

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 04 SEPTEMBER 2009

08/0932/FL: VARIATION OF CONDITIONS 1, 19 & 20 OF PLANNING PERMISSION CD/95/0058/MIN (AS AMENDED) RELATING TO THE OBLIGATION AND RIGHTS ON, AND RESTORATION OF, THE FORMER DARNCONNER OCCS BY AUCHINLECK

APPLICATION BY VIRIDOR WASTE MANAGEMENT (SCOTLAND) LTD

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 As a consequence of the Council's decision to refuse consent for landfill operations the Developer has submitted an alternative restoration scheme that promotes the void being retained as a water feature.

1.2 The relevant planning conditions which require to be varied relate to planning application CD/95/0058/MIN (approved on 11 September 1996). Condition (1) was amended by 00/0228/FL (approved on 12 April 2006) and currently reads as follows:

(1) That the development hereby permitted shall enure for the benefit of VWM (Scotland) Limited or its legal successor only; that it shall be commenced within six months of the date of the issued decision and that the approved operations shall be completed within 10 years of the commencement of the date of the operations or at such other time as may be agreed with the planning authority.

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

The applicant has requested that this condition be amended to the effect that the planning permission no longer enures for the benefit of Viridor Waste Management (Scotland) Limited or its legal successor only.

1.3 Condition 19 states:

(19) That the site shall be progressively restored in accordance with the scheme submitted as part of the planning application and which is detailed in the Environmental Statement and the supporting letter from S.B. Minerals dated 1st June 1995; that the scheme shall include provision for the service area and civic amenity centre to be restored to a suitable condition; the

restoration of the remaining area of the site for agriculture, forestry, nature conservancy and wetland area, or other appropriate uses as approved by the planning authority; that the restoration scheme shall also include the reinstatement of any access roads/rights of way and the procedures for the replacement of sub-soil and top-soil shall generally accord with those indicated in the Environmental Statement and to the satisfaction of the planning authority.

REASON: To ensure that the site is restored in a satisfactory manner.

The variation to this condition would remove the provision of the service area and civic amenity centre. The restoration of the site would maintain areas of wetland and nature conservation (including woodland and grassland) but does not include forestry or agriculture. The scheme includes provision for improving the surface of the access across the site to Tarmac Loch to the east. The placement of some top and sub soils has been undertaken previously, however now it is intended to retain the existing mounds, which are substantially re-vegetated; these include top and sub soil mounds and therefore this part of the condition will be varied.

1.4 Condition 20 states:

(20) That the restored site shall be progressively landscaped in accordance with the scheme submitted as part of the planning application and which is detailed in the Environmental Statement and the supporting letter from S.B. Minerals dated 1 June 1995, and that the landscaped areas shall be subsequently managed to the satisfaction of the planning authority.

REASON: To ensure that the site is restored in a satisfactory manner.

The variation of this condition is required as the site will no longer be restored in accordance with the schemes previously submitted and because there has been no importation of wastes to achieve the necessary contour levels. The variation is required to provide a scheme that is based on the landform currently existing at the site.

1.5 The key elements of this variation are required for both conditions and the approach to landscaping, restoration and aftercare management has been detailed in the planning statement which accompanied this planning application submission.

2. RECOMMENDATION

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

3. SUMMARY OF ANALYSIS

3.1 As indicated in Section 5 of this report, there are no specific policies within the Development Plan which relate to the suitability of restoration and aftercare proposals associated with a former mineral extraction site, although it is considered that the application is consistent with the spirit of the policies within the EAOCSF relating to restoration. In such circumstances, greater weight should be attached to the material considerations relevant to the application. As is indicated in Section 6 above, there are material considerations relevant to this application and in many respects the material considerations insofar as planning history and nature conservation interests are concerned would tend to be supportive of a scheme which would reclaim former mineral surface workings to after-uses that fall into the broad category of amenity.

3.2 The reclamation of surface mineral workings can often provide substantial opportunity to improve landscapes and habitats, expose earth science interest and enhance access and recreation provisions for local communities. This can involve the creation of:-

- formal and informal recreational areas;
- woodland;
- grassland;
- geological exposures;
- reed beds;
- open water; and
- watercourses.

3.3 Whilst it is noted that the proposed development has attracted objections and concerns from both local Community Councils, the current approved and therefore the only enforceable restoration scheme (i.e. in accordance with planning application reference 95/0058/MIN) cannot be achieved without landfill taking place given the present condition of the site.

3.4 The area of land associated with the landfill void equates to approximately 12.1 hectares and has the capacity to accept approximately one million cubic metres of waste. The applicant originally had consent to fill this void with solid, controlled, domestic, commercial and industrial waste at a rate of 100,000 tonnes per year over a 10 year period. Overburden would be used for cell engineering, haul roads etc. Required to develop the void for land-filling and the soils would be used for the final restoration over the engineered cap of the landfill.

3.5 On the basis of the height and footprint of the available soil and overburden mounds, it is estimated that on site at present there is approximately:-

- 190,000 cubic metres of overburden; and
- 35,000 cubic metres of soils

On this basis it is clear that there is insufficient available material stored above ground to produce an effective dry land restoration scheme as the volume of available material would only provide 22% of the material required to fill the void. Taking account of the deficit of materials and assuming that the available soils would be used for final restoration, it is estimated that a minimum of 800,000 cubic metres of material would have to be imported to the site to achieve an alternative to the wetland scheme proposed by the applicant. If this comprised of imported inert materials, it is anticipated that infilling would take a minimum of 15 years to complete and would result in associated impacts similar to that associated with the original scheme for landfill reclamation.

3.6 In addition, at this stage it is not known whether there are risks associated with surface water contamination from using overburden to fill the water void. In terms of soil mounds it is not considered good practice to place soils in surface water due to the potential for depletion of oxygen in the water and therefore, this material should only be used for restoration to dry land.

3.7 Since members refused the recent application to extend the life of the landfill site, the applicant has been pro-active in appointing Environmental and Legal Consultants to come up with solutions for achieving the restoration of the site. After refusal of planning consent to allow the site to be used for landfill purposes, the applicant did not exercise their right of appeal to the Scottish Ministers, but instead sought further meetings with the planning authority to discuss an alternative restoration scheme that would see the void being retained as a water feature to an after-use that is in keeping with the area and involves minimal disruption to the environment, whilst maintaining habitats that are establishing naturally. This proposal therefore builds upon the existing areas that have naturally recolonised.

3.8 There now appears to be conflict within the representations /consultations received concerning site restoration where some objectors wish to see the site fully restored while others would wish the water-body being retained and the site left to 'naturalise'. The submitted scheme represents a good and reasonable practical solution to returning this site to beneficial after-uses without causing major disruption in the area, given the circumstances of the temporary consent for landfill, and that, with the implementation of restoration and aftercare, the site can be improved for wildlife and nature conservation. The restoration scheme therefore provides a solution to guarantee the restoration of this site, which should in time make a positive contribution to the environment and nature conservation interests in the area.

3.9 Refusal of this present application would have significant consequences for the restoration of the site and may potentially impact on the ability of the Council to call in the restoration bond.

3.10 In respect of all relevant matters and material considerations to be taken into account, it is considered that the revised proposals for restoration of this site are acceptable and it is considered that the application should be

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

Section 75 Agreement

(i) The existing legal agreement will require to be discharged to the effect and intent that it shall be deemed 'pro non scripto' as from the date when a new minute of agreement comes into effect.

(ii) Viridor Waste Management (VWM) shall obtain and deliver to the Council, a new performance bond from Barclays Bank PLC or another recognised financial institution, which shall remain in force until the restoration obligations have been complied with or discharged, or such other time as may be agreed between the Council and VWM.

(iii) The new restoration bond shall be in the sum of eighty five thousand pounds (£85,000) or such other sum as may be agreed in writing between the Council and VWM. The new performance bond shall provide for the sum to be reduced to twenty two thousand five hundred pounds (£22,500) following completion of the restoration obligations; further reduced to fifteen thousand pounds (£15,000) on the first anniversary following the completion of the restoration obligations and further reduced to seven thousand five hundred pounds (£7,500) on the second anniversary following completion of the restoration obligations. The new performance bond will formally be discharged on the third anniversary following completion of the restoration obligations to the satisfaction of the Council as planning authority.

(iv) In the event of a failure by VWM to perform the restoration obligations within one year of the date of planning approval, the Council shall, by written notice, intimate such failure to VWM. The notice shall describe the nature of the breach of the obligations, the steps required to remedy the breach and the timescales within which the remedial steps require to be taken.

Alan Neish
Head of Planning and Economic Development

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

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Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation as the Head of Planning & Economic Development under Section 43A(6) of the Planning etc Act 2006 concluded that the application raises significant issues for the treatment and restoration of the site as well as financial implications; collectively meriting determination at committee.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 3.5 km north of Cumnock, 3 km south east of Auchinleck and is located immediately west of Darnconner Farm. The application site accesses directly onto the C22 Commonloch Road which in turn accesses onto the A70 Cumnock – Muirkirk Road. The site at present is split into two main areas which are separated by the access track to Darnconner Farm. The larger of the two, the 'west site' (22.9 hectares) which lies to the west of the track comprises the former opencast void (approximately 12.1 hectares) is currently full of water and represents a significant water body in the locality. The portion of the site to the east of the track, the 'east site' (8.3 hectares), is for the most part opencast backfill, this area also incorporates an overburden storage mound which is approximately 20 metres high. The site is effectively un-restored although other parts of the former opencast coal site have been restored.

2.2 Planning permission for a landfill waste disposal site for controlled waste and the formation of a Civic Amenity Centre was previously approved by East Ayrshire Council on 11 September 1996 under planning application CD/95/0058/MIN. This approval was subject to a Section 50 Agreement under The Town and Country Planning (Scotland) Act 1972 including a site restoration bond in the sum of £875,000. The consent granted for the development was also personal to the applicant at that time, S.B. Minerals. Although the planning permission for the landfill site was effectively commenced in March 1997 through the carrying out of engineering work at

the site in preparation for the reception of waste, no landfill operations have taken place, with no formal waste management licence having been obtained for deposition of controlled waste.

2.3 Planning permission (Ref. No. 00/0228/FL) for a Variation of Condition 1 of this consent to allow a transfer of the personal consent from S.B. Minerals to VWM (Scotland) Limited was approved on 12 April 2006. The Council currently holds a replacement restoration bond for the site from Viridor Waste Management in the sum of £875,000.

2.4 Planning permission (reference number 06/0480/FL) to amend condition one of planning consent CD/95/0058/MIN to extend the life of the planning consent to allow for a further 10 year period for landfill operations to take place was refused by the Council on 13 June 2008 for the following reasons:-

- *There is sufficient approved landfill capacity within East Ayrshire at this time;*
- *That with the drive to reduce waste to landfill through the National Waste Strategy, it is the view of the Council that the completion of landfill operations, with no presently identified waste streams, could not be undertaken to secure final restoration of the Darnconner site within 10 years; and*
- *That as the Darnconner site has been disturbed and has remained un-restored for a period in excess of 20 years; a further 10 year period of potential landfill operations would represent an unacceptable further delay in the restoration of the site.*

2.5 **Existing Site:** Title plans show a narrow strip of land along the southern boundary of the eastern part of the site (between Auchinleck Burn to the east and the access track to Darnconner Farm to the west) as being land over which third parties can exercise rights of access. Fencing along the Darnconner access track, which runs alongside a remnant hedgerow and drainage ditch, and an area of marshy grassland suggest that any access rights which do exist have not been enforced for a long period of time.

2.6 Vehicular access in to the eastern site is via a strip of land connecting to the public road passing Common Farm. This is shown on title plans as within which Viridor Waste Management have a servitude right of access. Access is however restricted by the fishing club based at nearby Tarmac Loch, who holds the keys to the vehicle gate off the public road. This gate is usually kept locked. The access track to Tarmac Loch shares its first 100m with land within the Viridor right of access, before diverting to the north-east.

2.7 **Proposed Development:** As a consequence of the Council's decision to refuse consent for landfill operations the Developer has submitted an alternative restoration scheme that promotes the void being retained as a water feature.

2.8 The relevant planning conditions which require to be varied relate to planning application CD/95/0058/MIN (approved on 11 September 1996). Condition (1) was amended by 00/0228/FL (approved on 12 April 2006) and currently reads as follows:

(1) That the development hereby permitted shall enure for the benefit of VWM (Scotland) Limited or its legal successor only; that it shall be commenced within six months of the date of the issued decision and that the approved operations shall be completed within 10 years of the commencement of the date of the operations or at such other time as may be agreed with the planning authority.

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

The applicant has requested that this condition be amended to the effect that the planning permission no longer enures for the benefit of Viridor Waste Management (Scotland) Limited or its legal successor only.

2.9 Condition 19 states:

(19) That the site shall be progressively restored in accordance with the scheme submitted as part of the planning application and which is detailed in the Environmental Statement and the supporting letter from S.B. Minerals dated 1st June 1995; that the scheme shall include provision for the service area and civic amenity centre to be restored to a suitable condition; the restoration of the remaining area of the site for agriculture, forestry, nature conservancy and wetland area, or other appropriate uses as approved by the planning authority; that the restoration scheme shall also include the reinstatement of any access roads/rights of way and the procedures for the replacement of sub-soil and top-soil shall generally accord with those indicated in the Environmental Statement and to the satisfaction of the planning authority.

REASON: To ensure that the site is restored in a satisfactory manner.

The variation to this condition would remove the provision of the service area and civic amenity centre. The restoration of the site would maintain areas of wetland and nature conservation (including woodland and grassland) but does not include forestry or agriculture. The scheme includes provision for improving the surface of the access across the site to Tarmac Loch to the east. The placement of some top and sub soils has been undertaken previously, however now it is intended to retain the existing mounds, which are substantially re-vegetated; these include top and sub soil mounds and therefore this part of the condition will be varied.

2.10 Condition 20 states:

(20) That the restored site shall be progressively landscaped in accordance with the scheme submitted as part of the planning application and which is detailed in the Environmental Statement and the supporting letter from S.B. Minerals dated 1 June 1995, and that the landscaped areas shall be subsequently managed to the satisfaction of the planning authority.

REASON: To ensure that the site is restored in a satisfactory manner.

The variation of this condition is required as the site will no longer be restored in accordance with the schemes previously submitted and because there has been no importation of wastes to achieve the necessary contour levels. The variation is required to provide a scheme that is based on the landform currently existing at the site.

2.11 The key elements of this variation are required for both conditions and the approach to landscaping, restoration and aftercare management has been detailed in the planning statement which accompanied this planning application submission.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Scottish Natural Heritage has no objection to the restoration proposals but make the following comments:-

All works must be carried out with all due consideration given to protected species such as bats, otters, badgers and breeding birds.

Noted.

3.2 SNH welcomes the proposals to soften some of the contours at the site but is disappointed that this work is to be very limited in extent. SNH recommends that further work is carried out which would create beach-like features of graded, shallow water around more of the edges of the main water-body. These features would eventually become vegetated and provide a useful habitat for wildfowl.

The final void at Darnconner has been partially engineered to provide a suitable slope for landfill construction, and this is evident on the south west margin of the water body, where there are beached/shallow water areas. However, within the remainder of the void, the original opencast void has been left unaltered. This means that the first bench would be in the order of 15m depth (below the water level). This bench is likely to be in the order of 5m in width meaning that there is no practical method of backfilling the edge of the water body to create more shallows. It is likely that material tipped into the water would sink to the bottom of the void and make little or no practical impact on the

restoration objective. This approach would require an enormous amount of inert material, the large majority of which would need to be imported onto site (assuming it could be sourced) to create any further graded slopes. It is considered that the disturbance and disruption to the area i.e. lorry movements, would negate the potential benefits.

3.3 At the moment the water body appears to consist primarily of deep water with little or no vegetation and the site is unlikely to become a wildlife haven of some quality unless more shallow water areas are created, and with, ideally, a flat-topped island upon which birds could nest safely.

The final void at Darnconner is relatively deep, thereby making it suitable for land-filling as originally intended through the previous consent CD/95/0058/MIN. Islands are relatively simple to construct in shallow water bodies, for example sand and gravel excavations, up to 5m or 6m in depth, where back-fill material can be used for the construction of islands during the operational life of a sand and gravel mineral working. However, in the case of Darnconner, as can be seen by the landform in general, there are areas adjacent to the water body that have been backfilled and areas of original ground that have soil stockpiles on them. The water body itself was designed and retained as a void suitable for landfill, with a minimal surface area and deep void that has subsequently filled with water. Therefore, similar to design of shallow margins, there is no practical method of constructing islands due to the depth of the water and, as a consequence, any deposited material would be spread out across the base of the water body. To achieve the objective of developing islands and shallow lake margins the whole water body would need to be backfilled by an inert landfill to a shallower level before stabilised areas could be created. This would need a landfill solution or the importation of enormous amounts of inert material to resolve such a restoration objective.

3.4 We believe that there is a good opportunity to create a quality wildlife haven and the opportunity ought to be made the most of.

Taking the above points into account, the submitted scheme still has the objective of increasing the wildlife potential of the areas around the water body through a combination of re-vegetation and grazing control, whilst leaving the water body such that it could be developed in the future for informal leisure uses. The use of soils from the stockpile would have limited or possibly no practical value in creating either beached areas or islands due to a combination of the geometry of the opencast void and depth of water that would need to be backfilled to develop shallows etc.

3.5 East Ayrshire Woodlands considers the overall proposal to be of a significantly reduced scale and ambition. Other than minor earthworks and small scale woodland planting the bulk of the restoration objectives is met through a non-intrusive approach. Other comments raised are as follows:-

It is recommended that consideration be given to forming broad land reclamation 'rigg & furrow' features to facilitate woodland establishment on the compacted flat landscape of the east site. These are generally 30m wide and 1.5m at the centre, giving a side slope gradient of approximately 6". Whilst this can be achieved using bulldozers it is better constructed using excavators to minimise re-compaction of the disturbed material.

This is an alternative to forestry ploughing into 400mm of loose tipped soil. The applicant has accepted that by using this technique a greater depth of soil can be placed in the rig, although lateral root growth will be curtailed as a consequence of the design. Adopting this technique would require a similar volume of topsoil and can therefore be incorporated into the design. The applicant has agreed to increase the available depth of soils for planting rooting, by initial placement of 400mm of subsoil. This would create an overall depth of soil of 700mm to 800 mm within the rig and furrow.

3.6 If good quality soil is imported and spread to the depth indicated then the issues of poor fertility, particularly low nitrogen, and lack of organic material will be addressed. Mineral sites such as Darnconner with heavy clay soils tend to become waterlogged in winter and experience drought in summer. Organic matter is important in managing soil moisture and sustaining soil living organisms that will continue to aerate the growing medium in the future. Where soil/organic material are not introduced a mineral fertiliser application will be necessary to promote tree growth on site.

This has been accepted by the applicant; the addition of fertiliser would be beneficial during aftercare. Indicative costs were based on the addition of fertiliser during aftercare, as additions should be repeated for each of the 2 years of aftercare and will now therefore be extended to 3 years.

3.7 The choice of species for 'native' woodland is a little unusual in that dogwood is not normally a component of any native woodland types found in Scotland. I would also highlight the proportion of aspen which although native to this area is relatively rare. I doubt whether it would be possible to produce transplants of local provenance. I would strongly recommend increasing the proportion of alder and birch (including silver birch) in the overall mix and, if pH is not particularly acidic, substituting ash for aspen. A stocking density of 2,500 trees/ha is fine but increasing this would promote earlier canopy and hasten the build up and recycling of leaf litter in the soil.

The removal of dogwood from the mix has been accepted by the applicant. The planting mix will be revised to take account of this

amendment by increasing the proportion of alder/birch in the woodland mix and where appropriate, introducing ash and aspen into the planting stock. The planting density for woodland will be a minimum of 2,500 planted stock per hectare.

3.8 The use of 0.6m tree shelter belts could be questioned. Whilst these give good protection from browsing by voles, rabbits and hares they are too short to offer protection from roe deer. Stray sheep may also present a problem for the establishment of trees if boundary fences are not secure.

The potential for deer damage is noted and the applicant has agreed that the tubes will now be doubled in height to 1.2m.

3.9 Planting is proposed on the southern half of the lower slopes to the eastern shore of the main water-body. The banking above the immediate shore is almost vertical and eroding/collapsing along its length. Rather than 'add soils to shallow lower slope' it would be more appropriate to grade the bank side to a more stable profile. There is also evidence that livestock graze the area around the water-body despite the applicant's assertion that groundcover will be maintained by continuing exclusion of livestock. Fences generally around the eastern perimeter and along the access track to Darnconner Farm are in poor repair. No mention is made in the proposal for erection/replacement of stock fences.

In order to undertake this aspect of the restoration, the upper edge of slope on the eastern shore of the water-body, which is steep with signs of erosion, could be re-graded by placing material onto the lower slopes with a long-arm of a 360 degrees excavator. This operation would add soil to the lower slopes, providing a slope suitable for planting, which in itself would help consolidate the slope. Conditions can be attached to any consent granted for the erection, replacement or maintenance of stock fences.

It is agreed that there is evidence of grazing within the site, although the stock fences appear to be in reasonable order. It is therefore likely that stock is being let into the site to graze and this can be controlled during the aftercare period.

3.10 The aftercare specification for woodland areas is insufficient. The use of herbicide is referred to only as a pre-planting treatment. Strimming between trees 3 times a year will not reduce competition between ground vegetation and trees, rather it will increase it. Furthermore use of mechanical cutting equipment is likely to give rise to high failure due to accidental damage to shelters and trees. I strongly recommend spot weeding with herbicide for at least 3 growing seasons. A residual herbicide such as propyzamide can be applied in the winter following the first growing season. A translocated herbicide such as glyphosate can be used in early summer to good effect.

Woodland planting maintenance regime (strimming) has been used at other opencast coal sites in East Ayrshire. The final detail may come down to the preference and skill of the contractor for individual sites. The aftercare scheme will be amended to use spot weed-kill around the base of planted trees. Viridor are willing to consider three years woodland maintenance as identified by East Ayrshire Woodlands.

3.11 More imagination could be applied to the diversification and enhancement of habitats within the site. There is evidence that hedges used to line the access road to Darnconner Farm. Consideration should be given to reinstating these features.

There are short sections of remnant hedgerow on the track to Darnconner Farm. These are well maintained however, to reinstate them along the eastern boundary of the 'western site' and along the western boundary of the 'eastern site' would require approximately 560 linear metres of additional planting.

3.12 Wetland habitats could be assisted in their development by transplanting appropriate established vegetation from one wetland to another.

Suitable transplanting of vegetation to the shallow margins of wetland will be undertaken as restoration works progress.

3.13 Scrub/thicket type planting could be used more extensively to tie in soil and spoil mounds with the planned and surrounding landscape of woodlands and naturally regenerated hawthorn on bings.

The area of scrub/thicket planting will be increased in size by a further 1.4 hectares to produce a thicker band of planting, with the aim of discouraging access to steep lake margins.

3.14 Mention is made of using stone and other suitable materials recovered within the site to improve the standard of the access track. Effort should be made to encourage recycling of rocks laying on the surface outwith the identified re-grading areas, particularly around the base of the main spoil heap.

The restoration scheme depends on the recycling of aggregate materials available within the site and this conforms to the approach identified by East Ayrshire Woodlands.

3.15 The Scottish Environment Protection Agency has no objection to the restoration proposals in principle, but would offer the following comments:-

SEPA would expect all necessary mitigation measures to be taken during the restoration works to ensure that the pollutants typically associated with this aspect of the works e.g. silts, concretes etc, do not enter the watercourses adjacent to the site.

The requirements raised by SEPA in consultation have been noted and can be integrated into the restoration programme, including:-

- ***Contractors will be required to accord with the Pollution Prevention Guidance Notes;***
- ***Prior to works on site SEPA will be contacted to discuss treatment of smaller surface water ditches and damming; and***
- ***Biodiversity issues have been considered by the applicant in the supporting statement and will be reviewed prior to commencement of any earthworks.***

3.16 The safety issues associated with leaving water in the opencast void do not fall within SEPA's remit. If however, as part of the restoration scheme it is decided that water is to be removed from the void, the applicant must obtain the appropriate authorisations from SEPA prior to works commencing on site.

The void will not be dewatered as a consequence of the restoration proposals and therefore a CAR licence will not be required for discharge of surface water.

3.17 East Ayrshire Environmental Health Division has no objection to the restoration proposals in principle, but states that any waste arising from the works should be disposed of to the satisfaction of the Waste Management authority, and otherwise than by burning.

Noted.

3.18 The Division further notes that soil-making materials are to be excavated and spread for woodland planting purposes. It is recommended that the source and type of materials be ascertained to ensure that no materials will be used which may give rise to nuisance conditions.

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

3.19 It is recommended that signage indicating the presence of deep water be erected at suitable points, to highlight any areas of danger to persons having access (both authorised and unauthorised) to the site.

A priority of the scheme is to prevent access to the steep section of the water body shoreline. This can be achieved by a combination of reinforcing the fencing (along the existing roadside boundary) and planting to develop a thorny scrub to discourage access. Conditions can be attached to any consent granted in relation to the requirement for signage.

3.20 Auchinleck Community Council has concerns about the application, in particular:-

We believe that the restoration bond for this site amounts to £850,000; if this is the case, a more ambitious restoration scheme could be achieved.

The Council holds a Restoration Bond of £875,000 provided by the applicant and it is accepted that the availability of such funds could result in the promotion of a more ambitious restoration scheme. However, the calling in of the restoration bond would require to be based on successfully enforcing the failure of the developer to restore the Darnconner site. Since the restoration of the site was dependent on landfill taking place, and that an extension to the timescale for such operations has recently been refused by the Council, this may raise some uncertainty about a successful outcome in calling in the bond. Indeed, the terms of the current bond would require the Council to fund and carry out restoration works and then attempt to call on the bond with no guarantee of successful outcome. While the restoration proposals submitted under the current application are more modest, they are not dependent on bond funds being available.

3.21 Top-soil and sub-soil mounds were retained to cover the site and should therefore be used for this purpose.

The soil storage mounds along the eastern boundary of the west site have a well established ground cover of grasses, rushes and forbs. Access to them by machinery for the potential recovery of their soils for use in other areas of the site is restricted by both the site boundary and the steep slopes above the water body, which make extensive removal dangerous. Due to the above reasons the applicant proposes to retain these soil mounds and their existing groundcover largely as they are, whilst removing sufficient soil (working from the southern end northwards) to facilitate restoration of 400mm of cover for woodland planting within the east site. Thorny scrub planting at either end of them should prevent potential access by livestock and therefore encourage natural regeneration to occur. Notwithstanding this there is insufficient material to infill the current void.

3.22 Access to the site has been denied to the general public due to health and safety issues; the roadway should therefore be reinstated per the terms of the original conditions.

There is no provision within the restoration proposals under the previous application CD/95/0058/MIN for the re-instatement of the tarmac road which leads to Darnconner Farm. However, the applicant intends rehabilitating the existing access track in order

to permit vehicular access. Material existing on and adjacent to the track will be used to fill potholes and hollows, with stone similar to type 1 forming the bulk of the fill. The final 80mm thick surface course will be formed from stone 20mm down arising from within the site. Thereafter, any loose-tipped material lying on the line of the access track will be bladed and spread onto the adjacent land lying to the north of the track.

3.23 The large overburden storage mound was a by-product of the opencast workings and is not a natural feature. We believe it should be used for its original intended purpose i.e. to fill-in the void.

Sections 8.5 and 8.6 of this report provide more details associated with using the overburden mound for in-fill purposes. In addition, groundcover on the existing overburden mound has established naturally and a varied flora is developing, the applicant proposes to retain this feature and to allow natural colonisation to continue. The visual impact of the landform feature will be mitigated by extending the recent plantations of Duncan's Wood so that woodland cover wraps around the tip to the north, east and south. Some woody species have begun to establish on the rougher textured western slope. Natural colonisation on the overburden tip has been allowed to occur as a result of the exclusion of sheep from the site. Maintaining this regime will allow the natural colonisation to continue in the future and with time, further establishment of woody species will help to break up the shape of the tip.

3.24 Wardell Armstrong state that the slopes on the east side of the void are a potential health and safety risk as there is extensive slippage and erosion. We believe that planting trees on top of this slippage would only increase the problem. Reconfiguration of the slopes seems to be the only solution to this problem.

The applicant intends to carry out limited grading to sweeten contours and lessen gradients as the steep slopes to the east of the main water body do present a potential health and safety risk. In order to prevent access to these areas by the public, the applicant proposes to plant native thorny shrubs at both the northern and southern ends. These would consist of naturalistic thickets which follow the existing contours and drainage courses which would link the eastern boundary of the west site with the waters edge. Thorny shrubs would also be used to block access along the western shore of the water body.

3.25 Cronberry, Logan & Lugar Community Council has welcomed the proposal to restore the site, but there were several areas in which it was felt that there were failings in the proposal and it is to these that the following objections are addressed:-

The proposal to leave the overburden mound is unacceptable. It does not conform to the previous landform and the proposal to 'disguise' it using trees will not result in it conforming to the present topography.

Please refer to 3.23 above.

3.26 In general the other areas of restoration, as described, are satisfactory but there are fears that the costings presented are not adequate for the scale of this project and these should be re-examined.

The outline costs to restore the site indicate that Viridor Waste Management will require a bond of £85,000 for a period up to the completion of restoration works, declining to £22,500 for the three year aftercare period (declining again by £7,500 after the first year of aftercare, again by £7,500 after the second year of aftercare, leaving a total of £7,500 for the final year of the aftercare period).

3.27 The original bond put in place for restoration was far in excess of the costings presented. If the project can be completed within this budget what will happen to the residue of this bond?

The £875,000 restoration bond held by the Council will remain in place and will only be reduced if the Committee approves this application. Any reduction in the bond amount can only be achieved through negotiating and agreeing a new Section 75 legal agreement with the applicant.

3.28 If there is a residual figure the Community Council feels that the restoration could be extended e.g. the removal of the overburden mound. It will not be acceptable to restore the site to the minimum standard while leaving the present owners benefiting financially. The community has lived with the disturbance of this operation and its aftermath for a very long time.

The restoration bond is essentially an insurance policy/financial guarantee to the value of £875,000. The only way the owners will benefit financially will be through possible reductions in the premiums paid to the company who underwrite the bond.

4. REPRESENTATIONS

4.1 In addition to the points raised by the Community Councils above a further letter of representation has been received from an adjacent landowner. The main concerns raised are as follows:-

Planting a few trees and erecting fencing is not going to be an improvement.

Woodland planting within the 'east site' is seen as the most practicable and effective way of mitigating the visual impact of the overburden tip whilst retaining the existing land-cover on the tip.

4.2 Erosion will occur due to the retention of water in the void.

It is considered that the planting of trees will assist in stabilising the ground around the margins of the water-body.

4.3 Why is the restoration bond not being used to infill the void?

The applicant has put forward these proposals after the Council refused planning consent for the site to be used for landfill purposes. If the Council refuse this application to change the conditions associated with the restoration of the site, formal enforcement action would require to be taken to secure restoration of the site to the satisfaction of the Council as planning authority. This course of action may involve 'calling-in' the restoration bond.

4.4 There is plenty of material on site which can be used for backfill.

There is material on site which will be used to improve the general appearance of the area.

4.5 The entire site is an eyesore. If Viridor get their way it will be in the same state in another 10 years time.

Since members declined to extend the life of the landfill site, Viridor has been pro-active in appointing environmental and legal consultants to design a reasonable, practical solution to returning the site to beneficial after-uses without causing further major disruption in the area. It is perhaps disingenuous of the objector to suggest that Viridor has not taken their restoration responsibilities seriously in preparing this application submission.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

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

Ayrshire Joint Structure Plan

5.2 There are no applicable policies within the structure plan relating to the suitability of restoration and aftercare proposals associated with a former mineral extraction site.

Noted.

East Ayrshire Opencast Coal Subject Plan (EAOCSF)

5.3 There are no specific development plan policies relating to the amendment of conditions on planning consents. However, as the site relates to a former opencast coal site, it is considered reasonable and appropriate to assess the proposals against relevant provisions of the EAOCSF. There are various policies in the plan pertinent to the application and relating to restoration activities. Policy MIN 15: All developers are required to restore their operational sites progressively to the highest possible standards. The use of restored land for specific agricultural, forestry, recreational and nature conservation purposes will be acceptable to the Council and applicants are encouraged to create wildlife habitats and wetland areas, if appropriate, within their restoration proposals. 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. Professional advice from Scottish Natural Heritage and other appropriate nature conservation bodies should be sought in this regard.

It is considered, albeit that the original approved restoration scheme cannot be implemented, that the applicant's amended proposal will deliver the opportunity for habitat improvement and enhancement, in line with the spirit of Policy MIN15.

5.4 Policy MIN 16: Developers are required, wherever possible, to divert and re-route any existing rights of way affected by proposed opencast operations and to ensure that any Rights of Way or other public footpaths disrupted by opencast operations are fully reinstated as an integral part of site restoration proposals. Improved public access and the provision of additional facilities for local communities in the restoration of opencast sites is also strongly advocated by the Council

It is the applicant's intention, to re-instate the former right of way that passes through the application site, as part of the amended restoration proposals.

5.5 Policy MIN 17: The Council will require all developers, as an integral part of a submitted planning application to submit detailed restoration and aftercare plans for the development site, including:

- The identification of those areas to be restored to particular end uses such as agriculture, forestry, wildlife purposes etc.
- An assessment of the existing landscape of the development site and its wider surrounding area.
- A detailed scheme showing how the restored site will be assimilated into the landscape.

- Details of the phasing, programming and implementation of the restoration scheme.
- Measures to enhance the environment, recreate landscape features, wildlife habitats and public access.
- Measures to treat surface and groundwater run-off.
- Detailed arrangements for effective aftercare of the site.

Detailed design of restoration features and implementation of the restoration and aftercare proposals will be made the subject of conditions attached to any issued consent and any other arrangements as may be considered appropriate.

The applicant has provided the details of the restoration scheme including aftercare. Furthermore conditions can be attached to any consent granted for the proposed development to address some of the concerns raised by the consultees.

5.6 Policy MIN 35: The Council will require all applicants for opencast coal developments to provide appropriate financial guarantees prior to the issue of any planning consent in order to ensure full restoration, reinstatement and aftercare of the site should, for any reason, works be abandoned prior to completion. A financial guarantee, provided by a recognised financial institution and reassessed at regular intervals will be considered appropriate with the amount lodged being calculated on the basis of a realistic assessment of the total costs of restoration of the individual site concerned at any particular time, the amount of disturbed land, the cost of providing for the detailed after-uses agreed for the site and appropriate costs of aftercare. The Council will require a regular assessment of restoration operations to be carried out by an independent consultant, selected through an appropriate tendering process and who is financed and funded directly by the opencast developer. The consultant will be required to provide the Council with an ongoing assessment of the degree of compliance with the approved restoration plans through the submission of updated restoration drawings and with a recalculated detailed assessment of restoration costs on a six monthly basis. The costs in meeting any shortfall in the agreed restoration requirements will require to be met in full by the developer through an appropriate insurance scheme or other method of funding as may be agreed with the Council. It will also be a pre-requirement of any agreement entered into in respect of the restoration of the site, that the Council is absolved of any liability if problems in the restoration of the site occur.

5.7 Policy MIN 36: On completion of all reinstatement, earth moving and engineering works associated with the restoration of the site and subject to all such works being carried out to the satisfaction of the Council, the Council will release the restoration financial guarantee. However, an appropriate guarantee will be retained by the Authority under the arrangements agreed for the lodging of restoration guarantees described in Policy MIN 35 above, to

cover a five year period within which the operator will be required to carry out any prescribed aftercare works including the provision of site drainage, landscaping, seeding, reinstatement of Rights of way, public footpaths etc. and the enhancement of the site for nature conservation purposes. The aftercare arrangements will be reassessed on a rolling basis as and when aftercare works on any particular section of the restored site are completed to the satisfaction of the Council.

See Section 7 below

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principle material considerations relevant to the determination of this application are the consultation responses, the representations received, legislative provisions, National Planning Policy Guidelines, Planning Advice Notes and the relevant planning history of the site.

Legislative Provisions

6.2 The legislative provisions covering the reclamation of mineral workings have been introduced incrementally since the Town & Country Planning (Minerals) Act 1981. These have now been consolidated within the Town & Country Planning (Scotland) Act 1997, schedules 3, 8, 9 & 10. This confers powers to impose conditions on planning permission for surface mineral workings where the land is to be used for agriculture, forestry or amenity purposes, and details how the conditions may be imposed and assessed.

National Planning Policy Guidelines

6.3 Policy on the reclamation of mineral workings is contained in Scottish Planning Policy SPP4 (Mineral Workings) and Scottish Planning Policy SPP16 (Opencast Coal) which advise that land should be reinstated to a standard suitable for other agreed uses or an after-use which brings about environmental or community benefits.

Consultation Responses

6.4 There are no consultation responses that would indicate that the application should be refused, although it is acknowledged that the two Community Councils have concerns relating to the issues associated with the restoration bond and the retention of the overburden/water-body.

Representations

6.5 It is considered that the representations received can either be appropriately addressed through the imposition of appropriate conditions in any planning consent for the proposed development or the points of objection are not considered to be valid.

Planning Advice Notes

6.6 PAN64: Reclamation of Surface Mineral Workings states that reclamation of surface mineral workings can enhance derelict and degraded areas, remove ground instability caused by old mineral workings, create habitats, improve countryside access and provide community facilities and geological sites of interest. Reclamation can therefore bring environmental and community benefits, although the restored landscape can take several years to mature.

6.7 In the past, land was typically returned to agriculture or forestry use. In recent years it has been shown that reclamation operations can create or enhance a wide range of habitat types and landscape features including, woodland, hedgerows, wet grassland, reed beds, open water and watercourses. Reclamation can thereby contribute to targets in UK and Local Biodiversity Action Plans.

Noted.

Planning History

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

- (i) CD/ 84/81/Q – Winning and working of coal and fireclay, approved by the Secretary of State on appeal in March 1985.
- (ii) CD/85/148/Q – Proposed 12 hectare extension to Darnconner opencast site, approved in January 1986.
- (iii) CD/87/153/Q – Proposed 27 hectare extension to Darnconner opencast site approved in September 1987.
- (iv) CD/89/241/Q – Proposed 187 hectare extension to Darnconner opencast site, approved in November 1991.
- (v) CD/91/169/Q – Proposed 40 hectare extension to Darnconner opencast site. Approved in November 1991.
- (vi) CD/95/0058/MIN – Proposed use of existing opencast site for infill with controlled waste and associated Civic Amenity Centre at Darnconner, approved on 11 September 1996.
- (vii) CD/95/0230/DPP: Restoration of existing opencast site, Darnconner Opencast Coal Site, by Auchinleck, approved 11 December 1995
- (viii) 00/0228/FL – Variation of Condition 1 of planning consent CD/95/0058/MIN to transfer to VWM (Scotland) Ltd, approved on 12 April 2006.
- (ix) 06/0480/FL – To amend condition one of planning consent CD/95/0058/MIN to extend the life of the planning consent to allow for a further 10 year period for landfill operations to take place, refused on 13 June 2008.

6.9 Under planning application CD/95/0230/DPP listed above, restoration of the Darnconner site was amended essentially to approve two distinct restoration options. Option 1 promoted a scheme which covered full

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

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

Since the landfill permission has effectively expired with the refusal of that application, the applicant is now attempting to resolve matters by promoting a scheme to restore the site in a practicable and sensitive manner, through the submission of the current application.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 Legal implications would arise through the requirement to secure site restoration with the potential for enforcement action and the possible calling in of the restoration bond, should the Committee be minded to refuse the application. This could lead to financial implications as under the provisions of the existing bond, the Council would require to undertake restoration works and then seek to recoup the costs by calling on the restoration bond.

7.2 The restoration bond relates to the requirements of a legal agreement (Section 50) that can be called upon if the landfill development, originally approved (CD/95/0058/MIN) defaulted in terms of restoring the site. Viridor were not responsible for the opencast mining and leaving the site in its present condition; the opencast coal extraction was carried out by LAW Mining (who are now in liquidation) prior to Viridor's involvement in the site.

7.3 Advice has been sought from the Council's Legal Section and in its view the restoration bond for the site remains valid and enforceable. Members should however note that the Bond is essentially an insurance policy, and if this application is refused, the Council would be required to make a claim on this Bond by contacting the Bond Provider to advise that that Viridor did not infill the site with waste within the life of their planning consent and that they have failed to secure an extension of the time limit for use of the site for waste disposal purposes.

7.4 The Bond Provider (Barclays Commercial) has confirmed that the Bond issued by the Bank in this instance is a surety bond rather than a demand guarantee and if the Council wanted to call it in, the authority would have to provide evidence that Viridor had defaulted (as described above). Should the Committee agree to refuse this application, then this would be the only viable way in which the site could be restored but would involve invoking a process where the outcome would be uncertain given the planning history of the site.

8. CONCLUSIONS

8.1 As indicated in Section 5 of this report, there are no specific policies within the Development Plan which relate to the suitability of restoration and aftercare proposals associated with a former mineral extraction site, although it is considered that the application is consistent with the spirit of the policies within the EAOCSP relating to restoration. In such circumstances, greater weight should be attached to the material considerations relevant to the application. As is indicated in Section 6 above, there are material considerations relevant to this application and in many respects the material considerations insofar as planning history and nature conservation interests are concerned would tend to be supportive of a scheme which would reclaim former mineral surface workings to after-uses that fall into the broad category of amenity.

8.2 The reclamation of surface mineral workings can often provide substantial opportunity to improve landscapes and habitats, expose earth science interest and enhance access and recreation provisions for local communities. This can involve the creation of:-

- formal and informal recreational areas;
- woodland;
- grassland;
- geological exposures;
- reed beds;
- open water; and
- watercourses.

8.3 Whilst it is noted that the proposed development has attracted objections and concerns from both local Community Councils, the current approved and therefore the only enforceable restoration scheme (i.e. in accordance with planning application reference 95/0058/MIN) cannot be achieved without landfill taking place given the present condition of the site.

8.4 The area of land associated with the landfill void equates to approximately 12.1 hectares and has the capacity to accept approximately one million cubic metres of waste. The applicant originally had consent to fill this void with solid, controlled, domestic, commercial and industrial waste at a rate of 100,000 tonnes per year over a 10 year period. Overburden would be used for cell engineering, haul roads etc. Required to develop the void for

land-filling and the soils would be used for the final restoration over the engineered cap of the landfill.

8.5 On the basis of the height and footprint of the available soil and overburden mounds, it is estimated that on site at present there is approximately:-

- 190,000 cubic metres of overburden; and
- 35,000 cubic metres of soils

On this basis it is clear that there is insufficient available material stored above ground to produce an effective dry land restoration scheme as the volume of available material would only provide 22% of the material required to fill the void. Taking account of the deficit of materials and assuming that the available soils would be used for final restoration, it is estimated that a minimum of 800,000 cubic metres of material would have to be imported to the site to achieve an alternative to the wetland scheme proposed by the applicant. If this comprised of imported inert materials, it is anticipated that infilling would take a minimum of 15 years to complete and would result in associated impacts similar to that associated with the original scheme for landfill reclamation.

8.6 In addition, at this stage it is not known whether there are risks associated with surface water contamination from using overburden to fill the water void. In terms of soil mounds it is not considered good practice to place soils in surface water due to the potential for depletion of oxygen in the water and therefore, this material should only be used for restoration to dry land.

8.7 Since members refused the recent application to extend the life of the landfill site, the applicant has been pro-active in appointing Environmental and Legal Consultants to come up with solutions for achieving the restoration of the site. After refusal of planning consent to allow the site to be used for landfill purposes, the applicant did not exercise their right of appeal to the Scottish Ministers, but instead sought further meetings with the planning authority to discuss an alternative restoration scheme that would see the void being retained as a water feature to an after-use that is in keeping with the area and involves minimal disruption to the environment, whilst maintaining habitats that are establishing naturally. This proposal therefore builds upon the existing areas that have naturally recolonised.

8.8 There now appears to be conflict within the representations /consultations received concerning site restoration where some objectors wish to see the site fully restored while others would wish the water-body being retained and the site left to 'naturalise'. The submitted scheme represents a good and reasonable practical solution to returning this site to beneficial after-uses without causing major disruption in the area, given the circumstances of the temporary consent for landfill, and that, with the implementation of restoration and aftercare, the site can be improved for wildlife and nature conservation. The restoration scheme therefore provides a solution to

guarantee the restoration of this site, which should in time make a positive contribution to the environment and nature conservation interests in the area.

8.9 Refusal of this present application would have significant consequences for the restoration of the site and may potentially impact on the ability of the Council to call in the restoration bond.

8.10 In respect of all relevant matters and material considerations to be taken into account, it is considered that the revised proposals for restoration of this site are acceptable and it is considered that the application should be approved but subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

Section 75 Agreement

(i) The existing legal agreement will require to be discharged to the effect and intent that it shall be deemed 'pro non scripto' as from the date when a new minute of agreement comes into effect.

(ii) Viridor Waste Management (VWM) shall obtain and deliver to the Council, a new performance bond from Barclays Bank PLC or another recognised financial institution, which shall remain in force until the restoration obligations have been complied with or discharged, or such other time as may be agreed between the Council and VWM.

(iii) The new restoration bond shall be in the sum of eighty five thousand pounds (£85,000) or such other sum as may be agreed in writing between the Council and VWM. The new performance bond shall provide for the sum to be reduced to twenty two thousand five hundred pounds (£22,500) following completion of the restoration obligations; further reduced to fifteen thousand pounds (£15,000) on the first anniversary following the completion of the restoration obligations and further reduced to seven thousand five hundred pounds (£7,500) on the second anniversary following completion of the restoration obligations. The new performance bond will formally be discharged on the third anniversary following completion of the restoration obligations to the satisfaction of the Council as planning authority.

(iv) In the event of a failure by VWM to perform the restoration obligations within one year of the date of planning approval, the Council shall, by written notice, intimate such failure to VWM. The notice shall describe the nature of the breach of the obligations, the steps required to remedy the breach and the timescales within which the remedial steps require to be taken.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and that the issue of the decision notice should be withheld until the Solicitor to the Council has satisfactorily concluded an amended agreement under Section 75 of the

Town and Country Planning (Scotland) Act 1997 with the applicant in respect of the matters indicated in Section 8.10 of this report.

**Alan Neish
Head of Planning and Economic Development**

CONTRARY DECISION NOTE

Should the Committee decide to refuse the application contrary to the recommendation of the Head of Planning and Economic Development, there will be no requirement to refer the application to the full Council for consideration.

27 August 2009
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of Representation
5. Adopted East Ayrshire Local Plan (2003)
6. Approved Ayrshire Joint Structure Plan (2007)
7. Previous applications as described in Section 6.7
8. PAN 64: Reclamation of Surface Mineral Workings

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

Implementation Officer: Dave Morris

Application no: 08/0932/FL

Location	Former Darnconner Opencast Site by Auchinleck
Nature of Proposal:	08/0932/FL: Variation of Conditions 1, 19 & 20 of planning permission CD/95/0058/MIN (as amended) relating to the obligation and rights on, and restoration of, the former Darnconner OCCS by Auchinleck.
Name and Address of Applicant:	Viridor Waste Management (Scotland) Ltd. Suite D Victoria House Victoria Street TAUNTON TA1 3EA
Name and Address of Agent	Wardell Armstrong LLP Suite 2/3 Great Michael House 14 Links Place EDINBURGH EH6 7EZ

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

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

1. Conditions 1, 19 and 20 of planning consent CD/95/0058/MIN dated 11 September 1996, as amended by planning application 00/0228/FL dated 12 April 2006, are hereby deleted.

REASON: The original conditions are no longer applicable and are now superseded by this consent.

2. The site shall be progressively restored in accordance with the scheme submitted along with this planning application.

REASON: To ensure appropriate restoration of the site.

3. No materials for filling shall be introduced to the site from sources external to it without the formal written approval of the planning authority.

REASON: To enable the planning authority to retain control over development of the site.

4. All necessary mitigation measures must be taken during the restoration works to ensure that pollutants typically associated with works of this nature e.g. silts; concretes etc do not enter the watercourses adjacent to the site.

REASON: To prevent pollution of watercourses and to minimise the risk of flooding.

5. Prior to works commencing on site the applicant shall submit details of an environmental protocol in the event that protected species are encountered during site restoration. In this regard, all works should cease until appropriate advice is sought from Scottish Natural Heritage.

REASON: To ensure that protected species are guarded from disturbance.

6. Notwithstanding the submitted plans the applicant shall increase the proportion of alder and birch (including silver birch) in the overall mix of tree planting and, if the pH is not particularly acidic, substitute the ash species for aspen.

REASON: In the interests of environmental enhancement and visual amenity.

7. Notwithstanding the submitted plans the applicant shall increase the stocking density of trees to a minimum of 2,500 per hectare in order to promote earlier canopy and hasten the build-up and recycling of leaf litter in the soil.

REASON: In the interests of environmental enhancement and visual amenity.

8. Broad land reclamation 'rigg and furrow' features shall be formed to facilitate woodland establishment on the compacted flat landscape of the east site. The 'rigg' must be at least 30m wide and 1.5m at the centre, to give a side slope gradient of no more than six degrees.

REASON: To ensure that the reclamation strategy will deliver environmental benefit.

9. The applicant shall ensure that spot-weeding with herbicide shall be undertaken for three growing seasons upon completion of site restoration and during the period of aftercare. A residual herbicide such as 'propryzamide' must be applied in the winter following the first growing season and with a translocated herbicide such as 'glyphosate' being used in the summer.

REASON: To ensure a proper aftercare specification for woodland areas.

10. Notwithstanding the submitted plans the scrub/thicket type planting shall be used more extensively to tie-in soil and spoil mounds with the planned and surrounding landscape of woodlands and naturally regenerated hawthorn on bings.

REASON: In the interests of environmental enhancement and visual amenity.

11. The banking on the eastern shore of the main water-body shall, insofar as is practical on safety grounds) be graded to a more stable profile in order to prevent erosion or collapsing.

REASON: In the interests of public safety.

12. The applicant shall erect appropriate signage to highlight the presence of deep water. Details of this signage shall be submitted in writing to the planning authority within one month of the date of this consent, for approval by the authority and shall thereafter be implemented on site within one month of such approval being granted.

REASON: In the interests of public safety.

13. Where possible, wetland habitats should be assisted in their development by transplanting appropriate established vegetation from existing wetlands to the others.

REASON: In the interests of environmental enhancement and visual amenity.

14. The applicant shall make stock-proof and maintain, replace or repair (until the three year aftercare period is over) all fences around the perimeter of the site and along the access track to Darnconner Farm and shall protect them from damage during restoration of the site.

REASON: In the interests of protecting the rural landscape.

15. Any rubbish and scrap materials generated or discovered in the course of restoration works on site shall, as far as is practicable, be kept in a screened location until disposed of to the satisfaction of the waste management authority, and otherwise than by burning.

REASON: In the interests of visual amenity.

16. The right of way which runs through the centre of the site shall be reinstated on completion of the restoration works.

REASON: To encourage active leisure and recreational use of the site.

17. The restored site shall be subsequently managed for a period of three years in accordance with the aftercare scheme submitted along with the planning application. This aftercare period shall commence once the Council confirm in writing that the site has been restored to the satisfaction of the planning authority.

REASON: In the interests of securing appropriate after-uses of the site.



Title/Location

Former Darconner OCCS by Auchinleck

Application Ref: 08/0932/FL

East Ayrshire Council

Planning & Economic
Development Division.

6 Croft Street
Kilmarnock KA1 1JB

Tel: (01563) 576790 Fax: (01563) 576774

E-Mail : Planning@east-ayrshire.gov.uk



Key



Application Site