

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 12 DECEMBER 2006

**06/0538/FL: PROPOSED EXTENSION OF OPENCAST COAL SITE
AT GREENBURN OPENCAST COAL SITE, NEW CUMNOCK**

APPLICATION BY KIER CONSTRUCTION LIMITED

Report by Head of Planning, Development and Building Standards

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for an extension of the existing Greenburn site for the winning and working of coal, fireclay and other minerals by opencast method. The Dalgig Extension will be developed as a sequential phase of the existing Greenburn using predominantly the same plant and infrastructure. In particular the existing coal treatment area, railhead and railway line will be used to process and transport coal extracted from the Dalgig Extension, with all extracted coal transported to the railhead via internal haul roads. With the new extension and the existing operational site the total Greenburn development site will extend to 510 hectares. It is noted that the proposed Dalgig Extension is greater in area than the current Greenburn operational site

1.2 This proposal will allow the recovery of up to a further 2.7 million tonnes of high quality coal, distributed mainly via the new dedicated railhead and line to the power generation industry. Production will be at a rate of between 400,000 and 500,000 tonnes per annum, similar to the current annual production rate of the existing operational site.

1.3 The current coaling operations at Greenburn are anticipated to cease by the end of 2009 and the proposed operations in the Dalgig Extension are to be phased to commence in 2009 in order for the applicant to achieve a continuous supply of coal to the market. The Dalgig Extension is expected to have an operational life of 7 years coaling with a further 18 months being required to complete the progressive restoration programme. It is therefore anticipated that the Dalgig Extension will be fully completed and restored by the end of 2017. A five year aftercare programme will continue beyond this date. The current Greenburn operation is consented until mid 2014 and with the adjustments to the phasing of the Greenburn operation, the Dalgig operation will result in an additional 3 years operation beyond the current consented dated.

1.4 In terms of site infrastructure and maintenance, the only significant amendment to the existing Greenburn operation will be the relocation of the

existing plant maintenance building from its present site to a site on the proposed extension just north of the U719 Dalgig Road. The proposals also include the permanent diversion of a section of the U719 Dalgig Road. The new section of road will be constructed to East Ayrshire Roads Division adoption standards. The proposed permanent diversion of the Dalgig Road will require to be the subject of a formal road closure order promoted in terms of the Town and Country Planning (Scotland) Act 1997. Furthermore, the existing road will not be closed until the new diverted section is complete and commissioned.

1.5 As indicated above, some 148 hectares of the Dalgig Extension area is occupied by commercial forestry consisting of semi-mature Sitka spruce and Japanese larch. This will require to be felled to enable mining operations to take place. It is estimated that the total yield of the timber crop is approximately 60,000 tonnes. The woodland will be progressively felled on an annual basis in advance of the working void in the Dalgig Extension. Timber will be dispatched to markets available at the time either by road or, if possible, by rail.

1.6 It is proposed to use the same hours of operation and shift system as currently used at the Greenburn site i.e. between 0700 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No haulage of minerals from the excavation area to the coal processing area will take place between 1900 and 0700 hours during the 24 hour working period. Coal processing and dispatch of minerals via the railhead will be limited to between 0700 and 1900 Mondays to Fridays and between 0800 and 1300 hours on Saturdays. The dispatch of minerals by road will be confined between 0800 and 1800 hours Mondays to Fridays with no dispatch on Saturdays and Sundays. With the exception of essential site maintenance

1.7 The Greenburn operation provides full time employment for 60 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 7 year working life of the Dalgig Extension. In addition the proposed increase in resources employed, in terms of plant and equipment, will result in the creation of a further 14 full time jobs. The proposed development will therefore provide direct, full-time employment for 96 people for a period of up to 7 years. The applicant is further committed to providing employment for local people and currently over 90% of the workforce employed on the site live within a 25 mile radius of the site. In addition to direct employment, a number of indirect jobs (estimated at 130) will also continue to be supported in terms of site servicing. The projected annual wage bill during the life of the proposed development is some £3.6 million, a large proportion of which will contribute towards the local economy. In addition in excess of £3 million per year will be expended with local businesses.

1.8 An Environmental Statement has been provided by the applicant to suggest that the proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology. The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed

development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the Section 75 Agreement.

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 be 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 matter detailed in Paragraph 8.5 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. 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 either not of sufficient weight to justify refusal of the application or are not relevant to the proposal.

3.2 The proposals represent a significant extension to the existing consented site at Greenburn and include the re-location of the U719 Dalricket Road. 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 a significant body of objection to the proposal.

3.3 It is considered that, given the relatively remote and sparsely populated area in which the existing Greenburn site and the proposed Dalgig Extension site are located, the proposal to extend the existing consented site will have no significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it is considered that the extended operations proposed can be undertaken within acceptable environmental standards.

3.4 The existing Greenburn operation provides full time employment for 60 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 7 year working life of the proposed Dalgig Extension. In addition the proposed increase in resources employed, in terms of plant and equipment, will result in the creation of a further 14 full time jobs. The

proposed development will therefore provide direct, full-time employment for 96 people for a period of up to 7 years. This is considered to be of significant community benefit.

3.5 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 but 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) A joint 3 monthly safety inspection will be carried out to identify safety defects requiring attention, such works to be carried out at the applicant's expense;

(b) A joint annual detailed inspection of the route (U720/U719/C36) will be carried out to identify any programmed remedial work required due to deterioration of the road surface.

(c) On completion of haulage of materials from the site, a joint inspection of the route will be undertaken to identify works to be carried out to ensure that there has been no detrimental effect to the road fabric by HGV movement generated from the Greenburn OCCS. To assist in determining before and after road condition a Road maintenance and Condition Survey will be undertaken and compared to that undertaken by the Council in 2003 (U719) and 2004 (C36). Any works identified will require to be undertaken at the applicant's expense.

(ii) The extension of the remit of the existing Greenburn Technical Working Group to embrace the proposed Dalgig Extension.

(iii) The monitoring of the restored Greenburn and Dalgig Extension sites through to the final aftercare period ending during 2022, as overseen by the Greenburn / Dalgig Technical Working Group.

(iv) The production of a comprehensive Conservation Management Plan for the Greenburn site as extended by the Dalgig Extension, this plan to be agreed by the Greenburn / Dalgig Technical Working Group and shall incorporate the requirements of Scottish Natural Heritage and the Royal Society for the Protection of Birds (Scotland) as indicated in their respective consultation responses.

(v) The involvement of an ecologist for detailed operational and restoration design and consideration of wider ornithological interests.

(vi) The preparation of a Bird Management Strategy within the comprehensive Conservation Management Plan.

Alan Neish

Head of Planning, Development and Building Standards

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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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 Development Services Committee under the scheme of delegation because it represents an extension of working for an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan and will require to be notified to the Scottish Ministers.

2. APPLICATION DETAILS

2.1 **Site Description:** The Greenburn opencast coal site lies approximately 5 kilometres west of New Cumnock and approximately 6 kilometres south of Cumnock and comprises the farmlands of Greenburn, Fardenreoch and Auchincross, together with an area of derelict land at the site of the former Coalburn Colliery, covering a total area of 226.5 hectares. The application site relates to the approved Greenburn Opencast Coal Site, works for which commenced in August 2003. 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.

2.2 The current application site which the applicant has termed the Dalgig Extension extends to approximately 284 hectares and lies to the west of the existing Greenburn site, to the north of the House of Water opencast coal site, the River Nith and the unclassified Dalgig Road (U719), and to the south of the peaks of Bedminnie and Black Hills within the Kyle Forest. In terms of topography, the application site slopes at varying gradients from the aforementioned hills at an elevation of 330m AOD and falling directly down to the River Nith at 215m AOD. A number of watercourses have incised steep-sided valleys creating an undulating structure.

2.3 The application site comprises two principal land uses. Some 48% of the site comprises farmland based on grassland and stock production while 52% of the site is dominated by the dense commercial conifer plantation forming part of the Dalgig Forest. Although the area is sparsely populated,

Dalgig Farm and farmhouse lie within the application site while Burnston Cottage lies just outwith the site on its southern boundary. Both these properties are currently occupied.

2.4 Proposed Development: Permission is sought for an extension of the existing Greenburn site for the winning and working of coal, fireclay and other minerals by opencast method. The Dalgig Extension will be developed as a sequential phase of the existing Greenburn using predominantly the same plant and infrastructure. In particular the existing coal treatment area, railhead and railway line will be used to process and transport coal extracted from the Dalgig Extension, with all extracted coal transported to the railhead via internal haul roads. With the new extension and the existing operational site the total Greenburn development site will extend to 510 hectares. It is noted that the proposed Dalgig Extension is greater in area than the current Greenburn operational site

2.5 This proposal will allow the recovery of up to a further 2.7 million tonnes of high quality coal, distributed mainly via the new dedicated railhead and line to the power generation industry. Production will be at a rate of between 400,000 and 500,000 tonnes per annum, similar to the current annual production rate of the existing operational site.

2.6 The current coaling operations at Greenburn are anticipated to cease by the end of 2009 and the proposed operations in the Dalgig Extension are to be phased to commence in 2009 in order for the applicant to achieve a continuous supply of coal to the market. The Dalgig Extension is expected to have an operational life of 7 years coaling with a further 18 months being required to complete the progressive restoration programme. It is therefore anticipated that the Dalgig Extension will be fully completed and restored by the end of 2017. A five year aftercare programme will continue beyond this date. The current Greenburn operation is consented until mid 2014 and with the adjustments to the phasing of the Greenburn operation, the Dalgig operation will result in an additional 3 years operation beyond the current consented dated.

2.7 In terms of site infrastructure and maintenance, the only significant amendment to the existing Greenburn operation will be the relocation of the existing plant maintenance building from its present site to a site on the proposed extension just north of the U719 Dalgig Road. The proposals also include the permanent diversion of a section of the U719 Dalgig Road. The new section of road will be constructed to East Ayrshire Roads Division adoption standards. The proposed permanent diversion of the Dalgig Road will require to be the subject of a formal road closure order promoted in terms of the Town and Country Planning (Scotland) Act 1997. Furthermore, the existing road will not be closed until the new diverted section is complete and commissioned.

2.8 As indicated above, some 148 hectares of the Dalgig Extension area is occupied by commercial forestry consisting of semi-mature Sitka spruce and Japanese larch. This will require to be felled to enable mining operations to

take place. It is estimated that the total yield of the timber crop is approximately 60,000 tonnes. The woodland will be progressively felled on an annual basis in advance of the working void in the Dalgig Extension. Timber will be dispatched to markets available at the time either by road or, if possible, by rail.

2.9 It is proposed to use the same hours of operation and shift system as currently used at the Greenburn site i.e. between 0700 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No haulage of minerals from the excavation area to the coal processing area will take place between 1900 and 0700 hours during the 24 hour working period. Coal processing and dispatch of minerals via the railhead will be limited to between 0700 and 1900 Mondays to Fridays and between 0800 and 1300 hours on Saturdays. The dispatch of minerals by road will be confined between 0800 and 1800 hours Mondays to Fridays with no dispatch on Saturdays and Sundays. With the exception of essential site maintenance

2.10 The Greenburn operation provides full time employment for 60 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 7 year working life of the Dalgig Extension. In addition the proposed increase in resources employed, in terms of plant and equipment, will result in the creation of a further 14 full time jobs. The proposed development will therefore provide direct, full-time employment for 96 people for a period of up to 7 years. The applicant is further committed to providing employment for local people and currently over 90% of the workforce employed on the site live within a 25 mile radius of the site. In addition to direct employment, a number of indirect jobs (estimated at 130) will also continue to be supported in terms of site servicing. The projected annual wage bill during the life of the proposed development is some £3.6 million, a large proportion of which will contribute towards the local economy. In addition in excess of £3 million per year will be expended with local businesses.

2.11 An Environmental Statement has been provided by the applicant to suggest that the proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology. The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the Section 75 Agreement.

3. CONSULTATIONS AND ISSUES RAISED

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

(1) The developer must agree an ongoing road maintenance regime incorporated into a Section 75 Agreement with the Council to continue to

maintain the road 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 the following:

- (a) A joint 3 monthly safety inspection will be carried out to identify safety defects requiring attention, such works to be carried out at the applicant's expense;
 - (b) A joint annual detailed inspection of the route (U720/U719/C36) will be carried out to identify any programmed remedial work required due to deterioration of the road surface. This may comprise of resurfacing, including lengths at property frontages as indicated in the Environmental Statement, patching edge strengthening, kerbing and drainage/ verge repair work.
- (2) On completion of haulage of materials from the site, a joint inspection of the route will be undertaken to identify works to be carried out to ensure that there has been no detrimental effect to the road fabric by HGV movement generated from the Greenburn OCCS. To assist in determining before and after road condition a Road maintenance and Condition Survey will be undertaken and compared to that undertaken by the Council in 2003 (U719) and 2004 (C36). Any works identified will require to be undertaken at the applicant's expense.
- (3) 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 -16 HGV's per day.
- (4) The Transportation Management Plan (incorporating the Transport Protocol) must continue to be implemented and observed by the applicant and their hauliers.
- (5) The new section of U719 public road must be completed prior to the removal of the existing road. Road Construction Consent will be required to be issued to the developer prior to the commencement of road works on site.
- (6) The redundant section of road will require to be stopped up by order under the provisions of the Town and Country Planning Act for permitted development should the application be approved.
- (7) The new junction onto the U719 will require Road Construction Consent with visibilities of 4.5 metres by 160 metres and no object greater than 1 metre in height within the splay areas formed and will require to be bituminously surfaced for a minimum distance of 20 metres from the public road.

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 Division.

3.2 The Scottish Environment Protection Agency states that the Burnston Burn appears to be spring fed and so it is essential that mitigation measures are put in place that ensures that at the restoration stage this spring and any other springs in the area are not affected by the operation. The applicant should provide additional information on the design of the aquitard they intend to construct at the restoration stage.

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

Any pumping of groundwater will probably require authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR). If the abstraction rate is greater than 100 cubic metres per day then the applicant will be required to undertake a Water Features Survey. The applicant should consult with SEPA on this.

Noted.

During the working of the site it is noted that headwaters of some small watercourses will be diverted into other watercourse catchments. There is no indication in the report of the percentage increase in flows as a result of this. Additional information will require to be submitted to SEPA on this in order to determine if mitigation measures require to be put in place to prevent increased risk of erosion of the watercourses which would result in increased sediment movement into the River Nith. This activity will probably require a CAR authorisation.

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

During a recent Technical Working Group meeting the applicant agreed to install a gauging station on the Dalgig Burn to provide flow data and also for long term monitoring. The applicant should consult SEPA with regard to this.

Noted.

If the current settlement lagoons are to be used for the contaminated site drainage from the extension then the applicant should ensure that these do not require to be reviewed. Any new settlement lagoon discharges will require an authorisation under CAR. SEPA should be consulted in this regard. The restoration of the watercourses should match the existing profiles as closely as possible. This will require River Habitat Surveys to be undertaken which will provide information on the slope, width and depth of the channel as well as invertebrate and substrate information. The applicant must consult SEPA with regard to this. All River Habitat Surveys and hydrological investigations must be undertaken before any work is undertaken in this proposed area. SEPA is in agreement with the procedure of restoring burns in one year but not diverting waters until the autumn of the following year to try and allow the establishment of vegetation on the bankings and stability of the channel. Part of the restoration of the Dalgig Burn is the removal of a dam, to allow the

passage of fish. The applicant requires to examine the means by which the gradient of the stream will be changed. A hydrogeomorphologist must be employed to provide expert advice on the restoration of the Dalgig Burn and other watercourses. The burn restorations are a controlled activity and will require to be authorised by SEPA.

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

SEPA further states that the current OCCS at Greenburn is permitted by SEPA in terms of the Pollution Prevention and Control Regulations 2000 in respect of emissions to air. This permit is fairly standard for sites of this nature save that monitoring was required for particulates less than 10mm diameter (PM10) following consultations with the local health board. Should the proposed development proceed, the applicant will have to notify SEPA regarding such and apply for a variation of permit. The requirement for continuing and/or extending PM10 monitoring will be considered in detail during the determination of any application. It is noted however that the applicant does not foresee any particular problems with dust emissions from the proposed extension.

Noted.

Restoration of the site should be agreed with the Technical Working Group which was set up for the existing Greenburn site. At the last TWG meeting it was stated that monitoring of the restored site should be undertaken until 2022. SEPA would be obliged if this could be included as a planning condition.

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

3.3 The Scottish Wildlife Trust states that it was regularly consulted during the preparation of the Environmental Statement and is generally satisfied with the result. The Trust is concerned however about the potential dewatering of Glaisnock Moss and would seek reassurance that this matter has been addressed before coming to a final conclusion about the proposal. While it is correct that sections of the provisional wildlife sites within the proposed development site no longer have significant wildlife interest, loss of species-rich grassland along the Dalgig Burn was a concern. The Trust is pleased to see that grassland has been addressed in the restoration plan, although the long term maintenance of this feature is going to depend on appropriate management not under the applicant's control. It is noted that the ES contains some confusion over conservation designations, mainly between Wildlife Reserve, pLNR and Wildlife Site. Thankfully in this case, the mistakes will not result in any locally important sites being damaged or lost. With regard to birds, The Trust wishes to see the implementation of the recommendations presented by JDC Ecology in their May/June 2006 report. Finally the Trust would wish to see habitat continuity and links made with the restoration plan for the House of Water OCCS.

The applicant has indicated that further hydrogeological assessment and groundwater monitoring will be undertaken as part of the mitigation measures proposed in the ES. The implementation of the recommendations contained within the bird survey report can be achieved through a Section 75 Agreement for the Dalgig Extension. In respect of habitat continuity and links to the proposed restoration plan for the adjacent House of Water OCCS can be achieved through the respective Technical Working Groups which are common to both sites.

3.4 Scottish Natural Heritage states that it has no objection to the proposed extension on ecological issues but recommends conditions to minimise any adverse impacts arising from the proposal as follows:

- (1) Management works must be agreed by the competent authority under a Section 75 Agreement with management work being incorporated into a main plan for review by the Technical Working Group.
- (2) The Otter Protection Plan as highlighted in the ES is produced and used through the development of the Dalgig Extension.
- (3) Topsoil is carefully collected and stored to be used as part of the restoration process following operations.
- (4) Retention of trees and hedges and the drystone dyke along the minor road west of Dalgig Farm

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.

SNH is aware of an application for an extension to the House of Water site. Since this application proposes to extend the boundary of the Greenburn site, SNH is of the opinion that a significant adverse cumulative landscape and visual impact may arise and suggests that the landscape and visual consequences of both proposals is required to fully assess the potential cumulative impacts. SNH objects to the proposal on the basis of the information currently submitted.

A planning application (Ref. No. 06/0548/FL) for an extension to the House of Water Opencast Coal site (Burnston Extension) has been submitted to this Division for determination. It should be noted that the application site for the proposed extension to the House of Water site is in the main coincident with the application site for the Dalgig Extension. While in theory both applications could be approved, only one as submitted will be implemented and that will be determined through commercial and legal processes. A report on the Burnston Extension will be put to the Development Services Committee at a later date for consideration.

Consequently, the adverse cumulative landscape and visual impacts suggested by SNH are unlikely to occur. Notwithstanding

this, the applicant has provided further clarification of the potential cumulative impacts. As the proposed operations in the Dalgig Extension are not due to commence until 2009, significant restoration works will have taken place on both the Greenburn site and the House of Water site. It is therefore considered that significant cumulative landscape or visual impacts will not arise as a result of the proposed development.

SNH has been consulted further on this clarification and is content with the findings provided that the timing and timescale of operations on the Dalgig Extension are as stated within the Environmental Statement. A condition can be attached to any consent granted to ensure that the development is undertaken in accordance with the ES to minimise the potential for cumulative landscape and visual impacts.

3.5 Power Systems, Transco and Scottish Water have no objections to the proposed development

Noted.

3.6 New Cumnock Community Council has not responded to the consultation letter.

Noted.

3.7 The Royal Society for the Protection of Birds does not object to the development subject to mitigation measures being implemented through appropriate planning conditions or a legal agreement. The RSPB response is based largely based on the supplementary bird survey report, 2006. This reveals that the site does not contain bird populations of significant conservation interest

Noted.

RSPB is pleased to see several useful mitigation measures proposed, particularly as part of the supplementary report in 2006. The position of RSPB of non-objection to this development is conditional on:

- The provision of 9 barn owl boxes to a specification and in locations approved by the TWG;
- The involvement of an ecologist for detailed operational and restoration design and consideration of wider ornithological interest;
- The preparation of a Bird Management Strategy within the Conservation Management Plan;
- Vegetation clearance, forest felling and soil stripping being carried out outwith the bird breeding season. Where this is not possible, surveys for nesting birds must be carried out and suitable mitigation measures put in place, as agreed by the TWG.

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 RSPB.

The draft restoration concept contains a mix of habitats that will be of benefit to a range of bird species. RSPB is pleased to see inclusion of habitats that could benefit breeding waders and black grouse. Although not recorded on the site, this species occurs in the vicinity and restoration that increases forest edge habitat could encourage the species to spread in the long term. However the success of such a plan is dependant on the details of implementation and the TWG should be given a key role during finalisation and implementation of the restoration plan which must be backed up by a full Conservation Management Plan. RSPB notes that while it submitted comments on the original CMP for Greenburn, these were never incorporated. It is crucial that a CMP for the whole site is agreed by the TWG and that successful implementation of this plan is ensured through appropriate conditions or legal agreement. East Ayrshire Council must see monitoring of this work as part of their enforcement role at the site. A revised schedule of monitoring for the site should be developed in consultation with the TWG as part of the CMP. This should include extension areas within ongoing bird breeding surveys. Reports should be written up and reported to the TWG annually.

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 RSPB.

3.8 National Air Traffic Services has no objections to the proposed development.

Noted.

3.9 The West of Scotland Archaeology Service has no adverse comments to make on the proposed development.

Noted.

3.10 The Nith District Salmon Fishery Board states that having been associated with the applicant at the Greenburn site since its commencement the Board has been satisfied that the applicant has fulfilled all environmental commitments. This has ensured that the aquatic environment has been safeguarded and that this has been validated by annual electro-fishing surveys conducted by the Board. In this proposed extension the applicant has included a package of mitigation measures which satisfy the NDSFB regarding the temporary loss of the Dalgig Burn and a habitat used by migratory salmonids. Mitigation for the temporary loss of the Dalgig Burn includes fish rescue, compensation in respect of loss of production of migratory salmonids, restocking and annual monitoring of recovery of the re-instated watercourse. The monitoring period has been agreed by NDSFB and

the applicant to extend over a sufficient length of time to ensure complete recovery of the spawning / nursery habitat.

Noted.

The applicant is aware of the potential difficulties in restoring a watercourse as mentioned in the submitted ES and when restoration of the Dalgig Burn is complete the NDSFB would like to be reassured that the watercourse will be constructed to a standard which will ensure the watercourse does not flow subsurface. This watercourse does not suffer from these seasonal events currently and if it did it would not sustain migratory salmonids.

The present Technical Working Group for the Greenburn site would continue to support and oversee the restoration proposals for the Dalgig Extension and in this regard, the NDSFB is presently a member of the Greenburn TWG.

The NDSFB considers that there are opportunities to improve the Dalgig Burn, post coaling as mentioned in section 8.8.2 in the ES. However as an absolute minimum measure of success of restoration, the Board would insist that the reinstated Dalgig Burn does sustain salmonid populations, no fewer than it currently does prior to opencast operations commencing. Using this yardstick to measure restoration success, coupled with the other mitigation measures mentioned, the NDSFB would not object to this proposal to extend the Greenburn OCCS.

Noted.

3.11 East Ayrshire Council Environmental Health Division has no objections to the proposed development in principle, subject to compliance with existing conditions re dust, noise and vibration control measures. The Division would request sight of any noise monitoring results submitted by the applicant for perusal and comparison with the assessed data.

Noted.

3.12 Historic Scotland is content with the Environmental Statement and has no comments to offer on the proposal.

Noted.

3.13 The Scottish Executive Trunk Road Network Management Directorate indicates that the proposed development represents an intensification of the use of this site and will increase the associated traffic movements on the local road network. However the percentage increase in traffic is such that the proposal is likely to cause minimal environmental impact on the trunk road network and as such, the TRNMD has no comment to offer.

Noted.

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

Noted.

3.15 East Ayrshire Council Economic Development Division notes that the proposal is an extension of an existing opencast operation and as such will ensure continuity of employment, where many of the jobs require a high degree of skill in the operation of plant and machinery and where the employer will already have made a significant investment in terms of training. Accordingly this Division would be supportive of the planning application.

Noted.

3.16 The Scottish Executive Environment Group has no comments to make on the Environmental Statement in respect of the responsibilities for water supply, water protection, sewerage, flood prevention waste disposal and air quality.

Noted.

4. REPRESENTATIONS

4.1 A total of four letters of representation have been received objecting to the proposed development. The main points of objection are summarised as follows:

4.2 I am the owner of the adjacent woodland on Carsgailloch Hill and would lodge an objection to the proposal as it cuts across the only access track to the wood. The track is in the middle of the proposed extension site. Without this track I will be unable to carry out forestry operations and harvest timber from the wood.

The point raised by the objector is essentially a legal matter regarding rights of access along the stated track. It is for the applicant to ensure that he has the legal rights to implement any planning consent granted and that resolution of the issue will be through legal processes. In this regard the point of objection is not valid in planning terms.

4.3 The Dalgig valley is suffering from saturation opencast mining and the planned extension is the only virgin ground left in a 11km run of opencast sites in the area stretching from the unfinished site at Rigghead through Greenburn through the proposed extension to House of Water. I find this level of activity in the Dalgig valley highly damaging for all the wildlife activity as they have been deprived of large areas of land.

While it is accepted that there has been a high level of opencast activity in this area, the greater part of it is identified as Potential

Coal Extraction Areas in the East Ayrshire Opencast Coal Subject Plan. The opencast sites referred to are also undergoing progressive restoration and with mitigation measures undertaken and proposed, together with associated habitat improvements, it is considered that there will be no significant impact on flora and fauna. This is also borne out by the consultation process.

4.4 Some 25 cultural / historical sites have been identified on the proposed site that will be lost forever, regardless if they are sites of major or minor importance. The loss of our historical sites is not the way to preserve our heritage.

Consultations with Historic Scotland and the West of Scotland Archaeology Service has shown that no significant sites of interest will be lost as a result of the proposed development and neither consultee has raised any objections to the proposed development in this regard.

4.5 I am concerned that the proposed restoration of the site will not reflect its original status. I am concerned that the re-instatement phase will be a poor attempt to restore the land to its former / original contours. Like previous sites, holes are filled with water and spoil heaps shaped to look like hills. Authority planners need to be more stringent on the re-instatement phases of these operations.

The restoration of the Greenburn site and proposed Dalgig Extension will be undertaken to an agreed restoration plan and overseen by key stakeholders as part of the Technical Working Group already in place for the Greenburn site. In this regard there is involvement from SNH, RSPB, the Nith Salmon Fishery Board and SEPA, working together to ensure that the restoration of the site is carried out to the highest possible standards and to secure net environmental benefit through habitat enhancement.

4.6 An issue of environmental importance which I never seen in the application is the movement of the workshop facilities from the most easterly part of the application site. If permission were to be granted for this extension, I believe the workshop facilities should be moved west to keep pace with the bulk of plant movement. This would save fuel and see a reduction in dust and noise due to less plant movements to the most distant part of the site.

As indicated in paragraph 2.6 above, the only significant amendment to the existing Greenburn operation will be the relocation of the existing plant maintenance building from its present site to a site on the proposed extension just north of the U719 Dalgig Road. This will address the concerns of the objector in respect of this matter.

4.7 The proposed development contravenes Policy MIN1 of the East Ayrshire Opencast Coal Subject Plan (EAOCSPP) as much of the application site falls outwith the Potential Coal Extraction Areas.

While it is accepted that some 15% of the Dalgig Extension application site (48 hectares) lies outwith the identified Potential Coal Extraction Areas identified in the EAOCSPP, the proposed development requires to be considered under Policy MIN3 as an extension to an existing opencast site (see Section 5 below).

4.8 The proposed development contravenes Policy MIN2 because it is not a small extension, it does not remove dereliction and there is no overall benefit to communities now or after 2010.

Policy MIN2 refers to new opencast coal developments outwith the identified PCEAs. The proposed development represents an extension to the existing operational Greenburn opencast site and therefore requires to be considered under Policy MIN3 (see Section 5 below).

4.9 We have not seen a plan to show whether the Dalgig Extension would in fact be contiguous with the existing site.

The proposed development represents a sequential phase of mining operations from the existing Greenburn site, exploiting the contiguous coal seams found in the locality.

4.10 The applicant is extremely coy about disclosing its other interests in the locality, not even having results for drilling in 2006 as mentioned. From the list of farms on which they appear to have mineral rights, some of these may be in PCEAs, unlike half of the current application site.

As indicated above some 15% of the Dalgig Extension application site (48 hectares) lies outwith the identified Potential Coal Extraction Areas identified in the EAOCSPP, not half as suggested by the objectors.

4.11 Greenburn is scheduled to finish in 2014 according to previous planning consents. If the applicant has worked at a faster rate than originally scheduled then that is their affair; it does not put the Council under a moral obligation to allow coaling to continue. If finite resources are removed from an approved site faster than envisaged, then the land can be restored quicker and returned to local people.

Noted. Progressive restoration of the existing Greenburn site is also proceeding at a commensurate faster rate.

4.12 The ES lists site within 5 km of one another and then states that most of these sites will have been fully restored or nearly so by the time the Dalgig Extension starts. How can one company assume this will be the case? Why

should others not be extended or take longer to finish extraction, restoration or aftercare?

Noted.

4.13 Policy MIN12 seeks to prevent the proliferation of opencasts within close proximity to one community or in any one particular area. The applicant makes great play of the distance from communities, if communities are judged to be groups of houses. The current application clearly contravenes MIN12 as it would constitute a third operative site within 3km of each other and a third site within a 3km radius of the communities of Burnside etc. along the B741 road.

The proposed development represents an extension, albeit a significant extension, to an existing approved operational opencast site and is not therefore a new site in terms of assessment of the development under Policy MIN12. A community in terms of the definition under the EAOCSF relates to a grouping of about 10 houses or more.

4.14 SPP16 has a presumption against opencasting, applying the principles of sustainable development and environmental justice. Removing coal from areas not identified in the EAOCSF and admitting to removing coal faster than previously agreed is hardly sustainable. There has been little environmental justice for local residents when they have had to leave their homes and seen historic building demolished, landmarks removed and footpaths obliterated. Even their public roads and river have been diverted to suit coal barons.

Notwithstanding the objectors' comments insofar as they may relate to other opencast coal site, the present application has been formally assessed and has been the subject of extensive consultations. No significant adverse issues have been raised in respect of the matters raised by the objectors and it is noted that the application has attracted only three other letters of representation in respect of the proposals.

4.15 SPP16 (Test 1) refers to environmental acceptability, through weighing up the various benefits and disbenefits. Test 2 requires the proposal, if it is to be acceptable to provide local or community benefits which clearly outweigh the likely impacts. This development will not remove dereliction nor render this ground any more useable or attractive. The question of continuing employment at Greenburn is not a factor at this time as the currently consented site at Greenburn will continue to employ workers until at least 2010, possibly longer due to restoration or due to the economic climate. In any case the applicant has indicated other opencast interests which may be more likely to gain planning consent as they are identified for opencasting. The proposal is therefore contrary to SPP16.

SPP16 states that there shall be a presumption against opencast development unless the proposal would meet one of two tests.

Test 1 considers whether the proposal is environmentally acceptable or can be made so by use of conditions and/or agreements. The consultation and policy assessment process indicates that the Dalgig Extension does meet this first test, not surprisingly since 85% of the application site lies within a PCEA as identified in the EAOCSP, which seeks to guide developers to those areas of least environmental constraints.

Notwithstanding the above, it is considered that Test 2 is also met as the proposed Dalgig Extension will allow continuation and expansion of employment which is particularly beneficial in those areas where the extraction takes place. It is therefore considered that both tests are satisfied in assessing the Dalgig Extension.

4.16 The proposals will terminally affect Dalgig Farmhouse. More farmhouses have been demolished by opencasting than remain, many of them with historic associations. It will detrimentally affect access to the Martyr's Graves and their tranquil setting. It will obliterate relics of former early occupation of wooded areas.

It is acknowledged that Dalgig Farm will be demolished as part of the Dalgig Extension operations. However consultations with Historic Scotland and the West of Scotland Archaeology Service has shown that no significant sites of interest will be lost as a result of the proposed development and neither consultee has raised any objections to the proposed development in this regard.

4.17 The proposed development will adversely impact on flora and fauna. A significant range of birds, mammals and invertebrates are all present on this site and with opencasting approaching from all sides they soon will have nowhere to go. Such cumulative reduction in their habitats is unacceptable. Given the abundance of wildlife on this site and the threats thereto posed by this and other potential and existing opencasting in the area, MEGA members are of the opinion that it is time for a review of wildlife in the Upper Nith area. The extension of opencasting is such that House of Water would effectively join up with Greenburn which itself adjoins Hall of Auchincross and Rigghead with Skares just looming to the north and with Chalmerston closing in further west (apart from the additional threat from the wind farm).

It is noted that subject to appropriate conditions and/or legal agreements, neither SNH nor RSPB have raised objection to the proposed development in respect of cumulative impacts on flora and fauna.

4.18 Objection is made on the basis of an additional extension of the detrimental impacts arising from the transportation of materials from the site. The non-technical summary confirms a further three and a half years of road haulage would be generated. However this presentation of the situation by the applicant is somewhat misleading given that they acknowledge that coal

production at Greenburn itself is programmed to continue only to mid 2009. The extension removes any benefit to the community arising from the existing site being worked more quickly than anticipated. It seeks to present the extension as being a mere three and a half years when it is in effect a further seven year of mining.

The applicant has indicated that there is no intention of misleading anyone in the preparation of the submitted application. The intention of the applicant is clearly stated within both the Non-Technical Summary and the Environmental Statement. Section 2.6 of the ES provides full details of the timing, timescale and hours of operation for the Dalgig Extension. Furthermore, Section 15.4 of the ES clearly defines over what timescale any potential traffic related impacts are expected, and have been evaluated as part of the assessment of environmental impacts.

4.19 The Environmental Statement refers all too briefly to future interests and to exploratory drilling undertaken in 2005 and 2006. This potential for additional extension of the site is a material consideration; that is why the company is obliged to provide details. However the details are conveniently sparse. These interests in Greenburn South promise yet more coaling and yet more disturbance for those properties adjacent to the transport route. How many more extensions are going to be permitted and how much additional impact on local residents is this Council going to accept? What is being proposed is an incremental increase in disturbance to residents along the roads used for transportation to local markets.

In terms of Policy MIN6 of the EAOCSP, 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 stated that this information is based on current knowledge of the geology of the area and is included in the plans accompanying the application. The applicant contends that the information put forward on its future interests is as detailed as it could reasonably be at this stage.

4.20 A further three and a half years of impact in terms of vibration of passing vehicles which equates to a total of 10 years from now, of potential vibration damage to the houses next to the road. The applicant has not offered and the Council has not thus far required that there be any assessment or monitoring of the impacts of this vibration on properties on those adjacent houses and this should be enshrined in the consideration of this current application.

The ES provides a detailed independent assessment of potential impacts associated with traffic related to the proposed development. This assessment concludes that there are no significant environmental impacts as a result of traffic associated

with the proposed development. The applicant has further responded to the point by stating that given extensive research into both ground and air-borne vibration, it is deemed unnecessary to monitor for traffic-related vibration within buildings.

4.21 The proposed extension does not lie entirely within the search area for potential coal extraction and as such should be refused; otherwise what is the point of defining such areas.

It is accepted that part of the Dalgig Extension lies outwith a Potential Coal Extraction Area as identified in the East Ayrshire Opencast Coal Subject Plan. The policy position with regard to the proposed Dalgig Extension is stated fully in section 5 below.

4.22 This application should be refused, however if the Council were to be persuaded that the proposal should be approved, it should be without increase in the numbers of vehicles per day using the transportation routes. In this regard the additional opportunities to exploit fireclay, sandstone and other aggregates, together with the felling of timber from within the forested area of the extension must not generate road transport movements in excess of those already approved. It is noted that some 60,000 tonnes of timber would be exploited. The haulage of timber does already impact on Roadside and the Dalgig Extension must not generate additional timber movements through that community.

The applicant has stated within the application that it is proposed to dispatch up to a maximum of 80,000 tonnes of minerals and materials per annum, in line with the current consents relating to the existing Greenburn site. This figure includes all coal, fireclay, sandstone, aggregates, timber and any other economic minerals. Therefore there will be no increase in the number of vehicle movements per day using the existing agreed transport route.

It is recognised by the applicant the C36 transport route is currently utilised for the transportation of timber. The impact of the harvesting and dispatch of timber from the development area will occur whether the proposed development takes place or not. It is noted that the felling and dispatch of timber by the applicant will allow additional controls to be applied to regulate this road haulage as the estimated 60,000 of timber will be dispatched over a period of 7 years and will form part of the 80,000 tonnes per year of minerals to be dispatched by road.

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 (1999) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

Ayrshire Joint Structure Plan

5.2 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the Greenburn 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 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 Dalgig Extension application has been assessed and determined against the stated criteria. The proposals promoted by the current application will 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.

5.4 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 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 generated by the extended site are 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 the restoration as the site will be progressively restored.

However, the part of the proposed Dalqig Extension area does not fall within a Potential Coal Extraction Area. Approximately 43 hectares of the Dalqig Extension site lies outwith a PCEA.

5.5 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 will be a small area of existing dereliction 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 proposed extension area will safeguard the continued direct employment of 80 people at the Greenburn site and will result in the creation of a further 14 full-time jobs.

(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.

Although the overall lifespan of the Greenburn operation as extended by the Dalgig Extension would be a total of 13 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. Other impacts such as mineral transportation through local communities is considered to be 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.

5.6 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 and is included in the plans accompanying the application. The applicant contends that the information put forward on its future interests is as detailed as it could reasonably be at this stage. In this regard, the applicant has indicated an interest in land to the south of the existing Greenburn site.

5.7 Policy MIN 12: 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, albeit that it is accepted that the proposed extension area is greater than that of the original Greenburn site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12 with respect to the stated criteria.

5.8 Policy MIN 15: 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 Dalgig Extension is designed to improve the wildlife conservation value of the land that 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 Dalgig Extension.

5.9 Policy MIN 18: 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 requires 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.

5.10 Policy MIN 19: 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.

5.11 Policy MIN 20: 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 is secured through the existing Section 75 Agreement for the Greenburn site and this will be extended to encompass the Dalgig Extension in terms of the consultation response received from the Roads and transportation Division.

5.12 Policy MIN 21: 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 Dalgig Extension.

5.13 Policy MIN 23: 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 proposed Dalgig Extension area does not encroach within 500 metres of any settlement.

(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 Dalgig Extension would be a total of 13 years (and an extraction period 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. Other impacts such as mineral transportation through local communities is considered to be 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 site operator is currently exploring the potential for further extraction of coal in the vicinity of the existing site. However, it is considered that the current proposal will not, in itself, result in perpetuation of disturbance to local communities.

5.14 Policy MIN 25: 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;

The applicant states that there are no residential properties, outwith its potential ownership or control that lie within 500 metres of the amended working face of the site.

(ii) the extraction or operational area does not encroach within 100 metres of any group of dwellings, individual dwellinghouse(s) or sensitive establishment concerned.

There are no residential properties, outwith the applicant's potential ownership or control that lie within 100 metres of the amended working face of the site.

5.15 Policy MIN33: 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 Dalgig Extension in response

5.16 Policies MIN34 and MIN35: 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 Dalgig Extension.

5.17 Policies MIN36 and MIN37: 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 Dalgig Extension.

It is therefore considered that the proposed development is generally consistent with the relevant EAOCSP policies pertinent to this application.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received, SPP16 on Opencast Coal and associated PAN50, relevant planning history and the Finalised Ayrshire Joint Structure Plan 2006.

Consultation Responses

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

Representations

6.3 It is considered that with the mitigation measures promoted within the ES, many of the points of objection can be addressed either by condition or by means of a Section 75 Agreement.

Scottish Planning Policy

6.4 Recent guidance on opencast coal extraction has been given in Scottish Planning Policy 16: Opencast Coal. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coaling may take place.

6.5 Many of the provisions of SPP16 are already addressed within the adopted East Ayrshire Opencast Coal Subject Plan with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. Nonetheless SPP16 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 the greater part of the Dalgig Extension development lies within such an area.

6.6 SPP16 also indicates that in applying the principles of sustainable development and environmental justice to opencast coal extraction, there should be a presumption against development unless the proposal would meet one of two tests:

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

The consultation and policy assessment process indicates that the Dalgig Extension does meet this first test, not surprisingly since 85% of the application site lies within a PCEA as identified

in the EAOCSP, which seeks to guide developers to those area of least environmental constraints.

(ii) does the proposal provide local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission?

It is considered that Test 2 is also met as the proposed Dalgig Extension will allow continuation and expansion of employment which is particularly beneficial in those areas where the extraction takes place. It is therefore considered that both tests are satisfied in assessing the Dalgig Extension.

Planning Advice Notes

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

Noted.

Planning History

6.8 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.

6.9 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.

6.10 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.

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

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

6.13 A planning application (Ref. No. 06/0548/FL) for an extension to the House of Water Opencast Coal site (Burnston Extension) has been submitted to this Division for determination. It should be noted that the application site for the proposed extension to the House of Water site is in the main coincident with the application site for the Dalgig Extension. While in theory both applications could be approved, only one as submitted will be implemented and that will be determined through commercial and legal processes. A report

on the Burnston Extension will be put to the Development Services Committee at a later date for consideration.

Finalised Ayrshire Joint Structure Plan

6.14 There are no policy changes with regard to opencast coal mining being promoted in the new finalised joint structure plan and the current provisions of the approved structure plan remain relevant to this application.

Noted.

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 Dalgig Extension and as required to be amended by the terms of this report. In addition, formal procedures will require to be undertaken to promote the stopping up of the exiting U719 Dalgig Road under the Town and Country Planning (Scotland) Act 1997.

7.2 In terms of the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No.2) Direction 1998, certain categories of opencast development require to be formally notified to the Scottish Ministers should the Planning Authority be minded to approve opencast proposals. This includes development consisting of works connected with the extraction of coal by opencast methods, and other minerals extracted in association with works to extract opencast coal, for which a planning authority is minded to grant consent which involves sites greater than 500 hectares.

The proposed combined Greenburn site and the Dalgig Extension covers an area of some 510 hectares. While this is an extension, existing infrastructure within the Greenburn site is to be used and areas within the overall site will be undergoing restoration and aftercare. The application will therefore require to be notified to the Scottish Ministers in accordance with the Direction.

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. 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 either not of

sufficient weight to justify refusal of the application or are not relevant to the proposal.

8.2 The proposals represent a significant extension to the existing consented site at Greenburn and include the re-location of the U719 Dalricket Road. 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 a significant body of objection to the proposal.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the existing Greenburn site and the proposed Dalgig Extension site are located, the proposal to extend the existing consented site will have no significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it is considered that the extended operations proposed can be undertaken within acceptable environmental standards.

8.4 The existing Greenburn operation provides full time employment for 60 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 7 year working life of the proposed Dalgig Extension. In addition the proposed increase in resources employed, in terms of plant and equipment, will result in the creation of a further 14 full time jobs. The proposed development will therefore provide direct, full-time employment for 96 people for a period of up to 7 years. This is considered to be of significant community benefit.

8.5 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 but 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) A joint 3 monthly safety inspection will be carried out to identify safety defects requiring attention, such works to be carried out at the applicant's expense;

- (b) A joint annual detailed inspection of the route (U720/U719/C36) will be carried out to identify any programmed remedial work required due to deterioration of the road surface.
- (c) On completion of haulage of materials from the site, a joint inspection of the route will be undertaken to identify works to be carried out to ensure that there has been no detrimental effect to the road fabric by HGV movement generated from the Greenburn OCCS. To assist in determining before and after road condition a Road maintenance and Condition Survey will be undertaken and compared to that undertaken by the Council in 2003 (U719) and 2004 (C36). Any works identified will require to be undertaken at the applicant's expense.
- (ii) The extension of the remit of the existing Greenburn Technical Working Group to embrace the proposed Dalgig Extension.
- (iii) The monitoring of the restored Greenburn and Dalgig Extension sites through to the final aftercare period ending during 2022, as overseen by the Greenburn / Dalgig Technical Working Group.
- (iv) The production of a comprehensive Conservation Management Plan for the Greenburn site as extended by the Dalgig Extension, this plan to be agreed by the Greenburn / Dalgig Technical Working Group and shall incorporate the requirements of Scottish Natural Heritage and the Royal Society for the Protection of Birds (Scotland) as indicated in their respective consultation responses.
- (v) The involvement of an ecologist for detailed operational and restoration design and consideration of wider ornithological interests.
- (vi) The preparation of a Bird Management Strategy within the comprehensive Conservation Management Plan.

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 be 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 matter detailed in Paragraph 8.5 of this report.

Alan Neish
Head of Planning, Development and Building Standards.

4 December 2006
HM/HM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of representation
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (1999)
7. Finalised Ayrshire Joint Structure Plan (2006)
7. Previous applications 00/0793/FL, 03/0726/FL, 04/0263/FL, 04/0717/FL and 05/558/FL
8. Application 06/0548/FL
9. SPP16: Opencast Coal
10. PAN50 and Annexes.

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

Implementation Officer: Dave Morris

| | |
|--------------------------------|---|
| Location | Greenburn OCCS, New Cumnock |
| Nature of Proposal: | Extension of Opencast Coal Site (Dalgig Extension) |
| Name and Address of Applicant: | Kier Construction Limited Tempsford Hall SANDY Beds. SG19 2BD |
| Name and Address of Agent | Mark Harrington Per Kier Mining Tempsford Hall SANDY Beds. SG19 2BD |

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

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

1. The total mineral haulage and timber haulage from the site on the public road system shall not exceed a total of 80,000 tonnes per annum at an average daily rate of 12 - 16 HGV's per day.

REASON –In the interests of residential amenity and road safety.

2. The proposed new section of U719 public road shall be completed and operational prior to the removal of the existing section of road.

REASON – In the interests of public road safety.

3. The proposed new access junction onto the U719 shall have visibilities of 4.5 metres by 160 metres with no object greater than 1 metre in height being allowed within the splay areas formed. The access shall be bituminously surfaced for a minimum distance of 20 metres from the edge of the public road.

REASON – In the interests of public road safety.

4. Prior to the commencement of operations on the Dalgig Extension area, the applicant shall submit to and have approved by the Planning Authority, in consultation with the Scottish Environment Agency, details of the construction of the proposed aquitard to be used during the restoration of the Burnston Burn.

REASON – To ensure effective restoration of the site.

5. Prior to the commencement of operations on the Dalgig Extension area, the applicant shall submit to and have approved by the Planning Authority, in consultation with the Scottish Environment Agency, information regarding the increased flows in watercourses taking additional diverted waters and an assessment of the mitigation measures proposed to prevent increased risk of erosion in these watercourses.

REASON – In the interests of environmental protection.

6. Prior to the commencement of operations on the Dalgig Extension area, the applicant shall undertake River Habitat Surveys and hydrological investigations, the details of which shall inform the process of restoration of watercourses affected by the proposed development.

REASON – To ensure a high standard of restoration of watercourses.

7. The existing trees, hedges and the drystone dyke running along the U719 road west of Dalgig Farm shall be retained insofar as is reasonably practical.

REASON – In the interests of nature conservation and visual amenity.

8. Prior to the commencement of works on the Dalgig Extension, the applicant shall provide 9 barn owl boxes to a specification and in locations approved by the Planning Authority in consultation with the Greenburn / Dalgig Technical Working Group.

REASON – In the interest of environmental protection.

9. All vegetation clearance, forest felling and soil stripping shall be carried out outwith the bird breeding season. 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 / Dalgig Technical Working Group.

REASON – In the interests of environmental protection.

10. 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 and as amended by planning consent 05/0583/FL dated 13 April 2006.

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

11. The proposed new section of U719 public road shall be completed and in use prior to the stopping up and removal of the existing section of road.

REASON: In the interests of public road safety.

Note to Applicant

1. The applicant is advised to make early contact with the Scottish Environment Protection Agency with regard to any amendments to existing authorisations in place for the Greenburn site in respect of legislation administered by that body.

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