

EAST AYRSHIRE COUNCIL

PLANNING COMMITTEE: 12 DECEMBER 2013

UPDATE ON OPERATIONAL OPENCAST COAL SITES IN EAST AYRSHIRE

REPORT BY THE DEPUTE CHIEF EXECUTIVE

1. Purpose of Report

2. The purpose of this report is to provide an update to the Planning Committee on the recent activity relating to the four operational opencast coal mines in East Ayrshire.

3. Background

4. Following the demise of Aardvark TMC Limited (Aardvark) and the Scottish Coal Company Limited (SCCL) the Chief Executive's Report to Council on 19 September 2013 set out the Council's Opencast Coal Steps to Recovery. That report advised that further reports would be brought forward to update members on the progress of the site masterplanning for each complex; the opportunity has been taken in this report to provide the Planning Committee with an update on the operational status of the four active opencast complexes within East Ayrshire, including information on the strategy for dealing with the former Aardvark and SCCL mines which have outstanding restoration but also have the potential for active mining operations.

5. Operational Complexes

Site	Owner	Contractor
Netherton	OCCW Netherton (Hive Co)	Hargreaves Surface Mining Ltd (Hargreaves)
Duncanziemere	OCCW Duncanziemere (Hive Co)	Hargreaves Surface Mining Ltd (Hargreaves)
House of Water	OCCW House of Water (Hive Co)	Hargreaves Surface Mining Ltd (Hargreaves)
Greenburn	Kier Mining	Kier Mining

6. As detailed in the Chief Executive's Reports of 25 May 2013 and 19 September 2013, it was identified that the sites at Duncanziemere, Netherton and House of Water all had reserves of coal which Hargreaves Surface Mining Limited (Hargreaves) had determined, and as they so intimated, remained financially viable to extract. However, as previously reported, these coal extraction operations had historically not been operated in line with the relevant approved planning permissions,

significant liabilities had been identified such as enlarged overburdens and oversized working voids and the value of these liabilities did not relate to the value of the restoration bonds in place for the sites.

7. As also previously reported to Council, the Hive Cos have maintained some level of employment at the complexes formerly run by Aardvark, namely, Duncanziemere and Netherton and operations have recently recommenced at House of Water, formerly operated by SCCL. However, due to the significant liabilities, these companies have indicated that it is not financially viable to provide a restoration bond for the sites and it will, of course, be for the companies to satisfy the Council, as Planning Authority, as to the merits of that position. Ultimately, this will be a matter for the Planning Committee to determine in each case.
8. In accordance with the general principles set out in the Chief Executive's report to Council on 19 September 2013, the Council's Coal Team has been assessing the options in relation to delivery of the original planning permissions at these sites, including consideration of appropriate restoration schemes while at the same time enabling the Hive Cos to maintain operations at Duncanziemere and Netherton and seek to commence operations at House of Water. The approach which the Coal Team has adopted has been based on the following principles:-
 - That the mining operations at the site would not increase the restoration liability of the site from the time when the Hive Co took control of the mine;
 - That the mining operations would not result in any material being placed above the restoration levels set within the approved planning permission for the site;
 - That the mining operations would be carried out in accordance with the conditions and obligations set out in the relevant planning permission and Section 75 Agreements, except in relation to the final restoration design of the site and the provision of a bond;
 - That Letters of Comfort would be issued in relation to the personal nature of the planning permissions for each site;
 - That the Hive Co would submit a planning application for a deliverable and appropriate revised restoration scheme based on the coal reserves remaining at the site and the potential bond money available;
 - That where there were limited coal reserves and /or no restoration bond existing for the site, the Hive Co would be expected to provide a level of financial security to cover the potential liability, arising from any future coaling operations; and
 - That all mining operations would be subject to monthly visits with a bi-monthly Compliance Assessment Report from the Council's Independent Compliance Monitoring Engineer.

9. The following paragraphs set out the current status of each of the four active complexes within East Ayrshire.

10. Netherton/Skares Opencast Surface Mine Complex

11. The Netherton site comprises of a Planning Permission (Ref: 09/0891/PP) which was approved on 19 October 2010 for the extraction of approximately 4.1M tonnes of coal with current extraction of approximately 1.1M tonnes remaining within the northern void with progressive restoration being undertaken with the overburden filling the southern void. Approximately 0.7M tonnes of coal remains and the site is scheduled to finish coaling during May 2015. At the time of the liquidation of Aardvark, the temporary overburden remained centrally within the site. Currently there is no overburden extraction material being placed above ground with all material restoring the southern void; therefore, there has been no increase in restoration liabilities within the site with phased restoration being carried out as coal is extracted. This has been verified by Dalgleish Associates Ltd, the Council's appointed Independent Mining Engineer who provides Compliance Monitoring on this site.
12. A Planning application was received on 9 August 2013 from OCCW (Netherton) Ltd to alter Condition 1 (Personal Consent) and was assessed and approved under the powers delegated to the Head of Planning and Economic Development subject to the conclusion of appropriate Legal Agreements under Section 69 of the Local Government (Scotland) Act 1973 and Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended. The Section 69 Legal Agreement is in relation to the reimbursement by the operator of the Compliance Monitoring charges. The Head of Planning and Economic Development issued a Letter of Comfort to OCCW (Netherton) on 26 April 2013 to allow the continued mining operations while the Planning Application was being determined, and the Letter of Comfort will be withdrawn at the point of issue of this consent following conclusion of the Legal Agreements.
13. Currently the site has a Restoration Bond provided by ACE for £4.5M and negotiations are underway with the bond provider to secure the bond monies which will be used to facilitate the alternative restoration of the site. As reported to Council on 19 September 2013, the Council's Independent Mining Engineers report identified that the restoration of the site in accordance with the original approved restoration scheme was £11.811M. As part of the requirement under Opencast Coal Subject Plan Policy Min 35 and 36, a restoration guarantee is required which will be subject to 6 monthly monitoring. Given the extent of financial guarantee required to cover the £11.811M restoration liability, Hargreaves have advised that they could not operate the site and carry out the required restoration without redesigning the site restoration scheme and revising

the methodology for the restoration guarantee. Therefore, OCCW (Netherton) are formulating proposals for a revised restoration scheme which would achieve an alternative landform, utilising revenue from the coal extraction at the site together with the bond monies to secure a deliverable alternative scheme.

14. On 9 September 2013, OCCW (Netherton) submitted a Proposal of Application Notice (13/0010/PREAPP) to the Planning Authority relating to the proposed amendment to the restoration scheme at the Netherton site. On 8 October 2013, a public consultation was carried out by OCCW (Netherton) and they have advised that a Planning Application for the proposed alternative restoration scheme will be submitted to the Council in January 2014 and this will be presented to the Planning Committee as soon as it is ready for determination.

15. Laigh Glenmuir/Duncanziemere Opencast Surface Mine Complex

16. The Duncanziemere site comprises of a Planning Permission (Ref: 09/0511/PP) which is an extension of the original Laigh Glenmuir Planning permission (Ref: 05/0232/PP) which continues to support the site compound, haul roads and treatment lagoons. The Duncanziemere application was approved for the extraction of approximately 800,000 tonnes of coal with current extraction of approximately 300,000 tonnes remaining within the Duncanziemere void and with progressive restoration being undertaken with the overburden filling the void. The site is scheduled to finish coaling in March 2015. At the time of the liquidation of Aardvark, the overburden mounds within Duncanziemere and Laigh Glenmuir were prominent on the landscape. Operations prior to that date had not been out in accordance with the planning consents. As part of ongoing operations on site, extracted overburden material is not being placed above ground, with all this material being used to progress the restoration of the Duncanziemere void; therefore, there has been no increase in restoration liabilities within the site since OCCW (Duncanziemere) has taken over the site. This has been verified by Dalgleish Associates Ltd, the Council's appointed Independent Mining Engineer who provides Compliance Monitoring on this site.

17. On 8 August 2013, a Planning application was received from OCCW (Duncanziemere) Ltd to alter Condition 1 (Personal Consent) and was assessed and approved under the powers delegated to the Head of Planning and Economic Development subject to the conclusion of appropriate Legal Agreements under Section 69 of the Local Government (Scotland) Act 1973 and Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended. The Section 69 Legal Agreement is in relation to the reimbursement by the operator of the Compliance Monitoring charges. The Head of Planning and Economic Development

- issued a Letter of Comfort to OCCW (Netherton) on 26 April 2013 to allow the continued mining operations while the Planning Application was being determined, and the Letter of Comfort will be withdrawn at the point of issue of this consent following conclusion of the Legal Agreements.
18. Currently, the site has a Restoration Bond provided by Euler Hermes for £2.6M and negotiations are underway with the bond provider regarding this matter. The Council's Independent Mining Engineer's report identified that the restoration of the site in accordance with the original approved restoration scheme was £6.593M. As part of the requirement under Opencast Coal Subject Plan Policy Min 35 and 36, a restoration guarantee is required which will be subject to 6 monthly monitoring. Given the extent of financial guarantee required to cover the £6.593M restoration liability, Hargreaves on behalf of OCCW (Duncanziemere) have indicated that the restoration costs for compliance with the approved scheme significantly exceeds that of the revenue of the coal production and any bond monies that might be secured, therefore, OCCW (Duncanziemere) are unable to achieve the approved restoration scheme.
 19. Detailed discussions have taken place with Hargreaves/OCCW (Duncanziemere) who have proposed two alternative strategies to deliver restoration on the site, with the second of those being subject to the grant by the Planning Authority of a further consent for an extension to the coaling at the site. Initially they propose to submit a Planning Application for a revised restoration scheme to remodel the landform with a designed water body at the northern part of the site when coaling is completed. While this design will not achieve full restoration of the Duncanziemere and Laigh Glenmuir sites in accordance with the original restoration plan, the proposals aim to re-profile the land with the two water bodies and lagoons retained. The relevant Planning Application (Ref: 13/0865/PP) was submitted on the 4th December 2013 and once validated, advertised, consulted upon and assessed, this will be presented to a future Planning Committee for determination.
 20. Further, on 17 June 2013, OCCW (Duncanziemere) submitted a Proposal of Application Notice (Ref: 13/0007/PREAPP) to the Planning Authority relating the proposed amendment to the restoration scheme at Duncanziemere to extract further coal reserves via a new extension to the site. A public consultation was carried out by Hargreaves in August 2013. Hargreaves have advised that following public consultation an alternative coal extraction and restoration scheme will be prepared comprising the eastern extension into the land between Duncanziemere and Dalfad which will be submitted to the Council in early 2014. Hargreaves have indicated that these proposals aim to deliver a sustainable restoration scheme which will encompass the Duncanziemere and Laigh Glenmuir complex. While both applications propose revisions to the restoration scheme,

Hargreaves are aware that the decision on any revised restoration scheme and additional coal extraction rests with the Planning Committee. The Council's appointed Independent Mining Engineer will review both applications for the phased restoration scheme to confirm that each proposed scheme is technically deliverable, legally compliant, environmentally acceptable and financially feasible prior to the Planning Officer assessment and referral to the Planning Committee for determination.

21. A planning application to vary the hours of operation at the Duncanzimere mine to allow 24 hour working was considered by the Planning Committee on 29 November 2013 and approved subject to the finalisation of a Section 75 Legal Agreement. The original Letter of Comfort dated 22 June 2012 will be withdrawn when the Decision Notice is issued on conclusion of the Legal Agreement. This approval has varied the planning conditions as they relate to noise within the Letter of Comfort, and consequently the said Letter has been revised and re-issued to reflect these amended conditions while the required Legal Agreement is being concluded in accordance with the Planning Committee's decision.
22. On 28 August 2013, a Non Material Variation application was submitted for changes to direction and orientation within the approved extraction area of mineral workings (Planning Consent No. 09/0511/PP) which is currently being considered and will be submitted to the Planning Committee for determination. A further Non Material Variation application was submitted on 23 August 2013 for the recovery of additional coal from outwith the agreed excavation area, although within the planning boundary (Planning Consent No 09/0511/PP). Following assessment, this second application was returned to Hargreaves with a request that they submit a full planning application to enable this matter to be progressed; that further application is currently awaited.
- 23. House of Water Opencast Surface Mine Complex**
24. The House of Water Complex comprises of fifteen Planning Permissions comprising the House of Water; Whitehill Farm, the River Nith Diversion; the Kyle Forest Haul Road, Craigman South, Tappit Hill, Burnston Fields; Burnston Fields Extension and Burnston Remainder. Within the Burnston Fields Extension there remained approximately 25,000 tonnes of coal at the time of the SCCL liquidation. The Burnston Remainder application was approved on 13 February 2013 for the extraction of approximately 2.6M tonnes of coal over a 72 month extraction and restoration period. The Burnston Remainder site is currently subject to a site investigation and to Hargreaves submitting information to discharge the Planning Conditions prior to commencement on site.

25. Four Planning applications have been received from OCCW (House of Water) to alter Condition 1 of the active consents which have been assessed and approved under powers delegated to the Head of Planning and Economic Development (Personal Consent), subject to the conclusion of Legal Agreements under Section 69 of the Local Government (Scotland) Act 1973 and Section 75 of the Town and County Planning (Scotland) Act 1997 as amended. The Planning Applications referred to are CD/94/0072/MIN (Whitehill Farm), 09/0286/FL (Tappet Hill), 09/0371/PP (Burnston Fields Extension) and 12/0022/PP (Burnston Remainder). The Section 69 Legal Agreements are in relation to the reimbursement by the operator of the Compliance Monitoring charges.
26. On 11 October 2013, the Depute Chief Executive issued a Letter of Comfort to OCCW (House of Water). The purpose of the Letter of Comfort was to allow the OCCW (House of Water) to initiate operations within the House of Water complex in accordance with the Approved Planning Permissions while the pending Section 42 Application to revise both the Personal condition and the time period of the development having regard to the work remaining on site are being considered. Initial works include water pumping, mining and restoration operations to be undertaken within the Burnston Fields Extension site while the current Planning Application is being determined. Dalgleish Associates Ltd, the Council's appointed Independent Mining Engineer is currently reviewing the Planning Permissions and obligations within the complex as part of their Compliance Monitoring role for this site
27. It is acknowledged that there is insufficient bond funding for each of the current applications and the complex as a whole to restore the complex to the approved schemes. Early discussions with Hargreaves identified that the coal revenue from the Burnston Remainder coal extraction could contribute towards the restoration of the House of Water Complex. This supports the Council's Masterplan principles detailed within the Chief Executive's Report of 19 September 2013 and, on receipt of this developed proposal, it will be passed to Dalgleish Associates Ltd for their detailed assessment
28. Currently, the site has four restoration bonds from Zurich for a total value of £0.44M and negotiations are underway with the bond provider to utilise these bonds to contribute to the restoration of the site. The complex has been reviewed by the Independent Mining Engineer who has verified that to carry out restoration in accordance with the original approved Planning Consents would cost £26.399M.
29. As part of the requirement under Opencast Coal Subject Plan Policy Min 35 and 36, a restoration guarantee is required which will be subject to 6 monthly monitoring. Given the extent of financial guarantee required to

cover the £26.399M restoration liability, Hargreaves have advised that they could not operate the site and carry out the required restoration without redesigning the site restoration scheme and revising the methodology for the restoration guarantee. A further Planning Application is to be submitted by Hargreaves for consideration by the Planning Committee to remodel the landscape within the complex by reshaping the overburden mounds, infilling the voids and restoring the landform through the restoration funding proposal as noted below.

30. The Letter of Comfort issued on 11 October 2013 to allow the recommencement of works in the Burnston Fields Extension set out the following specific conditions which require to be adhered to:
 - That the coaling operations within House of Water would be carried out in accordance with all the other Planning Conditions as set out in the planning consents. i.e. noise and blasting limits;
 - £500,000 will be deposited in a joint ESCROW account, between East Ayrshire Council and OCCW (House of Water) prior to commencement of operations on site. The aim of this cash deposit was to provide adequate restoration security as required by the planning consents, in relation to the remainder of the coaling operations in this site. The level of provision within this ESCROW account will be subject to monthly review through Compliance Monitoring by an Independent Mining Engineer on behalf of the Council and if the overall site restoration liability is found to have increased then the ESCROW fund will be increased on a cost per cubic metric tonne basis;
 - That the House of Water Community Liaison Group (CLG) meetings and Technical Working Group (TWG) meetings are reconvened at the commencement of the project in line with Planning Conditions and Section 75 requirements; and
 - That survey information detailing the pre-start condition of the House of Water complex, including Land Survey Software data, mining plan and geotechnical reports, was to be provided to the Planning Authority prior to the commencement of operations.
31. All of the matters specified in the letter of comfort have been or are being adhered to by OCCW (House of Water). In addition, a Restoration bond of £0.097m and an aftercare bond of £0.097m exist for this site and have been claimed.
32. In relation to the Burnston Remainder site, once the Planning Conditions and Section 75 obligations have been discharged by the Planning Authority, then the Burnston Remainder site would commence.

33. The Council will consider the approach to financial guarantees on a case by case basis taking into consideration the specific circumstances at each site, including alternative restoration proposals, existing performance guarantee bonds and remaining coal reserves. Any future proposals would require to be carefully scrutinized by the Independent Mining Engineers to ensure that the most appropriate restoration scheme is secured, prior to presentation of such proposals to the Planning Committee for determination.
34. The Letter of Comfort for the current works at Burnston Fields extension will be withdrawn when the relevant application is determined.
35. OCCW (House of Water) has also submitted on 10 October 2013 a Proposal of Application Notice (13/0011/PREAPP) to the Planning Authority relating to the proposed amendment to the restoration scheme relating to the House of Water Complex. A public consultation is scheduled to be carried out by Hargreaves by February 2014. Hargreaves advise that this proposal aims to deliver a financially sustainable restoration scheme for the House of Water complex for consideration by the Planning Committee. The Council's appointed Independent Mining Engineer will review the applications for the phased restoration scheme to confirm that the proposed scheme is technically deliverable, legally compliant, environmentally acceptable and financially feasible prior to the Planning Officer assessment and referral to the Planning Committee for consideration.
36. The Letter of Comfort issued for the operational works on the Burnston Fields Extension placed a duty on the OCCW (House of Water) and Hargreaves to comply with the original Planning Consents and in relation to the transfer of coal over the Kyle Forest Haul Road to the railhead at Killoch. Hargreaves, while owning Killoch has experienced delays in Network Rail opening the railway line. This delay has required a temporary revision to the transportation arrangements by transferring coal to Crowbandsgate, New Cumnock. This relates to approximately 15- 20 vehicle movements per day to Crowbandsgate up to the 7th December 2013 when the Killoch railhead is due to be reopened. Under Condition 8 of the Planning Approval this approach can be accepted by the Planning Authority in an emergency situation. A verbal update will be provided to the Planning Committee when it meets on 12 December 2013.
37. **Greenburn Opencast Surface Mine**
38. The Greenburn Complex comprises of 14 Planning consents covering the Greenburn, Wellhill Farm, Braehead Farm and Dalgig Farm. Within the complex, coal extraction is currently being carried out at the Wellhill Farm site which commenced in March 2013 to extract approximately 750,000

- tonnes of coal and fireclay and is scheduled to last 2.5 years. Kier Mining commenced work at the Braehead Farm site during May and June 2012 and will extract 1.5m tonnes of coal over a 4.5 year period. The Dalgig Farm consent commenced June 2009 and is extracting 1.5m tonnes of coal including clay and is in the final scheduled year of coaling. Each site has a five year aftercare plan. Coal transportation is via the railhead located within the complex.
39. Currently the complex is working to the agreed Planning Approvals with the exception of Braehead Farm where an application has been submitted to revise the operations within the site. This application is currently being assessed and once completed shall be submitted to the Planning Committee for determination in due course.
 40. The Council at its meeting of 19th September 2013 agreed the Compliance Monitoring arrangements for new and revised opencast coal projects with costs being met by the operator. As noted above, Hargreaves' operations to revise the consent and restoration proposals have enabled the Council to review the Compliance Monitoring arrangements and, therefore, amend the Legal Agreements which have permitted the Compliance Monitoring costs associated with the employment of the Dalgleish Associates Ltd as Independent Engineers to be paid for by the operator.
 41. However, the original Greenburn opencast coal surface mine is subject to planning consents which pre-date the Opencast Coal Subject Plan. Therefore, the specific requirements of MIN 35 and 36 in relation to the monitoring of the financial guarantees supporting restoration are not sufficient within the existing consents to require the operator to pay the Compliance Monitoring costs.
 42. Within the Braehead Farm and Wellhill Farm consents there are legal obligations on the operator to provide a six monthly Independent Mining Engineer assessment. Kier have submitted proposals for these works to be carried out. However, the Council's revised procedures exceed that of the arrangements contained within the Section 75 Legal Agreement. Therefore, there will be a cost borne by the Planning Authority in fulfilling this robust Compliance Monitoring remit for the remaining sites and the other consents within the Complex. While this figure will reduce as the site works progress towards completion, the approximate initial cost would be £10,000 per annum. However, where any of the original consents are amended to extend the coal extraction there will be an opportunity to revise the Legal Agreements to seek full reimbursement of the costs associated with Compliance Monitoring.
 43. The complex is currently provided with two bonds, one for the Greenburn site amounting to £2.5M by Lloyds and the Wellhill Bond for £3.1M by

ACE. Braehead Farm has been provided with a Parent Company Guarantee which is valued at £9.3M. The Greenburn Bond has been extended by the Bond provider for a further year commencing on January 2014. The Council's Compliance Monitoring arrangements noted above will be carried out by Dalgleish Associates Ltd over the next two months with the two Bond assessments required to be carried out over a similar period.

44. Kier submitted a Planning Application for the extraction of 4M tonnes of coal and associated fireclay over an eight year period at the Carsgailoch Hill site which lies north west of the Greenburn complex and abuts the Burnston Remainder site at House of Water. The application was considered and approved by the Planning Committee on 15 June 2012 subject to the satisfactory conclusion of a Legal Agreement. The Legal Agreement has not yet been concluded due to difficulty in reaching agreement with Kier as to what might constitute an appropriate financial guarantee, which is reflective of the current national position, as referred to elsewhere in this report. Discussions continue and a further meeting with Kier has been arranged for 18 December 2013. Thereafter, it is likely that a report on this whole matter will require to be brought before the Planning Committee for determination in early course.

45. FINANCIAL AND LEGAL IMPLICATIONS

46. As this report is a factual update in respect of the four named operational mine complexes there are few financial implications arising directly from the terms of this report. However, as noted in Paragraph 42, there could be costs to the Council of approximately £10k per annum arising from the application of the revised compliance monitoring regime to the Greenburn site, which cannot be passed on to the operator in terms of the current planning consent. If the opportunity should arise in the future to pass these costs on to the operator then the Council will, of course, seek to do so. In the meantime, these costs will require to be met from within the current approved budget of the Planning and Economic Development service.
47. Further, as described throughout this report, the Council has sought to make best use of its full range of statutory planning powers in order to facilitate delivery of the masterplanning approach whilst appropriately supporting, in the interim, ongoing coaling of these sites in accordance with their original planning consents so far as possible, but subject to some variation where required in the short term due to operational necessity. However, as the report makes explicitly clear, any proposed variation to existing approved restoration schemes for these sites, or to the Council's financial requirements in respect of the underwriting thereof, will be presented to the Planning Committee for

determination. Any further specific Financial or Legal implications will be appropriately addressed within each of those further reports.

48. RECOMMENDATIONS

49. It is recommended that the Planning Committee:-

1. Notes the progress made in respect of the status of the four named active opencast coal mining sites;
2. Notes the compliance monitoring arrangements currently in place at each of these sites;
3. Notes that further applications will be submitted to the Planning Committee in due course relative to each of these four active sites, setting out for determination in each case the operator's proposals for future coaling operations, their revised restoration scheme, and their offer in terms of a form of financial guarantee; and
4. Otherwise notes the contents of the report.

Elizabeth Morton
Depute Chief Executive

9 December 2013

LIST OF BACKGROUND PAPERS

1. Opencast Mining in East Ayrshire – Steps to Recovery: Report submitted to the meeting of East Ayrshire Council on 19 September 2013
2. Opencast Mining in East Ayrshire – Compliance Monitoring Report submitted to the Planning Committee on 29 November 2013

Any person wishing further information should contact Elizabeth Morton, Depute Chief Executive (Tel No 01563 576076) or David McDowall, Operations Manager, (Tel No 01563 576528)

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