

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 01 OCTOBER 2010

**10/0491/PP: RECOVERY OF COAL USING SURFACE MINING
TECHNIQUES, RESTORATION TO AGRICULTURE WITH NATURE
CONSERVATION AND IMPROVED PUBLIC ACCESS
AT: BRAEHEAD FARM, NEW CUMNOCK**

APPLICATION BY KIER CONSTRUCTION LIMITED

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=10/0491/PP>

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 It is estimated the total coal output from the Braehead Farm site will be approximately 1.5 million tonnes, with a proposed annual production rate of approximately 450,000 – 650,000 tonnes which is the same as the current annual rate of extraction at Greenburn (Dalgig Farm) i.e. the Braehead Farm site will exhibit similar rates of extraction to the existing Greenburn operation. It is anticipated that small quantities of fireclay and other minerals will be recovered from the site during the coaling operation, subject to available markets which are not currently forthcoming.

1.2 The Braehead Farm site will be worked as a continuation of the existing Greenburn mining operations using predominately the same plant and infrastructure. In particular, the existing coal processing area, railhead and railway line will be used to process and transport the extracted coal. Within the site, the extracted coal will be transported to the railhead via internal haul roads. The railhead, the reinstated 3.5 kilometres of railway line, and the new railway bridge over the River Nith were installed in 2003/04 as part of the enabling works for the first phase of the Greenburn operation, and represented a significant capital investment by the applicant.

1.3 Including restoration, it is currently envisaged that the Braehead Farm site will operate for approximately four and a half years commencing in 2012. This will be followed by a five year aftercare programme. As stated earlier in the report, the overall Greenburn South proposal comprised three discrete excavation areas which it was intended would be worked and restored in order: Area A (Lanemark); Area B (Braehead); and Area C (Dalricket). The major overburden storage area would be located at the centre of the overall site outwith these extraction areas. The current alternative proposal is centred on Braehead Farm and excludes the Lanemark operation.

1.4 The fundamental change between the current proposal and the full Greenburn South proposal is the removal of the Lanemark area that lies immediately to the east of the Lane Burn. This will reduce the working life of

the mine by approximately four years. Most of the potential environmental and social impacts involved in the larger Greenburn South proposal are associated with the Lanemark Farm area and therefore less environmental mitigation will be required in the current Braehead Farm proposal. In particular, the Braehead Farm operations will not encroach within 500 metres of the residential properties along Burnfoot Road and no diversion and realignment of the Lane Burn will be required. In some cases the environmental mitigation measures in the larger Greenburn South scheme represented significant improvements to existing conditions and these benefits will be lost. For example, the improved public access within the restoration strategy and the removal of unstable infrastructure from previous underground workings (e.g. mine entrances/working areas).

1.5 As previously stated, it is anticipated that coaling at the existing Greenburn (Dalgig Farm) site will finish by the end of May 2012 with a further two years to full and final restoration. The commencement of site establishment operations at Braehead Farm in Spring/Summer 2011 and coaling in early 2012 would accordingly achieve a continuous supply of coal to market, and a continuation of the existing employment levels at Greenburn. Coaling would continue from early 2012 to autumn 2015, with restoration finishing in autumn 2016 followed by a five year aftercare period. The proposed Braehead Farm site will therefore result in an additional four and a half years of operation beyond the existing Greenburn developments and will result in the generation of an additional one and a half million tonnes of high quality coal.

1.6 An important element of the proposed Braehead Farm development is the continuation of employment which currently exists at the current Greenburn sites. At present the Greenburn site provides direct employment for 103 people within the site, of which 50% live locally within 10 miles of the Greenburn site and 90% live within 25 miles. It is anticipated that the proposed Braehead Farm extension will maintain this approximate level of employment and provide 107 full time direct jobs during the operation of the site until 2016. The proposed development will accordingly provide continuous employment opportunities for a further four and a half years.

1.7 In addition to this direct employment, there is significant indirect employment generated locally in businesses servicing the coaling operation which will also be safeguarded for a further extended period should consent be granted. These overall employment and economic benefits to the local economy within East Ayrshire will therefore continue to accrue as a result of the proposed Braehead Farm development.

1.8 The development plan involves the sequential working of coal from within two discrete excavation areas with associated overburden storage areas, topsoil and subsoil storage areas, water treatment systems, a new workshop and parking area, site haul roads and coal stocking and rail loading areas.

1.9 There are no changes to the proposed hours of operation with the exception of the restriction that was proposed for the working of the initial stages of the Greenburn South development (this is no longer required).

Except in cases of emergency, the hours of operation will be restricted to between 07:00 hours on a Monday through to 16:00 hours on Saturdays (24 hour working). With the exception of essential site maintenance and the maintenance of plant and machinery, no work shall take place on Sundays or on recognised Public Holidays in East Ayrshire. The processing of coal and dispatch of minerals via the rail loading facility shall be limited to between 07:00 hours and 19:00 hours Monday to Fridays and between 07:00 hours and 16:00 hours on Saturdays.

1.10 With regard to the transportation and minerals dispatch there is no change to the Greenburn South proposal; the bulk of material will be dispatched by rail using the existing Greenburn rail loading facility and it is anticipated that greater than 90% of all minerals will be dispatched in this manner. To-date, the existing Greenburn site has dispatched more than 98% of all minerals by rail. The transportation of minerals by road is to be limited to between 08:00 hours and 18:00 hours Monday to Friday, with no dispatch on Saturdays or Sundays. In addition, mineral transportation by road will be governed by the Greenburn Protocol for Transportation of Coal by Road agreed with the Council's Roads & Transportation Service. These haulage restrictions will also apply to any dispatch of fireclay and any other mineral by road.

1.11 Operations will commence in Area B. Therefore, the timing of operations in Area B will change to 2012 (originally 2015). Excavation arisings from Area B will be stored in the overburden storage areas until the maximum working void is reached (the maximum working void is the size of the excavation when excavation arisings from the advance can be safely deposited in previously worked out areas as backfill with no requirement for additional above ground overburden storage). The direction of working Area B will be reversed. This will mean that the excavation operations will commence in the west of the area and advance to the east. This is to ensure adequate time for the eastern River Nith realignment to be constructed and for vegetation to establish prior to diverting the river flows.

1.12 The overburden storage area in Greenburn South was located adjacent to the initial excavation to minimise haulage. With the excavation operations starting in the western part of Area B, it is feasible to store overburden in Area C. This will greatly reduce the volume of overburden required to be restored to the south of Area B (Overburden Storage Area 2) and will reduce the visual impact of the overburden storage area from views to the south and east (the tip height will be reduced by 15m). The new overburden storage area (Overburden Storage Area 1) will be partially excavated during the working of Area C and used to restore Area B. Since the footprint of part of the storage area within the working area, it reduces the total area required to be disturbed as part of the development. The proposed River Nith Realignment (East) has also been reduced in length from 893m to approximately 441m.

1.13 The Greenburn South development plan involved the temporary closure of a portion of the U720 road between Dalricket Mill Farm and Dalleagles in 2015 for a period of three years. The change of direction of working Area B will require road closure at the commencement of site

operations for the life of the mine. The road will still be reinstated following development to adoption standards.

1.14 It is proposed to restore the land back to agriculture with areas of nature conservation interest and improved public access in sympathy with the surrounding land-use. Detailed surveys have been conducted of the existing types of habitat on-site and the plant species of interest. Habitats of interest will either be safe-guarded or recreated, in consultation with Scottish Natural Heritage, the Scottish Environment Protection Agency, Scottish Wildlife Trust, the Nith District Salmon Fishery Board and the Royal Society for the Protection of Birds, as part of the restoration process. Through the consultation process, it has been identified that there is a demand for improved public access, including for horse-riding. The Greenburn South scheme had a suitable land area that was easily accessible for this land-use. The Braehead Farm area is not as suitable to realise these objectives and only a limited number of pathways will be provided. It is proposed to maintain the existing Technical Working Group and to encourage the participation of all stakeholders in the development of the restoration strategy to ensure that opportunities are realised in sympathy with other environmental enhancement projects within the area.

1.15 The proposal has been the subject of pre-application consultation with the local community and a Pre-Application Consultation Report accompanies the application. A presentation was given to the New Cumnock Community Council in January 2010 highlighting the intentions of the applicant and explaining the differences between the Greenburn South and Braehead Farm schemes. An open public exhibition was held by the applicant in March 2010 as part of the consultation process in the New Cumnock Community Centre. The purpose of this public consultation event was to display and explain the proposed development plan and hear the views of local community members and the general public outwith the sphere of the existing consultation. The suggestions, comments and concerns raised by the public have been considered within the design and the impact assessments and have, in many cases, helped to shape the development design.

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 is 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 8.6 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 that it represents a technical departure from Policy MIN3. Therefore, given the

terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

3.2 The proposal represents a significant extension to the existing consented site at Greenburn. It will involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. In addition, the proposed development has not attracted any significant level of objections. It is considered that, given the relatively remote and sparsely populated area in which the existing Greenburn site and the proposed Braehead Farm extension site are located, the proposal to extend the existing consented site will not have any significant adverse effects on any local community.

3.3 The existing Greenburn operation provides full time employment for 103 staff, operatives and contractors. All of these jobs will be maintained throughout the additional four and a half year working life of the proposed Braehead Farm extension. The development will provide an additional 1.5 million tonnes of high quality coal for use in the national energy market. As such, the development will contribute in a meaningful sense to achieving the government's stated objective of Scottish coal playing a significant role in ensuring diverse and sustainable supplies of energy at competitive prices.

3.4 The detailed design, operational characteristics, phasing and proposed mitigation measures of the proposed development have all been planned to minimise the potential impact of the proposed development and to ensure that the restoration and aftercare works provide an enhanced ecological and landscape legacy. The comprehensive Environmental Statement provides a full analysis of the potential impacts of the proposed development.

3.5 Consideration has been given to current planning policies at national and local level. It is considered that in all respects bar the identified discrepancy in relation to the extent of the designated Potential Coal Extraction Areas, the Braehead Farm surface mine proposal accords with related policy and guidance at national government, Structure Plan and Local Plan levels. Given the positive benefits which will arise from the proposed development, particularly the continued employment and economic benefits which will accrue for the local area, there is a justification for granting planning permission for the proposed development.

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

Section 75 Agreement

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

- (a) The applicant completing, at their expense, road improvements identified along the haulage route in conjunction with East Ayrshire Council, in order to ensure the road is maintained in a safe and serviceable condition. The applicant shall also agree an ongoing road maintenance contribution of £0.15p per tonne of mineral hauled via the public road system, to continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route (U720/U719/C36) between the site access and the A76.
- (b) The carrying out of a joint annual detailed inspection of the route U720, U719 and C36 to identify any programmed remedial work required to be done due to deterioration of the road surface. The work identified could comprise of re-surfacing, including lengths at property frontages, potholing, patching, edge strengthening, kerbing, drainage/verge repair work, road markings and additional signage.
- (c) The applicant shall pay all costs associated with the formal temporary closure of the U720 road including the provision of turning points at each end of the road closure and any signage required for alternative routing during the period of closure. On completion of site works, the road will require to be reinstated to East Ayrshire Council standards and Road Construction Consent will be required to allow it to be re-adopted as a through public road.
- (d) The provision of signage and road markings on the B741, at the applicant's expense, prior to the closure of the U720 road. The applicant must provide two vehicle activated speed warning signs for 'pedestrians in the road' at Roadside on the C36 public road at their own expense.
- (e) On completion of site works, the road will require to be reinstated to East Ayrshire Council standards and Road Construction Consent will be required to allow it to be re-adopted as a through public road.

(ii) The subscription of the applicant to the Council's Transportation Protocol to provide for agreement on routing, timing and marking of vehicles for minerals won within the Braehead Farm site transported on the public road network within East Ayrshire;

(iii) The total mineral haulage from the site on the public road system must not exceed that consented to previously (i.e. 80,000 tonnes per annum) at an

average daily rate of 12 to 16 HGV's per day as indicated in the Environmental Statement;

(iv) The extension of the remit of the existing Greenburn Technical Working Group to embrace the proposed Braehead Farm extension;

(v) The monitoring of the restored Greenburn and Greenburn extension sites through to the final aftercare period ending during 2021, as overseen by the Greenburn Technical Working Group;

(vi) The production of a comprehensive Conservation Management Plan for the comprehensive Greenburn complex as extended by the Braehead Farm extension, this plan to be agreed by the Greenburn Technical Working Group;

(vii) The preparation of a Protected Mammals Management Plan (PMMP), as approved by the Planning Authority to cover the impacts on protected mammals (otters, bats, barn-owls,) arising as a result of the Braehead Farm development. This PMMP shall be agreed with SNH prior to the commencement of works and shall include, in relation to the timing and phasing of operations:

- The undertaking of a bat survey prior to the demolition of any building or removal of trees.
- The undertaking of an otter survey prior to any works excavating the streams.
- The undertaking of a barn owl survey prior to any works. The applicant will also be responsible for erecting barn-owl nesting boxes, which must be well designed and erected within 200 metres of existing or identified roost/nest sites, at least 30 days before any works commence on site.

Such surveys and associated mitigation proposals shall be undertaken in cognisance of the comments of SNH in its consultation response dated 31 August 2010;

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

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

(ix) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Braehead Farm site following consultation with the Planning Authority and the

Environmental Health Service, such monitoring schemes to be in place prior to the commencement of operations associated with this development;

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

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

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

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

CONTRARY DECISION NOTE

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

Alan Neish
Head of Planning and Economic Development

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

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APPLICATION BY KIER CONSTRUCTION LIMITED

Report by Head of Planning & 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 as it represents an extension of working for an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan and is a major development in terms of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

2. APPLICATION DETAILS

2.1 **Site Description:** The proposed development (the site) is located approximately 3km west of New Cumnock, 5km south of Cumnock and 10km north-east of Dalmellington. The Braehead Farm application site extends to approximately 206.9 hectares (511.25 acres) with the actual extraction area being 85 hectares (210 acres), 57.4 hectares (141.8 acres) in Area B and 27.6 hectares (68.2 acres) in Area C. The site comprises approximately 47% of the larger Greenburn South site detailed below.

2.2 **Introduction:** In December 2009 Kier Mining submitted an application to the Council for planning permission for a proposed surface mining development at Greenburn South surface project. That application (Reference: 09/0906/PP) which comprises proposed operations at Lanemark, Braehead Farm and Dalricket was approved at Southern Local Planning Committee on 13 August 2010 subject to conditions but the issue of the decision notice was 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 applicant. The application was also subject to formal notification to the Scottish Ministers and has since been cleared for the Council to proceed to issue its decision on the development. It remains the intention of the applicant to work the whole or part of the Greenburn South project subject to the receipt of the necessary permissions required for the project.

2.3 The current application for Braehead Farm is proposed as an alternative to the complete Greenburn South project and one which will

enable Kier Mining to work part of the overall site in the eventuality that the Greenburn South scheme cannot be worked. This is considered essential in order to maintain production when operations finish at Dalgig Farm if the Greenburn South proposal does not go ahead. It is the intention of Kier Mining to only work this alternative scheme if the necessary permissions for Greenburn South cannot be concluded within an appropriate timescale.

2.4 As the Braehead Farm site forms part of the overall Greenburn South site many of the planning principles applicable to the latter application are applicable to the current Braehead Farm proposal albeit the current proposal is for a significantly smaller site (some 47% of the larger Greenburn South application site) with associated reduced impacts. The applicant is currently undertaking a major surface coal mining operation on a phased basis at the existing approved Greenburn complex. Site works at Greenburn initially started in August 2003 under planning consent 00/0793/FL which was granted on 6 August 2002. Extraction and progressive restoration works have taken place continually since that time. To-date, approximately 3.7 million tonnes of coal and 60,000 tonnes of fireclay have been extracted, with 42.2 hectares (104.3 acres) of land fully restored to finished ground level and enhanced agricultural or ecological use, 19.7 hectares (48.7 acres) to sub-soil status, and a further 55.1 hectares (136.2 acres) restored to overburden level ready for soils.

2.5 The applicant is currently operating on the final phase of the initial Greenburn development and the later Greenburn (Dalgig Farm) extension which was granted consent on 19 August 2008 under planning application 07/0908/FL. It is estimated that coaling will cease at Greenburn by the end of 2010 and on the Greenburn (Dalgig Farm) extension in May 2012. The Dalgig Farm extension involves the extraction of 1.5 million tonnes of high quality coal. Final restoration of both the original Greenburn site and the Greenburn (Dalgig Farm) extension is due in 2014.

2.6 Given the limited lifespan of the existing consented developments at Greenburn, for several years the applicant has been investigating the potential for a successor site to the existing operations beyond those currently consented. The area under consideration in the current application is the land to the south of the existing operation and south of the River Nith referred to as Braehead Farm. Numerous technical and environmental investigations have taken place to establish the potential of the site and the issues to be addressed. These investigations include intrusive on-site studies.

2.7 A detailed description of the proposed Braehead Farm proposal is provided in the Environmental Statement which accompanies the planning application for the Braehead Farm site. The Environmental Statement also provides a detailed analysis of the potential impacts of the proposed development on a wide range of environmental, planning and socio-economic issues.

2.8 **Proposed Development:** It is estimated the total coal output from the Braehead Farm site will be approximately 1.5 million tonnes, with a proposed annual production rate of approximately 450,000 – 650,000 tonnes which is the same as the current annual rate of extraction at Greenburn

(Dalgig Farm) i.e. the Braehead Farm site will exhibit similar rates of extraction to the existing Greenburn operation. It is anticipated that small quantities of fireclay and other minerals will be recovered from the site during the coaling operation, subject to available markets which are not currently forthcoming.

2.9 The Braehead Farm site will be worked as a continuation of the existing Greenburn mining operations using predominately the same plant and infrastructure. In particular, the existing coal processing area, railhead and railway line will be used to process and transport the extracted coal. Within the site, the extracted coal will be transported to the railhead via internal haul roads. The railhead, the reinstated 3.5 kilometres of railway line, and the new railway bridge over the River Nith were installed in 2003/04 as part of the enabling works for the first phase of the Greenburn operation, and represented a significant capital investment by the applicant.

2.10 Including restoration, it is currently envisaged that the Braehead Farm site will operate for approximately four and a half years commencing in 2012. This will be followed by a five year aftercare programme. As stated earlier in the report, the overall Greenburn South proposal comprised three discrete excavation areas which it was intended would be worked and restored in order: Area A (Lanemark); Area B (Braehead); and Area C (Dalricket). The major overburden storage area would be located at the centre of the overall site outwith these extraction areas. The current alternative proposal is centred on Braehead Farm and excludes the Lanemark operation.

2.11 The fundamental change between the current proposal and the full Greenburn South proposal is the removal of the Lanemark area that lies immediately to the east of the Lane Burn. This will reduce the working life of the mine by approximately four years. Most of the potential environmental and social impacts involved in the larger Greenburn South proposal are associated with the Lanemark Farm area and therefore less environmental mitigation will be required in the current Braehead Farm proposal. In particular, the Braehead Farm operations will not encroach within 500 metres of the residential properties along Burnfoot Road and no diversion and realignment of the Lane Burn will be required. In some cases the environmental mitigation measures in the larger Greenburn South scheme represented significant improvements to existing conditions and these benefits will be lost. For example, the improved public access within the restoration strategy and the removal of unstable infrastructure from previous underground workings (e.g. mine entrances/working areas).

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2.14 In addition to this direct employment, there is significant indirect employment generated locally in businesses servicing the coaling operation which will also be safeguarded for a further extended period should consent be granted. These overall employment and economic benefits to the local economy within East Ayrshire will therefore continue to accrue as a result of the proposed Braehead Farm development.

2.15 The development plan involves the sequential working of coal from within two discrete excavation areas with associated overburden storage areas, topsoil and subsoil storage areas, water treatment systems, a new workshop and parking area, site haul roads and coal stocking and rail loading areas.

2.16 There are no changes to the proposed hours of operation with the exception of the restriction that was proposed for the working of the initial stages of the Greenburn South development (this is no longer required). Except in cases of emergency, the hours of operation will be restricted to between 07:00 hours on a Monday through to 16:00 hours on Saturdays (24 hour working). With the exception of essential site maintenance and the maintenance of plant and machinery, no work shall take place on Sundays or on recognised Public Holidays in East Ayrshire. The processing of coal and dispatch of minerals via the rail loading facility shall be limited to between 07:00 hours and 19:00 hours Monday to Fridays and between 07:00 hours and 16:00 hours on Saturdays.

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2.22 The proposal has been the subject of pre-application consultation with the local community and a Pre-Application Consultation Report accompanies the application. A presentation was given to the New Cumnock Community Council in January 2010 highlighting the intentions of the applicant and explaining the differences between the Greenburn South and Braehead Farm schemes. An open public exhibition was held by the applicant in March 2010 as part of the consultation process in the New Cumnock Community Centre. The purpose of this public consultation event was to display and explain the proposed development plan and hear the views of local community members and the general public outwith the sphere of the existing consultation. The suggestions, comments and concerns raised by the public have been considered within the design and the impact assessments and have, in many cases, helped to shape the development design.

3. CONSULTATIONS AND ISSUES RAISED

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

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

- (i) Prior to the commencement of any haulage of minerals/coal from the site via the existing public road network, the applicant will require to complete, at their expense, road improvements identified along the haulage route in conjunction with East Ayrshire Council, in order to ensure the road is maintained in a safe and serviceable condition. The developer must also agree an ongoing road maintenance contribution of £0.15p per tonne of mineral hauled via the public road system, with the Council to continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route (U720/U719/C36) between the site access and the A76. This will be achieved by carrying out a joint annual detailed inspection of the route U720, U719 and C36 to identify any programmed remedial work required to be done due to deterioration of the road surface. The work identified could comprise of re-surfacing, including lengths at property frontages, potholing, patching, edge strengthening, kerbing, drainage/verge repair work, road markings and additional signage.
- (ii) The section of road U720 that will be temporarily closed will require to be stopped up by order under the provisions of the Town and Country Planning Act for permitted development with all costs paid by the applicant. On completion of site works, the road will require to be reinstated to East Ayrshire Council standards and Road Construction Consent will be required to allow it to be re-adopted as a through public road. Each end of the stopped up section of road will require a turning area to be formed to Council standards at the applicant's expense. All

signage required indicating the road is no longer a through road, signing of the alternative route and any access gates etc. required must be provided at the applicant's expense.

- (iii) The total mineral haulage from the site on the public road system must not exceed that consented to previously (i.e. 80,000 tonnes per annum) at an average daily rate of 12 to 16 HGVs per day as indicated in the Environmental Statement submitted.
- (iv) The Transportation Management Plan (incorporating the Transport Protocol) must continue to be implemented and observed by the applicant and their hauliers.
- (v) Two vehicle activated speed warning signs for "pedestrians in the road" must be provided at Roadside on the C36 at the developer's expense.
- (vi) Any new accesses onto the public road system will require to be agreed with the Council and meet the requirements of the Design Manual for Roads and Bridges in terms of visibility and construction.
- (vii) Signage and road markings identified in the Environmental Statement at Burnside on the B741 must be provided at the applicant's expense prior to the closure of the U720.

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

Conditions can be attached to any consent granted for the proposed development or by means of obligations in a Section 75 Agreement to meet the requirements of the Roads and Transportation Service.

3.3 The Scottish Environment Protection Agency has met with the applicant in order to discuss the proposed development and advise that planning conditions be attached to any consent granted which require information in relation to hydrogeology, flood-risk, ecology and peat issues being submitted to the satisfaction of the planning authority in consultation with SEPA, prior to the commencement of any development. If any of these conditions are not applied, SEPA want their representation considered as an objection. They also reserve the right to amend their position on the receipt of this additional information.

SEPA notes that this development site lies within the boundary of the Greenburn site (planning reference 09/0906/PP) on which they commented on in a letter dated 5 August 2010. The issues pertaining to the potential impact on the groundwater environment are similar for both sites and they

can confirm that the main issues of concern have been addressed by the applicant to their satisfaction. They would, however, advise that conditions be inserted into any consent which addresses the following issues:

- All borehole logs should be submitted to SEPA for consultation; and
- Upon completion of any additional works, a revised Hydrogeological conceptual model is required.

The applicant has advised that they are happy to revise their existing hydrogeological conceptual model following any additional works. This can be secured by means of conditions attached to any consent granted for the development.

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

- A long-term monitoring plan should be developed in consultation with SEPA. Monitoring should be undertaken prior, during and post operations. All monitoring borehole positions should be maintained throughout the operational lifespan of the site.

The applicant has proposed a monitoring plan within Section 6.8 (p46 - Hydrogeology) of the Environmental Statement which includes the provision for consultation with SEPA.

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

- A CAR permit for abstraction is likely to be required for dewatering of any voids;

The applicant is aware of the need for a CAR permit abstraction.

- Groundwater monitoring boreholes that are likely to be destroyed during operations should be correctly decommissioned to prevent them becoming direct pathways to groundwater;

The applicant has confirmed that groundwater monitoring boreholes will be appropriately decommissioned. A condition can be attached to any consent granted for the development to meet the requirements of SEPA.

- Step 6 of the backfill risk assessment should be completed whatever the outcome. This requires a contingency plan to be developed, at least six months and not more than 18 months prior to site closure, and this should be done in consultation with SEPA;

The applicant is aware of Step 6 of backfill risk assessment. A condition can be attached to any consent granted for the development to meet the requirements of SEPA.

- Consideration should be given to developing a contingency plan that considers the application area together with other consented development areas adjacent to the proposed site (e.g. House of Water) due to the potential interaction between neighbouring areas and for cumulative impacts;

The applicant is unsure of the practicalities of how best to develop a hydrogeological contingency plan looking at all sites in the area, although they are prepared to consult with SEPA on this matter. They believe that individual sites should be dealt with by the individual operator on a site by site basis and are done so through the EIA process. The practicalities of obtaining potentially commercially confidential information from competitors will likely be extremely difficult. Each development should have appropriate pollution prevention incorporated into the development, as recommended through the EIA process.

- It is important that good practice is followed and Pollution Prevention Guidelines (PPG) are in place at all times during construction; and

The applicant operates their sites in accordance with best practice guidelines issued by SEPA.

- All appropriate permits must be in place prior to works commencing on site.

The applicant is aware that all permits must be in place prior to works commencing and we have been consulting with SEPA with respect to obtaining necessary permits.

SEPA objects to the proposed development on flood risk grounds unless, should the Planning Authority be minded to approve this application, the following planning condition is imposed:

- Provision of an updated Flood Risk Assessment to demonstrate that the proposal will have no increase in flood risk or that any increase in flood risk can be managed effectively to ensure no material increase in risk to properties.

The previous flood risk assessment for the larger Greenburn South development should have little issue with respect to flooding and SEPA has acknowledged this within its response. SEPA also suggests that the smaller Braehead Farm scheme will likely present less of a flood risk. The applicant agrees with SEPA that the impacts have been characterised enough at this stage to assess the scale and likelihood of any impact based upon the draft river designs and it is satisfactory to wait until the finalised

river designs have been produced prior to conducting any further assessment of flood risk. Thus the applicant intends to conduct a further flood risk assessment following the production of the final river designs, as agreed with SEPA. A condition can be attached to any consent granted for the development to meet the requirements of SEPA.

In the event that the Planning Authority proposes to grant planning permission contrary to this advice on flood risk the application must be notified to the Scottish Ministers as per The Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

A revised planning application has now been submitted for this mining proposal and we would provide the following comments on the revised Environmental Statement (ES). We would also recommend that these comments are read in conjunction with previous responses:

- Table 7.1 of the Hydrology chapter outlines the modifications to the initial proposal and it is acknowledged that the size of the mining area is significantly reduced. Furthermore, the Lane Burn watercourse diversion is no longer proposed and as such the number of watercourse crossings has also been reduced; and
- Based on this it is thought that the potential impact on flood risk is also likely to be reduced. The FRA provided in support of the initial application indicated that the proposal would not significantly increase flood risk in the area and given the modifications it is thought that this localised increase in flood risk is likely to be reduced further. It is noted that the revised ES indicates that an updated Flood Risk Assessment (FRA) will be submitted (section 7.5.4) prior to commencement of operations. The updated FRA will allow verification of the revised proposals to ensure that they have at least no material increase in flood risk to properties. Given the proposed modifications it is thought that any increase in flood risk will be localised and could be managed effectively.

The proposal for the development of a surface mine at Braehead Farm would highlight a number of significant sources of fugitive particulate matter including, blasting, coal processing, rail loading areas and general materials handling. However due to the rail conveyor being deployed rather than traditional road transport methods, sources from unpaved haul roads should be minimised. Furthermore, there would appear to be only one relevant exposure source within 1Km of the site (Farden Farm 550m to the south of overburden area 2). We would recommend that the Council consider requesting ambient background monitoring to validate the developers prediction that it is unlikely that any exceedences of the PM10 annual mean objective level will result on account of the proposal.

The applicant conducted formal PM10 monitoring at the existing Greenburn site for a period of two years. The monitoring was initially set up under request from SEPA (even though it went beyond Scottish Government guidelines) after pressure from NHS

Ayrshire and Arran. The report presented to SEPA following two years of monitoring concluded that, with three operating opencast sites within the area, 2010 AQS objectives were not being exceeded and would be unlikely to be exceeded (there are now only two sites with the closure of Rigghead).

SEPA is required to regulate air emissions under the PPC permitting regime. Following the submission of the above report and consultation with SEPA, the applicant advises that SEPA withdrew their requirement to monitor for PM10 emissions. SEPA's remit specifically details (PPC Regs 2000): crushing, grinding or otherwise breaking up coal or coke or any other coal product; screening, grading or mixing coal, or coke or any other coal product; loading or unloading petroleum coke, coal, coke or any other coal product, except unloading on retail sale. It does not include for any operations associated with any other substance other than coal which is therefore beyond the remit of SEPA.

This is therefore included within the remit of the Council. The main potential source of dust from coal is from the coal processing and rail loading area. It is proposed to use the existing Greenburn rail loading and coal processing area which was the focus of the PM10 study which revealed no exceedences of 2010 AQS, even with properties at a distance of 300m to the south. The applicant believes that further measures are not required and have the data to support this and they are happy to discuss this matter further with both SEPA and the Council.

SEPA states that all impacts identified in the initial scoping report have been successfully identified and mitigation proposed. We would offer the following detailed comments on the water environment and would highlight that these issues below can be addressed at the CAR licensing stage and are therefore not considered by us to be "showstoppers":

- Further investigation is requested in relation to the hydraulic connectivity of rivers to groundwater. A site up-stream (House of Water surface mine carried out River Nith diversions pre-WFD regulations) employed the use of a bentonite clay barrier between the diverted stretch of the River Nith and the working area to prevent any loss of volume from the river by the excavation;
- Additional surveys will be required of all watercourses in the vicinity of the proposed extension area to ensure avoidance of losing any flows into the site; and
- Any aftercare of land will require to comply with the Water Environment (Diffuse Pollution) (Scotland) Regulations 2008, the PEPFAA code and Forest and Water Guidelines e.g. fertiliser applications, forestry drainage etc.

A paramount point to note is the potential for a downgrade in water body status on account of the major diversion planned on the River Nith (two separate permanent diversions). SEPA's general presumption is not to authorise proposals likely to result in adverse impacts to the water environment. Consequently, the derogation procedure as stipulated in SEPA's regulatory method: *RM 34: Derogation Determination – Adverse impacts of the Water Environment* will more than likely require consultation at the point where the applicant applies to SEPA for authorisation under the Water Environment (Controlled Activities) Regulations (CAR). This process requires an assessment of the social, economic and environmental benefits within the context of sustainable development and climate change. Sustained consultation will be required between the operator and SEPA on this matter.

The applicant has had significant consultation with SEPA with respect to the regulatory aspects and accepts all their points under this heading. They anticipate further significant consultation with respect to the Water Environment and this part of the consultation process has gone well over the five year consultation period.

SEPA protects wetlands that are dependent on groundwater or surface water bodies through the Water Framework Directive and the Water Environment and Water Services (Scotland) Act 2003 (WEWS). SEPA also directs impact away from rain-fed wetlands where appropriate and therefore require detailed information on the location and types of wetlands likely to be impacted by a development and details of proposed mitigation measures and restoration/re-creation options for any impacted wetlands.

The applicant has consulted SNH on this issue and provided them with the required information to their satisfaction. Mitigation measures are included within the ES. However, the applicant is happy to discuss further information requirements if they are appropriate and proportionate.

The results of Phase 1 habitat survey for the whole site and National Vegetation Classification (NVC) survey for selected areas have been provided within the Environmental Statement. However, the information provided lacks detail and a map showing the results of the NVC survey is not provided.

The applicant targeted the NVC survey based upon recommendations of SWT in consultation with the Technical Working Group, and satisfied their request with the survey. The applicant has however indicated that they will be happy to discuss further information requirements if they are appropriate and proportionate.

A number of wetland areas are identified in the Phase 1 habitat survey but NVC survey information is only provided for two of the wetland areas (from two quadrats). NVC survey information can be used with hydrology/hydrogeological information to help determine the ecohydrological

function of the wetland features. This can then be used to assess the probable direct and indirect impacts of the development on those wetland features. A full NVC survey (including a map) for all wetland habitats is required to understand the water dependency of the various wetland habitats across the site. This should be completed for wetlands within the development boundary and those outside the development boundary that may be impacted indirectly (e.g. through changes in hydrology). The map should show the extent of NVC categories across the site in relation to the development infrastructure.

During the identification of impacts within the ES process, it was noted that there were bog features present and there was a query in relation to potential dewatering (being the main potential impact other than the removal of small areas). This was addressed within the ES and includes the provision of bunding to prevent lateral drainage effects. It also points out that from a review of the geology, significant drift deposits will prevent vertical drainage. NVC surveys also demonstrate that the bog area is ombrotrophic, i.e. rain water fed and not groundwater dependent. The applicant has considered this impact and has dismissed it – which SNH appear to be happy with. SEPA wants further information that the applicant is willing to discuss providing their requests are appropriate and proportionate.

Direct impact on the two areas of wet modified bog has been minimised although indirect impacts (through alterations to site hydrology) are likely. Further details to prevent damage to the bog are required. The development, where possible, should avoid direct and indirect impacts on good quality blanket bog.

As SEPA has indicated, in accordance with discussions held with SNH, the applicant has minimised direct impacts to bogs via a sensitive design. They have also provided information on how they will prevent damage to the bogs within the ES. These concepts have been developed in consultation with SNH and the applicant has sought to avoid impacts on bogs.

Habitat Restoration and Translocation Issues - Translocation of wetland habitats is proposed but the likely success of this method is questionable. Establishing appropriate hydrological conditions is essential for successful wetland creation but it is important to recognise that this can be very difficult. Hydrological conditions (water quantity and quality) vary for different wetland habitat types. Further details of this method including monitoring proposals are required.

The applicant has not proposed to translocate habitats within the Braehead Farm development proposal as they are proposing to create new habitats based around the restoration strategy. Measures for the re-use of recovered peat have been discussed and agreed with SNH and are included within the development proposal. More detail of the restoration method and monitoring

will be forthcoming in the Conservation Management Plan, which is the usual and accepted mechanism to address specific habitat restoration details and species conservation.

SEPA considers the five year aftercare proposed for the habitat work to be too short; often wetlands (especially bog habitats) may take seven or eight years to recover and this is in relation to existing sites recovering from impacts like afforestation. Further details of habitat creation, restoration and translocation proposals should be provided. SEPA also seeks clarification on how this habitat restoration is proposed to be monitored. SNH may also provide further advice on this issue.

All direct impacts to bog habitats (recovery of peat) will take place at the start of the development because they are associated with infrastructure (western river realignment and workshop). Therefore, potential impacts to bogs (although minimised through sensitive design and mitigation provisions) can, if necessary, be monitored following, at most, one year into the development programme, thus leaving three years of the development and five years of aftercare. This equates to eight years of potential monitoring, if required. Monitoring requirements can be discussed during the formulation of the Conservation Management Plan which is compiled in consultation with the TWG (which includes SEPA).

Due to the rarity in Ayrshire of tea-leaved willow, as part of the mitigation and restoration strategy it is planned to translocate the trees out of the development zone but no details are given on, for example, the size of the trees or the methods that will be employed to successfully do this. Advice from SNH should be sought on this issue.

This comment is irrelevant and relates to the Lanemark wetlands within Greenburn South. There is no proposal to translocate tea-leaved willow within the Braehead Farm development proposals.

A peat survey is provided but this lacks detail. A more detailed peat depth survey should be undertaken to establish actual peat depths where average depths are given and we recommend that a 50 metre grid sampling system is used. This is required to determine construction method and possible waste issues.

The company has provided a detailed peat survey for the bog area next to the River Nith and are happy to conduct a detailed peat survey near to the workshop area to minimise any potential disturbance to peat.

It is proposed that topsoil and subsoil will be stripped and used for landscaping where practicable. Please note that excavated peat (particularly wet deep peat) is not considered a suitable material for landscaping.

The applicant has agreed to take on board SEPA's comments with respect to the use of peat for restoration activities. In addition, it is a primary objective of the Mining Waste Directive to re-use soil and peat resources. The company are happy to consult further with SEPA providing their requirements are appropriate and proportionate. It should be noted that peat recovery habitat creation has been discussed and agreed with SNH.

In Section 14.5.3 of the original Greenburn South ES it is noted that large areas of the site are overlain by deep (basin) peat or shallow peat with depths up to 7.5 metres. It is proposed the end land-use of the excavated peat is in a wetland habitat (assuming that this is part of restoration proposals). It is important to note that excavated peat may not be suitable for this use. Further details of the amount of excavated peat and proposed re-use options are required.

Measures for the re-use of recovered peat have been discussed and agreed between the applicant and SNH and these are included within the development proposal. More detail of the restoration method and monitoring will be forthcoming in the Conservation Management Plan.

In section 2.8.13 of the original Greenburn South ES it is stated that 'peat will be stored behind containing bunds of overburden in 'peat ponds', not exceeding three metres in depth. It is not clear how much peat will be stored or for how long the peat will be stored in the bunds and whether the likely waste regulation issues have been considered. Further details are required.

This is an extractive waste management issue and not an ecological issue. Waste management issues are covered by The Management of Extractive Waste (Scotland) Regulations 2010. A Site Waste Management Plan has been submitted to the Planning Authority for consideration and SEPA will be a consultee in that process.

The use of Sustainable Urban Drainage Systems (SUDS) is proposed for the site. Existing wetlands should not be used as SUDS.

It is not proposed to use existing wetlands as SUDS within the development proposals.

Although the waste produced in this development will be extractive waste and therefore outside our remit, it would be pertinent to identify the risks and problems associated with peat management. We would also highlight that the applicant does not appear to have provided any details required under the Extractive Waste Regulations. We would expect the applicant to be required to comply with these regulations following Scottish Government guidance.

Extractive waste is indeed outwith SEPA's remit. Waste management issues are covered by The Management of Extractive Waste (Scotland) Regulations 2010. A Site Waste

Management Plan has been submitted to the Planning Authority for consideration. However, SEPA is a statutory consultee in that process.

3.4 Scottish Natural Heritage does not object to this proposal, but asks that the following comments are taken into consideration:

While we have considered the impacts of this proposal on its own merits, we are concerned over the wider cumulative impacts of contiguous opencast operations in this part of the Nith valley. Overall there is an incremental simplification of the landscape and its character, and loss of semi-natural habitats and the biodiversity that they support. Although the opencast mining will bring welcome income in the short term, there is a very real risk that in the long term the countryside will be less able to sustain a diverse rural economy.

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

The existing Greenburn site benefits from the operation of a Technical Working Group that provides invaluable input to the monitoring and implementation of the progressive restoration of that site in terms of the agreed restoration strategy. The remit of this TWG would be extended to embrace the operations on the Braehead extension site, should permission be granted for the proposed development.

SNH makes the following comments:

(i) Peatland: As submitted the proposals will impact on two locally significant areas of peatland. We note that the applicants have made significant efforts to minimise the impacts on these habitats.

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

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

- Otters: this development would add to the considerable extent of opencast operations which are currently impacting on this stretch of the River Nith which is known to host European Protected Species otters. As a result our advice on the potential impacts on otters, is that mitigation as detailed in chapter 7 of the Environmental Statement should be incorporated into any approval in order to avoid an offence that may occur under Regulation 39/43 of the Habitats Regulations 1994 as amended. The Otter mitigation plan should outline the actions to be taken to protect otter's places of shelter as identified in the Environmental Statement. An application to Scottish Government for licence to disturb otter is required. In this instance, I can confirm that it is the view of SNH that the granting of a licence will not be detrimental to the maintenance of the otter population at favourable conservation status within their natural range. You are reminded that if this application is approved without consideration of this information, the development could result in an offence under Regulation 39/43 of the Habitats Regulations 1994.
- Bats: We note that the proposals will require the destruction or disturbance of several bat roosts. Bats are protected as a European Protected Species. As a result our advice on the potential impacts on bats, is that mitigation as detailed in chapter 7 of the Environmental Statement should be incorporated into any approval in order to avoid an offence that may occur under Regulation 39/43 of the Habitats Regulations 1994 as amended. The Bat mitigation plan should outline the actions to be taken to protect bats and their places of shelter as identified in the Environmental Statement. An application to Scottish Government for licence to disturb bats is required. You are reminded that if this application is approved without consideration of this information, the development could result in an offence under Regulation 39/43 of the Habitats Regulations 1994
- Barn Owls: All wild birds, their nests and their eggs are protected by law. As a species protected under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended), if disturbance to the nesting birds is likely then a license would be required. It would also be useful for an ornithologist to be present to ensure resident birds are out of buildings before any demolition. In addition to the general protection afforded to birds, it is an offence to:
 - (a) disturb any barn owl while it is building a nest or is in, on or near a nest containing eggs or young
 - (b) disturb any dependent barn owl young.

As a result our advice on the potential impacts on barn owls, is that mitigation as detailed in chapter 7 of the Environmental Statement should be

incorporated into any approval. In addition, Barn Owls are faithful to the roost/nest sites they use. Nest boxes should be well designed and should be erected somewhere on-site (within c.200 metres) at least 30 days before works begin. Ideally a new permanent nesting place should be provided, for example an existing small building which could be converted to provide long term roost/nest sites; all sites that used to have Barn Owls should be maintained for future re-occupation. Thus, even if there is no evidence of current occupation, permanent provision should still be made. Barn Owls are dependent upon the availability of prey-rich foraging areas. Local Authorities have a statutory duty not only to protect species but also to help restore or enhance populations and habitats.

Conditions can be attached to any consent granted for the proposed development or by means of obligations in a Section 75 Agreement to meet the requirements of SNH.

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

3.6 The West of Scotland Archaeology Service finds that the Cultural Heritage Constraints Map provides a partial assessment of the likely impacts of the proposed development in respect of previously known archaeological resources in the area. These resources are those that are identifiable on the ground or from map evidence, but they do not include sites which have been eroded by ploughing in the past, or which have had no substantive above-ground elements. It would appear that a more detailed assessment of the potential of the area to the east of the current application site has taken place, as it's noted that some archaeological sites of potential significance have been omitted from the map provided. Without more detailed information about the scope, date and survey, and methodologies used it is impossible to fully assess the competence of the information provided, or to decide what weight to attach to its findings, whether explicit or implied. In addition, the information provided does not detail what mitigation measures, if any, are proposed to address the cultural heritage issues currently raised. This is clearly inadequate, and in the lack of appropriate information on the detail of this application, we are forced to refer to comments and proposals made for similar sites in the immediate vicinity in the past.

As has been stated in this Service's response to an earlier application (reference number 09/0906/PP – Greenburn South) we would assess the potential for the development area to contain previously undiscovered archaeological remains as being moderate. Place-name evidence and previous find-spots in the area indicate that there may have been settlement and land use in the valley of the Nith and its side valleys at least back to the early historic period. Little is known about settlement and land use before this period, but prehistoric use of the area is suggested by the few recorded sites of this period which are known. This possibility would appear not to have been addressed in the current application, where as has been stated above, no mitigation measures appear to have been proposed. Notwithstanding the above comments, having assessed the available map-based and documentary evidence, we do not consider that the potential archaeological issues are likely on their own to warrant refusal of the application. They are

however, of sufficient weight to deserve to be addressed more rigorously than has been the case to-date.

Should planning consent be granted for this proposed development, there will be a need to design a strategy of archaeological work to mitigate adverse impacts on the non-renewable cultural heritage resources which may survive within the application boundary. In addition to measures relating to already identified resources, it is expected that this strategy will include trial trenching to assess the currently un-quantified issue of archaeological potential beyond the already identified sites. As was stated in this Service's response to the earlier application (Greenburn South) such trial trenching has not previously been requested in relation to opencast coal exploitation in this general area because of the heights above Ordnance Datum of those earlier opencast operations, but in this case, as this proposed opencast operation appears to be located on better quality and lower lands closer to New Cumnock, we consider there to be a consequently higher risk that there may be sub-surface archaeological resources of significance within the site.

WOSAS recommends that should the Council determine to grant planning consent for the proposed development, the following condition should be attached to address the archaeological issues raised:

“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.”

Should the Council determine in favour of the application and attach the recommended condition, WoSAS would be happy to liaise with the developer's archaeological agents to allow preparation of the necessary written scheme of investigation to allow the development to proceed in an efficient manner.

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

3.7 The Ayrshire Rivers Trust advises that the application is within the Nith catchment and will therefore not be commenting.

3.8 The Nith District Salmon Fishery Board understands that the applicant has already applied for planning permission to extend their operations into the Greenburn area adjacent to the existing Greenburn site (Greenburn South) and that this Braehead proposal is a 'cut-down' version of that application. In responding to the original Greenburn South application the Board considered the potential impact that this extension would have on the surrounding aquatic environment very carefully. Given that much of the Braehead proposal was

included in the Greenburn South proposal, the Board has approached this application using the same principles. The inclusion of river diversions and working in very close proximity to the aquatic environment has the potential to severely impact on species which the Board are statutorily charged with managing. Kier has agreed to incorporate a suite of fisheries mitigation measures within their proposals for extending their site and corresponded with the Board on 13 January 2010 in relation to their original Greenburn South application. NDSFB consider that these mitigation measures, which include monitoring for baseline data and annual monitoring thereafter, fish rescuing, restocking, compensation for loss of production and habitat reinstatement, to still be applicable, pro-rata, for the Braehead application. Having liaised with Kier the Board has confirmed that this is their understanding and they have made due consideration for the necessary fisheries mitigation within their plans.

The NDSFB has been impressed by Kier's commitment to protect the aquatic environment and their response when incidents occur. The Board has monitored fish stocks in the vicinity of the original Greenburn site since pre-coal mining operations and annually thereafter. Results from those surveys prove, that to-date, there have been no adverse impacts on fish populations caused by the Greenburn surface mine. This record, coupled with the commitment to include fisheries mitigation measures in the Braehead proposals is taken into account by the Board when considering these applications and we are minded not to object to this application. NDSFB look forward to working with Kier to secure a sustainable environmentally successful project at Braehead.

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

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

The applicant has advised that the watercourse which receives the leachate from the landfill and discharges to the River Nith may have to be re directed to facilitate the development proposal. Although it is the Council's responsibility to address the potential impacts the landfill may have on environmental receptors on and adjacent to the site, the leachate run off from the site to the River Nith is directed through the application area. Therefore there may be the opportunity, in partnership with the applicant, to mitigate the

risk of leachate release from the landfill site which may pose a risk to the River Nith and subsequently satisfy SEPA's concerns in this regard.

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

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

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

3.10 East Ayrshire Council Flooding Section indicates that it is content for the application to be approved based on the currently provided data but this requires to be conditional on the subsequent provision of an updated Flood

Risk Assessment being provided by the applicant prior to any works commencing on site.

The applicant intends to conduct a further flood risk assessment following the production of the final river designs, as agreed with SEPA. A condition can be attached to any consent granted for the development to meet the requirements of the Flooding Section.

3.11 Historic Scotland states that it has undertaken an appraisal of the ES and notes that it does not predict any significant impacts on any of the above sites and are content to agree with these findings and therefore have no further comments to offer.

3.12 Transport Scotland (Trunk Road Network Management Directorate) indicates that the proposed development represents an intensification of the use of this site; however the percentage increase in traffic is such that the proposed development is likely to cause minimal environmental impact on the trunk road network. On this basis TRNMD has no comment to make.

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

3.14 The Scottish Government (Rural & Environment Directorate) indicates that their response relates to the Scottish Ministers responsibilities for air quality and noise, and on the basis of the information available and without prejudice to any further consideration the Scottish Ministers may be required to give, they have no comments to offer on the Environmental Statement.

3.15 The Ayrshire Joint Planning Unit, New Cumnock Community Council, and Scottish Power have no objections to the proposed development.

3.16 Scottish Water, Scottish Wildlife Trust, The Royal Society for the Protection of Birds and Transco have not responded to the consultation letters.

4. REPRESENTATIONS

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

4.2 Past experience tells me that I will be subjected to excessive noise, especially during night-time operations. Please don't forget that people live in the vicinity of these opencasts and all the anti-social activity which they bring does not stop at their perimeters.

The objector's house is situated greater than 1.7km from the nearest excavation at its closest point, therefore it was considered to be at a significant distance from the site not to be included as a representative receptor for noise, dust and vibration assessment. Locations for representative receptors were agreed

with Environmental Health. The closest representative receptor is Fordmouth which is situated approx. 1.1km away from the closest excavation area. Dust, Noise and Vibration assessments have been conducted for this location and are included in Chapters 8, 9, and 10 of the environmental statement, respectively. These assessments conclude that there will be no significant impact upon this receptor. Given the increased separation distance of the objector's house, it is considered that any potential impacts should be of lesser magnitude than for Fordmouth.

4.3 I have a public safety issue regarding the use of the U754 public road which is rapidly becoming a super-highway for opencast traffic on route to service two large opencast sites in the Dalgig valley. This road has no pavement, lighting etc and can be a dangerous place to be at times, especially for children. When Kier propose to close the U720 I believe that traffic on this small road will become heavier, as it will be the shortest route to the Dalgig valley to traffic coming from the south. This road is barely wide enough for a car let alone some of the HGV's I have seen on it. Time and time again dangerous driving by opencast employees is witnessed on this small road.

The U754 is a public road, but notwithstanding this, Kier discourage employees from driving along this road and have erected signage at the top of the road prohibiting opencast traffic. To allow the full extraction of coal from the site, it will be necessary from year one i.e. 2012, to close the U720 south of Dalgig to facilitate the excavation of material in this area. During this period, road turning heads would be constructed at the road stopping-up points and signage erected to divert traffic via the B741 and C36 Boig Road. As part of the signage works, speed actuated signs would be erected on the B741 to the east and west of Burnside. Therefore, with the implementation of the proposed TMP and mitigation measures, the residual traffic impacts of the proposed mineral extraction activities are considered to be minor.

4.4 I have concerns about the old Council landfill site at Dalricket Mill. A site which was never lined and prepared like a new site would be. What preparations have been put in place to ensure that any leachate leakage or contamination from this site will not leak into the River Nith? I do not feel comfortable that opencasting in such close proximity to an old landfill site is a wise option as it will probably lead to pollution problems.

A detailed response to this point has been provided in paragraph 3.9 above.

4.5 I hear reports that less local people are being employed on some local sites, if this is true, why are there as many local men unemployed when they could be working on these sites. What is the percentage of local men on the Kier Mining register?

At present 103 people are employed on the overall Greenburn site with an estimated 133 indirect jobs generated or maintained off-site. The current operation contributes significantly to the local economy, with an annual wage bill of approximately £3.9 million and an additional figure in excess of £3 million expended with local businesses. Some 50% of employees live locally within 10 miles of the Greenburn site and 90% live within 25 miles of the site.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

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

Ayrshire Joint Structure Plan

5.2 There are no policy changes with regard to opencast coal mining being promoted in the new joint structure plan 2007 and the current provisions of the 1999 approved structure plan remain relevant to this application. The Approved Ayrshire Joint Structure Plan 1999 indicates in its Key Diagram that the House of Water development site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads. The proposed development requires to be assessed against Policy E14 which states:

Development opportunities for opencast coal working shall be directed to Preferred Areas of Search in East Ayrshire identified on the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.

The proposed Braehead Farm extension site falls within a Preferred Area of Search.

5.3 Policy E13 states that proposals to extend the supply of land with planning consent for the winning and working of minerals shall be considered against the following criteria:

- (i) impact on the countryside, landscape character, visual amenity and the natural and built environment.
- (ii) the impact caused by noise, dust and the contamination of ground and surface water.
- (iii) any adverse effect on communities within Ayrshire.
- (iv) opportunity to maximise transport by rail or sea.
- (v) extent of directly related community benefit derived such as enhancement and creation of landscapes and habitats, and removal of dereliction.

- (vi) cumulative impact of proposals in one area and the extraction period.

The proposed Braehead Farm extension application has been assessed and determined against the stated criteria. The proposals promoted by the current application would be implemented under the existing planning controls within the existing consent and Section 75 Agreement (as may be amended) for the existing Greenburn site and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed extension would not conflict with the stated criteria in terms of its operational conduct.

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

East Ayrshire Opencast Coal Subject Plan

5.4 In terms of planning policy this is the principle document against which the Braehead Farm proposal falls to be assessed. In addition to providing the opencast policy context of the Council it incorporates the national policy context as contained in the Scottish Planning Policy and associated Advice Notes. As such, detailed cognisance has been taken by the applicant of both the strategic aims and specific policies contained in the Subject Plan in bringing forward the current proposal in relation to its design and operational characteristics.

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.*

Extraction will be carried out as a sequential phase of development of the overall Greenburn site.

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

The development will generally utilise existing site facilities and infrastructure.

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

The scale of operations, rate of extraction and number of vehicle movements / rail movements generated by the extended site will be commensurate with those as existing currently on site.

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

The proposed extension will not significantly prejudice plans for restoration as the site will be progressively restored.

However, part of the proposed Braehead Farm extension 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 existing areas of dereliction related to previous mining and industrial activities that will be removed as a result of the proposed extension.

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

The working of the Braehead Farm extension will result in continuing direct employment of 107 jobs for a further period of up to 4.5 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 Greenburn site have been carried out over a period of just over 6 years with mining operations having first commenced in February 2004. However it is considered that the current proposal for the Braehead Farm extension will not result in any perpetuation of disturbance to a local community given the location of the site and its relative remoteness from local communities. The life of Braehead Farm extension will extend to approximately 4.5 years and it is not considered that there would be any perpetuation of existing disturbance to communities.

With the proposal to direct over 90% of extracted minerals from the existing Greenburn site and the proposed Braehead Farm

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

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

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

5.7 Policy MIN4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against the following criteria:

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

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

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

It is considered that in line with the existing controls imposed in the existing consents for the Greenburn site, the Braehead Farm extension can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards, subject to the imposition of appropriate

conditions / and or obligations secured by means of a Section 75 Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

(viii) the period of extraction.

The proposed Braehead Farm extension will be worked within a 4.5 year period which in itself is not considered to present any significant issues. The proposed operations will result in operations extending into 2016/17, resulting in an overall timescale for the Greenburn mining complex of 12 years. However, given the characteristics of the existing and proposed operations, their location and proximity to communities, there has been no significant detrimental impact on any local community. Furthermore, it is considered that there are significant local community and environmental benefits to be secured by the proposed development as stated above.

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

The applicant has provided information based on current knowledge of the geology of the area. The scheme presented in the Braehead Farm and the larger Greenburn South development plan represents what the applicant believes is the maximum that it can work given current environmental and economic constraints.

5.9 Policy MIN10: Where the Council has granted consent for an opencast coal development, all other economic minerals should be removed at the same time as the extraction of coal.

In line with Policy MIN10, the current application seeks consent for the extraction of any fireclay and other economic minerals which may be encountered in addition to coal.

5.10 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.

The Braehead Farm site contains areas of wet modified peat bog. The site layout has been specifically designed in order to try and avoid the majority of the two areas of wet modified bog associated with the Braehead Farm Application Scheme. The works will result in some disturbance to the edge of each part of these areas where the bog habitat is degraded but will retain the main parts of better quality habitat. Measures such as bunding will ensure that these areas do not dry out. The ES details

mitigation measures for the conservation and storage of the peat which has to be disturbed, and for its restoration.

5.11 Policy MIN12: The Council will seek to ensure that a proliferation of opencast coal sites within close proximity to any one community or within one particular area does not occur. In this context, any proposed new opencast developments may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where that development would:

- (i) constitute a third approved or operative site within 3 Kms of each other or within a 3 Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or
- (ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or
- (iii) generate volumes of heavy traffic which taken together with the volumes of coal haulage vehicles already using the routes concerned, would cause unacceptable detriment to the amenity of any community or group of dwellings located along proposed haulage routes; or
- (iv) result in an unacceptable accumulation of adverse impacts on international or nationally designated sites of nature conservation interest over time and place within a particular locality, or an accumulation of individual impacts which collectively have a significant adverse effect on the integrity of such areas.

The proposed development is not a new site but an extension to the existing Greenburn site. It is considered that the proposed extension would not conflict with the provisions of policy MIN 12 with respect to the stated criteria.

5.12 Policy MIN15: All developers are required to restore their operational sites progressively to the highest possible standards. Developers will be required to provide for the creation of new habitats appropriate to the particular after uses of the site concerned as an integral part of their detailed restoration and aftercare proposals.

The restoration of the existing Greenburn site and the proposed Braehead Farm extension is designed to improve the wildlife conservation value of the land and would provide for greater benefits to the area both in bio-diversity terms and also in general amenity terms. Restoration to high standards will be overseen by the Technical Working Group which has been set up, and is operational, as part of the existing Section 75 Agreement for the current operational Greenburn site. The remit of the TWG can be extended to include overseeing of the Braehead Farm extension.

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

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

5.14 Policy MIN18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

A minimum of 90% of coals won from the proposed extension area will require to be dispatched via the existing dedicated railhead facilities at the Greenburn site, as per the current Section 75 Agreement for Greenburn. To date, some 98% of minerals won from the site have been dispatched to markets by rail.

5.15 Policy MIN19: All haulage of extracted materials between the area of excavation and the point of dispatch from the opencast site should be via internal haul roads only.

All coals won from the proposed extension area will be taken to the coal preparation area via internal haul roads and / or by a conveyor system.

5.16 Policy MIN20: Haulage of opencast coal on the public road system to be along clearly defined haulage routes agreed with the Council. With the exception of the 'A' Class Roads throughout East Ayrshire, opencast operators will be required, at their own expense, to bring all roads used by their haulage vehicles up to an acceptable standard for haulage purposes, prior to the use of the route for dispatch purposes. Requirement for operators to pay for any necessary upgrading and maintenance of routes used by opencast traffic.

Contributions by the operator to the maintenance of public roads are secured through the existing Section 75 Agreement for the Greenburn site and this will be extended to encompass the Braehead Farm extension in terms of the consultation response received from the Roads and Transportation Service.

5.17 Policy MIN21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

- (i) to ensure the highest possible operational standards for the transportation of extracted minerals;
- (ii) to ensure best operational practice regarding road safety and operational matters;
- (iii) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes
- (iv) to audit and record operational details of the transportation of coal on a regular basis; and
- (v) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

The Council is currently formulating with the co-operation of the opencast operators, a 'Transportation of Coal by Road Protocol' addressing the above issues to which existing and potential opencast operators and their approved sub-contractors will be invited to subscribe.

The existing Section 75 Agreement for the Greenburn site contains an obligation in respect of this matter which will be amended to encompass the Braehead Farm extension.

5.18 Policy MIN23: 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 Braehead Farm development does not encroach within 500 metres of any community.

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

Although the overall lifespan of the Greenburn operation as extended by the proposed Braehead Farm extension would be a total of 12 years, it is considered that the proposal will not result in any perpetuation of disturbance to a local community given the location of the site and its relative remoteness from local

communities. The existing Greenburn operation has not resulted in any significant adverse disturbance to any local community primarily due to its relative remoteness. The operations to be undertaken will not exceed the 10 year timescale in itself.

Other impacts such as mineral transportation through local communities are considered to be entirely acceptable given that to date some 98% of the minerals recovered from the existing Greenburn operation have been dispatched via the dedicated railhead at Greenburn. In addition as indicated within this report there are significant local and community benefits to be accrued from the proposed development.

- (iii) the proposal is likely to be the subject of repeated extensions, perpetuating disturbance to local communities for a period substantially longer than 5 years.

The applicant has provided information based on current knowledge of the geology of the area. The scheme presented in this Braehead Farm development and the larger Greenburn South development represent what the applicant believes is the maximum that it can work given current environmental and economic constraints.

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

There will be no sensitive, individual properties lying within 500 metres of the working face of the Braehead Farm site outwith the control or ownership of the applicant.

5.20 Policy MIN25: 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;
- (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 dwellinghouse(s) or sensitive establishment concerned.

The Braehead Farm extension will not encroach within 500 metres of the residential community at Burnside. In addition, there will be no extraction of coal within 100 metres of any sensitive establishments outwith the control or ownership of the applicant.

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

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

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

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

5.23 Policy MIN30: In order to ensure that opencast operations do not have an unacceptable adverse impact on the visual amenity of the area, the Council will not be supportive of proposals which could be detrimental to the visual amenity and appearance of the 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 through the area. In particular, developments will not be considered acceptable where these would be detrimental to the landscape and scenic quality of:

- (iii) the open views obtained from the A76 trunk road and the A70

Given the location and relative isolation of the Braehead Farm extension site, its relationship to New Cumnock, and the proposed design and mitigation measures of the proposed development, the proposal will not intrude on skylines when viewed from New Cumnock or A-class roads. In addition, the proposal will involve no long term or irreparable damage to the landscape and quality of the area.

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

- (i) adequate mitigation measures can be implemented, to the satisfaction of the Council and SEPA to prevent any pollution to the water resource concerned: and
- (ii) any changes to the levels of surface and ground water, changes to river flows and changes to water quality can be demonstrated not to have an unacceptable adverse impact on natural habitats, water abstraction schemes, or to give rise to an unacceptable increase in flood risk.

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

5.25 Policy MIN32: The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an applicant to enter into an agreement with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997 in order to regulate, by agreement, such matters as cannot adequately be regulated by the imposition of planning conditions.

The existing Greenburn opencast site is the subject of a current Section 75 Agreement that would be extended and amended to encompass the proposed Braehead Farm extension.

5.26 Policies MIN33 and MIN34: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

The applicant is currently a contributor to the Mineral Trust Fund in respect of the existing Greenburn opencast site and would contribute in respect of the Braehead Farm extension.

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

The existing Greenburn opencast site is subject to a Section 75 Agreement encompassing the above matters and appropriate amendments to this Agreement would ensure that safeguards to site restoration and aftercare would be in place for the Braehead Farm extension.

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

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

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

Consultation Responses

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

Scottish Planning Policy

6.3 At a national level, government policy in relation to surface coal mining is contained in the new consolidated Scottish Planning Policy published in February 2010. Within an agenda of sustainable development and environmental justice, the SPP recognises that Scottish coal output is likely to continue to play a significant role in ensuring diverse and sustainable supplies of energy at competitive prices. It recognises that although development can raise significant environmental issues, 'extraction is necessary and important in the national interest'. The SPP indicates that it is for planning authorities to identify in their Development Plans areas where opencast coal extraction may be acceptable. A requirement to review identified search areas and consider new search areas through the Development Plan process is imposed on local authorities. The SPP also indicates the various environmental and other factors which require to be taken into account in considering whether a proposed development is acceptable.

6.4 Many of the provisions of SPP relating to surface coal mining are already addressed within the adopted East Ayrshire Opencast Coal Subject Plan such as the proximity of workings to local communities, repeated extensions, cumulative landscape and visual impacts, protection of natural and built heritage and the preference for rail transport. Nonetheless SPP

indicates that Planning Authorities should use their development plans to identify areas where opencast coal extraction may be acceptable. There should be a presumption against development outwith these areas.

The adopted East Ayrshire Opencast Coal Subject Plan has identified Potential Coal Extraction Areas and in this regard approximately 78% of the Braehead Farm extension development lies within such an area. However, it should be noted that having assessed the site against the criteria for identification of the Potential Coal Extraction areas in the Opencast Coal Subject Plan, the remaining area has been excluded primarily on the basis that information provided by the British Geological Survey did not indicate the presence of coal reserves within this part of the extension site. It has not been specifically excluded for landscape, environmental, nature conservation or built heritage reasons.

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

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

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

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

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

It is therefore considered that both tests are satisfied in assessing the Braehead Farm development.

Planning Advice Notes

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

Planning History

6.7 Planning permission for the extraction of 3.5 million tonnes of coal by opencast method from the application site was granted on 06 August 2002

under planning application 00/0793/FL. Full permission was also granted at that time for the construction and operation of a new dedicated railhead and rail link to serve the proposed opencast site (02/0177/RM dated 10 May 2002).

6.8 Planning permission for a variation of conditions 7 and 35 of consent 00/0793/FL to allow the formation of a vehicle underpass within the application site was approved on 10 October 2003 (Ref. No. 03/0746/FL).

6.9 Planning permission for a variation to condition 39 of consent 00/0793/FL to allow extended haulage hours between the excavation area and the coal processing area was approved on 25 June 2004 (Ref. No. 04/0263/FL).

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

6.11 Planning permission for an extension to excavation limits was approved on 13 April 2006 (Ref. No. 05/0452/FL).

6.12 Planning permission for the recovery of minerals other than coal at the Greenburn site was approved on 13 April 2006 (Ref. No. 05/0583/FL).

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

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

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

6.16 Planning permission for an extension to the Greenburn site (Dalgig Farm Extension – alternative scheme) was approved on 19 August 2008 (Ref. No. 07/0908/FL).

6.17 The Southern Local Planning Committee on 13 August 2010 resolved to approve a planning application for an extension to the Greenburn site (Greenburn South) subject to a Section 75 Agreement which, to date, has not been formally concluded (Ref. No. 09/0906/PP). It should be noted that this application was notified to and subsequently formally cleared by the Scottish Ministers.

Representations

6.18 It is considered that the points of objection are either not of sufficient weight to justify refusal of the application or raise matters that can be addressed by imposition of conditions or by means of obligations secured by a Section 75 Agreement.

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

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

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

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

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

- At the local level, the proposed extension would make a direct contribution to the East Ayrshire economy through the sustained employment of the current 107 staff and personnel directly employed in the surface mining operations. The majority of the staff employed in the operations lives within the communities of East Ayrshire. The proposed extension would also contribute to the sustained indirect employment in the local area for numerous workers and subcontractors.***
- The retention of employment is considered to be of overriding public interest in the current economic climate.***
- The proposed development presents what is likely to be the only opportunity to extract the 1.5 million tonnes of coal which underlie the extension area. If the coal is not worked as part of this current scheme an undesirable consequence may be that the coal is permanently sterilised. National planning guidance in SPP cautions against the sterilisation of coal reserves.***

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

Test 2: “that there is no satisfactory alternative”

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

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

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

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

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement to amend the existing Section 75 Agreement for the site to include the Braehead Farm extension area and as required to be amended by the terms of this report. In addition, formal procedures will require to be undertaken to promote the temporary stopping up of the existing U720 Dalricket Road and the suspension of the claimed Right of Way under the Town and Country Planning (Scotland) Act 1997.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan albeit that it represents a technical departure from Policy MIN3. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

8.2 The proposal represents a significant extension to the existing consented site at Greenburn. It will involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. In addition, the proposed development has not attracted any significant level of objections. It is considered that, given the relatively remote and sparsely populated area in which the existing Greenburn site and the proposed Braehead Farm extension site are located, the proposal to extend the existing consented site will not have any significant adverse effects on any local community.

8.3 The existing Greenburn operation provides full time employment for 103 staff, operatives and contractors. All of these jobs will be maintained throughout the additional four and a half year working life of the proposed Braehead Farm extension. The development will provide an additional 1.5 million tonnes of high quality coal for use in the national energy market. As such, the development will contribute in a meaningful sense to achieving the government's stated objective of Scottish coal playing a significant role in ensuring diverse and sustainable supplies of energy at competitive prices.

8.4 The detailed design, operational characteristics, phasing and proposed mitigation measures of the proposed development have all been planned to minimise the potential impact of the proposed development and to ensure that the restoration and aftercare works provide an enhanced ecological and landscape legacy. The comprehensive Environmental Statement provides a full analysis of the potential impacts of the proposed development.

8.5 Consideration has been given to current planning policies at national and local level. It is considered that in all respects bar the identified discrepancy in relation to the extent of the designated Potential Coal Extraction Areas, the Braehead Farm surface mine proposal accords with related policy and guidance at national government, Structure Plan and Local Plan levels. Given the positive benefits which will arise from the proposed development, particularly the continued employment and economic benefits which will accrue for the local area, there is a justification for granting planning permission for the proposed development.

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

Section 75 Agreement

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

- (a) The applicant completing, at their expense, road improvements identified along the haulage route in conjunction with East Ayrshire Council, in order to ensure the road is maintained in a safe and serviceable condition. The applicant shall also agree an ongoing road maintenance contribution of £0.15p per tonne of mineral hauled via the public road system, to continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route (U720/U719/C36) between the site access and the A76.
- (b) The carrying out of a joint annual detailed inspection of the route U720, U719 and C36 to identify any programmed remedial work required to be done due to deterioration of the road surface. The work identified could comprise of re-surfacing, including lengths at property frontages, potholing, patching, edge strengthening, kerbing, drainage/verge repair work, road markings and additional signage.
- (c) The applicant shall pay all costs associated with the formal temporary closure of the U720 road including the provision of turning points at each end of the road closure and any signage required for alternative routing during the period of closure. On completion of site works, the road will require to be reinstated to East Ayrshire Council standards and Road Construction Consent will be required to allow it to be re-adopted as a through public road.
- (d) The provision of signage and road markings on the B741, at the applicant's expense, prior to the closure of the U720 road. The applicant must provide two vehicle activated speed warning signs for 'pedestrians in the road' at Roadside on the C36 public road at their own expense.
- (e) On completion of site works, the road will require to be reinstated to East Ayrshire Council standards and Road Construction Consent will be required to allow it to be re-adopted as a through public road.

(ii) The subscription of the applicant to the Council's Transportation Protocol to provide for agreement on routing, timing and marking of vehicles for minerals won within the Braehead Farm site transported on the public road network within East Ayrshire;

(iii) The total mineral haulage from the site on the public road system must not exceed that consented to previously (i.e. 80,000 tonnes per annum) at an average daily rate of 12 to 16 HGV's per day as indicated in the Environmental Statement;

(iv) The extension of the remit of the existing Greenburn Technical Working Group to embrace the proposed Braehead Farm extension;

(v) The monitoring of the restored Greenburn and Greenburn extension sites through to the final aftercare period ending during 2021, as overseen by the Greenburn Technical Working Group;

(vi) The production of a comprehensive Conservation Management Plan for the comprehensive Greenburn complex as extended by the Braehead Farm extension, this plan to be agreed by the Greenburn Technical Working Group;

(vii) The preparation of a Protected Mammals Management Plan (PMMP), as approved by the Planning Authority to cover the impacts on protected mammals (otters, bats, barn-owls,) arising as a result of the Braehead Farm development. This PMMP shall be agreed with SNH prior to the commencement of works and shall include, in relation to the timing and phasing of operations:

- The undertaking of a bat survey prior to the demolition of any building or removal of trees.
- The undertaking of an otter survey prior to any works excavating the streams.
- The undertaking of a barn owl survey prior to any works. The applicant will also be responsible for erecting barn-owl nesting boxes, which must be well designed and erected within 200 metres of existing or identified roost/nest sites, at least 30 days before any works commence on site.

Such surveys and associated mitigation proposals shall be undertaken in cognisance of the comments of SNH in its consultation response dated 31 August 2010;

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

- agreeing monitoring for the PMMP and reporting results to the TWG;

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

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

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

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

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

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

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 is 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 8.6 of this report.

CONTRARY DECISION NOTE

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

Alan Neish
Head of Planning and Economic Development

22 September 2010
CG/HM

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form, Plans and Environmental Statement.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letter of representation
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (2007)
7. Previous applications 00/0793/FL, 03/0726/FL, 04/0263/FL, 04/0717/FL, 0605/558/FL, 06/0538/FL, 070211/FL, 07/0745/FL, 07/0908/PP and 09/0906/PP.
8. Scottish Planning Policy
9. PAN50 and Annexes.

Any person wishing to inspect the background papers listed above should contact Mr. Colin Graham on 01563 555482.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 10/0491/PP

Location	Greenburn OCCS, New Cumnock (Braehead Farm Extension)
Nature of Proposal:	Proposed recovery of coal using surface mining techniques with restoration to agriculture with nature conservation and improved public access.
Name and Address of Applicant:	Kier Construction Limited Tempsford Hall SANDY Bedfordshire SG19 2BD
Name and Address of Agent:	Per Mr Jonathan Hillier

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

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 Braehead Farm site, or by such other time as may be formally agreed in writing with the Planning Authority.**

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

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

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

3. Prior to any works commencing on site, the applicant shall prepare a groundwater monitoring plan developed through prior discussion and agreement with SEPA and submitted to the Planning Authority for approval in consultation with SEPA. The scope of the plan shall include:

- **The collection and interpretation of baseline data; the on-going collection and interpretation of data; the reporting mechanism of this interpreted data; and an on-going mechanism to secure appropriate mitigation of impacts to ensure protection of the water environment in perpetuity;**
- **The provision of additional information as requested by SEPA in its consultation response dated 07 September 2010.**
- **The arrangement and installation details of monitoring boreholes shall be approved by the Planning Authority in consultation with SEPA prior to operations commencing on site. Groundwater monitoring locations shall be required both up-gradient and down-gradient of the proposed excavation areas. It should be ensured that other monitoring points have been installed to adequate depths around the site to account for changes in water levels throughout the life of the works.**
- **The submission of a revised hydrogeological conceptual model following the provision of additional information.**
- **The completion of step 6 of the backfill risk assessment and the provision of a contingency plan produced in consultation with SEPA.**
- **Details of the decommissioning of groundwater boreholes destroyed by ongoing excavation operation.**

REASON – In the interests of environmental protection.

4. Prior to any works commencing on site, the applicant shall provide an updated Flood Risk Assessment to demonstrate that the proposal will have no increase in flood risk or that any increase in flood risk can be managed effectively to ensure no material increase in risk to properties. This assessment must be developed through prior discussion and agreement with SEPA and submitted to the Planning Authority for final approval in consultation with SEPA.

REASON – In the interests of environmental protection.

5. Prior to any works commencing on site, the applicant shall submit to, and have approved by the Planning Authority, in consultation with SNH, SEPA and the Greenburn Technical Working Group, information regarding the following matters:

- Details on the location and types of wetlands likely to be impacted on;
- Details of proposed mitigation measures and restoration/recreation options for any such impacted wetlands;
- Details of habitat creation, restoration and translocation proposals and subsequent monitoring of thereafter;
- A Habitat Survey;
- A National Vegetation Classification Survey (including a detailed map);
- An assessment of impact on the wet modified bog;
- Information on the dependency of wetland habitats on high groundwater levels;
- Details of the amount of excavated peat, storage methods and proposed re-use options; and
- All borehole logs will require to be submitted to SEPA for consultation.

REASON – In the interests of environmental protection.

6. **The range of mitigation measures with respect to all protected species as identified in the Environmental Statement (Kier Construction Limited dated May 2010: Braehead Farm: Addendum to Greenburn South) shall be adopted and implemented in full to the satisfaction of the Planning Authority.**

REASON – In the interests of environmental protection.

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

REASON – In the interests of environmental protection.

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

REASON – In the interests of environmental protection.

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

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

10. **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.

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

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

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

REASON - In the interests of amenity.

- 13. Except in the case of emergency and with the prior agreement of the Planning Authority, the hours of operation for the Braehead Farm site shall be confined between 07:00 hours on a Monday through to 16:00 hours on a Saturday (24-hour working). No works shall take place on Sundays or recognised Public Holidays with the exception of essential site maintenance works only.**

REASON – In the interest of residential amenity.

- 14. Except in the case of emergency and with the prior agreement of the Planning Authority, the dispatch of coal and other minerals from the site by road shall be confined to between the hours of 08:00 and 17:00 hours Mondays to Fridays (excluding the hours of 08:00 to 08:30 and of 15:00 to 15:30 during school term times). 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

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

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

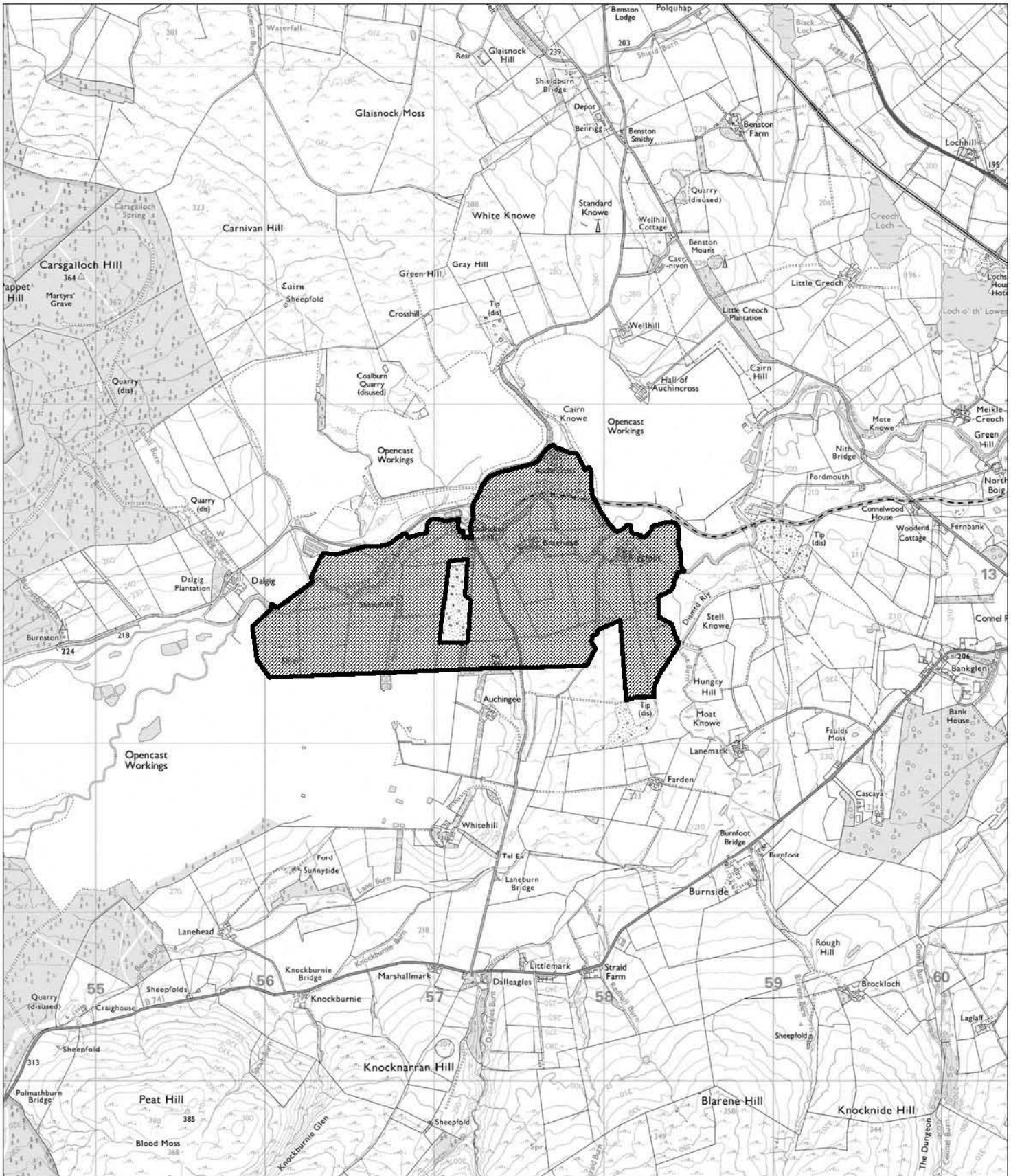
NOTE TO APPLICANT:

1. Any new accesses onto the public road system will require to be agreed in writing with the Council and meet the requirements of the Design Manual for Roads and Bridges in terms of visibility and construction.

REASON FOR THE DECISION

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

Furthermore, there are no material considerations in respect of this application that would suggest refusal of the application.



Title/Location **Braehead Farm OCCS**
New Cumnock
Application No. 10/0491/PP

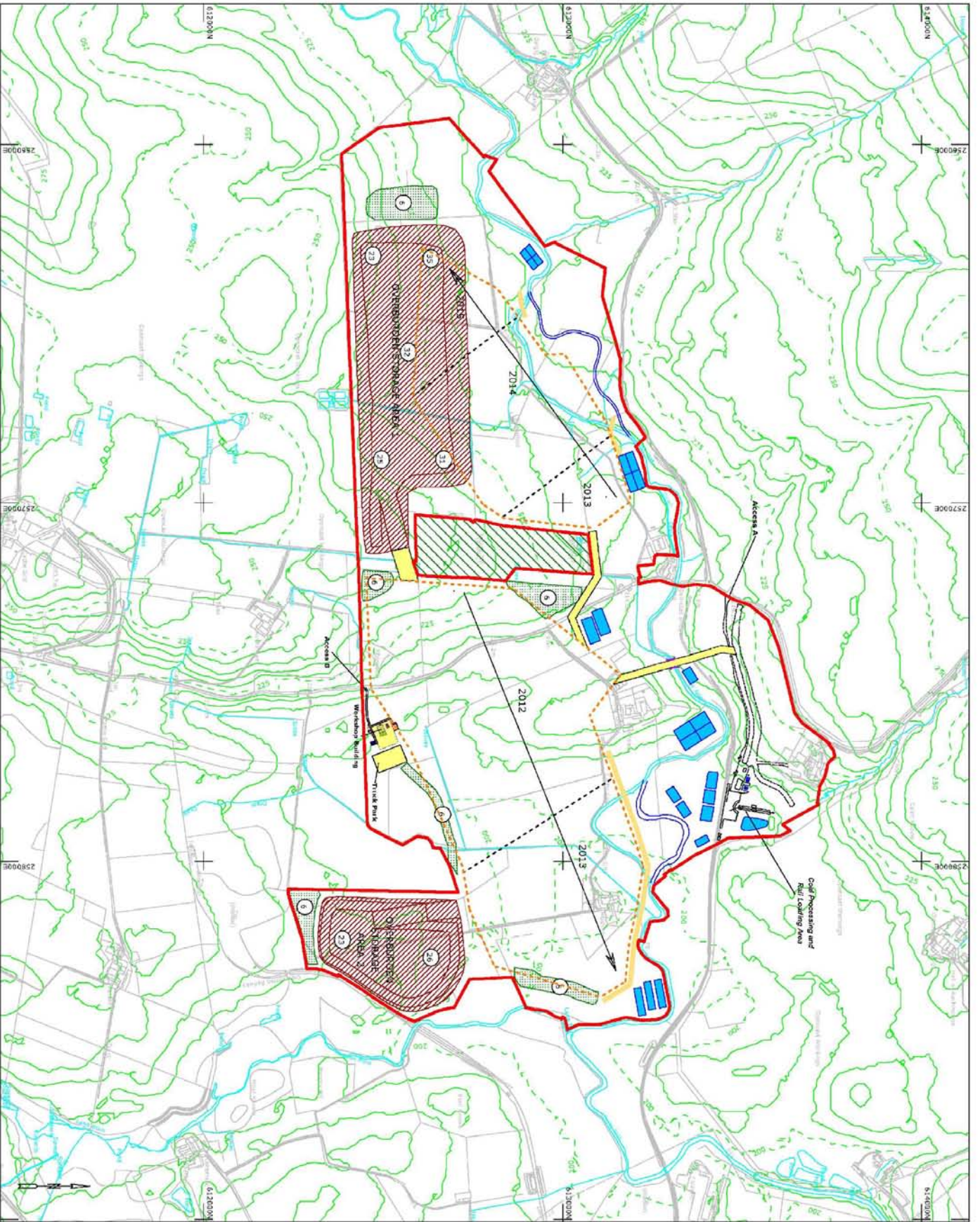
East Ayrshire Council
Department of Neighbourhood Services
 Planning & Economic Development Service.
 6 Croft Street
 Kilmarnock KA1 1JB
 Tel: (01563) 576790 Fax: (01563) 576774
 E-Mail : Planning@east-ayrshire.gov.uk



Key  **Application Site**

Com Date: 01/10/2010

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LEGEND

- Project Boundary
- - - - - Annual Mining Blocks
- - - - - Limit of Excavation - Proposed Development
- Watercourse Realignment (Permitted)
- Indicative Heritage Route
- Food Barrier
- Crossing Point
- Original Ground Level Contours
- Water Treatment Areas
- Soil Storage (reuse/visual attenuation)
- - - - - Overburden Storage Area
- - - - - Dairies Coup

- General Direction of Working
- 5 Indicative Height of Storage Area

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BRAEHEAD FARM
INDICATIVE SITE PLAN
CONCEPTUAL LAYOUT

Author	CT	Checked	JM
Date	20-May-2010	Scale	1:10000 @ A3
Project No.	02250/BRES/0201	File	



Kier Mining
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