

## **EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE - 5 OCTOBER 2004**

### **SCOTTISH PLANNING POLICY (SPP) 16: OPENCAST COAL: CONSULTATION DRAFT**

#### **Report by Executive Director of Development and Property Services**

#### **1. PURPOSE OF REPORT**

- 1.1 To advise the Committee and obtain the Committees views on a Scottish Executive publication entitled 'Scottish Planning Policy, SPP16, Opencast Coal: Consultation Draft'.

#### **2. GENERAL OBSERVATIONS AND CONCLUSIONS**

- 2.1 The research funded by the Scottish Executive into the operation and effectiveness of NPPG 16 has endorsed the policy objectives of the guidance and made recommendations to build on its strengths. While the proposed SPP has updated, revised and clarified the contents of the NPPG, the essential policy advice and direction contained in the document remains essentially unchanged. A number of changes are, however proposed and these can be summarised as follows:

- 2.1.1 The policy regarding separation distances between opencast operations and nearby communities has been amended to relate to a 500 metre distance from site boundaries rather than working faces, as previously. This approach is in line with the approach taken by the Council in the Opencast Coal Subject Plan and is to be welcomed.

- 2.1.2 The policy regarding cumulative impacts has been strengthened to refer to operational opencast sites, other minerals sites and landfill sites within a stipulated 5 km of any nearby community. The introduction of a specific distance into the SPP and reference to other types of sites is a new innovation and the introduction of this policy approach is to be welcomed. If adopted, this provision may require a future amendment to be made to the Subject Plan which stipulates a 3 km distance and restricts cumulative effects only to other opencast sites.

- 2.1.3 The SPP states that the removal of coal from prime quality and other categories of agricultural land may be considered appropriate where it is feasible to restore the land to a high standard, where the demand for the resource is high and where the development would contribute to the local economy. This represents a substantial change in policy direction as it could open up substantial areas of land to otherwise unacceptable opencast extraction pressures. The proposed change is not, therefore, supported as it is not in accordance with East Ayrshire Council Opencast Coal Subject Plan.

2.1.4 The SPP makes specific reference to the assessment of air quality against a recognised governmental framework in cases where there is a community within 1 km of an opencast development. This introduction of this provision is to be welcomed.

2.1.5 The draft usefully clarifies that a limit of 10 years should be the time period that disturbance to a local community from a particular application or an extension is likely to be unacceptable.

### **3. FINANCIAL IMPLICATIONS**

3.1 There are no financial implications for the Council as a direct result of the consultation exercise.

### **4. LEGAL / AUTHORITY IMPLICATIONS**

4.1 There are no legal / authority implications for the Council as a direct result of the consultation exercise

### **5. PERSONNEL IMPLICATIONS**

5.1 There are no personnel implications for the Council as a direct result of the consultation exercise.

### **6. RECOMMENDATIONS**

6.1 It is recommended that the Committee agrees:

- (i) to approve the contents of this report; and
- (ii) to authorise the Executive Director of Development and Property Services to submit a copy of this report and the attached appendix to the Scottish Executive as representing the views of the Committee on the draft SPP.

**James Lavery**  
**Executive Director of Development and Property Services**  
8 September 2004

### **LIST OF BACKGROUND PAPERS**

- (i) **Scottish Planning Policy SPP 16: Opencast Coal: Consultation Draft**
- (ii) **National Planning Policy Guideline NPPG 16: Opencast Coal and Related Minerals**

Anyone wishing to inspect the above background papers, please contact John Lilley on (01563) 576754.

Implementation Officer: Alan Neish

## APPENDIX 1

### DETAILED POLICY RESPONSE TO THE APPROACH ADVOCATED IN THE SPP

#### **(i) Policy Context**

As with the existing NPPG 16, the proposed SPP states that it is not the UK Government's policy to set limits on or targets for the share of total energy or electricity supply to be met from different fuels. While recognising the important role that coal fired generation has in ensuring the diversity of the energy mix, it is accepted that it remains a matter for individual opencast operators to determine the level of output for which they wish to aim. Likewise, planning authorities should determine the acceptability of individual development proposals in accordance with the principles of the land use planning system, having regard to the policies set out in development plans, the new SPP and all other material considerations.

#### **(ii) General Principle**

The proposed SPP clarifies and simplifies the general principle for opencast development set out in NPPG 16 and is much more definitive in its approach than previously, stating that the Executive's policy is that there should be a presumption against opencast coal development unless the proposal would meet one of the following tests;

- (i) Is the proposal acceptable, taking into account the use of planning conditions and/or agreements to offset or mitigate any adverse impacts?
- (ii) Does it provide local or community benefits which outweigh the impacts to justify the grant of planning permission?

The revised wording and emphasis does not, however, represent any major change in the thrust or direction of the overall policy approach proposed.

#### **(iii) Working with Communities**

As with the NPPG, the proposed SPP advocates the establishment of formal liaison mechanisms to ensure that community concerns are properly addressed and to promote better mutual understanding between local communities and the opencast industry.

#### **(iv) Separation Distances**

In considering whether impacts on local communities are acceptable, the SPP states that particular attention requires to be given to separation distances between proposed sites and adjacent communities. In this regard, it is stated in the SPP that site boundaries within 500 metres are likely to pose a threat to the amenity of a community and are likely to be unacceptable. This represents a major change from the approach taken in the NPPG which states that opencast proposals may be unacceptable where they have working faces within 500 metres of communities. The proposed change now brings national planning policy in line with the approach currently taken in the Council's Opencast Coal Subject Plan which already measures separation distances from site boundaries rather than working faces.

## **(v) Cumulative Impacts**

The section of the existing NPPG currently addressing the issue of 'Concentration of Workings' has been expanded in the proposed SPP to relate specifically to 'Cumulative Impacts'. Specific advice is given in the SPP for Planning Authorities to ensure that proposals will not subject any community to a disproportionate burden of negative environmental impacts. This will be particularly important if there are already two or more operational or consented sites that could raise similar impacts within 5 km of any nearby community. Such sites are defined as being other opencast sites, sites for the extraction of other minerals and landfill sites.

The SPP goes further than the existing policy relating to cumulative impact included in the Opencast Coal Subject Plan in two respects. Firstly, the SPP refers to developments within 5 km of any nearby community, rather than the 3 km detailed in the Subject Plan. Secondly, the Subject Plan assesses cumulative impact of an opencast development only against other opencast developments while the SPP assesses such impact against a number of other types of development as may exist or be consented in the area. The SPP proposal represents a strengthening of the policy relating to Cumulative Impact, increasing the protection afforded to communities from the cumulative effects of opencast and other stated developments over a wider area than previously.

It is noted, however, that the SPP makes no reference to the cumulative effects of opencast developments (or sites for the extraction of other minerals and landfill sites as proposed in the document) on any particular community over time. Many of the East Ayrshire communities have experienced cumulative impacts of successive opencast developments over considerable periods of time and it is considered imperative that this particular aspect is addressed within the SPP as a matter of priority. Communities remote from opencast coal extraction areas but located alongside coal haulage routes can also suffer unacceptable impacts from opencast operations over time and this issue should also be recognised and addressed by the SPP.

Large numbers of opencast operations may also result in an unacceptable accumulation of adverse impacts on internationally or nationally recognised 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. This issue is also considered to be worthy of attention in the SPP.

## **(vi) Safeguarding Environmental Resources**

The SPP does not proposed any changes in the approach presently advocated in the NPPG as regards issues relating to natural heritage, conservation of the built heritage, green belts and the sterilisation of coal resources by permanent development. However, with regard to agricultural land, the SPP now states that the removal of coal from prime quality and other categories of agricultural land may be considered appropriate where it is feasible to restore the land to a high standard, where the demand for the resource is high and where the development would contribute to the local economy. This represents a major change from the policy approach currently advocated in both the existing NPPG and the Council's Opencast Coal Subject Plan which protects prime quality and the highest grade category of good quality, locally important agricultural land against permanent development or irreversible damage. The Council would not be supportive of this particular change, which could effectively remove the protection given to good quality agricultural land from opencast development. The removal of such protection could possibly result a substantial increase in the extent of the Potential Coal Extraction Areas identified in the Subject Plan and a corresponding increase in pressure for opencast development both within and outwith these areas.

## **(vii) Operational Considerations**

The new SPP deals specifically with the issues of air quality, groundwater and environmental protection under this particular heading. With regard to air quality, the SPP repeats the advice given in the current NPPG that planning authorities and the industry should adopt the framework undertaken by researchers in preparing the government sponsored research 'Do particulates from Opencast Mining Impair Children's Respiratory Health?' in drawing up and considering proposals for new sites, or extensions or modifications to existing sites. The proposed SPP qualifies this advice by stating that this framework should be adopted specifically where there is a community within 1km of the proposed site. The qualification of this advice is welcomed.

The section on groundwater is a new addition to the SPP, not having been previously addressed in the existing NPPG. The introduction of this section does not necessitate any changes being made to the Opencast Coal Subject Plan. The section relating to environmental protection expands on the contents of the existing NPPG by making specific reference to the provisions of Section 53 of the Coal Industry Act 1994. The new section does not, however, represent any major change in the thrust or direction of the policy approach already adopted by the Council in the Opencast Coal Subject Plan.

## **(viii) Environmental Impact Assessment**

The section relating to Environmental Impact Assessment in the existing NPPG is outdated and the SPP now brings this up to date through reference to the Environmental Impact Assessment (Scotland) Regulations 1999. The revised section does not, however, necessitate any changes to the policy approach relating to EIA's already adopted by the Council in the Opencast Coal Subject Plan.

## **(ix) Supporting Information**

The section relating to the submission of supporting information has been reworded but does not represent any substantive change to the approach detailed in the existing NPPG.

## **(x) Appraisal of Proposals**

As with the existing NPPG, the SPP lists a series of disbenefits and benefits of opencast coal extraction. In so far as disbenefits are concerned, the list remains unchanged. However, the SPP also recognises that, when assessing disbenefits of an opencast proposal, planning authorities may also wish to take into account other developments in close proximity that will subject a local community to a disproportionate cumulative burden of negative environmental impacts. The list of quoted benefits of opencast developments has been expanded from 7 to 11. In this regard, the avoidance of adverse impacts on communities and landscapes is being introduced into the SPP as a benefit of opencast operations. The Council would not agree with this view and would suggest that these particular 'benefits' be deleted from the SPP. The SPP also removes job creation from the list of recognised benefits and it is recommended that this item should be retained in the SPP as being a prime benefit to local communities.

The section of the NPPG relating to Minerals Trust contributions remains unchanged.

## **(xi) Safeguarding Communities**

The section of the SPP relating to safeguarding communities remains substantially unchanged from the existing NPPG. However, some of the examples quoted where proposals may be considered unacceptable, have been subject to amendment or change, ie:

(i) the example quoted in the NPPG of proposals being too close to communities (ie working faces within 500 metres where there are no mitigating factors, storage mounds and landscaping bunds within 100 metres) has been simplified and amended to refer to proposals being too close to communities or sensitive establishments (ie within 500 metres from the site boundary) and there are no mitigating factors. This amendment is considered worthy of support (see paragraph 3.4 above). Reference to developments being unacceptable when they are within 500 metres of sensitive establishments also brings the SPP in line with the policy approach already adopted by the Council in the Opencast Coal Subject Plan.

(ii) a new example of a proposal possibly being considered unacceptable is in the case of an extension to an opencast operation where such an intention was not made explicit when the original application was approved. There are no objections to the inclusion of this additional example in the SPP.

(iii) the two separate examples quoted in the NPPG relating to developments which involve a substantial area for extraction over an extended period (ie more than 10 years) and development which is likely to be subject to repeated extensions, perpetuating disturbance to local communities for a period substantially longer than 5 years, have been combined and simplified in the proposed SPP. The example now relates to developments that are likely to result in a period of disturbance to communities that, including extensions, involves extraction for a period of more than 10 years. This proposed change is supported by the Council.

## **(xii) Regulating Development**

The sections of the proposed SPP relating to the regulation of development, (ie those paragraphs relating to Conditions and Related Matters, Monitoring Compliance with Conditions, Restoration, Aftercare and After Use, and Time limits on Operations) remain unchanged from the existing NPPG.

## **(xiii) Further Applications**

The sections of the proposed SPP relating to further applications, (ie those paragraphs relating to Extensions to Existing Sites and Repeat Applications) remain unchanged from the existing NPPG.

## **(xiv) Development Planning**

The section relating to development planning has been placed in the context of the forthcoming review of local planning. The guidance provided in this section has been reworded but remains essentially unchanged.

## **(xv) Notification of Applications**

The SPP states that the notification direction issued on 22 October 1998 (SODD Circular 20/1998) is to be amended to take account of the revised policies in the SPP.