

## **EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE: 06 MARCH 2007**

### **06/0685/FL: EXTRACTION OF COAL BY OPENCAST METHODS WITH RESTORATION TO FORESTRY AND NATURE CONSERVATION, AND RETENTION OF EXISTING SITE INFRASTRUCTURE AT CHALMERSTON OCCS, DALMELLINGTON**

**APPLICATION BY SCOTTISH COAL COMPANY LIMITED  
(SCOTTISH RESOURCES GROUP)**

#### **EXECUTIVE SUMMARY SHEET**

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

1.1 Permission is sought for an extension of the existing Chalmerston North site for the winning and working of coal by opencast method. Fireclay, where encountered, will also be won in conjunction with coaling operations. The proposed northern extension will be developed as an additional phase of the existing operational site using predominantly the same plant and infrastructure. In particular the existing coal treatment area, railhead and railway line used for this mining complex will be used to process and transport coal extracted from the Northern Extension, with all extracted coal transported to the railhead via existing internal haul roads. With the new extension (280 hectares) and the existing operational site (985 hectares) the total Chalmerston North development site will extend to 1265 hectares.

1.2 This proposal will allow the recovery of up to a further 1.02 million tonnes of coal, distributed mainly via the existing dedicated disposal point and rail line to the power generation industry. Production will be at a rate of 250,000 tonnes per annum (or 5000 tonnes per week), similar to the current production rates of the existing operational site. The coals will be worked within two distinct phases with a total working area of 86 hectares. Phase 1 (46.3 hectares) which lies generally within the central part of the application site, will be worked in a south-west to north-east direction for a period of approximately 30 months. Following this phase 2 (39.8 hectares), which lies on the western boundary of the application site, will be commenced and worked in a north to south direction for a period of approximately 18 months. The total period of working, including between 6 to 12 months restoration, will be approximately 5 years. The maximum depth of working will be 73 metres below original ground level.

1.3 The current coaling operations at Chalmerston North / Pennyvenie are anticipated to cease by the end of 2008 and the proposed operations in the Northern Extension are to be phased in to allow for the applicant to achieve a continuous supply of coal to the market, and no doubt to allow for the construction of wind turbines should the Scottish Ministers be minded to grant consent for the Kyle Wind Farm. It is therefore anticipated that the Northern

Extension will be fully completed and restored by June 2013. A five year aftercare programme will continue beyond this date.

1.4 In terms of site infrastructure phase 1 overburden will be stored within the application site as one mound located to the east of the phase 1 extraction area to a maximum height of 40 metres. After 30 months this mound will be dismantled as progressive restoration takes place. The phase 2 overburden will again be stored as one mound located to the east of the phase 2 extraction area to a maximum height of 28 metres. A new overland haul road will be formed to connect the Northern Extension to the existing network of haul routes to the coal preparation and dispatch area within the original Chalmerston site. As indicated above, the Northern Extension area is occupied by commercial forestry and this will require to be clear felled to enable mining operations to take place. A surface water management scheme will also be operated throughout the operational life of the site and will involve the installation of water treatment lagoons, perimeter cut-off ditches and the diversion of watercourses away from the working areas.

1.5 It is proposed to use the same hours of operation and shift system as currently used at the Chalmerston North site i.e. between 0700 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No operations are to be undertaken on Sundays or local or Public Holidays with the exception of routine maintenance and emergency works. The dispatch of minerals by road will be confined between 0800 and 1700 hours Mondays to Fridays and 0800 and 1600 hours on Saturdays, with no dispatch on Sundays. Approximately 95% of coals won from the site will be dispatched by rail via the dedicated rail line with 5% being dispatched via road (A713) to either Killoch or Ayr Harbour.

1.6 The Chalmerston North / Pennyvenie operation provides full time employment for 128 personnel with a further 10 persons employed in off-site coal transportation. Additional employment will also be generated / sustained within nearby businesses in the supply of site services. These jobs will be maintained throughout the working life of the Northern Extension. The projected annual wage bill during the life of the proposed development is some £3.84 million, a large proportion of which will contribute towards the local economy. In addition £5.8million per year will be expended on fuel from local suppliers and £272,000 per annum to public finances. From the experience gained at the current site, approximately 85% of employees reside within a 10 km radius of the site.

1.7 Progressive restoration will be integral to the proposed development, with worked areas being backfilled with newly excavated overburden, and re-vegetated as work progresses. Final restoration operations and replanting of the site are weather dependent but are expected to take 12 months. The restoration plan submitted by the applicant indicate that the majority of the site will be returned to commercial forestry along with native woodland planting and associated habitat enhancement designed with reference to the Ayrshire Local Biodiversity Action Plan. Watercourses will be re-instated and restored

as wildlife corridors and further wetland areas created. Public access is to be encouraged including the creation of a cycle route.

1.8 Access to the site is via the existing main access off the A713 to the north of Dalmellington (then by overland haul routes) and also from the B741 to the north-east of Dalmellington where the main site offices, employee facilities and car park are currently located.

1.9 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.

1.10 It should be further noted that the Chalmerston North extension lies within the development area of the proposed Kyle Forest Wind Farm to which the Council formally objected on 08 March 2006 and again on 28 November 2007. This proposal is currently the subject of a Public Local Inquiry and final decision on this development will rest with the Scottish Ministers. Should consent for the wind farm development be granted, the proposed opencast operations proposed under this application will be undertaken prior to the construction of any turbines located in this application site (approximately 10 turbines) in order to prevent sterilisation of coal reserves. The approval of this wind farm development would also have an impact on the proposed restoration of the Chalmerston North proposed extension site.

## **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and subject to Notification of Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No 2) Direction 1998. The issue of the decision notice should 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 matters 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 can be addressed by conditions or by legal agreement.

3.2 The proposals represent a significant extension to the existing consented site at Chalmerston North and 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. Indeed a significant number of letters of support has been received in this case.

3.3 It is considered that, given the relatively remote and sparsely populated area in which the proposed Northern Extension site is located, this proposal 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. The present use of the site as a commercial forest also means that in landscape and ecological terms, the application site is of low value and the remaining forestry will act as a visual screen to most of the development.

3.4 The existing Chalmerston North / Pennyvenie operation provides full time employment for 138 staff, operatives and contractors. These jobs will be maintained throughout the additional 5 year working life of the proposed Northern Extension. This is considered to be of significant ongoing 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) The extension of the remit of the existing Chalmerston North Technical Working Group to embrace the proposed Northern Extension. The TWG shall also include a representative from the Ayrshire Rivers Trust.
- (ii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement that accompanied the planning application. The applicant shall provide a Mitigation Plan for the site that shall be the subject of an annual audit

with a monitoring report provided to the Planning Authority assessing the effectiveness of mitigation measures.

- (iii) The undertaking and establishment of baseline conditions in respect of the water environment and water quality on the site. Appropriate monitoring systems shall be put in place together with appropriate management measures to address any water quality issues arising from operations on site, which shall be the subject of agreement with the Planning Authority in consultation with SEPA.
- (iv) The undertaking of an assessment of potential effects on the hydrology of Martyr's Moss and, if appropriate, the introduction and implementation of suitable mitigating measures to minimise any potential adverse impact on this Provisional Wildlife Site.
- (v) The setting up and undertaking of appropriate noise, dust and vibration monitoring, the details of which shall be the subject of prior consultation and agreement with the Environmental Health Division
- (vi) The undertaking of an assessment of the fish population in the stream proposed for diversion with an appropriate fish rescue plan implemented if necessary, to be undertaken prior to diversion of the stream.
- (vii) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the East Ayrshire Opencast Coal Subject Plan 2003.
- (viii) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;
- (ix) The establishment of noise, dust and vibration monitoring programmes for the Northern Extension site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (x) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.

**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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**APPLICATION BY SCOTTISH COAL COMPANY LIMITED  
(SCOTTISH RESOURCES GROUP)**

#### **Report by Head of Planning, Development and Building Standards**

#### **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 existing Chalmerston North opencast coal site lies approximately 3 kilometres north-east of Dalmellington and itself forms part of a wider complex of opencast coal sites including the original Chalmerston site and the Pennyvenie site. The application site relates to the approved Chalmerston North / Pennyvenie Opencast Coal Site, works for which commenced in 1998. Planning permission for the extraction of 4.5 million tonnes of coal by opencast method from the application site was granted on 10 June 1998 under planning application 97/0582/FL.

2.2 The current application site which the applicant has termed the Northern Extension extends to approximately 280 hectares and lies, as its name suggests, to the north of the existing operational site at Chalmerston North. The site comprises extensive commercial coniferous plantation (Sitka Spruce) and lies within the Kyle Forest which is managed by Forest Enterprise on behalf of the Scottish Ministers. The dense plantations and remoteness of the site from public highways, communities and private properties effectively screens the site from external viewpoints. The plantation is at varying stages of growth with the main part of the site being given over to large recently felled or replanted areas. The site is also transacted by a series of forest rides.

2.3 The site lies between approximately 305 metres and 360 metres Above Ordnance Datum, with higher ground to the north near Stannery Knowe, sloping down generally to the south towards the Head Mark Lane burn and south-east to the Black Water. Although the area is sparsely populated, two isolated farmsteads are located within the vicinity of the proposed northern extension. Upper Beoch is situated approximately 2.4 km south east of the site and Rankinston is situated approximately 2.1 km to the north-west.

2.4 The applicant has indicated that drilling within the application site has confirmed the presence of six economically viable coal seams with average thickness of these seams being between 0.25 metres and 0.7 metres.

2.5 **Proposed Development:** Permission is sought for an extension of the existing Chalmerston North site for the winning and working of coal by opencast method. Fireclay, where encountered, will also be won in conjunction with coaling operations. The proposed northern extension will be developed as an additional phase of the existing operational site using predominantly the same plant and infrastructure. In particular the existing coal treatment area, railhead and railway line used for this mining complex will be used to process and transport coal extracted from the Northern Extension, with all extracted coal transported to the railhead via existing internal haul roads. With the new extension (280 hectares) and the existing operational site (985 hectares) the total Chalmerston North development site will extend to 1265 hectares.

2.6 This proposal will allow the recovery of up to a further 1.02 million tonnes of coal, distributed mainly via the existing dedicated disposal point and rail line to the power generation industry. Production will be at a rate of 250,000 tonnes per annum (or 5000 tonnes per week), similar to the current production rates of the existing operational site. The coals will be worked within two distinct phases with a total working area of 86 hectares. Phase 1 (46.3 hectares) which lies generally within the central part of the application site, will be worked in a south-west to north-east direction for a period of approximately 30 months. Following this phase 2 (39.8 hectares), which lies on the western boundary of the application site, will be commenced and worked in a north to south direction for a period of approximately 18 months. The total period of working, including between 6 to 12 months restoration, will be approximately 5 years. The maximum depth of working will be 73 metres below original ground level.

2.7 The current coaling operations at Chalmerston North / Pennyvenie are anticipated to cease by the end of 2008 and the proposed operations in the Northern Extension are to be phased in to allow for the applicant to achieve a continuous supply of coal to the market, and no doubt to allow for the construction of wind turbines should the Scottish Ministers be minded to grant consent for the Kyle Wind Farm. It is therefore anticipated that the Northern Extension will be fully completed and restored by June 2013. A five year aftercare programme will continue beyond this date.

2.8 In terms of site infrastructure phase 1 overburden will be stored within the application site as one mound located to the east of the phase 1 extraction area to a maximum height of 40 metres. After 30 months this mound will be dismantled as progressive restoration takes place. The phase 2 overburden will again be stored as one mound located to the east of the phase 2 extraction area to a maximum height of 28 metres. A new overland haul road will be formed to connect the Northern Extension to the existing network of haul routes to the coal preparation and dispatch area within the original Chalmerston site. As indicated above, the Northern Extension area is occupied by commercial forestry and this will require to be clear felled to enable mining operations to take place. A surface water management scheme will also be operated throughout the operational life of the site and will involve the installation of water treatment lagoons, perimeter cut-off ditches and the diversion of watercourses away from the working areas.

2.9 It is proposed to use the same hours of operation and shift system as currently used at the Chalmerston North site i.e. between 0700 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No operations are to be undertaken on Sundays or local or Public Holidays with the exception of routine maintenance and emergency works. The dispatch of minerals by road will be confined between 0800 and 1700 hours Mondays to Fridays and 0800 and 1600 hours on Saturdays, with no dispatch on Sundays. Approximately 95% of coals won from the site will be dispatched by rail via the dedicated rail line with 5% being dispatched via road (A713) to either Killoch or Ayr Harbour.

2.10 The Chalmerston North / Pennyvenie operation provides full time employment for 128 personnel with a further 10 persons employed in off-site coal transportation. Additional employment will also be generated / sustained within nearby businesses in the supply of site services. These jobs will be maintained throughout the working life of the Northern Extension. The projected annual wage bill during the life of the proposed development is some £3.84 million, a large proportion of which will contribute towards the local economy. In addition £5.8million per year will be expended on fuel from local suppliers and £272,000 per annum to public finances. From the experience gained at the current site, approximately 85% of employees reside within a 10 km radius of the site.

2.11 Progressive restoration will be integral to the proposed development, with worked areas being backfilled with newly excavated overburden, and re-vegetated as work progresses. Final restoration operations and replanting of the site are weather dependent but are expected to take 12 months. The restoration plan submitted by the applicant indicate that the majority of the site will be returned to commercial forestry along with native woodland planting and associated habitat enhancement designed with reference to the Ayrshire Local Biodiversity Action Plan. Watercourses will be re-instated and restored as wildlife corridors and further wetland areas created. Public access is to be encouraged including the creation of a cycle route.

2.12 Access to the site is via the existing main access off the A713 to the north of Dalmellington (then by overland haul routes) and also from the B741 to the north-east of Dalmellington where the main site offices, employee facilities and car park are currently located.

2.13 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.

2.14 It should be further noted that the Chalmerston North extension lies within the development area of the proposed Kyle Forest Wind Farm to which the Council formally objected on 08 March 2006 and again on 28 November 2007. This proposal is currently the subject of a Public Local Inquiry and final decision on this development will rest with the Scottish Ministers. Should consent for the wind farm development be granted, the proposed opencast operations proposed under this application will be undertaken prior to the construction of any turbines located in this application site (approximately 10 turbines) in order to prevent sterilisation of coal reserves. The approval of this wind farm development would also have an impact on the proposed restoration of the Chalmerston North proposed extension site.

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

3.1 East Ayrshire Council Roads and Transportation Division indicates that provided that the transport arrangements are as indicated within the Environmental Statement there are no objections to the proposed development.

#### ***Noted.***

3.2 The Scottish Environment Protection Agency states that it acknowledges that the current site for which this extension is proposed is well run and has not been known to have caused problems to date concerning issues likely to affect its interests. One of the biggest concerns is the potential risk of pollution to the watercourses draining the site and possible effects on groundwater. In order to identify the impacts on hydrology, the Environmental Statement (ES) has identified operations and procedures which might have the potential to have a negative impact on the water environment. Amongst mitigation measures proposed are an initial site investigation and site monitoring. SEPA considers that the establishment of baseline conditions is essential to understanding and measuring the effects of any future operations on the site and would recommend that a responsible person is appointed, who has the expertise and authority to act, should problems arise with water quality issues once operations begin on site.

***An obligation can be attached to a Section 75 Agreement in any consent granted for the proposed development to meet the requirements of SEPA.***

SEPA welcomes proposals for a water management system and looks forward to receiving a detailed Work Method Statement for comment prior to any works commencing on site.

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

SEPA notes that the ES recognises that the diversion of watercourses will require a licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2005. This licence will be issued by SEPA and the applicant must ensure that sufficient time is allowed to obtain the necessary authorisation. SEPA further welcomes the proposals not to diver watercourses at times of high flow and would suggest that other aspects of working procedures on site may have more or less environmental impact depending on climatic conditions.

***Noted.***

SEPA states that very little information has been provided regarding the construction of the new access road and the possible environmental impacts during and post construction. Construction techniques should be adopted that minimise environmental impacts. It should be noted that SEPA has a policy against the culverting of watercourses and the bridging of watercourses will be subject to authorisation. Any construction practices should minimise the use of raw materials and maximise the use of secondary aggregates and recycled or renewable materials. SEPA would expect surface water run-off from the road to be treated by means of Sustainable Urban Drainage Systems.

***Noted. The applicant has been made aware of the comments of SEPA.***

Should there be any increase in the number of staff working at the site, then it is essential that on site facilities have the spare capacity to deal with increased numbers. An assessment of the existing facilities should therefore be made and any necessary improvements identified and implemented ahead of the new proposal.

***The proposed northern extension is not likely to result in any increase in staff numbers on site.***

In relation to ecological issues, SEPA states that adequate consideration has been given to all the various designations which may be relevant to the development and the section on potential impacts and mitigation is also well presented and covers most topics satisfactorily. However, the ES states that is intended that the watercourses in the site will be recreated while also

stating that continuity of watercourses will be maintained wherever possible. However, no studies on the morphology and habitat of the watercourses have been carried out. This omission will make it more difficult to recreate the watercourses.

***A condition can be attached to any consent granted for the proposed development to require River Habitat Surveys to be undertaken prior to the commencement of development on site. This information can subsequently be used to inform watercourse recreation that will be overseen by the Technical Working Group for the Chalmerston North site.***

SEPA further indicates that the potential impacts on the hydrology of the area have been recognised in the ES although these are mainly concerned with ground water and water quality. It is noted that there is a proposal to divert a small watercourse while another will be removed. While re-instatement is proposed SEPA would recommend that no additional flow is directed to any catchment while the re-instated watercourse should replicate the hydrological and hydraulic conditions of the existing channels ensuring no increased conveyance downstream. Downstream of the site, there are clearly areas that could be potentially at risk of flooding and SEPA would recommend that run-off from the proposed operations are effectively controlled not to adversely affect the risk of flooding elsewhere. The ES generally recognises this point.

***A condition can be attached to any consent granted to ensure that the detailed water management and treatment proposals include the provisions to collect, store and return intercepted waters to the natural environment in a manner that is acceptable to the Planning Authority and SEPA.***

In terms of hydrogeology SEPA states that the ES provides a good assessment of the risks of the proposed extension to the opencast operations. The ES identifies alterations of the local groundwater recharge regime, which could affect supplies to springs and surface waters, and acidic mine drainage, from the backfill and potential impact on surface and groundwater quality as the main risks to groundwater as a result of the proposed operations. There is a general agreement with this conclusion. The ES states that no groundwater abstractions are present within the predicted zone of influence of the workings. The nearest abstractions occur at Drumbowie Farm, Laight Farm and Drumgrange Farm, which are all located more than 3 km from the centre of the proposed extension. An assessment of the potential risk to other abstractions will form part of the CAR authorisation process.

***Noted.***

Specific identified potential impacts from the dewatering scheme include dewatering of mire and the oxidation of sulphides and subsequent generation of acid mine drainage. Proposals to mitigate the risks to the mire by hydraulically isolating this with clay materials are discussed within the ES. SEPA welcomes measures to protect the mire. In relation to acid mine

drainage, the ES states that this is not anticipated based on local experience. However, verification based on site investigation data, including groundwater quality, and revised risk assessment, is sought following further works.

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

SEPA also notes that it is proposed that monitoring of surface water and groundwater will be undertaken prior to commencement of works in order to provide baseline data, and periodically during site operations. This is welcomed. The specific scope and extent of groundwater and surface water monitoring is expected to be part of future consultation.

***Noted.***

3.3 Scottish Natural Heritage states that the proposed development could have adverse impacts on important natural heritage interests, but those impacts could be reduced to a satisfactory level through conditions and / or legal agreements. SNH objects to the proposed extension unless it is made subject to conditions and/or legal agreements which would overcome the following concerns:

- (1) The establishment of a restoration programme which should be submitted for approval by East Ayrshire Council in consultation with SNH within six months of commencement of operations;
- (2) Prior to the commencement of operations a method statement regarding the construction of the retaining wall to protect the mire area should be provided detailing the location, construction method and materials for the wall / bund.

***Conditions can be attached to any consent granted for the proposed development to meet the requirements of SNH.***

SNH further states that protected species (otter, red squirrel etc.) are unlikely to be significantly impacted by the proposed development. However, should any otter activity or red squirrel dreys be found during operations, work should cease and SNH advice sought and a license from the Scottish Executive be obtained if necessary. SNH also supports the proposal for no tree felling to occur during the bird breeding season.

***Noted.***

SNH notes the restoration proposals for this application and the recommendation, as with other operating sites, that SNH would be a member of a technical Working Group to oversee this. While SNH states that this should be a condition of the application, it also acknowledges this site also falls within the Kyle Wind Farm application to be considered at a Public Local Inquiry which could impact on the restoration proposals.

***Noted.***

3.4 Power Systems has no objections to the proposed development

***Noted.***

3.5 Dalmellington Community Council and Drongan, Rankinston and Stair Community Council have not responded to the consultation letter.

***Noted.***

3.6 The Royal Society for the Protection of Birds does not object to the development subject to measures being implemented through appropriate planning conditions or a legal agreement as follows:

1. Impact on breeding birds – RSPB notes that the level of survey effort carried out at this site is significantly less than that requested by SNH in the scoping report. However, given the conclusion of habitat concerned and the conclusion of other surveys in the Kyle Forest, RSPB does not believe significant conservation interests would be revealed by additional survey work. While a range of bird species was found at the site, RSPB does not believe the development will have significant impacts on populations of conservation concern. However, all breeding birds are protected by law. RSPB therefore requests a condition to ensure implementation of the proposed mitigation to prevent disturbance to breeding birds.

2. Impact on habitats – The area of greatest ecological interest in the site is the area of mire in the north of the site. RSPB notes that this area will be largely retained during coaling but that there are likely to be negative effects from drainage. RSPB therefore requests a condition to ensure implementation of the proposed mitigation to minimise damage to the mire habitat. The ES states that the Martyr's Moss Provisional Wildlife Site is over 2 km to the south east of the study site. In fact it is RSPB's understanding that the PWS borders the proposed development site as far as Black Water. RSPB therefore has some concerns over potential effects on this site. The hydrology chapter does not adequately address this concern stating that any effects on groundwater are insignificant because they are not used as domestic water supply. RSPB requests that an assessment is made of potential effects on the hydrology of Martyr's Moss and suitable mitigating measures proposed before consent is granted.

3. Restoration – RSPB agrees with the ES that the degree of cumulative impact will largely depend on quality of restoration design, restoration techniques and aftercare and are therefore disappointed to see that the positive restoration ideas described in the ES are not reflected in the restoration plan. This shows the site being largely returned to conifer plantation, with limited moves towards the habitat mosaic described in the text. While pleased to see inclusion of some areas of broadleaved planting and wet woodland, RSPB believes significantly more could be achieved to diversify the habitats within the site and compliment the habitats present in the

Martyr's Moss PWS. RSPB requests that consent be conditional on a final restoration plan being agreed by the Chalmerston Technical Working Group.

***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. With regard to impacts on the Martyr's Moss PWS, the response from SNH indicated that it did not consider that the proposed development would have an adverse impact on this site.***

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

***Noted.***

3.8 The West of Scotland Archaeology Service states that the Cultural Heritage chapter of the ES is flawed for several reasons. It is factually inaccurate in places with incorrect grid references. There is confusion over other mapped sites and it has omitted other sites. It is misleading in the statement to say that none of the recorded sites date to earlier than the post-medieval / modern period. This gives an impression of knowledge and certainty which, while likely to be true for most of the sites, remains an unproven suggestion. Indeed, intrusive investigations in recent years on upland industrial / agricultural structures previously deemed to be of no great age by former ordnance Survey inspectors has revealed sites of Dark Age, High medieval and Prehistoric date. The application area has been the subject of a walkover survey and desk-based assessment and the recorded sites do not suggest an area of particularly high sensitivity. WOSAS agrees with the ES that enough information has been gathered to be able to advise the Planning Authority and therefore does not think there is a need for a prior archaeological evaluation of the site but rather a similar investigation following grant of consent.

***Noted.***

In order to achieve the relevant archaeological investigations, WOSAS advises that a condition relating to the archaeological issue should be placed on any consent granted for these or future proposals. This condition, which is based on PAN 42 but is worded to reflect current circumstances and in light of experience elsewhere, is as follows:

*'No development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the*

*satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.'*

WOSAS further states that the applicant will need to retain the services of a professional archaeologist to carry out the required works. Any significant discoveries made will require to be excavated before their destruction through a staged series of further works including any post excavation analyses and publication, as required. WOSAS does not agree that the recorded sites now contained within the forested areas should be assumed destroyed. A watching brief on the felling and clearing of the timber in those areas required to identify the surviving remains and those that can be relocated should then be subject to the initial evaluation as noted above.

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

3.9 The Ayrshire Rivers Trust makes the following comments regarding the above planning application:

1. The proposed development is situated within the headwaters of two sub-catchments of the River Ayr, the Water of Coyle and the Black Water/Burnock Water sub-catchments. Both of these catchments are important tributaries of the River Ayr, or in the case of the Black/Burnock Water, the Lugar Water. Both sub-catchments support important fish populations, particularly of salmon (lower reaches only), trout (both migratory and resident) and lampreys. Although this development is located in the headwaters there is still potential to impact negatively on riverine ecology for a significant distance downstream.

2. ART accepts that diversion of the some water courses is unavoidable and welcomes the developer's commitment to restore the watercourses to a natural profile. ART would like to be kept informed regarding the design and specification of the restoration. Many early stream restoration projects have left a legacy of problems such as impassable obstructions and unsightly degrading gabion basket constructions. Any restoration should be to latest standard and overseen by a suitably qualified and experienced organisation.

3. The Environmental Statement does not consider the impact of the stream diversion, or closure of the existing channel, on existing fish populations. During survey work in 2006 ART surveyed a site on the Water of Coyle just to the north west of the site boundary where trout were found. ART consider that in a development of this scale survey work should have been commissioned to investigate the fish population in the area of the proposed diversion in order to allow appropriate mitigation measures to be put in place.

4. The ES states that "treatment techniques of a similar design and specification to those used on other Scottish Coal sites will be employed". ART is aware that there have been a number of pollution incidents at Scottish Coal sites, some of which have resulted in action by SEPA. Considering the remote location of this development, and its potential to impact on important

tributaries, ART considers that it may be appropriate to consider the installation of logging equipment to monitor water quality at discharge points. Continuous monitoring for parameters such as suspended solids and hydrocarbons would offer a much higher level of protection to watercourses.

***The points raised by ART have very much been echoed by SEPA and SNH. In this regard appropriate conditions and obligations can be attached to any consent granted or legal agreement to meet the points raised by ART.***

3.10 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, vibration and dust monitoring results submitted by the applicant for perusal and comparison with the assessed data and compliance with any conditions attached to any consent regarding these matters. In relation to noise from the development, it is suggested that the figures contained within table 4.3 of the ES be included as maximum noise levels at the two locations specified.

***Noted.***

3.11 Historic Scotland has no comments to offer on the content of the ES or the proposal.

***Noted.***

3.12 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.***

3.13 The Health and Safety Executive, Scottish Water and The Scottish Wildlife Trust have not responded to the consultation letter.

***Noted.***

3.14 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.***

3.15 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 One letter of representation has been received objecting to the proposed development. The main points of objection are summarised as follows:

4.2 MEGA objects on principle. From the approved East Ayrshire Opencast Coal Subject Plan (EAOCSP) we see that this opencast coal site was due to be completed by 2009. As the previous extension was very extensive it is time to call a halt in the Dalmellington area and concentrate on real regeneration and permanent employment in a decent environment.

***The Chalmerston North opencast site is due to be completed by June 2009 and the proposed Northern Extension will extend opencast operations in this area by a further five years. It should be noted that a significant part of the Northern Extension area lies within a Potential Coal Extraction Area. Opencast operations in the Dalmellington area, principally centred on the Chalmerston/ Chalmerston North/ Pennyvenie complex, has provided significant employment over the last 18 years together with the significant benefits accrued to the local economy.***

4.3 The proposed extension is only partly within an area identified for opencasting. It is arrogant of Scottish Coal to ignore these boundaries when they had been able to contest them at the time of the finalisation of the EAOCSP. However, they are only too aware that such designation is meaningless in the Cumnock and Doon Valley area, where even the Structure Plan policy of allowing opencasting on sites less than 25 ha for two years is ignored.

***It is accepted that part of the proposed Northern Extension site lies outwith the Potential Coal Extraction Areas identified in the EAOCSP. This issue addressed in Section 5 below.***

4.4 Each time Scottish Coal applies for yet another extension to one of their sites, they always trumpet the contribution they make to the local economy. Has unemployment fallen or outward migration ceased since they started opencasting locally? We think not.

***The ES contains socio-economic information describing the contributions made by the existing Chalmerston North operation, which are noted in paragraph 2.10 above. Notwithstanding the***

***comments of the objector, this information and its economic impacts are material to the consideration of the application.***

4.5 If the Council puts jobs before the environment then it is surely time to assess how many local jobs are being provided, whether they are really going to local people, or simply to people who live in the area, whether in caravans or lodgings; whether there is a significant proportion of migrant labour, whether from elsewhere in Scotland / England or Eastern Europe.

***The applicant has stated within the ES that 85% of its employees live within a 10 mile radius of the Chalmerston North site.***

4.6 A proposed extension of 280 hectares is in fact much larger than most opencast coal sites in the UK. The proposal extends over a sensitive area between two hydrological systems running north and separated by Stannery Knowe. In addition Headmark Moss feeds one of these systems and could be affected by dewatering. There is also risk of watershed breaching, as hydrological systems near Benbain drain SSE to join a tributary of the River Doon near Dalmellington. Martyr's Moss may also be detrimentally affected, as the site joins the Black Water.

***Although the application site extends to 280 hectares the excavation areas extend to approximately 86 hectares. In terms of hydrology there are no significant objections to the development received from either SNH or SEPA, although SEPA requires further assessment of baseline conditions and monitoring during operations as part of any consent granted for the proposed development.***

4.7 We note too a grave marked on the proposed boundary. This proposed destruction of a peaceful landscape will not respect its setting.

***The grave will not be directly affected by the proposed operations which will be temporary in nature with the site restored with 5 years of commencement of operations.***

4.8 SPP16 requires the benefits, if any, to be weighed against the disbenefits. If the justification includes continuation of employment, then it is time the professional planners employed by the Council countered this, by suggesting they could be employed undertaking restoration, or be transferred to another opencast site.

***The tests of SPP16 in relation to the proposed development are given in Section 6 below. Progressive restoration of the Chalmerston North / Pennyvenie operations is ongoing.***

4.9 It should be noted that some 247 letters of support have been received regarding the proposed development, mainly supporting the development in relation to continued employment opportunities presented by the proposed development.

## 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 Chalmerston North 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 Chalmerston North 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 Chalmerston North site and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed extension would not conflict with the stated criteria in terms of its operational conduct.***

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

East Ayrshire Opencast Coal Subject Plan

5.4 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 an additional phase of development of the overall Chalmerston 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 northern extension 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 existing Chalmerston North site will be progressively restored.***

**However, the part of the proposed Northern Extension area does not fall within a Potential Coal Extraction Area, although in this case both the proposed phase 1 and phase 2 coal extraction areas do lie within a PCEA. It should be noted that the areas that are not subject to the PCEA designation are excluded simply because no coal reserves were identified in these areas by British Geological Survey. They have not been excluded for any environmental reasons. While this does represent a minor technical departure from policy, it is not significant in landscape, ecological or environmental terms.**

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 former quarry area associated with Gibson's Hill that will be removed as a result of the proposed extension.***

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

***The working of the proposed northern extension area could safeguard the continued direct employment of 138 people at the Chalmerston North / Pennyvenie site for a further period of 5 years.***

- (vii) *there are no conflicts with any other Subject plan policies*

***See comments below.***

*Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a total extraction period in excess of 10 years will not generally be considered acceptable, unless it can be clearly demonstrated that there are significant local community and local environmental benefits to be secured by the development.*

***Operations at Chalmerston, Chalmerston North and Pennyvenie mining complex have been carried out over a period of some 18 years with operations having first commenced in 1988. However it is considered that the current 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 some 95% of the coal recovered from the existing Chalmerston North operation have been dispatched to markets via the dedicated coal disposal point and rail line serving the Chalmerston site. 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. In this regard, the applicant has previously indicated an interest in land to the north-west of the existing Chalmerston complex.***

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 Chalmerston North site, albeit a significant area of 280 hectares. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12 with respect to the stated criteria, also for the reasons stated in paragraph 5.5 above***

5.8 Policy MIN 9 states that when approving major development proposals or development policies, the Council will consider whether it would be of benefit and desirable to plan for the removal of any underlying coal and related minerals in advance of, or in tandem with, the development proceeding. Any such mineral extraction operation would need to be acceptable in planning terms, with particular regard to the local community.

***As indicated previously, the application site lies within the proposed Kyle Wind Farm development area. Although this Council has formally objected to this proposed development, the Scottish Ministers will make the final decision on the wind farm development. If the coal reserves are not worked at this time,***

***these reserves could be sterilised for at least 20 -25 years should consent be granted for the wind farm.***

5.9 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 Chalmerston North site and the proposed Northern Extension is designed to deliver some improvements 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. It is accepted that in the main the site will be restored for commercial forestry purposes. 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 Chalmerston North site. The remit of the TWG can be extended to include overseeing of the Northern Extension as indicated in the consultation responses from SNH and RSPB.***

5.10 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.

***Some 95% of coals won from the proposed northern extension area will be dispatched via the existing dedicated coal disposal point and rail line facilities at the Chalmerston site.***

5.11 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.***

5.12 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 Chalmerston North site contains an obligation in respect of this matter which will be amended to encompass the Northern 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 Northern 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.

***Operations at Chalmerston, Chalmerston North and Pennyvenie mining complex have been carried out over a period of some 18 years with operations having first commenced in 1988. However it is considered that the current 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 some 95% of the coal recovered from the existing Chalmerston North operation have been dispatched to markets via the dedicated coal disposal point and rail line serving the Chalmerston site. 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 extraction of coal at a site to the north-west of the existing Chalmerston complex but this would be a new site rather than an extension. 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;

***There are no residential properties that lie within 500 metres of the working faces of the northern extension 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 that lie within 100 metres of the working faces 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 Chalmerston North opencast site is the subject of a current Section 75 Agreement that would be extended and amended to encompass the proposed Northern Extension.***

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 Chalmerston North opencast site and would contribute in respect of the Northern Extension.***

5.17 Policies MIN36 and MIN37: Requirement for operators to lodge restoration bonds and requirement to fund aftercare schemes.

***The existing Chalmerston North 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 Northern Extension.***

**It is therefore considered that the proposed development is generally consistent with the relevant EAOCS 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, the points of objection can be addressed either by condition or by means of a Section 75 Agreement, or are not of sufficient weight to merit refusal of the application. It is noted that some 247 letters of support have been received regarding the proposed development, seeking to safeguard continued employment at the site.

### 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 Northern Extension development (and more specifically the two coal extraction areas) lie 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 Northern Extension does meet this first test, not surprisingly since the greater part 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.***

(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 Northern Extension will allow continuation 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 Northern 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 The more relevant planning history relates to the Chalmerston North / Pennyvenie application for the winning and working of 4.5 million tonnes of coal which was approved on 10 June 1998 (Ref. No. 97/0582/FL).

6.9 A planning application for extraction of coal by opencast method at Pennyvenie (A) was approved on 15 October 1996 (Ref. No. 96/0076/FL).

6.10 A planning application for the winning and working of coal by opencast methods at Chalmerston (the original site) was approved by the former Cumnock and Doon Valley District Council on 27 August 1987 (Ref. No. CD/87/92). Subsequent to this approval an application to amend the

excavation areas and minor alterations to the site boundary was approved on 30 June 1993 (Ref. No. CD/93/0025/MIN).

### 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 Northern Extension and as required to be amended by the terms of this report.

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 Chalmerston North site and the Northern Extension covers an area of some 1265 hectares. While this is an extension, existing infrastructure within the Chalmerston 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 can be addressed by conditions or by legal agreement.

8.2 The proposals represent a significant extension to the existing consented site at Chalmerston North and 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. Indeed a significant number of letters of support has been received in this case.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the proposed Northern Extension site is located, this proposal 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. The present use of the site as a commercial forest also means that in landscape and ecological terms, the application site is of low value and the remaining forestry will act as a visual screen to most of the development.

8.4 The existing Chalmerston North / Pennyvenie operation provides full time employment for 138 staff, operatives and contractors. These jobs will be maintained throughout the additional 5 year working life of the proposed Northern Extension. This is considered to be of significant ongoing 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) The extension of the remit of the existing Chalmerston North Technical Working Group to embrace the proposed Northern Extension. The TWG shall also include a representative from the Ayrshire Rivers Trust.
- (ii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement that accompanied the planning application. The applicant shall provide a Mitigation Plan for the site that shall be the subject of an annual audit with a monitoring report provided to the Planning Authority assessing the effectiveness of mitigation measures.
- (iii) The undertaking and establishment of baseline conditions in respect of the water environment and water quality on the site. Appropriate monitoring systems shall be put in place together with appropriate

management measures to address any water quality issues arising from operations on site, which shall be the subject of agreement with the Planning Authority in consultation with SEPA.

- (iv) The undertaking of an assessment of potential effects on the hydrology of Martyr's Moss and, if appropriate, the introduction and implementation of suitable mitigating measures to minimise any potential adverse impact on this Provisional Wildlife Site.
- (v) The setting up and undertaking of appropriate noise, dust and vibration monitoring, the details of which shall be the subject of prior consultation and agreement with the Environmental Health Division
- (vi) The undertaking of an assessment of the fish population in the stream proposed for diversion with an appropriate fish rescue plan implemented if necessary, to be undertaken prior to diversion of the stream.
- (vii) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the East Ayrshire Opencast Coal Subject Plan 2003.
- (viii) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;
- (ix) The establishment of noise, dust and vibration monitoring programmes for the Northern Extension site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (x) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and subject to Notification of Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No 2) Direction 1998. The issue of the decision notice should 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 matters detailed in Paragraph 8.5 of this report.**

**Alan Neish**  
**Head of Planning, Development and Building Standards.**

25 February 2007  
HM/HM  
FV-AN

### **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 CD/87/92, CD/93/0025/MIN, 06/0076/FL and 97/0582/FL
8. Section 36 Application – Proposed Kyle Forest Wind Farm
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**

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Location	Chalmerston Opencast Coal Site Dalmellington
Nature of Proposal:	Extraction of coal by opencast methods with restoration to forestry and nature conservation, and retention of existing site infrastructure
Name and Address of Applicant:	The Scottish Coal Company Limited Castlebridge Business Park Gartlove ALLOA
Name and Address of Agent	Phillip Rayson Garan House 28 Main Street MUIRKIRK

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

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

1. The development hereby permitted shall enure for the benefit of the applicant only, and that the approved operations shall be completed within 5 years of the date of commencement of operations on site, or by 30 June 2013, whichever date is the earlier, or at such other time as may be agreed in writing with the Planning Authority.

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

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

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

3. Prior to the commencement of operations on site, the applicant shall submit to, and have approved by the planning Authority in consultation with the Scottish Environment Protection Agency, details of proposals for a the proposed water management system for the site including a detailed Work Method Statement. The detailed water management and treatment proposals shall include provisions to collect, store and return intercepted waters to the natural environment in a manner that is acceptable to the Planning Authority and SEPA.

REASON – To prevent pollution of watercourses and minimise risk of flooding.

4. Prior to the commencement of operations a method statement regarding the construction of the retaining wall to protect the mire area shall be provided detailing the location, construction method and materials for the wall / bund. The details provided shall also be accompanied by a Risk Assessment relating to the potential failure of the hydraulic isolation measures proposed for protection of the mire.

REASON – In the interests of environmental protection.

5. Within six months of the commencement of operations on site, the applicant shall establish a restoration programme and plan for the proposed Northern Extension area and shall submit the details of this programme and plan to the Planning Authority for approval. The required programme and plan shall be the subject of prior consultation with the Chalmerston North Technical Working Group.

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

6. Prior to the commencement of operations on the Northern 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. The required surveys shall be submitted to the Planning Authority and the Chalmerston North Technical Working Group for information and consideration in respect of the restoration of the site.

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

7. No development shall take place within the development site as outlined in red on the approved plan until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.

REASON – In order to identify and record any archaeological resource that may be present on site, prior to disturbance or destruction by the proposed operations.

8. Except in the case of emergency and with the prior agreement of the planning Authority, the dispatch of coal from the site by road shall be confined between the hours of 0800 and 1800 hours Mondays to Fridays inclusive. No transportation of coal by road shall take place on Saturdays or Sundays except in cases of emergency as indicated.

REASON – In the interest of residential amenity.

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 Chalmerston North 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 97/0582/FL dated 10 June 1998

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

**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 Chalmerston North site in respect of legislation administered by that body.

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