

## **EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 02 DECEMBER 2005**

**05/0583/FL: PROPOSED RECOVERY OF MINERALS OTHER THAN COAL  
AT GREENBURN OPENCAST COAL SITE, NEW CUMNOCK**

**APPLICATION BY KIER CONSTRUCTION LIMITED**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 Permission is sought for the recovery of other economic minerals in addition to and concurrent with, the extraction of coal from the existing Greenburn site. The operator of the site proposes to extract fireclay and sandstone from within the permitted extraction areas.

1.2 The fireclay currently exists beneath the majority of coal seams within the existing site and of particular interest is the fireclay underlying the House coal seam. Testing has shown that this is of high quality and suitable for the manufacture of bricks. Fireclay would be lifted in a cyclical sequence with coal and overburden and as it lies directly beneath the coals, fireclay extraction would be undertaken by the coaling team as part of the same operation. The fireclay would then be transported to a temporary stocking area to the north of the existing site workshop lying on the north side of the U720 Dalricket Road. It is estimated that approximately 20,000 tonnes of material would be stored in this area.

1.3 Sandstone occurs in many horizons throughout the site but those identified to be of sufficient mass and potential quality for the production of dimension stone and other associated construction products are situated in the northern region of the Greenburn site lying above the Knockshinnoch Main coal. Sandstone would be lifted by the prime movers as part of the overburden removal operations and would then be transported to a temporary stocking area within the existing site. The sandstone blocks would then be sorted and roughly cut to remove as much waste material as possible prior to road haulage.

1.4 It is anticipated that there would be no changes to the general agreed method of working of the site in order to facilitate the concurrent winning and working of coal and these other economic minerals. The proposal to remove these other minerals is not anticipated to have any significant impact on the current timescale for the Greenburn site.

1.5 It is proposed to dispatch these other minerals by road to end users. This would be via the existing agreed route for the dispatch of coal by road i.e. the U720, U719 and C36 public roads from the Greenburn site entrance to Skerrington Roundabout on the A76 Trunk Road. At present, the operator of

the Greenburn site can dispatch up to 10% of coal production from the site by road. To date only approximately 2% of coal produced to date has been dispatched by road.

1.6 The operator now seeks to dispatch coal, fireclay and sandstone, in combination, to an annual maximum total of 80,000 tonnes of minerals. The proposed development would result on average in 16 loads of minerals per day leaving the site (32 movements per day) over a 10 hour period. This would represent an increase from 10 loads per day (20 movements) that could take place under the current consents and agreements in place for the Greenburn site.

## **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal amendment to the existing Section 75 Agreement for the Greenburn site with the applicants in respect of the matters detailed in Paragraph 7.1 of this report.**

## **3. SUMMARY OF ANALYSIS**

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.

3.2 While the extraction of other economic minerals from opencast sites is generally supported through the policies of the adopted East Ayrshire Opencast Coal Subject Plan, it is considered that the proposal to significantly increase heavy goods vehicles traffic along the agreed coal road haulage route would result in greater adverse environmental impacts on residential properties located along this route.

3.3 In assessing the original development proposals for the Greenburn opencast coal site, significant emphasis was placed on securing dispatch of coal from the site by rail in order to minimise adverse environmental impacts associated with road haulage. Nonetheless, in recognition that some local markets could not be served by rail dispatch, a maximum of 10% of coal production was permitted to be dispatched by road along an agreed route. It was also considered that at this level there would not be significant adverse environmental impacts on residential properties along the route. It is considered that the proposal now to potentially increase traffic on this route by a potential maximum of 60% to 32 movements per day is considered to breach the spirit and terms of the consented project.

3.4 The applicant has amended the proposal such that the total amount of minerals to be dispatched by road does not exceed 80,000 tonnes per annum and this equates to an increase from 20 to 32 HGV movements daily over a 10 hour period. While it is recognised from the applicant's supporting statement that any approval of an amount less than this figure will in effect mean that the proposal will not go ahead in economic terms, it is considered that this level of increase is not acceptable in environmental terms.

3.5 Taking account of all material considerations, it is considered that the recovery of fireclay and sandstone would be acceptable only if the level of minerals hauled by road remains at the current permitted level of 10% of the total coal production from the Greenburn site. In this regard any approval should only be on the basis that the existing Section 75 Agreement for the site be amended to allow the recovery of fireclay and sandstone from the Greenburn site in addition to coal, but that the minerals to be dispatched by road be restricted to a maximum of 10% of the total coal production from the site.

3.6 Should the Committee be minded to allow the increase of vehicle movements to the level proposed by the applicant (i.e. a maximum of 80,000 tonnes per annum of total minerals dispatched by road) this would not represent a departure from policy, but would still require to be secured through an amendment to the existing Section 75 Agreement.

#### **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 because it would not be 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 KIER CONSTRUCTION LIMITED

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

2.2 Planning permission for the extraction of approximately 3.5 million tonnes of coal by opencast method from the application site was granted on 06 August 2002 under planning application 00/0793/FL. Full permission was also granted at that time for the construction and operation of a new dedicated railhead and rail link to serve the proposed opencast site. There have been further approvals for small extensions to the Greenburn site and overall the opencast site is to be worked over a total period of 11 years with a coaling period of 8 years. The total consented coal reserves for extraction is approximately 4.06 million tonnes.

2.3 **Proposed Development:** Permission is sought for the recovery of other economic minerals in addition to and concurrent with, the extraction of coal from the existing Greenburn site. The operator of the site proposes to extract fireclay and sandstone from within the permitted extraction areas.

2.4 The fireclay currently exists beneath the majority of coal seams within the existing site and of particular interest is the fireclay underlying the House coal seam. Testing has shown that this is of high quality and suitable for the manufacture of bricks. Fireclay would be lifted in a cyclical sequence with coal

and overburden and as it lies directly beneath the coals, fireclay extraction would be undertaken by the coaling team as part of the same operation. The fireclay would then be transported to a temporary stocking area to the north of the existing site workshop lying on the north side of the U720 Dalricket Road. It is estimated that approximately 20,000 tonnes of material would be stored in this area.

2.5 Sandstone occurs in many horizons throughout the site but those identified to be of sufficient mass and potential quality for the production of dimension stone and other associated construction products are situated in the northern region of the Greenburn site lying above the Knockshinnoch Main coal. Sandstone would be lifted by the prime movers as part of the overburden removal operations and would then be transported to a temporary stocking area within the existing site. The sandstone blocks would then be sorted and roughly cut to remove as much waste material as possible prior to road haulage.

2.6 It is anticipated that there would be no changes to the general agreed method of working of the site in order to facilitate the concurrent winning and working of coal and these other economic minerals. The proposal to remove these other minerals is not anticipated to have any significant impact on the current timescale for the Greenburn site.

2.7 It is proposed to dispatch these other minerals by road to end users. This would be via the existing agreed route for the dispatch of coal by road i.e. the U720, U719 and C36 public roads from the Greenburn site entrance to Skerrington Roundabout on the A76 Trunk Road. At present, the operator of the Greenburn site can dispatch up to 10% of coal production from the site by road. To date only approximately 2% of coal produced to date has been dispatched by road.

2.8 The operator now seeks to dispatch coal, fireclay and sandstone, in combination, to an annual maximum total of 80,000 tonnes of minerals. The proposed development would result on average in 16 loads of minerals per day leaving the site (32 movements per day) over a 10 hour period. This would represent an increase from 10 loads per day (20 movements) that could take place under the current consents and agreements in place for the Greenburn site.

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

3.1 East Ayrshire Council Roads and Transportation Division indicates that it has no objections to the proposed development subject to conditions. However, this proposal would increase the amount of material allowed to be hauled over the public road system from a possible 50,000t (10% of coal output) per annum to 80,000t /annum. The Division has concerns that this volume of heavy traffic is likely to have a detrimental effect on the road surface and would consider that the material output from the site should not exceed in total, the 10% of coal output approved under the original planning

consent for the site and that prior to commencement of any further mineral haulage (over and above the trial amount of 25,000t previously allowed) of coal, clay or sandstone, the priority 2 works identified in the agreed road inspection report dated December 2004 be carried out.

Should the intention of the applicant be to run coal plus other minerals from the site at a level over and above that previously allowed under the original Greenburn consent (00/0793/FL), then additional mitigation measures mentioned on pages 12 & 13 of consent 02/0933/FL ie. widening of the road to 6m where required with additional kerbing, drainage, edge strengthening, patching, re-surfacing as required, particularly at property frontages, will be required. Conditions to be attached should be as follows:

1. The developer must implement prior to commencement of any further mineral haulage on the public road system, the remaining works identified previously as priority 2 defects which are now required to maintain the road in a safe and serviceable condition under the terms of the Section 75 agreement for the site.
2. The developer must agree an ongoing maintenance regime with the Council to continue to maintain the road in a safe and serviceable condition during the future term of haulage of materials from the site over the route between the site access and the A76. A joint 3 monthly inspection will be carried out to identify any road defects requiring to be repaired at the applicant's expense. On completion of the site, an inspection of the route U720 and C36 will be carried out in conjunction with the applicant to assess any deterioration and remedial works required to return the road to a serviceable condition at the applicant's expense.
3. The developer will be required to implement further minor traffic calming works on the route.
4. The total mineral haulage from the site on the public road system should not exceed 80,000 tonnes per annum (to a total of 400,000 tonnes over the life of the site) at a rate of not more than 16 loaded vehicles per day.
5. A Transportation Management Plan (incorporating the Transport Protocol) must be agreed between the Council and the applicant.

***It is considered that the proposed development would result in a significant increase in transportation of minerals to a level more than double that currently permitted under the existing consents for the Greenburn site, and along a transportation route consisting of unclassified and C classified roads. It is clear from the terms of the original Greenburn consent and the associated Section 75 Agreement that any additional materials transported along this route in excess of the 10% production limit will trigger the requirement for significant road infrastructure improvements. Improvements to the road infrastructure along this route have already been undertaken by the operator of the Greenburn site and it is the operator's view that these improvements and mitigation measures in respect of environmental impact will***

**provide sufficient mitigation for the potential impacts of additional traffic movements.**

**While in theory appropriate road infrastructure improvements could be carried out to allow increased levels of mineral transportation along this route, it will result in greater adverse impacts on the amenity and enjoyment of residential properties located along the route, particularly those properties that lie immediately adjacent to the road. It should be borne in mind that the original Greenburn development was supported particularly on the basis that it was to be served by a dedicated railhead to facilitate coal dispatch by rail, thereby minimising adverse environmental impact associated with transportation of coal by road. In recognition that there may be some markets which could not be served by rail, an agreed level of 10% of production was allowed to be transported by road. This was considered to be a level that would not result in significant adverse environmental impacts through road transport. The proposed potential increase in movements from a maximum of 20 movements to 32 movements per day is considered to breach the spirit and terms of the consented project.**

**Nonetheless, conditions can be attached to any consent granted to meet the requirements of the Roads and Transportation Division. An amendment to the existing Section 75 Agreement will also be required in respect of the other economic minerals to be extracted from the site.**

3.2 New Cumnock Community Council notes that the application is to extract additional material from the ground and then to sell it. This would suggest that there will be a bigger hole to reinstate and less material to reinstate with. The Community Council needs to be assured that sufficient account of this is taken in the plans and provision for reinstatement and also that the Community has a say in exactly what is done with this hole at the end of the extraction contract in order that it should become an asset to the New Cumnock Area and not an eyesore. Potential uses and the views of the community can be discussed through the Greenburn Liaison Committee as the time approaches.

**Due to bulkage factors relating to the removal of overburden in the extraction areas, the proposal to remove additional economic minerals from the site will have no significant impact in the restoration of the Greenburn site. The Community Council is already represented in the Greenburn Liaison Committee.**

3.3 East Ayrshire Council Environmental Health Division notes that the mineral seams to be tapped would be extracted without significant deviation from existing working operations, the project only being viable because of the extraction works necessary to access the coal seams. The project will

obviously add to the volume of road transportation along the C36 road linking the site to Skerrington roundabout on the southern edge of Cumnock, although it is noted that the traffic flow figures mentioned in the report appear to be considerably reduced from the original study. Subject to adherence to restricted road haulage hours and assuming that this is acceptable to the Roads and Transportation Division, this service would not have any objections in this regard.

***Noted.***

#### **4. REPRESENTATIONS**

4.1 Four letters of representation have been received regarding the proposed development, two raising objections to the development and two in support of it. The points of objection are summarised as follows:

4.2 It is my opinion and blaringly obvious that the C36 road is not suitable for the amount of traffic proposed by the operator.

***The Roads and Transportation Division has indicated that the volume of traffic proposed under this present application, coupled with that volume already permitted to use the agreed transportation route, would require significant road infrastructure improvements.***

4.3 I would draw your attention to the fact that there is no public footpath along the C36 and this, together with the size and volume of the proposed new project, constitute a life-threatening hazard to pedestrians who both reside and commute on this road.

***The Roads and Transportation Division consultation response reflects the fact that, to accommodate the volumes of traffic proposed, the operator would require road infrastructure improvements in the interests of public road safety.***

4.4 The application form states that the proposed works are a continuation of an existing working. In that respect, the materials now proposed for extraction should be taken to market in adherence with the same principals that governed the extraction of coal from the same site i.e. no more than 10% of the fireclay and sandstone should be hauled by road. I object to the proposal that all fireclay and sandstone be hauled by road. This is inconsistent with the terms and spirit of Council policy and would lead to severe degradation of the road surface.

***The applicant has indicated that transportation of the fireclay by rail would be impractical in that the nature of the material would render it difficult to discharge from rail wagons. Additionally the end users of the mineral do not have the availability of rail access points to readily receive the mineral.***

***However, it is considered that the proposal to increase mineral haulage along this route above consented levels, regardless of what mineral that may be, is considered to breach the spirit and terms of the consented Greenburn project. The Roads and Transportation Division also agrees that without further road infrastructure improvements required for additional haulage movements along the transportation route, the condition and safety of the roads would be compromised.***

4.5 In the supporting statement it is stated that the dispatch of coal by road will remain at the current levels, the contention being that these levels are currently less than the 10% ceiling would actually permit. This is irrelevant in that the 10% figure of 10 lorries per day (20 movements) is enshrined in a consent that the operator can utilise in full at any time it wishes. Therefore the current application can only be assessed as an addition to the consented levels of road haulage i.e. 24 movements on top of the 20 movements already consented.

***The applicant has confirmed that, while to date only between 2-3% of coal production has been dispatched from the Greenburn site by road, the ability to dispatch up to the permitted 10% level is requested to remain. In this regard, the proposal will be assessed on the total potential volume of traffic movements i.e. 32 movements per day as revised by the applicant.***

4.6 I object to Roadside being subject to a further 24 lorry movements per day hauling fireclay and sandstone. This takes the total of 44 movements of heavy lorries every day at a distance of only 2 or 3 metres from the adjacent houses. This is increasing the road safety risk to the children in the community as well as impacting further on residential amenity.

***As indicated the applicant has reviewed the potential outputs of minerals from the site and indicates that the maximum total amount of minerals dispatched by road in any year would be 80,000 tonnes or the equivalent of 32 HGV movements per day. Nonetheless it is considered that the proposed development as revised will still result in greater adverse impacts on the amenity and enjoyment of residential properties located along the route, particularly those properties that lie immediately adjacent to the road. It should be borne in mind that the original Greenburn development was supported particularly on the basis that it was to be served by a dedicated railhead to facilitate coal dispatch by rail, thereby minimising adverse environmental impact associated with transportation of coal by road. In recognition that there may be some markets which could not be served by rail, an agreed level of 10% of production was allowed to be transported by road. This was considered to be a level that would not result in significant adverse environmental impacts through road***

***transport. The proposed potential increase in movements to 32 per day is considered to breach the spirit and terms of the consented project.***

4.7 The current planning consent requires operations on site to be completed within 10 years of the commencement of operations. I object to any consent being granted which extends that period bearing in mind that it has been in operation for a year or so already.

***The proposed development will be undertaken as part of the existing operations on site and is not likely to extend the consented life of the Greenburn site.***

4.8 The two letters of support have been received from a potential user of the fireclay from the Greenburn site. The potential user confirms that successful trialling of the fireclay has been undertaken and that the user cannot receive the mineral by rail. The letters of support also indicate that the fireclay is crucial to the business of the user as there is a requirement to have a long term supply of this material to meet customer demands and to safeguard the jobs of employees.

***Noted.***

## **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), the Adopted East Ayrshire Local Plan (2003) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

### Ayrshire Joint Structure Plan

5.2 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 a set of stated criteria, as follows:

A whether the proposal conforms to policies E14 and E15;

***Policies E14 and E15 are not relevant to the current application, the proposal not relating to the extraction of coal by opencast methods***

B availability of alternative supplies;

***No information has been provided by the applicant regarding the availability of alternative supplies of fireclay and sandstone. The***

**minerals to be extracted are to be extracted as by-products from a consented, operational opencast coal site and it is not considered that the availability of alternative supplies from other sources is a relevant criterion for assessment of the application in this particular case.**

C impact on the countryside, landscape character, visual amenity and the natural and built environment;

**The application relates to a consented, operational opencast coal site and the extraction of additional minerals from the existing operations is not considered to create any further adverse impact on the countryside, landscape character, visual amenity and the natural and built environment of the area, over and above that already experienced as a result of the existing operations.**

D the impact caused by noise, dust and the contamination of ground and surface water;

**Subject to satisfactory mitigation measures being put into place regarding operational and storage practices, it is not considered that there should be any adverse impact caused by noise, dust and the contamination of ground and surface water.**

E any adverse effect on communities within Ayrshire;

**The additional road traffic that would occur as a result of the operations would undoubtedly result in additional disturbance to individual properties located along the proposed haulage routes. No existing communities would be directly affected by the proposals.**

F extent of directly related community benefit derived;

**It is not considered that the proposal will result in any direct community benefits, apart from, possibly, some employment benefits accrued through haulage of materials. No evidence of this, or any other possible benefits have, however, been provided by the applicant.**

G opportunity to maximise transport by rail and sea;

**The existing opencast site is currently serviced by rail but the proposal is to remove all of the additional materials to be extracted from the site by road. The applicant has indicated that transportation of the fireclay by rail would be impractical in that the nature of the material would render it difficult to discharge from rail wagons. Additionally the end users of the mineral do not**

**have the availability of rail access points to readily receive the mineral.**

H other inward investment opportunities in the area;

**It is not considered that approval of this application will inhibit or adversely affect other inward investment opportunities in the area.**

I cumulative impact of proposals in one area; and

**It is understood that there are no other similar operations to extract fireclay and sandstone from any other sites within the vicinity of the application site.**

J the extraction period.

**It is stated in the application that the proposed operations will not extend the existing operational timetable for the working of the opencast coal site to any appreciable degree.**

#### East Ayrshire Opencast Coal Subject Plan

5.3 Policy MIN 10 of the Opencast Coal Subject Plan advocates that where the Council has granted consent for an opencast coal development, all other economic minerals should be removed at the same time as the extraction of the coal.

**The proposal is considered to be fully in line with this particular policy.**

#### East Ayrshire Local Plan

5.4 Policy M4 states that the Council will assess all applications for new mineral workings, including the extension of mineral working at existing sites, against a set of seven criteria, as follows:

(i) the impact of the development on the amenity of nearby residents and the residents of properties located along agreed haulage routes to and from the site;

**The additional road traffic that would occur as a result of the operations would undoubtedly result in additional disturbance to individual properties located along the proposed haulage routes. No existing communities would be directly affected by the proposals.**

(ii) the impact of the development on the natural and built heritage, historic gardens and designed landscapes, the visual amenity and the landscape character of the area;

***The application relates to a consented, operational opencast coal site and the extraction of additional minerals from the existing operations is not considered to create any further adverse impact on the countryside, landscape character, visual amenity and the natural and built heritage of the area, over and above that already experienced as a result of the existing operations. No historic gardens and designed landscapes are affected by the proposals.***

(iii) operational details, restoration proposals and after-use of the development site;

***The extraction of significant volumes of additional materials from the site is unlikely to any have any significant implications for the restoration of the site.***

(iv) any cumulative impact of the development either concurrently or successively in association with other similar developments in the vicinity of the site;

***There are no other similar operations to extract fireclay and sandstone from any other sites within the vicinity of the application site.***

(v) the extent of directly related community and environmental benefits to be afforded to the area as a result of the development;

***It is not considered that the proposal will result in any direct community benefits, apart from, possibly, some employment benefits accrued through haulage of materials.***

(vi) methods of transportation of material, volumes of traffic generated and proposed haulage routes; and

***The existing opencast site is currently serviced by rail but the proposal is to remove all of the additional materials to be extracted from the site by road. While in theory appropriate road infrastructure improvements could be carried out to allow increased levels of mineral transportation along this route, it will result in greater adverse impacts on the amenity and enjoyment of residential properties located along the route, particularly those properties that lie immediately adjacent to the road. It should be borne in mind that the original Greenburn development was supported particularly on the basis that it was to be served by a dedicated railhead to facilitate coal dispatch by rail, thereby minimising adverse environmental impact associated with transportation of coal by road. In recognition that there may be some markets which could not be served by rail, an agreed level of 10% of production was allowed to transported by road. This***

***was considered to be a level that would not result in significant adverse environmental impacts through road transport. The proposed potential increase in movements to 32 per day is considered to breach the spirit and terms of the consented project.***

(vii) the impact of the development on existing alternative economic initiatives and employment in the vicinity of the site e.g. tourism facilities etc

***It is not considered that approval of this application will inhibit or adversely affect other inward investment opportunities or other existing alternative economic initiatives and employment in the area.***

5.5 The policy also states that where an application relates to a new aggregate mineral working within the Rural Diversification Area, the proposal will also be assessed against the requirement of the mineral to meet special local needs.

***The application does not relate to an aggregate mineral and this element of the policy is not considered relevant to the proposal.***

***It is considered that the proposal is generally consistent with the provisions of the development plan.***

## **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, relevant planning history and the supporting statement by the applicant.

### Consultation Responses

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

6.3 It is considered that the points of objection made in respect of the additional traffic impacts associated with increased levels of haulage of minerals along the existing agreed haul route from the Greenburn site are material to the determination of this application. It is considered that the concerns raised could be appropriately addressed by the imposition of conditions in any consent granted or by means of amendments to the existing Section 75 Agreement relating to the Greenburn site.

### Planning History

6.4 Planning permission for the extraction of 3.5 million tonnes of coal by opencast method from the application site was granted on 06 August 2002 under planning application 00/0793/FL. Full permission was also granted at

that time for the construction and operation of a new dedicated railhead and rail link to serve the proposed opencast site.

6.5 Planning permission for a variation of conditions 7 and 35 of consent 00/0793/FL to allow the formation of a vehicle underpass within the application site was approved on 10 October 2003.

6.6 Planning permission for a variation to condition 39 of consent 00/0793/FL to allow extended haulage hours between the excavation area and the coal processing area was approved on 25 June 2004.

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

6.8 A further planning application (Ref. No. 05/0452/FL) for an extension of excavation area and site limits for opencast coal mining and re-alignment of an unclassified road was approved on 12 August 2005, although this is subject to an amendment to the Section 75 Agreement for the site.

#### Supporting Statement by Applicant

6.9 Since the submission of the application, the applicant has re-assessed and reviewed the potential markets and availability of materials on site and believes that to supply the likely market demand for fireclay, sized coal and possibly sandstone an annual total of 80,000 tonnes of mineral dispatched by road is required. Over the remaining life of the consented site this will represent a total of approximately 400,000 tonnes of minerals. On an average daily basis this represents approximately 16 lorry loads of minerals leaving the site over a 10 hour period.

6.10 The recovery of any mineral other than coal from the site is an additional operation requiring additional resources and consents. A certain level of product is required to both satisfy the market demand and to justify the investment in the additional resources which will be required to recover and supply the mineral. If this level cannot be achieved (i.e. a total of 80,000 tonnes per annum of all minerals), the operation will not be economically viable and will not be carried out.

6.11 At 80,000 tonnes per annum, the combined total of coal and other minerals dispatched by road will still only be approximately 10% of the currently anticipated total mineral production from the site. This is in line with the existing planning consent for 10% of output to be dispatched by road. On an approximate average daily basis, the increase from 50,000 tonnes to 80,000 tonnes is equivalent to an increase from 10 to 16 lorry loads of minerals leaving the site per day over a 10 hour period.

6.12 We do not consider that this level represents a significant increase in impact on the amenity of the local area, an impact which is already being addressed through the successful implementation of the road haulage protocol and regular liaison with both local residents and the Council's Roads

and Transportation Division. The road haulage protocol developed in conjunction with the Roads and Transportation Division has been successfully implemented. Daily haulage levels are carefully controlled and lorries are dispatched from site at intervals to ensure that incoming and outgoing lorries do not meet on the road. Haulage is also prohibited during the two daily time frames in which the school bus uses the road. We believe that these measures whilst not eliminating, certainly help to mitigate the adverse effects associated with road haulage.

6.13 Limiting the quantity of road transportation to 50,000 tonnes per year will not allow us to meet the identified market for fireclay and will prevent the recovery of valuable and useable minerals from the site.

***While it is recognised from the applicant's supporting statement that any approval of an amount less than this figure will in effect mean that the proposal will not go ahead in economic terms, it is considered that the level of increase in dispatch of minerals by road above the existing consented level is not acceptable in environmental terms.***

## **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 in relation to the extraction of the other economic minerals and the potential restriction of the type and amounts of minerals to be transported by road from the Greenburn site.

## **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.

8.2 While the extraction of other economic minerals from opencast sites is generally supported through the policies of the adopted East Ayrshire Opencast Coal Subject Plan, it is considered that the proposal to significantly increase heavy goods vehicles traffic along the agreed coal road haulage route would result in greater adverse environmental impacts on residential properties located along this route.

8.3 In assessing the original development proposals for the Greenburn opencast coal site, significant emphasis was placed on securing dispatch of coal from the site by rail in order to minimise adverse environmental impacts associated with road haulage. Nonetheless, in recognition that some local markets could not be served by rail dispatch, a maximum of 10% of coal

production was permitted to be dispatched by road along an agreed route. It was also considered that at this level there would not be significant adverse environmental impacts on residential properties along the route. It is considered that the proposal now to potentially increase traffic on this route by a potential maximum of 60% to 32 movements per day is considered to breach the spirit and terms of the consented project.

8.4 The applicant has amended the proposal such that the total amount of minerals to be dispatched by road does not exceed 80,000 tonnes per annum and this equates to an increase from 20 to 32 HGV movements daily over a 10 hour period. While it is recognised from the applicant's supporting statement that any approval of an amount less than this figure will in effect mean that the proposal will not go ahead in economic terms, it is considered that this level of increase is not acceptable in environmental terms.

8.5 Taking account of all material considerations, it is considered that the recovery of fireclay and sandstone would be acceptable only if the level of minerals hauled by road remains at the current permitted level of 10% of the total coal production from the Greenburn site. In this regard any approval should only be on the basis that the existing Section 75 Agreement for the site be amended to allow the recovery of fireclay and sandstone from the Greenburn site in addition to coal, but that the minerals to be dispatched by road be restricted to a maximum of 10% of the total coal production from the site.

8.6 Should the Committee be minded to allow the increase of vehicle movements to the level proposed by the applicant (i.e. a maximum of 80,000 tonnes per annum of total minerals dispatched by road) this would not represent a departure from policy, but would still require to be secured through an amendment to the existing Section 75 Agreement.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal amendment to the existing Section 75 Agreement for the Greenburn site with the applicants in respect of the matters detailed in Paragraph 7.1 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 because it would not be a significant departure from the development plan.

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

21 November 2005  
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. Supporting Statement by Applicant
6. Adopted East Ayrshire Opencast Subject Plan (2003)
7. Adopted East Ayrshire Local Plan (2003)
8. Approved Ayrshire Joint Structure Plan (1999)
9. Previous applications 00/0793/FL, 03/0726/FL, 04/0263/FL, 04/0717/FL and 05/0452/FL

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	Greenburn OCCS, New Cumnock
Nature of Proposal:	Recovery of minerals other than coal
Name and Address of Applicant:	<b>Kier Construction Limited</b> Tempsford Hall SANDY Beds. SG19 2BD
Name and Address of Agent	Mr Jonathan Hillier Per Kier Mining Tempsford Hall SANDY Beds. SG19 2BD

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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. Condition 35 of planning consent 00/0793/FL dated 06 August 2002 shall be amended to read as follows:

*"The operational conduct of the site shall be generally as indicated in the Project description that forms part of the application, as amended by the amended Project Description dated July 2004 and the revised site plan (Drw.No. 5030/H/L/CA004) dated 15 July 2004, as amended by the Project Description dated April 2005 and the revised site plan (Drw. No. 6215/B/PA/002), and as now amended by the Project Description dated May 2005 and the revised plan (Drw. No. 6215/EM/PA/002 – Addendum 1 dated 27 May 2005).*

*REASON: In the interests of amenity.*

REASON: To ensure that the terms of the original planning consent are consistent with the development hereby approved.

2. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 00/0793/FL dated 06 August 2002 as amended by planning consent 03/0726/FL dated 10 October 2003, as amended by planning consent 04/0263/FL dated 24 June 2004, as amended by planning consent 04/0717/FL dated 28 October 2004 and as amended by planning consent 05/0452/FL.

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

3. The total amount of all minerals approved for extraction from the Greenburn site to be dispatched to markets by road shall not exceed 10% of the total coal output from the site.

REASON – In order to minimise adverse environmental impacts on residential properties along the agreed haulage route.

4. The applicant shall implement prior to commencement of any further mineral haulage on the public road system, the additional works identified during a joint inspection between the applicant and the Roads Authority which are now required to maintain the approved haulage route in a safe and serviceable condition under the terms of the existing Section 75 agreement for the site. The condition of the approved haulage route shall thereafter be assessed on an annual basis to determine if further mitigation measures are required, Identified further mitigation works shall be implemented to the satisfaction of the Roads Authority.

REASON – In the interests of public road safety.

5. The developer shall agree an ongoing maintenance regime with the Roads Authority to continue to maintain the road in a safe and serviceable condition during the future term of haulage of materials from the site over the route between the site access and the A76. A joint 3 monthly inspection will be carried out to identify any road defects requiring to be repaired at the applicant's expense. On the cessation of coaling operations of the site, an inspection of the route U720 and C36 shall be carried out in conjunction with the applicant to assess any deterioration and remedial works required to return the road to a servicable condition at the applicant's expense.

REASON - In the interests of public road safety

6. The applicant shall undertake further minor traffic calming works on the agreed haulage route, the details of which shall be submitted to and approved by the Planning Authority in consultation with the Roads Authority, prior to the commencement of operations approved under this consent.

REASON - In the interests of public road safety.

7. Notwithstanding condition 3 above, the total mineral haulage from the site on the public road system should not exceed 50,000 tonnes per annum (to a total of 406,000 tonnes over the life of the site) at a rate of not more than 10 loaded vehicles per day in line with the original planning consent issued for the Greenburn site (planning consent 00/0793/FL dated 06 August 2002). A Transportation Management Plan shall be submitted to and approved by the Planning Authority in consultation with the Roads Authority, prior to the commencement of operations approved under this consent.

REASON - In the interests of public road safety and residential amenity.

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