

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 08 OCTOBER 2004

**04/0717/FL: PROPOSED EXTENSION TO EXCAVATION AREA FOR
OPENCAST COAL MINING
AT GREENBURN OPENCAST COAL SITE, NEW CUMNOCK**

APPLICATION BY KIER CONSTRUCTION LTD.

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for a variation to Condition 35 of the approved consent (Ref. No. 00/0793/FL) relating to the approved operational conduct of the site to allow for an extension to the excavation area within the Greenburn site and to allow the working of deeper seams of coal present in the consented site.

1.2 It is the intention of the operator to maximise coal production from the Greenburn site and following a review of geological data produced for the site, the operator believes that there are opportunities to extend the mining areas and recover additional coal from within the existing site. In total this would yield up to a further 500,000 tonnes of high quality coal, distributed via the new dedicated railhead and line to the power generation industry. The proposed extension to the excavation area takes in a further 2.2 hectares of land.

1.3 The proposed lateral extension to the site excavation area is to take place in the north east portion of the existing consented site and comprises the land covered by the former Coalburn Colliery Bing and a field directly to the north of this area. This area was originally designated for the site office, workshop and amenity area. Whilst the plant workshop is still located to the south of the bing area, the site offices and amenity area are now located at Auchincross Farm. The area north of the workshop is therefore available to mine and while it is known that some of the coal seams have been heavily worked in this area, exploration drilling has shown that coal can still be economically recovered. Excavation is planned to take place in year 4 of the Greenburn operation and would not affect the general direction of working within the site.

1.4 It is also proposed to work deeper coal seams present within the existing consented site and also within the north east extension area, as the seams are anticipated to be contiguous within the site. These seams are not known to be subject to any previous workings. The two seams, the Laight and an unnamed seam, lie approximately 12 metres and 15 metres respectively below the current basal seam (the Turf).

1.5 The deeper seams would be mined as part of the ongoing mining operations. The working void would be deeper and thus larger than originally approved, although the general working direction and method would remain unchanged. To accommodate the additional material from the deeper void, it is proposed to enlarge the overburden mound in terms of area with the dump extending further south from its original approved location, and thereby extending over the backfilled area of the year 1 mining area.

1.6 With this proposed alteration to the existing approved scheme, an additional 10 million m³ of overburden will be produced and the operations will yield up to an additional 500,000 tonnes of coal. With existing levels of production, this would extend the current mining operations by approximately 18 months, as the rate of advance of mining operations within the site would be slowed by the proposal to excavate deeper seams of coal.

1.7 Environmental information has been provided by the applicant to suggest that the proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology. The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. It is accepted that the additional overburden produced will have implications for visual impact as the overburden storage mound will be significantly extended. However the extended area is generally low lying and it is proposed that the top of the dump will generally follow the contours of the underlying restored ground. There will be no increase overall in the height of the overburden dump and in addition the outward facing slopes of the final dump are to be seeded to lessen visual impact.

1.8 All other aspects of the proposed development will be in accordance with the terms of the existing planning consent for the site and associated conditions and obligations within the Section 75 Agreement.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the condition on the attached sheet

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. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are either not of

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

3.2 The proposals represent the extraction of additional coals within the existing consented site at Greenburn which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. There will be additional visual impact through the requirement to increase the overburden storage area to allow extraction in the deeper seams. However, this will not result in an increase in the overall height of the mound and with the proposal to follow the contours of the restored area and to seed the sloping faces of the mound, this should assist in mitigating visual impact.

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

3.4 It is acknowledged that approval of this application will result in the extraction of approximately an additional 500,000 tonnes of coal and that this will result in extending the life of the site by 18 months giving a total timescale of 11.5 years. However, it is considered that the development will not have any significant adverse impact on nearby communities and that with the benefits of the extended employment period and the removal of the previous mining dereliction, the proposal is considered acceptable. A minimum of 90% of coal production from the extended will still be directed onto rail via the dedicated railhead at Greenburn.

3.5 With respect to the representations received, it should be noted that the principle of opencast development in this area has already been established through the existing consent for the Greenburn site. It is considered that the proposals under the current application will have no significant additional impact on existing residential properties in the locality through noise, dust or vibration. Some of the points of representation relate to issues not directly associated with the operations at Greenburn and are therefore not relevant to the determination of this application. Despite no formal record of noise complaints relative to opencasting in the locality, these matters are currently being addressed through the appropriate monitoring of planning conditions.

3.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are environmental and community benefits which would outweigh any temporary adverse impacts. Consequently it is considered that the application should be approved.

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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OPENCAST COAL MINING
AT GREENBURN OPENCAST COAL SITE, NEW CUMNOCK

APPLICATION BY KIER CONSTRUCTION LTD.

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 and 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 have recently commenced.

2.2 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. The Greenburn opencast site is to be worked over a total period of 10 years with a coaling period of 7 years. Average output from the site will be around 10,000 tonnes of coal per week. Coaling has already commenced on site.

2.3 **Proposed Development:** Permission is sought for a variation to Condition 35 of the approved consent (Ref. No. 00/0793/FL) relating to the approved operational conduct of the site to allow for an extension to the excavation area within the Greenburn site and to allow the working of deeper seams of coal present in the consented site.

2.4 It is the intention of the operator to maximise coal production from the Greenburn site and following a review of geological data produced for the site, the operator believes that there are opportunities to extend the mining areas and recover additional coal from within the existing site. In total this would yield up to a further 500,000 tonnes of high quality coal, distributed via the new dedicated railhead and line to the power generation industry. The proposed extension to the excavation area takes in a further 2.2 hectares of land.

2.5 The proposed lateral extension to the site excavation area is to take place in the north east portion of the existing consented site and comprises the land covered by the former Coalburn Colliery Bing and a field directly to the north of this area. This area was originally designated for the site office, workshop and amenity area. Whilst the plant workshop is still located to the south of the bing area, the site offices and amenity area are now located at Auchincross Farm. The area north of the workshop is therefore available to mine and while it is known that some of the coal seams have been heavily worked in this area, exploration drilling has shown that coal can still be economically recovered. Excavation is planned to take place in year 4 of the Greenburn operation and would not affect the general direction of working within the site.

2.6 It is also proposed to work deeper coal seams present within the existing consented site and also within the north east extension area, as the seams are anticipated to be contiguous within the site. These seams are not known to be subject to any previous workings. The two seams, the Laight and an unnamed seam, lie approximately 12 metres and 15 metres respectively below the current basal seam (the Turf).

2.7 The deeper seams would be mined as part of the ongoing mining operations. The working void would be deeper and thus larger than originally approved, although the general working direction and method would remain unchanged. To accommodate the additional material from the deeper void, it is proposed to enlarge the overburden mound in terms of area with the dump extending further south from its original approved location, and thereby extending over the backfilled area of the year 1 mining area.

2.8 With this proposed alteration to the existing approved scheme, an additional 10 million m³ of overburden will be produced and the operations will yield up to an additional 500,000 tonnes of coal. With existing levels of production, this would extend the current mining operations by approximately 18 months, as the rate of advance of mining operations within the site would be slowed by the proposal to excavate deeper seams of coal.

2.9 Environmental information has been provided by the applicant to suggest that the proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology. The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. It is accepted that the additional overburden produced will have implications for visual impact as the

overburden storage mound will be significantly extended. However the extended area is generally low lying and it is proposed that the top of the dump will generally follow the contours of the underlying restored ground. There will be no increase overall in the height of the overburden dump and in addition the outward facing slopes of the final dump are to be seeded to lessen visual impact.

2.10 All other aspects of the proposed development will be in accordance with the terms of the existing planning consent for the site and associated conditions and obligations within the Section 75 Agreement.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division indicates that it did not object to the original application on the understanding that over the life of the site 90% of the coal generated by the site would be removed by rail with a maximum of 10% of coal (for the domestic market) exiting the site by road via the U720, the U719 and the C36 to the A76 Trunk Road at Skerrington Roundabout. Concerns are re-iterated that any haulage of coal over the existing public road system to access the A76 Trunk Road at Skerrington would require road infrastructure improvements to be carried out on the haulage route by the applicant.

The issues raised by the Roads and Transportation Division are already addressed through the existing Section 75 Agreement for the Greenburn site that requires certain infrastructure improvements to road transport routes prior to their use. The minimum of 90% of coal production being dispatched by rail from the site is secured through the existing Section 75 Agreement.

3.2 The Scottish Environment Protection Agency indicates that as the extension of the excavation area should have no additional impact with respect to hydrology and the existing consents for the lagoon discharges and authorisations for the processing of coal will not require to be modified, SEPA has no objections to the proposal.

Noted.

3.3 The Scottish Wildlife Trust has no objections to the proposed development.

Noted.

3.4 Scottish Natural Heritage has no objection in principle to the extension as proposed although wishes to highlight that the increase of the overburden mound may have an adverse affect on visual amenity. It is unclear from the submitted plans and associated report what the profile of the enlarged overburden dump would be. The report indicates that the dump is to be extended south with no proposal to increase the height. SNH would have no

objection to this although may have concerns if the dump were to increase in height substantially.

There are no proposals to increase the overall height of the overburden dump.

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

Noted.

3.6 New Cumnock Community Council and Cumnock Landward Community Council have not responded to the consultation letter.

Noted.

3.7 The Royal Society for the Protection of Birds has no objections to the proposal but requests that the Mitigation of Environmental Impacts Plan is applied to the additional area of excavation. Restoration proposals for the additional area will also have to be included within the Conservation Management Plan, which will need to be amended through the Technical Working Group to consider the larger area.

The existing Section 75 Agreement provides for a Mitigation Plan and this currently encompasses the entire Greenburn site. Since the extension area lies wholly within the consented site, the Mitigation Plan already covers the extension area, as does the Conservation Management Plan.

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

Noted.

3.9 East Ayrshire Roads and Transportation Division (Flooding Section) indicates that the only concerns would have been the possibility of seepage from the River Nith to the excavated void and the discharging of pumped groundwater to the River Nith. However as the former has been examined and assessed as small and the latter controlled through water treatment areas to contain pollution and to accommodate flash flooding, the Section has no comment to make on the proposed development.

Noted.

3.10 The West of Scotland Archaeology Service has not adverse comments to make on the proposed development.

Noted.

4. REPRESENTATIONS

4.1 Two letters of objections from three signatories have been received with respect to the proposed development. The points of objection are summarised as follows:

4.2 We have not found enough information available from the plans showing exactly where the area is to be extended or the variation of the operational conduct. This we object to and as it affects our quality of life, which is already being affected and which has already been ignored by previous objections. I would like to know exactly what the extensions and variations are going to mean for ourselves residing at Braehead Farm.

Notwithstanding the comments of the objector, the submitted information in the form of a supporting statement and plans clearly defines the nature of the proposed extension and variation to the method of working. It is considered that with the exception of the increase in the timescale of operations at Greenburn, the proposals under this application are not considered to involve any significant additional impacts relative to the objector's interests.

4.3 I object to the extension at the north east corner of the Greenburn opencast coal site. This part of the site is closest to my property and about the same distance as operations at the Rigghead site

The proposed north east extension, which lies entirely within the consented Greenburn site, will result in excavations encroaching a further 65 metres closer towards the objector's property. However, the site boundary will remain the same and still lies some 1080 metres away from the objector's property and some 770 metres from the nearest occupied residential property not within the control of the applicant.

4.4 I have sustained blast damage to my house from the Rigghead operation and the probability of this being repeated by blasting operations at Greenburn are high. Due to the number of faults and fissure in the area nobody can reassure me that I am yet again being forced into an uncomfortable position. I would also like to remind the Planning Officials that my house is not the only one to be damaged by blasting operations.

Given the distance between the objector's property and the Greenburn site and in view of the vibration limits set within conditions on the existing Greenburn planning consent, it is not considered that blasting operations associated with the extended Greenburn site will have any significant detrimental impact on the objector's property. The alleged damage to his property from other opencast operations in the locality is not relevant to the determination of this application and is being addressed through other processes with the relevant site operator. This Division is

not aware of other complaints of alleged damage resulting from blasting in this locality.

4.5 The normal complaints I have voiced in the past about noise during night time operations are still the same and the situation will get worse as the Greenburn operation moves to the north-east part of the site. I will put up with noise but will not sit in a new house that vibrates when a shot is fired during blasting operations.

It is considered that the proposed extension to the Greenburn site will not result in any additional significant noise impacts. However, although this Division and the Environmental Health Division has no formal record of any noise complaints within the last year, appropriate monitoring is being carried out in respect of this issue.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (1999) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

Ayrshire Joint Structure Plan

5.2 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the Greenburn development site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads. The proposed development requires to be assessed against Policy E14 which states:

Development opportunities for opencast coal working shall be directed to Preferred Areas of Search in East Ayrshire identified on the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.

The proposed extension site falls within a Preferred Area of Search.

5.3 Policy E13 states that proposals to extend the supply of land with planning consent for the winning and working of minerals shall be considered against the following criteria:

- (i) *impact on the countryside, landscape character, visual amenity and the natural and built environment.*

- (ii) *the impact caused by noise, dust and the contamination of ground and surface water.*
- (iii) *any adverse effect on communities within Ayrshire.*
- (iv) *opportunity to maximise transport by rail or sea.*
- (v) *extent of directly related community benefit derived such as enhancement and creation of landscapes and habitats, and removal of dereliction.*
- (vi) *cumulative impact of proposals in one area and the extraction period.*

The application for the Greenburn opencast site (Ref. No. 00/0793/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 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 Policy MIN3 is pertinent to the application, the policy stating that, subject to detailed consideration, the Council will generally be supportive of any proposal to extend an existing operative opencast site within the Potential Coal Extraction Areas provided that all of the following criteria are met:

- (i) *that the proposed extraction operations are carried out as a sequential phase of development and not independently or in isolation from the extraction programme of the original approved site.*

Extraction will be carried out as a sequential phase of development of the overall site.

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

The development will utilise existing site facilities and infrastructure.

- (iii) *that the scale of operations, rate of extraction and number of vehicle movements generated by the extended site are commensurate with those as existing on the original site.*

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.

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

The proposed extension will not significantly prejudice plans for the restoration as the site will be progressively restored. However, the proposal will extend the life of the site by some 18 months.

- (v) *there is a clearly demonstrated benefit to be gained through the removal of existing areas of dereliction.*

The proposal relates to an area of land that is the site of a colliery spoil heap and has been subject to underground mining in the past. This will be removed as part of the proposed development and the site restored to a more acceptable condition.

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

Extension of the extraction area will result in an extended extraction period, prolonging existing employment for the local workforce employed at the site.

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

There are no conflicts with any other Subject Plan policies.

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

The extended site operations are expected to prolong the life of the site by approximately 18 months. The application relates to a small extension to an existing extraction area within the consented opencast site and for the working of deeper seams within the site. It is considered that the development will not have any significant adverse impact on nearby communities and that with the benefits of the extended employment period and the removal of the previous mining dereliction, the proposal is considered acceptable in planning policy terms.

5.5 Policy MIN 12: The Council will seek to ensure that a proliferation of opencast coal sites within close proximity to any one community or within one particular area does not occur. In this context, any proposed new opencast developments may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where that development would:

(i) constitute a third approved or operative site within 3 Kms of each other or within a 3 Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or

(ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or

(iii) generate volumes of heavy traffic which taken together with the volumes of coal haulage vehicles already using the routes concerned, would cause unacceptable detriment to the amenity of any community or group of dwellings located along proposed haulage routes; or

(iv) result in an unacceptable accumulation of adverse impacts on international or nationally designated sites of nature conservation interest over time and place within a particular locality, or an accumulation of individual impacts which collectively have a significant adverse effect on the integrity of such areas.

The proposed development is not a new site but an extension to the existing Greenburn site, wholly contained within the existing operational boundary of the site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12.

5.6 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 Greenburn site is designed to improve the wildlife conservation value of the land that would provide for greater benefits to the area both in bio-diversity terms and also in general amenity terms. Restoration to high standards will be overseen by the Technical Working Group set up as part of the existing Section 75 Agreement for the Greenburn site.

5.7 Policy MIN 18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

A minimum of 90% of coals won from the proposed extension area will be dispatched via the existing dedicated railhead facilities at the Greenburn site.

5.8 Policy MIN 19: All haulage of extracted materials between the area of excavation and the point of dispatch from the opencast site should be via internal haul roads only.

All coals won from the proposed extension area will be taken to the coal preparation area via internal haul roads and via the road underpass on the Dalricket Road.

5.9 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.

As indicated in section 3.1 of this report, contributions by the operator to the maintenance of public roads can be secured through the existing Section 75 Agreement for the Greenburn site.

5.10 Policy MIN 21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

(i) to ensure the highest possible operational standards for the transportation of extracted minerals;

(ii) to ensure best operational practice regarding road safety and operational matters;

(iii) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes

(iv) to audit and record operational details of the transportation of coal on a regular basis; and

(v) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

The Council is currently formulating with the co-operation of the opencast operators, a 'Transportation of Coal by Road Protocol' addressing the above issues to which existing and potential opencast operators and their approved sub-contractors will be invited to subscribe.

The existing Section 75 Agreement for the Greenburn site contains an obligation in respect of this matter.

5.11 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 any settlement.

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

The proposed extension area extends to only 2.2 hectares. This together with the extraction of the deeper seams of coal will extend the current life of the site by 18 months. This would take the overall timescale of the development to 11.5 years.

However, it is considered that the development will not have any significant adverse impact on nearby communities and that with the benefits of the extended employment period and the removal of the previous mining dereliction, the proposal is considered acceptable in planning policy terms.

- (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.

There are no known proposals at this stage that would indicate the operator's intentions to seek further extensions to this site.

5.12 Policy MIN 25: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, group of dwellings or individual dwellinghouses not in the ownership or under the control of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where all of the following criteria are met:

- (i) the Council is satisfied that there are no objections which cannot be overcome through the expeditious use of conditions or planning agreements from residents, owners, tenants or occupiers of properties located within 500 metres of the proposed working face of the site;

There are no residential properties, outwith the applicant's ownership or control that lie within 500 metres of the extended working face of the site.

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

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

5.13 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 or an amendment to the existing agreement in respect of the matters that may require to be subject of such an agreement.

5.14 Policies MIN34 and MIN35: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

The applicant is currently a contributor to the Mineral Trust Fund in respect of the existing Greenburn opencast site.

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

The existing Greenburn opencast site is subject to a Section 75 Agreement encompassing the above matters.

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

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations and relevant planning history.

Consultation Responses

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

Representations

6.3 It is considered that the objections raised are either not of sufficient weight to justify refusal of the application or are not relevant to the proposal.

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.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in the determination of this application.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are either not of sufficient weight to justify refusal of the application or are not relevant to the proposal.

8.2 The proposals represent the extraction of additional coals within the existing consented site at Greenburn which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. There will be additional visual impact through the requirement to increase the overburden storage area to allow extraction in the deeper seams. However, this will not result in an increase in the overall height of the mound and with the proposal to follow the contours of the restored area and to seed the sloping faces of the mound, this should assist in mitigating visual impact.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the Greenburn site is located, the proposal to extend and extract deeper seams within the existing consented site will have no significant adverse effects on any local community. The proposal will not result in any

breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan, and notwithstanding the representations received, it is considered that the extended operations proposed can be undertaken within acceptable environmental standards.

8.4 It is acknowledged that approval of this application will result in the extraction of approximately an additional 500,000 tonnes of coal and that this will result in extending the life of the site by 18 months giving a total timescale of 11.5 years. However, it is considered that the development will not have any significant adverse impact on nearby communities and that with the benefits of the extended employment period and the removal of the previous mining dereliction, the proposal is considered acceptable. A minimum of 90% of coal production from the extended will still be directed onto rail via the dedicated railhead at Greenburn.

8.5 With respect to the representations received, it should be noted that the principle of opencast development in this area has already been established through the existing consent for the Greenburn site. It is considered that the proposals under the current application will have no significant additional impact on existing residential properties in the locality through noise, dust or vibration. Some of the points of representation relate to issues not directly associated with the operations at Greenburn and are therefore not relevant to the determination of this application. Despite no formal record of noise complaints relative to opencasting in the locality, these matters are currently being addressed through the appropriate monitoring of planning conditions.

8.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are environmental and community benefits which would outweigh any temporary adverse impacts. Consequently it is considered that the application should be approved.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the condition on the attached sheet

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.

28 September 2004
HM/HM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letter of representation
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (1999)
7. Previous applications 00/0793/FL, 03/0726/FL and 04/0263/FL.

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

Implementation Officer: Dave Morris

Location	Greenburn OCCS, New Cumnock
Nature of Proposal:	Proposed extension of excavation area for opencast mining.
Name and Address of Applicant:	Kier Mining Tempsford Hall SANDY Beds. SG19 2BD
Name and Address of Agent	Mr Mark Harrington Kier Mining Tempsford Hall SANDY Beds. SG19 2BD

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

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

1. 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.

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 2001 as amended by planning consent 03/0726/FL dated 10 October 2003 and by planning consent 04/0263/FL dated 24 June 2004.

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

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THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
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VIEWING PLEASE CONTACT (01563) 555320.**