning and Economic Development**

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=11/0535/PP>

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 The applicant wishes to vary Condition 47 of planning consent 09/0891/PP to amend the times that blasting can be undertaken on site. The existing condition states:-

*(47) Except in cases of emergency or as otherwise may be agreed with the Planning Authority, blasting operations shall be carried out between 10:00 and 15:00 hours Mondays to Fridays and between 10:00 and 13:00 hours on Saturdays. No blasting operations shall take place on Sundays; on recognised East Ayrshire Public Holidays; during the hours of darkness or during periods of adverse visibility.*

*REASON - In the interests of amenity and public safety.*

1.2 The applicant has indicated that for health and safety reasons it is necessary to evacuate the working void when any blasting is being undertaken. For economic reasons, the Company are therefore looking at altering the blasting times to tie-in with their employee's tea-breaks i.e. between 10:30 and 11:00 hours (which is within current permitted times for blasting) and 15:00 and 15:30 hours (which is outwith current permitted blasting times).

1.3 The applicant therefore wishes to undertake blasting in the afternoon between 15:00 and 15:30 hours and is formally requesting a variation to Condition (47) to allow blasting between the hours of 10:00 and 16:00 Mondays to Fridays (with an additional 30 minute period being allowed for contingencies).

*REASON - In the interests of amenity and public safety.*

## **2. RECOMMENDATION**

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

## **3. CONCLUSIONS**

3.1 The applicant has indicated that for health and safety reasons it is necessary to evacuate the working void when any blasting is being undertaken on site. For economic reasons, the Company are therefore looking at altering the blasting times to tie-in with their employee's tea-breaks i.e. between 10:30 and 11:00 hours (which is acceptable in planning terms) and 15:00 and 15:30 hours (which is outwith current permitted blasting times). Notwithstanding the economic reasons, the amended blasting hours proposed by the applicant are not inconsistent with the provisions of PAN50.

3.2 Given that there are no consultation responses that would indicate that the application should be refused and the fact that no representations were received, there would appear to be no problem with allowing the applicant to tie-in the afternoon blasting times with their employee tea-breaks, with an additional half hour permitted for contingencies.

## **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: 04 NOVEMBER 2011

### 11/0535/PP: AMENDMENT OF CONDITION 47 OF PLANNING CONSENT 09/0891/PP TO ALLOW BLASTING OPERATIONS BETWEEN THE HOURS OF 10:00 AND 16:00 (MONDAY TO FRIDAY ONLY)

#### AT NETHERTON SURFACE MINE BY SKARES APPLICATION BY AARDVARK TMC LTD

#### Report by Head of Planning and Economic Development

## 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an application for planning permission which is to be considered by the Local Planning Committee under the scheme of delegation because it represents an alteration to 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 extends to some 438 hectares in area and lies approximately 1km (0.6 miles) south of Skares, 5km (3 miles) south-east of Ochiltree and approximately 2.5km (1.5 miles) south-west of Cumnock. The site lies to the east of the operational Skares Road surface mine, separated by the Garlaff Landfill site, approximately 1.2km (0.75 miles) north-west of the Greenburn Surface Mine and approximately 0.8km (0.5 miles) north of the House of Water Surface Mine.

2.2 **Proposed Development:** The applicant wishes to vary Condition 47 of planning consent 09/0891/PP to amend the times that blasting can be undertaken on site. The existing condition states:-

*(47) Except in cases of emergency or as otherwise may be agreed with the Planning Authority, blasting operations shall be carried out between 10:00 and 15:00 hours Mondays to Fridays and between 10:00 and 13:00 hours on Saturdays. No blasting operations shall take place on Sundays; on recognised East Ayrshire Public Holidays; during the hours of darkness or during periods of adverse visibility.*

*REASON - In the interests of amenity and public safety.*

2.3 The applicant has indicated that for health and safety reasons it is necessary to evacuate the working void when any blasting is being undertaken. For economic reasons, the Company are therefore looking at altering the blasting times to tie-in with their employee's tea-breaks i.e. between 10:30 and 11:00 hours (which is within current permitted times for blasting) and 15:00 and 15:30 hours (which is outwith current permitted blasting times).

2.4 The applicant therefore wishes to undertake blasting in the afternoon between 15:00 and 15:30 hours and is formally requesting a variation to Condition (47) to allow blasting between the hours of 10:00 and 16:00 Mondays to Fridays (with an additional 30 minute period being allowed for contingencies).

### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 East Ayrshire Council Environmental Health Division has no objections to the proposed development.

3.2 Ochiltree Community Council and Cumnock Landward Community Council have not responded to the consultation letters.

3.3 It is worth noting that the applicant has carried out an extensive consultation process prior to submitting their proposal to the Council. A Scoping Report was submitted which explained the environmental assessments that the applicant intended carrying out as part of the application process. The report also forms an initial consultation document with the planning authority as well as other organisations such as SEPA and SNH. The responses from this process together with consultation with the local community have helped finalise this proposal. This consultation process has included:-

- Proposal of Application Notice: As is consistent with the Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2008, Scottish Planning Policy and Planning Advice Note 81 (Community Engagement: Planning with People), the applicant has sought to engage with the local community in developing the application proposals.

In accordance with Regulation 6 of the Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2008, a Proposal of Application Notice was submitted to the Council on 08 February 2011. That notice outlined the proposals and provided details of community consultation that was proposed.

The Proposal of Application Notice and accompanying site plan was also sent to Ochiltree Community Council, Cumnock Landward Community Council and New Cumnock Community Council.

- Notice of Public Event: As required by Regulation 7 of the Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2008, the applicant advertised the proposal in the Cumnock Chronicle on Wednesday 09 March 2011 and Wednesday 16 March 2011.

In order to engage with their nearby neighbours, the applicant sent the nearest residents to the application site i.e. Muirdyke, Mossback, Mosside, Garallan School House, Garallan Cottage, Crofthead and the residents of Skares village, a leaflet which outlined details of the proposal.

- Public Consultation Day: The public event comprised an open exhibition that was held at Netherthird Community Centre on 23 March 2011 between the hours of 1:00pm and 7:00pm. Details of the amended blasting hours were on display and representatives of ATH Resources were available to answer questions on the proposals.

3.4 The public consultation exhibition was attended by 20 members of the public and questionnaires were available for people to complete and share their views on the proposed development. No consultation responses were received in respect of the proposed amendment to the blasting times. However, a verbal comment was received regarding the haphazard times that blasting was being undertaken, and a request was made that blasting be undertaken at the same time every day. Since this request has been made blasting operations at the site have been generally carried out in two half hour slots i.e. between 10:00 and 10:30 hours and between 14:30 and 15:00 hours.

#### 4. REPRESENTATIONS

4.1 No representations have been received.

#### 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 East Ayrshire Opencast Coal Subject Plan (2003).

##### Ayrshire Joint Structure Plan

5.2 There are no policy changes with regard to opencast coal mining being promoted in the new joint structure plan 2007 and the current provisions of the 1999 approved structure plan remain relevant to this application. The Structure Plan includes a commentary and policies on minerals including coal and refers to the East Ayrshire Opencast Coal Subject Plan as providing detailed policies concerning coal extraction.

***The 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. It is considered that the proposed development would not conflict with the stated criteria in terms of its operational conduct. The current application is therefore considered to be in accordance with the approved Structure Plan.***

##### East Ayrshire Opencast Coal Subject Plan

5.3 Policy MIN 25 requires that 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, local community, 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 working face of the 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;

- (iii) the proposed extraction does not involve any blasting operations within a distance of 500 metres from any sensitive establishment or dwelling; and
- (iv) the extraction or operational areas do not encroach within 100 metres of any group of dwellings, individual dwellinghouses(s) or sensitive establishment concerned.

***This proposal is seeking a minor amendment to the blasting times associated with the development site. The original Netherton application (our reference 09/0891/PP) was assessed against the Policies contained within the East Ayrshire Opencast Coal Subject Plan.***

## **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, the East Ayrshire Opencast Coal Subject Plan, relevant planning history, Scottish Planning Policy and the associated Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D.

### Consultation Responses

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

### Representations

6.3 No representations were received.

### Planning History

6.4 The relevant planning history is as follows:

- (i) CD/95/0254/MIN: Winning and working of coal by opencast methods at Skares Road - approved on 13 March 1997.
- (ii) 97/0596/FL: Revised application for winning and working of coal by opencast methods at Skares Road - approved on 15 May 1998.
- (iii) 98/0407/FL: Variation of Condition 1 of 97/0596/FL - approved on 01 September 1998.
- (iv) 98/0408/FL: Variation of Conditions 36 and 37 of 97/0596/FL - approved on 11 May 1999.
- (v) 98/0694/FL: Temporary access to Skares Road via Ward Farm Access – approved on 17 December 1998.
- (vi) 98/0705/FL: Variation in respect of limit of excavation and increased height of overburden – approved on 09 March 1999.

- (vii) 00/0010/FL: Modification of consent 97/0596/FL to allow a nightshift operation at Skares Road opencast site - approved on 08 June 2000.
- (viii) 00/0117/FL: Variation of condition 1 of 97/0596/FL to change Rackwood to ATH Resources – approved on 19 May 2000.
- (ix) 00/0685/FL: Extension to existing landfill site in Area B of Skares Road opencast site - approved on 22 June 2001.
- (x) 01/0459/FL: Modification of conditions 31 and 43 of consent 97/0596/FL to permit coal extraction beneath tips - approved on 02 November 2001.
- (xi) 02/0691/FL: Opencast coal mining with restoration to nature conservation uses at Hindsward - approved on 07 April 2003.
- (xii) 04/0210/FL: Extension of coaling area within existing site – approved on 25 June 2004.
- (xiii) 05/0446/FL: Southern extension to Skares Road opencast site - approved on 03 October 2005.
- (xiv) 08/0752/FL: Extension of existing surface mine and retention of existing site infrastructure, plant and buildings for duration of extended operations approved on 07 August 2009.
- (xv) 09/0526/PP: Extension of extraction area within permitted site boundary – approved on 26 February 2010.
- (xvi) 10/1020/PP: Construction of a dedicated coal haulage road – refused by the Council on 30 June 2011.

### Scottish Government Guidance

6.5 The principal planning policy at a national level from the Scottish Governments contained in Scottish Planning Policy (SPP) dated February 2010. The policy contained in the East Ayrshire Opencast Coal Subject Plan is in general terms consistent with the provisions of SPP insofar as it relates to coal developments.

6.6 Other minerals specific to national guidance pertinent to this application is contained in Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, 1996 (PAN 50), together with its Annex A, Annex B and Annex C which deal with Noise, Dust and Traffic respectively. Annex D specifically relates to the Control of Blasting at Surface Mineral Workings. The existing site operations have been designed to comply with the advice contained within PAN 50 and associated annexes.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial implications for the Council in the determination of this application.

## **8. CONCLUSIONS**

8.1 The applicant has indicated that for health and safety reasons it is necessary to evacuate the working void when any blasting is being undertaken on site. For economic reasons, the Company are therefore looking at altering the blasting times to tie-in with their employee's tea-breaks i.e. between 10:30 and 11:00 hours (which is acceptable in planning terms) and 15:00 and 15:30 hours (which is outwith current permitted blasting times). Notwithstanding the economic reasons, the amended blasting hours proposed by the applicant are not inconsistent with the provisions of PAN50.

8.2 Given that there are no consultation responses that would indicate that the application should be refused and the fact that no representations were received, there would appear to be no problem with allowing the applicant to tie-in the afternoon blasting times with their employee tea-breaks, with an additional half hour permitted for contingencies.

## **9. RECOMMENDATION**

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

### **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**

24 October 2011

### **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Supplementary Information.
3. Statutory Notices and Certificates.
4. Consultation Responses.
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (2007)
7. Scottish Planning Policy (SPP)
8. PAN 50 and associated Annexes.
9. Previous planning applications as indicated in Section 6.5 of this report

Any person wishing to inspect the background papers listed above should contact Mr Colin Graham on 01563 57 67 87.

**Implementation Officer: Hugh Melvin**

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 11/0535/PP

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Location	Netherton Surface Mine by Skares
Nature of Proposal:	Amendment of Condition 47 of planning consent 09/0891/PP to allow blasting operations between the hours of 10:00 and 16:00 (Monday to Friday).
Name and Address of Applicant:	Aardvark TMC Ltd Aardvark House Sidings Court Doncaster DN4 5NU

PPO's Ref:	[Hugh Melvin] 01563 576753
DPO's Ref:	[Colin Graham] 01563 576787

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

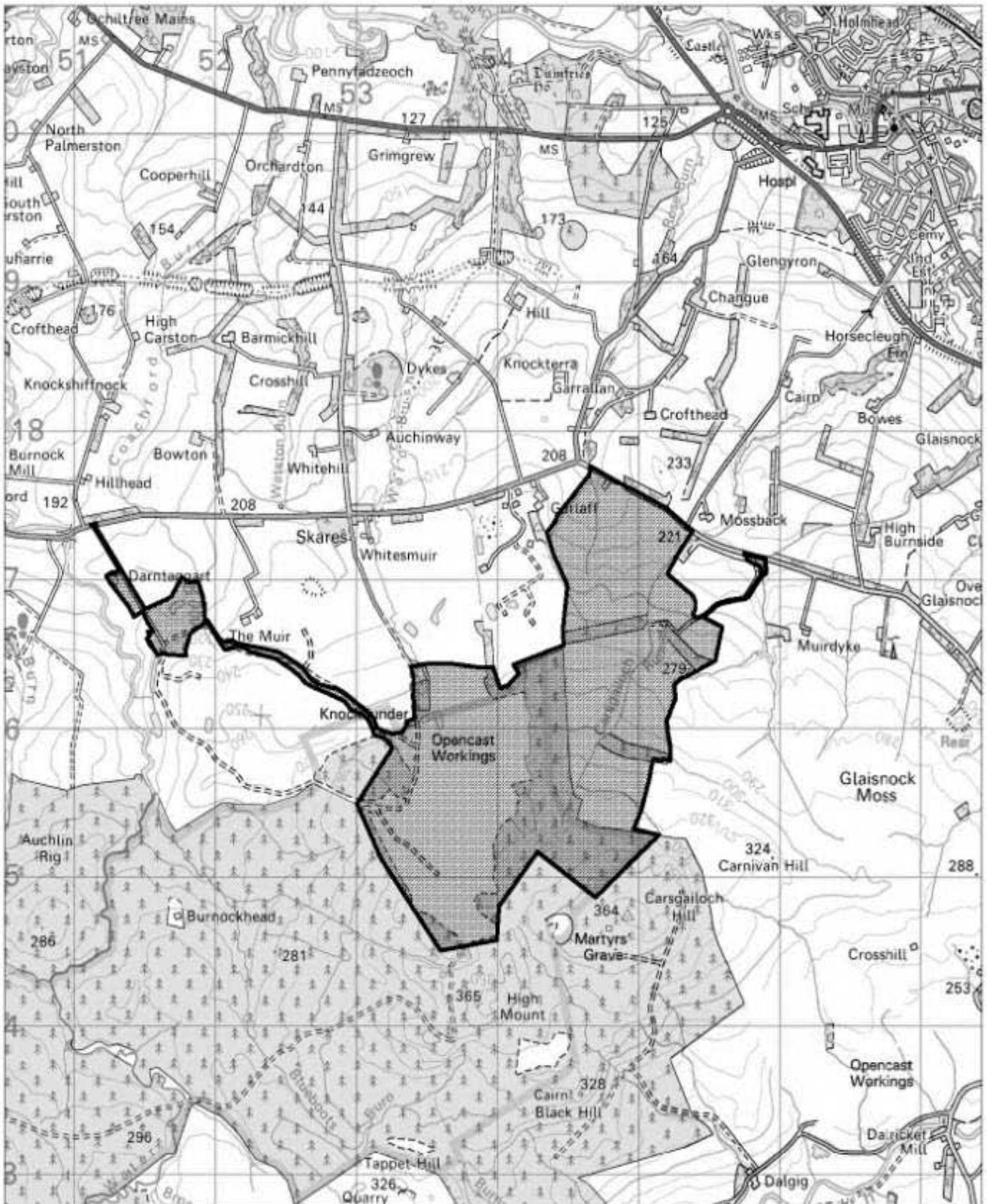
(1) Condition (47) of planning consent 09/0891/PP shall be amended to read as follows:-



*(47) Except in cases of emergency or as otherwise may be agreed with the Planning Authority, blasting operations shall be carried out on site between 10:00 and 16:00 hours Mondays to Fridays and between 10:00 and 13:00 hours on Saturdays. No blasting operations shall take place on Sundays; on recognised East Ayrshire Public Holidays; during the hours of darkness or during periods of poor visibility.*

REASON - In the interests of amenity and public safety.

**The Council has granted this consent for the following reasons:**

The proposal is generally consistent with the Development Plan and the material considerations relevant to this application also indicate that the application should be approved subject to the imposition of an appropriate condition in terms of the Town and Country Planning (Scotland) Act 1997.



<p>Title/Location</p> <p><b>Nethernton Surface Mine</b></p> <p><b>Skares</b></p> <p><b>Application No. 11/0535/PP</b></p>	<p><b>East Ayrshire Council</b></p> <p>Department of Neighbourhood Services          Planning &amp; Economic Development Service          The Johnnie Walker Bond          15 Strand Street          Kilmarnock KA1 1HU</p> <p>Tel: (01563) 576790 Fax: (01563) 554592          E-Mail : <a href="mailto:Planning@east-ayrshire.gov.uk">Planning@east-ayrshire.gov.uk</a>          Com Date: 04/11/11</p>
<p>Key</p> <p> Application Site</p>	

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