

**EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 12 AUGUST 2005**

**05/0446/FL: PROPOSED EXTENSION TO SOUTH OF SKARES ROAD  
OPENCAST SITE, SKARES, NEAR CUMNOCK.**

**APPLICATION BY ATH RESOURCES**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Permission is sought for an extension to Area C (south) of the existing opencast site covering an area of 46.1 hectares comprising of commercial forestry in the ownership of Forestry Enterprise. This would be mined as a part of the consented operations of Area C (south), but with excavations now being commenced within the extension area. Excavations would move initially in a north to south direction within the extended area before turning eastwards into the consented Area C (south) and continuing the workings in a generally south to north direction. The application area is underlain by some 350,000 tonnes of coal in the Lugar Main seam, the 30 Inch seam and the 3 Dirt seam. These seams are currently being extracted in Area F and are in addition to the other seams that will be extracted from Area C (south).

1.2 As working of the proposed extension will follow on from Area F, additional storage of overburden will not be required or necessary. Overburden excavated within the proposed extension area will be placed in the void of Area F to complete restoration of this part of the site. Subsequently, when extraction in the proposed extension area is completed, overburden from the southern part of Area F will be deposited in the proposed extension area to complete its restoration. The average depth of excavation is 22 metres with a maximum depth of 45 metres.

1.3 All site infrastructure will be provided through the existing facilities within the Skares Road site. All coals won from the proposed extension area will be taken to the existing coal processing area within the Skares Road site and thereafter dispatched by road, using the existing agreed transportation routes, to the existing railhead at Killoch. Due to the location of the southern extension, it is proposed to use the existing access at Ward Farm, to the east of Skares village to allow the workforce to access the working area. The use of this access is likely to provide a benefit to Skares village in that fewer cars will pass through the village during start times and shift changeovers.

1.4 The applicant has indicated that the blasting of overburden prior to extraction is not anticipated to be necessary within the proposed extension area, but that the possibility that some rock may require to be blasted cannot be ruled out completely. To date approximately only 3% of overburden material extracted within the site has necessitated blasting. Any blasting

would however be undertaken in accordance with the existing planning conditions pertaining to the Skares Road site.

1.5 The proposed extension represents an 8% increase in the site area and the applicant has stated that operations within the proposed southern extension only adds a further 6 to 8 months to the current life of the site as it will be worked as a double shift operation. The existing consent for Area C (south) allows for a limited nightshift operation but in order to minimise any potential for noise nuisance, the nightshift operations will not commence until operations can be undertaken below ground.

1.6 The current planning consents for the Skares Road site allow for operations until 2010. The proposed extension and working of Area C (south) will result in coaling activities within the Skares Road site ceasing in October 2008 with final restoration being completed during 2009, all within the current consented life of the site.

1.7 The limited nightshift operation is due to cease in May 2003 and works within the proposed extension area will be undertaken between 0700 hours to 1900 hours Mondays to Fridays and between 0800 hours and 1200 hours on Saturdays. All other operations regarding the processing and dispatch of coal will be undertaken in accordance with the conditions of the existing consents for the Skares Road site.

1.8 Restoration of the extension area is aimed at returning the land to Forest Enterprise for replanting of commercial forestry.

1.9 The application supporting statement is also accompanied by environmental information that considers environmental impact that may result from working the proposed southern extension. The principal elements of this environmental information focus on noise impact and visual impact associated with the proposed development.

## **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and 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 applicant, in respect of the matters described in Section 8 of this report.**

## **3. SUMMARY OF ANALYSIS**

3.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plan. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material

considerations indicate otherwise. As indicated in Section 6 above, there are material considerations relevant to this application, but in this regard, the proposed development is also considered to be acceptable.

3.2 Although a small part of the proposed southern extension lies outwith the identified Potential Coal Extraction Area at this location, this is due solely to the fact that the area reflects the geological survey information regarding the extent of known coal resources in that locality. In the main the significant part of the coal extraction area does lie within the PCEA. In this regard, the proposed development represents a minor technical departure from policy.

3.3 It is noted that there is no significant body of objection to the proposed development with only one letter of objection from residents in Skares village and an objection from Ochiltree Community Council. It is considered that these objections have been fully addressed by the applicant and are not of sufficient weight to justify refusal of the application in this instance.

3.4 The approval of the proposed extension will not have any significant impact on the timescale for completion of the Skares Road development and will provide continuation of employment for the 90 employees currently working at the Skares Road site. It is accepted that this extension to the existing opencast operation could be considered to perpetuate disturbance to the community of Skares in terms of cumulative impact over time, as the total extraction period would exceed a period of 10 years. However, as indicated above, the proposed extension will be worked within the permitted life of the site which was granted prior to the introduction of the policies in the East Ayrshire Opencast Coal Subject plan. It is also considered that there are significant community benefits to be secured by the development through continuation of employment.

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 potential environmental and community benefits which would outweigh any temporary adverse impacts. Consequently it is considered that the application should be approved. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the Skares Road site has been amended to extend its obligations to the proposed southern extension site.

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee as this would not represent a significant departure from the development 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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**APPLICATION BY ATH RESOURCES**

**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 Local Planning Committee under the scheme of delegation because it represents an extension to an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan and is subject to objections.

### **2. APPLICATION DETAILS**

2.1 **Site Description:** The application site lies approximately 3 miles south west of Cumnock and 2.5 miles south of Ochiltree and lies on the south side of the B7046 Skares Road, immediately south of the small village of Skares. The site extends to approximately 46.1 hectares and consists of an area of commercial forestry located on the southern boundary of the Skares Road site to the west of Carsgailloch Hill..

2.2 The application site represents an extension to the Skares Road Opencast Coal site for which planning permission was granted by East Ayrshire Council for the winning and working of coal on 13 March 1997 under application CD/95/0254/MIN. This site was to be operated in two main phases by two mineral developers. The Milzeoch Farm phase of operation commenced coaling during Summer 1997 this being undertaken by William Grant (Mining) Limited. The main phase of operation at Skares Road was to be operated by Rackwood Colliery Company Limited, with operations on this part of the site scheduled to commence during 1998.

2.3 William Grant (Mining) Limited, however, went into receivership and the personal consent granted to this company has been transferred to the Miller Group under application 97/0686/FL, following approval of this application by the Development Services Committee at its meeting on 02 December 1997. The Milzeoch Farm phase of development is now in the restoration phase under the terms of the original planning consent CD/95/0254/MIN. Restoration of this site is now the responsibility of the current applicant and restoration works on Milzeoch are due to be completed during 2003.

2.4 The Development Services Committee approved a revised application for the Skares Road site on 27 January 1998 under application 97/0596/FL. The decision notice was issued on 15 May 1998 following the completion of a Section 75 Agreement under the Town and Country Planning (Scotland) Act, 1997. Works commenced on site in 1998 with some 2.5 million tonnes of coal having been extracted to date and coaling operations are continuing at present. The Skares Road site comprises 4 separate coal extraction areas known as Areas B, C, E and F. The current operational Skares Road site extends to approximately 633 hectares. More recent planning history is indicated in Section 6 of this report.

2.5 **Proposed Development:** Permission is sought for an extension to Area C (south) of the existing opencast site covering an area of 46.1 hectares comprising of commercial forestry in the ownership of Forestry Enterprise. This would be mined as a part of the consented operations of Area C (south), but with excavations now being commenced within the extension area. Excavations would move initially in a north to south direction within the extended area before turning eastwards into the consented Area C (south) and continuing the workings in a generally south to north direction. The application area is underlain by some 350,000 tonnes of coal in the Lugar Main seam, the 30 Inch seam and the 3 Dirt seam. These seams are currently being extracted in Area F and are in addition to the other seams that will be extracted from Area C (south).

2.6 As working of the proposed extension will follow on from Area F, additional storage of overburden will not be required or necessary. Overburden excavated within the proposed extension area will be placed in the void of Area F to complete restoration of this part of the site. Subsequently, when extraction in the proposed extension area is completed, overburden from the southern part of Area F will be deposited in the proposed extension area to complete its restoration. The average depth of excavation is 22 metres with a maximum depth of 45 metres.

2.7 All site infrastructure will be provided through the existing facilities within the Skares Road site. All coals won from the proposed extension area will be taken to the existing coal processing area within the Skares Road site and thereafter dispatched by road, using the existing agreed transportation routes, to the existing railhead at Killoch. Due to the location of the southern extension, it is proposed to use the existing access at Ward Farm, to the east of Skares village to allow the workforce to access the working area. The use of this access is likely to provide a benefit to Skares village in that fewer cars will pass through the village during start times and shift changeovers.

2.8 The applicant has indicated that the blasting of overburden prior to extraction is not anticipated to be necessary within the proposed extension area, but that the possibility that some rock may require to be blasted cannot be ruled out completely. To date approximately only 3% of overburden material extracted within the site has necessitated blasting. Any blasting would however be undertaken in accordance with the existing planning conditions pertaining to the Skares Road site.

2.9 The proposed extension represents an 8% increase in the site area and the applicant has stated that operations within the proposed southern extension only adds a further 6 to 8 months to the current life of the site as it will be worked as a double shift operation. The existing consent for Area C (south) allows for a limited nightshift operation but in order to minimise any potential for noise nuisance, the nightshift operations will not commence until operations can be undertaken below ground.

2.10 The current planning consents for the Skares Road site allow for operations until 2010. The proposed extension and working of Area C (south) will result in coaling activities within the Skares Road site ceasing in October 2008 with final restoration being completed during 2009, all within the current consented life of the site.

2.11 The limited nightshift operation is due to cease in May 2003 and works within the proposed extension area will be undertaken between 0700 hours to 1900 hours Mondays to Fridays and between 0800 hours and 1200 hours on Saturdays. All other operations regarding the processing and dispatch of coal will be undertaken in accordance with the conditions of the existing consents for the Skares Road site.

2.12 Restoration of the extension area is aimed at returning the land to Forest Enterprise for replanting of commercial forestry.

2.13 The application supporting statement is also accompanied by environmental information that considers environmental impact that may result from working the proposed southern extension. The principal elements of this environmental information focus on noise impact and visual impact associated with the proposed development.

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

3.1 East Ayrshire Council's Roads Division has no objections to the proposed development subject to conditions. The applicant will require to agree further maintenance contributions towards repair work carried out on the B7046/U728 public road haulage route with the Roads Authority under Section 96 of the Roads (Scotland) Act 1984 due to damage caused by coal haulage traffic.

***The existing Section 75 Agreement for the Skares Road site has provision for the recovery of extraordinary road maintenance costs on the agreed haulage routes.***

3.2 Ochiltree Community Council has objected to the proposed development on the grounds that cumulative noise levels from this application and other nearby works, would be detrimental to residents of Skares.

***It should be noted that the proposed southern extension will take place within a commercial forestry area at greater distance away***

***from Skares village than parts of the site previously worked. The applicant has provided a noise assessment report and commissioned a further report on the potential for cumulative noise impacts with other mining and landfill activities in the locality. This information concludes that, given the separation distances and screening contributions from the other night time sources stated as giving rise to cumulative impact, they would not contribute any noise level that would result in an exceedance of both daytime and night time acceptable noise limits.***

3.3 East Ayrshire Council's Environmental Health Division advises that it appears that the applicant will be able to operate satisfactorily within existing conditions. Indeed noise impact from the proposed extension should, according to the assessment, be reduced i.e. better than in comparison with existing operations. The only potential concern would be if this was to be worked at the same time as the recently proposed House of Water northern extension at Craigman/Burnston as this might give rise to cumulative impact on Skares village which otherwise would be unlikely.

***At this time, there has been no planning application submitted for a further extension to the House of Water OCCS near New Cumnock, although it has been the subject of a formal scoping opinion request. Clearly should such an application be forthcoming, then an appropriate assessment will require to be made in respect of cumulative noise impact on Skares village and other communities if appropriate.***

3.4 Scottish Natural Heritage states that there are natural heritage interests of some importance at this location but it is considered unlikely to threaten those interests. However, SNH recommends that further survey work should be carried out with regard to red squirrels. The proposed site lies on the edge of a coniferous plantation and the proposal would require clear felling of 46.1 hectares of plantation. The Phase 1 survey has shown that along the rides of the proposed area there are smaller areas of marshy grassland and modified lowland raised bog. However these fragments are largely degraded by forestry activity and SNH is not overly concerned about the loss of these habitats.

***Noted.***

SNH further states that red squirrels are protected under Schedule 5 of the Wildlife and Countryside Act as amended by the Nature Conservation (Scotland) Act 2004. This would make it an offence to intentionally or recklessly kill or injure a red squirrel. The Scottish Red Squirrel Group recently commissioned a report to identify woodlands across Scotland which are important for red squirrel conservation. This identified the conifer forest at Carsgailloch Hill as priority woodland for red squirrels. SNH notes that during the Phase 1 habitat survey field signs for squirrels were looked for, although a full survey was not carried out. On this basis SNH recommends that survey work should be undertaken to establish the distribution of red squirrels in this

woodland. Given the potential importance of this site, SNH recommends that works are not carried out in the absence of this information, as this may constitute an infringement of the Nature Conservation (Scotland) Act 2004.

***Since receipt of the consultation response from SNH, the applicant has undertaken a full survey of the site in relation to the presence of red squirrels using appropriate and accepted methodology. A copy of this report has been provided directly to SNH. The report concludes that the proposed southern extension area represents approximately 1.15% of woodland within the overall large scale surrounding woodland (4000 hectares) and that this area presents very little overall red squirrel habitat value. The data generated from the survey suggests that there is a low density of red squirrels. There will be no significant effect of the proposed development on red squirrels. The loss of woodland will be small scale and temporary, and will be replaced by forestry planting. Felling operations should be carried out during late summer autumn to avoid any potential impact on breeding species. The report further suggests that more suitable tree species be included in the tree planting mix for the benefit of red squirrels as this would result in a positive long term effect and contribute to an enhanced red squirrel habitat. This mitigation can be secured through appropriate conditions in any consent granted for the proposed development.***

SNH also states that the landscape and visual impact assessment has been carried out using appropriate methodology. The information states that the visual impact is limited to properties in the immediate vicinity of the project and to the north along the B7046. The visual impact of the project is limited by the constrained topography of the site and there are no significant cumulative visual impacts on the site and restoration should restore the area to its current landscape value. SNH concurs with these findings.

***Noted.***

3.5 Power Systems and National Air Traffic Services have no adverse comments to make on the proposed development.

***Noted.***

3.6 The Scottish Environment Protection Agency has no objections to the proposed development provided the drainage arrangements are to SEPA's satisfaction. It is SEPA's understanding that drainage from the extension site is to be treated in existing effluent treatment systems consented under the terms of the Control of Pollution Act, 1974 (as amended). Extracted coal will be processed in the existing Authorised coal processing area. SEPA regularly inspects the coal processing area and samples these discharges for compliance with consent conditions. Clean water from around the site should be intercepted and diverted away from the working area. Freshly cut ditches on steep ground will require careful profiling and possibly some protection or

the inclusion of plunge pools to prevent erosion and pollution from mineral solids. Temporary settlement may also be required on these ditches to prevent pollution from mineral solids. Burn diversions should be carried out in such a manner as to prevent the degradation of habitat in the area. An assessment should be made of the likely effects of the flows of any diverted watercourse to ensure that downstream structures such as bridges/culverts and burn channels are not adversely affected.

***Conditions covering the issues raised by SEPA are contained within the existing planning consent for the Skares Road site. In any consent granted for the proposed development, the existing conditions would be applied similarly to the southern extension site.***

3.7 Scottish Water has no objections to the proposed development.

***Noted.***

3.8 The Ayrshire Joint Structure Plan and Transportation Committee and The Forestry Commission have not responded to the consultation letter.

***Noted.***

3.9 The Royal Society for the Protection of Birds does not object to the proposed development but makes a number of recommendations in relation to the site. The ecological survey reveals some bog habitat in forest rides, suggesting the presence of peat soils. Where possible peat should be removed and stored appropriately for use in site restoration. As the ecological survey states, all breeding birds are protected by law. Forest clearance should therefore take place outwith the bird breeding season (March to July inclusive). Restoration of this area would provide a good opportunity to replace non-native conifer plantation with native woodland and peatland restoration. While we appreciate that there may be commercial commitments to forestry at the site, it is hoped that an early dialogue can be opened up to investigate whether options are available to restore this area to habitats more beneficial to biodiversity. RSPB notes that it is intended to soil strip Area C in July this year. The Nature Conservation (Scotland) Act 2004 gives protection to all nesting birds and there are concerns that soil stripping in July may destroy nests. RSPB therefore seeks confirmation that consideration as to whether there are birds nesting on Area C and whether this area should be stripped later in the season.

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

3.10 The West of Scotland Archaeology Service states that within the application site there is an archaeological site (a settlement/ farmstead). It is depicted on the First Edition Ordnance Survey Map of 19<sup>th</sup> Century date and appears on Roy's Map dated 1745-1748. It may be that this farmstead dates to an even earlier time. The site of the farmstead is now within forestry and

WOSAS has no information on its current condition, for example whether it survives amongst the trees by being left in a clearing or whether it has been ploughed and planted. Given its potentially early date, this may be a site of some archaeological significance. It is recommended that the applicant locates the site and ascertains its current condition and evaluate it by trial trenching as appropriate, all of this to be done before the Council determines the planning application. This archaeological work requires to be undertaken by a competent professional archaeological body. On receipt of further information about this site, WOSAS will be in a position to advise further regarding archaeological issues arising from the development.

***Following receipt of this information from WOSAS, the applicant commissioned CFA Archaeology in collaboration with WOSA in determining what mitigation measures, if any, may be required should consent be granted for the proposed development. The area of archaeological interest was identified but no remains were visible and the location of the interest has indeed been ploughed and planted as part of the continuing forestry operations. Subsequently a further investigation has been secured with CFA Archaeology in consultation with WOSAS to determine the extent of any possible remains. The results of this survey will be forwarded to WOSAS in order for a determination of what mitigation if any is required. A condition can be attached to any consent granted for the proposed development to ensure that an agreed programme of mitigation is undertaken, if required, to satisfy the requirements of WOSAS.***

3.11 The Scottish Wildlife Trust states that a red squirrel was reported from the forest to the west of this site in 2003. The Kyle Forest has been identified as priority woodland for red squirrel conservation. In light of the plight of red squirrel in Ayrshire, conifer plantations can not be assumed to be of low ecological value. A decision on the planning application should not be made until the ecological survey has been completed and considered.

***Since receipt of the consultation response from SWT, the applicant has undertaken a full survey of the site in relation to the presence of red squirrels using appropriate and accepted methodology. A copy of this report has been provided directly to SNH. The report concludes that the proposed southern extension area represents approximately 1.15% of woodland within the overall large scale surrounding woodland (4000 hectares) and that this area presents very little overall red squirrel habitat value. The data generated from the survey suggests that there is a low density of red squirrels. There will be no significant effect of the proposed development on red squirrels. The loss of woodland will be small scale and temporary, and will be replaced by forestry planting. Felling operations should be carried out during late summer autumn to avoid any potential impact on breeding species. The report further suggests that more suitable tree***

***species be included in the tree planting mix for the benefit of red squirrels as this would result in a positive long term effect and contribute to an enhanced red squirrel habitat. This mitigation can be secured through appropriate conditions in any consent granted for the proposed development.***

#### **4. REPRESENTATIONS**

4.1 In addition to the objection received from Ochiltree Community Council referred to above, one letter of representation has been received objecting to the proposed development. The points of objection are summarised as follows:

4.2 This new extension will 'officially' bring back night shift working adding to the noise we already have 24/7 from the landfill site at Garlaff and operations at OCCS Dalgig. I feel that the accumulation will have a detrimental effect on the village and its residents. We have already complained about the coal preparation plant running at nights since the last shift ended in May 2003. I travel this road daily on route to work, often outside operational hours of 7pm to 7am, and while the late night working has eased in the last 6 months, early morning plant operations can clearly be seen and heard as early as 4am.

***A limited nightshift will operate in the Skares OCCS southern area regardless of the outcome of the determination of this present application. The proposed southern extension area is no closer to the objectors' property than the closer parts of the existing consented site. The applicant has provided a noise assessment report and commissioned a further report on the potential for cumulative noise impacts with other mining and landfill activities in the locality. This information concludes that, given the separation distances and screening contributions from the other night time sources stated as giving rise to cumulative impact, they would not contribute any noise level that would result in an exceedance of both daytime and night time acceptable noise limits currently conditioned as part of the Skares Road permissions. The allegations of unauthorised night shift operations have been fully investigated and, to date, have been found to be groundless.***

4.3 Blasting is opposed having experienced a blast which went wrong in Summer 2003 on a whinstone outcrop that runs below the village. The vibration was so severe that I had to employ a structural engineer to check my premises.

***The applicant has indicated that the blasting of overburden prior to extraction is not anticipated to be necessary within the proposed extension area, but that the possibility that some rock***

**may require to be blasted cannot be ruled out completely. To date approximately only 3% of overburden material extracted within the site has necessitated blasting. Any blasting would however be undertaken in accordance with the existing planning conditions pertaining to the Skares Road site. In response to the objector, the applicant has stated that the blast to which the objector refers measured 1.4 mm/s ppv at Hindsward (maximum permitted level at site boundary is 6 mm/s) which is approximately half way between the blast and the village. All blasting is monitored and no excessive blasts or 'blasts which went wrong' have ever occurred. It is notable that the objector has not reported the findings of the structural engineer.**

4.4 Further expense is incurred driving on the B7046 due to the dangerous state of the road with constant potholes between the opencast coal site and Mote Toll leading to regular tyre and tracking defects. This country road is not meant for the volume and weight of lorries which travel the route all day long. The bus service has also ceased due to the state of the road leaving elderly residents stranded.

**The applicant has in the past, and continues to do so now, made contributions to the maintenance and repair of the route used for the transportation of coal from the Skares Road site. Indeed, the applicant recently made a 50% contribution to the provision of the recent lighting and traffic calming scheme undertaken at Skares, although this section of the B7046 road is not used as part of the coal transportation route. The comments of the objector in relation to the dangerous condition of the road are not borne out by the comments of the Roads and Transportation Division, although it is recognised that the applicant will require to make further contributions towards road maintenance.**

4.5 This village has an exceptionally high percentage of asthmatic children using inhalers – coincidence? Surely you can't argue that the constant film of dust on cars and windows from whatever source is not being inhaled by residents.

**The views of the objectors are noted. This issue has been the subject of extensive research and dust from opencast operations is not considered to be a significant factor in the more general rise in reported asthma cases. Regular dust monitoring is undertaken on the Skares Road site with appropriate management measures in place in accordance with good practice and guidance. Since 1998, only one dust complaint had been made, and at the time of receipt of the complaint, the problem had already been noticed and appropriate measures implemented to rectify the problem.**

## 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 Skares Road 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 southern 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 revised application for the Skares Road opencast site (Ref. No. 97/0596/FL) was 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 and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed southern 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 Structure Plan.**

**East Ayrshire Opencast Coal Subject Plan**

5.4 The Adopted Local Plans covering the development site are considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed, following the public local inquiry process, that the East Ayrshire Council Opencast Coal Subject Plan (Finalised Version with Modifications) 2002, (EAOCSP), should be considered as a prime material consideration. The application now requires to be assessed against relevant pertinent policies promoted within this modified plan. *Note that in the following paragraphs some of the policies are summarised.*

(i) Policy MIN 1: All future opencast coal developments will be directed towards and limited to the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

***The proposed southern extension area generally lies within a Potential Coal Extraction Area, but the application requires to be assessed as an extension to an existing operational site.***

(ii) Policy MIN 2: There will be a presumption of refusal of applications for any new opencast coal developments outwith the Potential Coal Extraction Areas with the exception of small scale, short term extraction proposals which meet the following criteria:

(i) there is clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction.

(ii) there is an overall benefit for communities affected including local employment; and

(ii) there are no conflicts with any other Subject Plan Policies.

***The proposed development represents an extension to the existing Skares Road operational opencast coal site and therefore requires to be assessed against Policy MIN3.***

(iii) Policy MIN 3: Subject to detailed consideration the Council will generally be supportive of any proposal to extend the existing operative opencast coal site within the Potential Coal Extraction Areas either laterally or through an increase in the depth of existing workings provided that 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;

***The proposed development represents an extension to the existing operations and will be carried out as a sequential phase of the approved development in Area C (south) of the Skares Road site.***

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

***The proposed development will be carried out utilising 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.

***The scale of operations, rate of extraction and number of vehicle movements generated by the extended site operations will be commensurate with current site operations.***

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

***The proposed extension will not impact significantly on the restoration of the existing operational site.***

***However the part of the proposed extension area lies outwith a Potential Coal Extraction Area. However, this is solely due to the fact that the Potential Coal Extraction Area in this locality is identified on the basis of the identified coal reserves from British Geological Survey. There are no other constraints in the locality that would exclude the part outwith the identified reserves forming the current application site.***

Outwith the Potential Coal Extraction Areas, the Council will assess any extension proposal on its own merits and against the above criteria, and will generally not be supportive of such development except where

(v) there is a clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction.

***The proposed extension of operations and restoration not in itself result in the removal of existing areas of dereliction.***

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

***The coaling within the proposed extension area will safeguard the jobs of approximately 90 employees, contractors and service providers for 6 to 8 months over the current scheme being worked.***

(vii) there are no conflicts with any other Subject Plan Policies.

***It is considered that the proposed development does not conflict with the other Subject Plan Policies as noted 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 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.

***The existing Skares Road opencast site has a current consent for a 12-year period (2010). The proposed operations will be undertaken within this current consented timescale. The applicant has indicated that the Skares Road site is anticipated to be completed by 2009.***

***While there is a minor technical breach of Policy MIN3(v), it is considered that this, for the reasons stated above, is not significant in that the proposed development meets other aspects of the policy.***

(iv) Policy MIN 4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against the following criteria:

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

***The landscape and visual assessment report that accompanies the application indicates that the impact on the landscape character and quality of the site will be minimal, particularly given the short term nature of the proposed development. Furthermore with the restoration proposed there will be a net benefit in landscape character and visual amenity of the site. No statutory or non-statutory natural or built environment interests will be affected by the proposals.***

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

***It is considered that in line with the existing controls imposed in the existing consents for the Skares Road site, the proposed southern extension can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards.***

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

***It is considered that in line with the existing controls imposed in the existing consents for the Skares Road site, the proposed southern extension can be operated in such a manner as to minimise any adverse impacts on the village of Skares and other residential properties and can be undertaken to environmentally acceptable standards.***

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

***This is not particularly relevant to the current proposal, although opportunities may exist in respect of habitat enhancement for red squirrels.***

(v) the opportunities to maximise transportation by rail;

***Coals won from the site extension will, with the exception of coals destined for local markets, be transported by road to the Killoch railhead for onward dispatch to the power generation market, consistent with the existing operations.***

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

***The proposed southern extension will result in no significant prejudice to the existing restoration plans for the site. It is not considered that there would be significant cumulative impact resulting from the proposed southern extension.***

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

***Given the short term nature of the extension scheme, it is considered that it would have minimal impact on inward investment opportunities in the area.***

(viii) the period of extraction.

***The proposed extension scheme will be undertaken within the current consented life of the Skares Road site.***

(v) 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 southern extension scheme is not a new site but an extension to the existing Skares Road site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12.***

(vi) 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 extension area will result in the site being replanted for commercial forestry.***

(vii) 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.

***Coals won from the proposed extension area will be processed through the existing coal preparation area with the majority of***

***coal thereafter being dispatched by road to the existing railhead facilities at Killoch Disposal Point.***

(viii) 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 existing internal haul roads.***

(ix) 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.

***Improvement works on the B7046 Skares - Mote Toll road have already been secured through existing consents for the Skares Road opencast site.***

(x) 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 Skares Road opencast site is the subject of a Section 75 Agreement encompassing the above matters. The existing Agreement can be amended to encompass the proposed extension area to ensure the obligations are met by the operator.***

(xi) 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 extension area does not encroach within 500 metres of the settlement boundary of Skares village.***

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

***The proposed extension area extends to 46.1 hectares. It is considered that the proposed development does not conflict with this policy provision.***

(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 proposal under consideration is unlikely to be the subject of any further extensions given the proximity of Skares village.***

(xii) 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 proposed southern extension does not encroach within 500 metres of any occupied residential property.***

(iii) the total period of extraction and restoration within a distance of 500 metres from any sensitive establishment or dwelling does not exceed a period of 12 months

***Not applicable.***

(iv) the proposed extraction does not involve any blasting operations within the 500 metre buffer zone; and

***Not applicable.***

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

***The proposed southern extension does not encroach within 100 metres of any residential properties or sensitive establishment.***

(xiii) 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 applicant has indicated a willingness to enter into a Section 75 Agreement in respect of the matters that may require to be subject of such an agreement.***

(xiv) 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 a significant contributor to the Mineral Trust Fund in respect of the existing Skares Road opencast site.***

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

***The existing Skares Road opencast site is subject to a Section 75 Agreement encompassing the above matters. The existing Agreement would be amended to include the proposed extension area.***

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

## **6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are SPP 16 – ‘Opencast Coal’, appropriate Planning Advice

Notes, consultation responses, the representation received and relevant planning history.

### Scottish Planning Policy

6.3 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.

6.4 Many of the provisions of SPP 16 are addressed within the EAOCSP with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. The proposal is thus considered to be consistent with SPP 16.

### Planning Advice Notes

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

### Planning History

6.6 The more relevant planning history of the Skares Road site and other relevant information is as follows:

- (i) CD/95/0254/MIN: Winning and Working of Coal by opencast methods at Skares Road approved on 13 March 1997
- (ii) 97/0596/FL: Revised application for winning and working of coal by opencast methods at Skares Road approved on 15 May 1998.
- (iii) 00/0010/FL: Modification of Consent 97/0596/FL to allow a nightshift operation at Skares Road opencast site approved on 08 June 2000.
- (iv) 00/0685/FL: Proposed extension to existing landfill site in Area B of Skares Road opencast site approved on 22 June 2001 subject to a Section 75 Agreement.
- (v) 01/0459/FL: Proposed modification of conditions 31 and 43 of consent 97/0596/FL to permit coal extraction beneath tips approved on 02 November 2001.
- (vi) 02/0691/FL: Proposed opencast coal mining with restoration to nature conservation uses at Hindsward approved on 07 April 2003.

## Consultation Responses

6.7 There are no consultation responses that would suggest refusal of the application is appropriate.

## Representations Received

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

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial implications for the Council associated with the determination of this application. It is considered that the proposed development will necessitate an amendment to the existing Section 75 Agreement relating to the Skares Road site should the application be approved.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plan. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 above, there are material considerations relevant to this application, but in this regard, the proposed development is also considered to be acceptable.

8.2 Although a small part of the proposed southern extension lies outwith the identified Potential Coal Extraction Area at this location, this is due solely to the fact that the area reflects the geological survey information regarding the extent of known coal resources in that locality. In the main the significant part of the coal extraction area does lie within the PCEA. In this regard, the proposed development represents a minor technical departure from policy.

8.3 It is noted that there is no significant body of objection to the proposed development with only one letter of objection from residents in Skares village and an objection from Ochiltree Community Council. It is considered that these objections have been fully addressed by the applicant and are not of sufficient weight to justify refusal of the application in this instance.

8.4 The approval of the proposed extension will not have any significant impact on the timescale for completion of the Skares Road development and will provide continuation of employment for the 90 employees currently working at the Skares Road site. It is accepted that this extension to the existing opencast operation could be considered to perpetuate disturbance to

the community of Skares in terms of cumulative impact over time, as the total extraction period would exceed a period of 10 years. However, as indicated above, the proposed extension will be worked within the permitted life of the site which was granted prior to the introduction of the policies in the East Ayrshire Opencast Coal Subject plan. It is also considered that there are significant community benefits to be secured by the development through continuation of employment.

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 potential environmental and community benefits which would outweigh any temporary adverse impacts. Consequently it is considered that the application should be approved. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the Skares Road site has been amended to extend its obligations to the proposed southern extension site.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and 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 applicant, in respect of the matters described in Section 8 of this report.**

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee as this would not represent a significant departure from the development plan.

Alan Neish  
Head of Planning, Development and Building Standards

HM/HM  
02 August 2005

## **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory notices and certificates.
3. Supporting Environmental Information.
4. Consultation responses.
5. East Ayrshire Opencast Coal Subject Plan 2003
6. Approved Ayrshire Joint Structure Plan 1999
7. Previous application CD/95/0254/MIN.
8. Previous application 97/0596/FL.
9. Previous application 00/0010/FL.
10. Previous application 01/0459/FL.
11. Previous application 02/0691/FL.
12. SPP 16: Opencast Coal.
13. PAN 50, Annexes A, B, C and D.

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

**Implementation Officer: Dave Morris**

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 05/0446/FL

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Location Skares Road Opencast Coal Site  
Darntaggart Farm, Skares  
Near Cumnock

Nature of Proposal: Proposed extension to opencast site

Name and Address of Applicant: **ATH Resources**  
**Richmonds House**  
**White Rose Way**  
**DONCASTER**  
**DN4 5JH**

Name and Address of Agent

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

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

1. No development shall take place within the development site until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, this scheme to be submitted for approval by the Planning Authority following consultation and agreement with the West of Scotland Archaeology Service. Thereafter the developer shall ensure 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 Archaeological Service.

REASON: To ensure that appropriate archaeological work is undertaken before the development commences.

2. The applicant shall submit to and have approved by the Planning Authority, the details of any lighting equipment to be used within the proposed southern extension site, the siting of which should be in such a manner as to minimise impact on visual amenity.

REASON: In the interests of visual amenity.

3. Within three months of the date of commencement of operations on the proposed southern extension, the applicant shall submit to and have approved by the Planning Authority, a detailed restoration scheme for the site that shall be the subject of prior consultation with Scottish Natural Heritage, the Royal Society for the Protection of Birds and the Forestry Authority. Particular regard shall be made for enhancement of habitat for the benefit of red squirrels.

REASON: To ensure that the site is restored to the highest possible standards in the interest of habitat creation.

4. All forest clearance associated with the proposed development shall take place outwith the bird breeding season (March to July inclusive).

REASON: In the interests of protection of breeding birds that may be present within the site.

5. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 97/0596/FL dated 15 May 1998 as amended by planning consent 00/0010/FL dated 08 June 2000, as amended by planning application 02/0691/FL dated 07 April 2003.

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

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT  
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON  
VIEWING PLEASE CONTACT (01563) 555320.**