

ANNEX 2

EAST AYRSHIRE OPENCAST COAL SUBJECT PLAN

**SCHEDULE OF MODIFICATIONS IT IS SUGGESTED BE
MADE TO
THE EAST AYRSHIRE OPENCAST COAL SUBJECT
PLAN
AS A RESULT OF
RECOMMENDATIONS MADE BY THE REPORTER
FOLLOWING
THE PUBLIC LOCAL INQUIRY**

**REPORT TO DEVELOPMENT SERVICES COMMITTEE
27 AUGUST 2002**

EAST AYRSHIRE OPENCAST COAL SUBJECT PLAN

PUBLIC LOCAL INQUIRY

SCHEDULE OF MODIFICATIONS IT IS SUGGESTED THAT THE COUNCIL AGREE TO MAKE TO THE PLAN AS A RESULT OF THE RECOMMENDATIONS MADE BY THE REPORTER

REPORTER'S MOD	REF IN TEXT	DELETION	ADDITION / REPLACEMENT
RM 1	Paragraph 1.1 (as amended by MOD1)		Add after 'at least 5 years' at end of Paragraph 1 (as amended by previous modification MOD1) :- 'and it is the Council's intention to review the plan within 5 years of its adoption.'
RM 2	Paragraph 1.6		Add after 'A series of appendices':- 'and a glossary'
RM 3	Paragraph 7.7 (New Para 7.8)		Add new sentence at the end of Paragraph 7.7 (new Paragraph 7.8) :- ' In negotiating the level of contribution to the Trust Fund, the Council will take account of any particular community benefits being suggested by the operator for the particular community affected.'
RM 4	Paragraph 8.5 (as amended by MOD 68)	Delete from the end of paragraph 8.5, the additional sentence added to the paragraph by modification MOD 68.	Replace with:- 'Government sponsored research, 'Do Particulates from Opencast Mining Impair Children's Respiratory Health?' has been concluded and the results of this research are now incorporated into formal NPPG Guidance through an amendment to NPPG 16: Opencast Coal and Related Minerals. (The research findings have been endorsed by the Committee on the

			Medical Effects of Air Pollutants, the panel of independent experts which advises the United Kingdom Health Department on these matters.) In particular, both planning authorities and the industry should, as a minimum, adopt the assessment framework recommended in the research in drawing up and considering proposals for new sites, or extensions or modifications to existing sites and make use of information collected by local authorities in undertaking their responsibilities for Local Air quality Management. This assessment framework will be given full consideration by the Council in its determination of planning applications and in the scoping exercises carried out with regard to Environmental Impact Assessments, in order to ensure that open cast developments do not result in unacceptable levels of airborne dust.'
RM 5	Paragraph 8.17		Add after 'coal haulage vehicles' in 2 nd sentence of Paragraph 8.17:- 'and other HGV traffic'
RM 6	Policy MIN 6 (as amended by MOD 99) (new Policy MIN2)	Delete in 1 st sentence of new policy MIN2, created as a result of modification MOD 99:- 'The Council will not generally be supportive of any'	Replace with:- 'There will be a presumption of refusal of applications for'
RM 7	Policy MIN 6 (as amended by MOD 99) (new Policy MIN2)		Add after criterion (iii) :- 'There will be a presumption of refusal of other open cast developments outwith Potential Coal Extraction Areas unless there are positive reasons of sufficient weight to overcome the presumption of refusal and justify the grant of planning permission.'

RM 8	Policy MIN 9 (as amended by MOD 102) (new Policy MIN 3)	Delete at the start of new Policy MIN 3:- 'The'	Replace with:- 'Subject to detailed consideration, the'
RM 9	Policy MIN 9 (as amended by MOD 102) (new Policy MIN 3)		Add new criteria after criteria (iii) of new policy MIN3:- '(iv) that the proposed extension does not significantly prejudice plans for the restoration of the existing site.' Renumber subsequent criteria accordingly.
RM 10	Policy MIN 9 (as amended by MOD 102) (new Policy MIN 3)	Delete in the last sentence of new Policy MIN3:- 'a period substantially in excess of 5 years'	Replace with:- 'a total extraction period in excess of 10 years'
RM 11	New Policy MIN4 (as created by MOD 94)		Add at the end of criteria (vi) attached to new Policy MIN 4:- 'including any significant prejudice to restoration plans for any existing site.'
RM12	Policy MIN 1 (as amended by MOD 91) (new Policy MIN 5)	Delete 1 st sentence of new Policy MIN5.	
RM 13	Policy MIN 1 (as amended by MOD 91) (new Policy MIN 5)	Delete in the 2 nd sentence of new Policy MIN5:- 'will also presume against approval of any applications'	Replace with:- 'may decline to determine an application'

RM 14	MIN 3 (as amended by MOD 93) (new Policy MIN 7)	Delete Policy.	<p>Replace with:- 'Within Potential Coal Extraction Areas, all applicants for opencast coal development will be required to demonstrate to the Council that their proposals will not have any significant adverse effect on the community or create any permanent adverse effect on the environment. Proposals which are likely to have such effect are unlikely to be accepted unless there are counter balancing benefits. In assessing opencast coal proposals the Council will apply the following criteria;-</p> <ul style="list-style-type: none"> (i) whether the proposal is acceptable in planning terms with the use of appropriate planning conditions or legal agreements ; or (ii) whether the proposal carries benefit to the affected community or the environment which sufficiently outweighs any adverse effects: or (iii) exceptionally, whether the proposal is of such importance that it should be granted planning permission even though it fails to meet either of the previous criteria. Such a proposal might, for example, propose the rehabilitation of substantial areas of dereliction or the remediation of major problems left over from previous mining operations. <p>Applications which do not meet any of these criteria will not be acceptable to the Council and are unlikely to receive planning permission.'</p>
RM 15	Policy MIN 4 (as amended by MOD 95) (new Policy MIN 8)	Delete 3 rd sentence of new Policy MIN 8.	

RM 16	Policy MIN 5 (new Policy MIN 9)	Delete Policy.	Replace with:- ' When approving major development proposals or development policies, the Council will consider whether it would be of benefit and desirable to plan for the removal of any underlying coal and related minerals in advance of, or in tandem with, the development proceeding. Any such mineral extraction operation would need to be acceptable in planning terms, with particular regard to the interests of the local community.'
RM 17	New Policy MIN10 (as created by MOD 97)	Delete in 2 nd sentence of new Policy MIN10:- 'is not unduly detrimental to'	Replace with:- 'does not have any unacceptable adverse impact on'
RM 18	Policy MIN 7 (as amended by MOD 100) (new Policy MIN12)		Add after 'other opencast developments' in 3 rd sentence of new Policy MIN 12:- 'or other mineral extraction sites'
RM 19	Policy MIN 7 (as amended by MOD 100) (new Policy MIN12)		Add at the end of subsections (i), (ii) and (iii) of new Policy MIN 12:- 'or'
RM 20	Policy MIN 7 (as amended by MOD100) (New Policy MIN 12)		Add after 'group of dwellings' in criterion (ii):- 'from an existing operative site or'

RM 21	Policy MIN 7 (as amended by MOD 100) (new Policy MIN12)	Delete in subsection (ii) of new Policy MIN 12:- 'an extended'	Replace with:- 'a total'
RM 22	Policy MIN 7 (as amended by MOD 100) (new Policy MIN12)		Add after 'adverse effect on' in subsection (iv) of new Policy MIN 12:- ' the integrity of'
RM 23	Policy MIN 18 (as amended by MOD107) (new Policy MIN 21)	Delete in 1 st sentence of new policy MIN 21:- 'and their approved sub contractors'	
RM 24	Policy MIN 18 (as amended by MOD107) (new Policy MIN 21)		Add after 'potential opencast operators' in the last sentence of new Policy MIN 21:- 'and their approved sub contractors'
RM 25	Policy MIN 20 (as amended by MOD109) (new Policy Min 23)	Delete Policy Renumber subsequent policies accordingly.	Add new recommendation REC 7 in the Recommendations Section of the Plan to read:- 'Where considered expedient, and subject to the appropriate consent of the owner/occupier concerned being obtained, developers are recommended to carry out a structural survey of properties within close proximity to a proposed opencast site prior to the commencement of works in order that the degree and extent of any damage attributable to mining activities can be assessed. All such surveys should be carried out by a competent, professional body, agreed between the operator and the individual owners/occupiers of the properties concerned'

RM 26	Policy MIN 21 (as amended by MOD 110) (new Policy MIN24)	Delete in 1 st sentence of new Policy MIN 24:- 'may'	Replace with:- 'is likely to'
RM 27	Policy MIN 21 (as amended by MOD 110) (new Policy MIN24)	Delete in subsection (i) of new Policy MIN24:- 'working face or operational areas relating to the storage, processing or dispatch of coal which encroach'	Replace with:- 'boundary which encroaches'
RM 28	Policy MIN 21 (as amended by MOD 110) (new Policy MIN24)	Delete subsection (ii) of new Policy Min 24. Renumber following subsections accordingly	
RM 29	Policy MIN 21 (as amended by MOD 110) (new Policy MIN24)	Delete in subsection (iii) of new Policy MIN24:- 'extended'	
RM 30	Policy MIN 21 (as amended by MOD 110) (new Policy MIN25)	Delete in 1 st sentence of new Policy MIN 25:- 'and on'	Replace with:- 'including'
RM 31	Policy MIN 21 (as amended by MOD 110) (new Policy MIN25)		Add after 'not in the ownership' in new Policy MIN25:- 'or under the control '
RM 32	Policy MIN 21 (as amended by MOD 110) (new Policy MIN25)	Delete in 2 nd sentence of new Policy MIN 25:- 'the properties concerned'	Replace with:- 'affected properties'

RM 33	Policy MIN 22 (as amended by MOD 111) (new policy MIN 26)	Delete in 1 st sentence of new Policy MIN26:- 'local community'	
RM 34	Policy MIN 22 (as amended by MOD 111) (new policy MIN 26)		Add after 'not in the ownership' in the 1 st sentence of new Policy MIN 26:- 'or under the control'
RM 35	Policy MIN 22 (as amended by MOD 111) (new policy MIN 26)	Delete criterion (i) of new Policy MIN 26. Renumber subsequent criteria accordingly.	
RM 36	Policy MIN 22 (as amended by MOD 111) (new policy MIN 26)	Delete in criterion (iii) of new Policy MIN 26:- 'the 500 metre buffer zone'	Replace with:- 'a distance of 500 metres from any sensitive establishment or dwelling'
RM 37	Policy MIN 22 (as amended by MOD 111) (new policy MIN 26)	Delete in criterion (iv) of new Policy MIN 26:- 'the 500 metre buffer zone'	Replace with:- 'a distance of 500 metres from any sensitive establishment or dwelling'
RM 38	Policy MIN 22 (as amended by MOD 111) (new policy MIN 26)	Delete in criterion (iv) of new Policy MIN 26:- 'the community'	Replace with:- 'any'
RM 39	Policy MIN 27 (as amended by MOD 116) (new Policy MIN 30)		Add after 'The Council will' in the 1 st sentence of new Policy MIN30:- 'seek to'

RM 40	Policy MIN 27 (as amended by MOD 116) (new Policy MIN 30)		Add after 'opencast proposals' in the 1 st sentence of new Policy MIN30:- 'and related development'
RM 41	Policy MIN 29 (as amended by MOD 119) (new Policy MIN 33)	Delete subsection (xvi)	
RM 42	Policy MIN 30 (as amended by MOD 120) (new Policy MIN 34)	Delete in 1 st sentence of new Policy MIN 34:- 'expect and'	
RM 43	Policy MIN 30 (as amended by MOD 120) (new Policy MIN 34)		Add after 'set at a' in the 1 st sentence of new Policy Min 34:- 'suggested'
RM 44	Policy MIN 30 (as amended by MOD 120) (new Policy MIN 34)	Delete in last sentence of new Policy MIN 34:- 'expected'	Replace with:- 'encouraged'
RM 45	Policy MIN 31 (as amended by MOD 121) (new Policy MIN36)	Delete in 3 rd sentence of new Policy Min 36:- 'formally contracted to the Council but'	
RM 46	Policy MIN 31 (as amended by MOD 121) (new Policy MIN36)	Delete in last sentence of new Policy MIN 36:- 'the landowner absolves the Council'	Replace with:- ' the Council is absolved'

RM 47	Figure 10		Add new note to the figure, to read:- 'NOTE: The Figure does not purport to show all the communities which may potentially be affected by opencast coal mining.'
RM 48	Glossary		Add a new Glossary to the Plan as detailed in ANNEX 1 below.
RM 49	Appendices		Add a Policy and Recommendation Abstract as a new Appendix into the Plan, as detailed in ANNEX 2 below.

GLOSSARY OF TERMS

This glossary defines some of the technical and planning related terms used in the text of the Subject Plan. For convenience, these terms are detailed alphabetically.

Annex 1 Habitat Sites:

A list of sites of major importance for wild flora and fauna, identified in Annex 1 of Circular 6/1995: Habitats & Birds Directive.

Archaeological Sites and Locations

Known sites and areas of potential archaeological interest.

Ayrshire Joint Structure Plan

The strategic policy framework document for the development and use of land within Ayrshire, prepared jointly by the three Ayrshire Local Authorities and approved by the Scottish Ministers.

Ayrshire Landscape Assessment

A systematic assessment of the landscape character of Ayrshire, produced jointly by the three Ayrshire Authorities forming the Ayrshire Joint Structure Plan Committee, Scottish Natural Heritage and Enterprise Ayrshire.

Circulars:

Documents which provide statements of Government Policy and contain guidance on policy implementation through legislative or procedural change.

Community

A town, village or hamlet and including any cluster or group of about 10 houses in the countryside.

Conservation Areas

Areas of special architectural or historic interest, the character of which it is desirable to preserve or enhance and which should be protected from insensitive and inappropriate development.

Derelict Land

Land which has either been so damaged by development or use that it is incapable of beneficial use or development without rehabilitation or which is not being used and where contamination is known or suspected.

Despoiled/Degraded

Land which is characterised by being unused or unsightly and which would benefit development or improvement.

Ecological Master Plan

A plan for site restoration and aftercare which is designed to create or enhance a range of habitat types, such as woodland, wet grassland, reed beds, open water and water courses.

Environmental Audit:

An assessment provided by minerals operators of the degree of compliance with all environmental conditions and obligations relating to an issued minerals planning permission.

Environmental Impact Assessment

An assessment of the effect of a development proposal on people, buildings and infrastructure, natural resources and wildlife, in terms of health, safety and amenity.

Environmentally Sensitive Areas

Areas designated by Government within which sensitive agricultural practices are encouraged as a means of achieving positive conservation.

Gateway Valleys

The Upper Irvine Valley and Doon Valley areas targeted for tourism related development in the East Ayrshire Tourism Action Plan.

Historic Gardens & Designed Landscapes

Areas of significant parkland and woodland generally centred on a large house or castle, which have been laid out for artistic effect and have been identified in the "Inventory of Historic Gardens & Designed Landscapes in Scotland" (HS and CCS 1983).

Joint Environmental Accord

An accord, into by opencast developers and the Council to ensure the highest possible standards of environmental awareness are achieved in the operation and restoration of opencast coal sites.

Listed Buildings

Buildings which appear in the Scottish Executive's List of Buildings of Special Architectural or Historic Interest as being of national or considerable local importance and worthy of protection.

Listed Wildlife Sites

Sites of nature conservation interest identified by the Scottish Wildlife Trust, which are considered worthy of, albeit, non-statutory protection from insensitive and inappropriate development.

Local Liaison Committees

Committees comprising mineral developers and local community representatives to identify and resolve areas of potential conflict of a Mineral operation and to discuss relevant related issues.

Mining Progress Plan

A plan provided by minerals operators giving, on an annual basis, an up-to-date position statement on a particular minerals operation.

Minerals Trust Fund

A fund to which minerals operators are requested to contribute and which will be used to provide community benefits to communities most affected by the operations concerned.

National Planning Policy Guidelines (NPPG's)

Statements of Government Policy on nationally important land use and other planning matters.

Planning Advice Notes (PAN's)

Documents which provide advice on good planning practice and other relevant information.

Potential Coal Extraction Areas

Areas designated on the proposals map and illustrated on Figure 10 as areas within which opencast coal mining is acceptable in principle.

Renewable Energy

A term to cover those energy flows that occur naturally and repeatedly in the environment, e.g. from the sun, wind, oceans and the fall of water. Heat from the earth, combustible waste materials and the use of plant material (energy crops) are also important sources of renewable energy.

Restoration & Aftercare Guarantees

Financial guarantees provided by mineral operators to fund restoration and aftercare of mineral sites, should work be abandoned prior to the completion of operations.

Section 75 Agreements

Agreements under Section 75 of the Town & Country Planning (Scotland) Act 1997, entered into by the Council and a prospective developer to address those elements of a development proposal which cannot adequately be addressed by the use of planning conditions.

Sensitive Landscape Character Areas

Areas identified from the Ayrshire Landscape Assessment as being particularly sensitive to change and within which the protection and enhancement of the landscape should be given priority.

Settlement

A town, village or hamlet.

Special Areas of Conservation (SAC's)

Areas designated under the EC Habitats Directive, ensuring that rare, endangered or vulnerable habitats and species of community interest are either maintained at or restored to a favourable conservation status.

Special Protection Areas (SPA's)

Areas identified and classified under the EC Birds Directive, for the purpose of protecting the habitats of rare, threatened or migratory bird species.

Sites of Special Scientific Interest (SSSI's)

Sites which are designated by Scottish Natural Heritage as containing particular species, habitats, geology or geomorphology considered worthy of statutory protection from damage or deterioration.

Strathclyde Structure Plan

The strategic policy framework document for the development and use of land within the former Strathclyde Region, prepared by the former Strathclyde Regional Council and approved by the Secretary of State in 1997.

Sustainable Development

Economic or social development that meets the needs of the current generation without undermining the ability of future generations to meet their own needs.

Transportation by Road Protocol

An official code of practice prepared by the Council with the co-operation of opencast operators which is designed to ensure best practice by the industry in the transportation of coal by road.

POLICY AND RECOMMENDATION ABSTRACT

ANNEX 2

POLICIES

Policy MIN 1	Future opencast developments directed towards Potential Coal Extraction Areas.
Policy MIN 2	Refusal of opencast developments outwith Potential Coal Extraction Areas except in certain circumstances.
Policy MIN 3	Extensions to opencast sites acceptable subject to certain criteria being met.
Policy MIN 4	All applications for opencast operations assessed against certain stated criteria.
Policy MIN 5	Outline applications not accepted for opencast coal developments.
Policy MIN 6	All opencast coal applications to be supported with certain stated types of information.
Policy MIN 7	All opencast applications assessed against their environmental impact and impact on local communities.
Policy MIN 8	Environmental Impact Assessments to be submitted as required by the Environmental Assessment Regulations.
Policy MIN 9	Working of opencastable coal deposits prior to alternative development taking place considered by the Council.
Policy MIN 10	All other economic minerals to be extracted at the same time as the extraction of the coal.
Policy MIN 11	All areas of active peat bog within site boundaries to be conserved.
Policy MIN 12	Developments constituting unacceptable cumulative impact on communities and the environment not permitted.
Policy MIN 13	Planning applications to contain details of operational procedures, restoration proposals and aftercare.
Policy MIN 14	Reworking of colliery spoil heaps supported if leading to restoration of degraded land.
Policy MIN 15	Progressive restoration of sites to agriculture, forestry, recreational and nature conservation uses encouraged.
Policy MIN 16	Requirement to reinstate rights of way and to provide improved public access within restored sites.
Policy MIN 17	Requirement for detailed restoration and aftercare plans to be submitted along with applications.

Policy MIN 18	Operators encouraged to transport coal by rail rather than by road.
Policy MIN 19	Use of internal haul roads encouraged between excavation area and point of dispatch from the site.
Policy MIN 20	Operators to pay for any upgrading of agreed haulage routes required to meet their operational requirements.
Policy MIN 21	Operators invited to subscribe to a Transportation of Coal by Road Protocol.
Policy MIN 22	Operators required to minimise any adverse impacts of development on local communities and nearby properties.
Policy MIN 23	Developments with site boundaries within 500 metres of communities not considered acceptable.
Policy MIN 24	Operators to demonstrate steps to be taken to minimise effects of proposals on properties outwith communities.
Policy MIN 25	Opencast operations within 500 m of properties outwith communities to meet certain criteria.
Policy MIN 26	Protection of areas of nature conservation interest from adverse effects of opencast operations.
Policy MIN 27	Protection of built heritage resources and the natural environment from adverse effects of opencast operations.
Policy MIN 28	Protection of areas of established landscape character from adverse effects of opencast operations.
Policy MIN 29	Protection of areas with substantial tourism or recreational potential from adverse effects of opencast operations.
Policy MIN 30	Protection of the visual amenity of certain areas from adverse effects of opencast operations.
Policy MIN 31	Protection of water catchments, watercourses and other water resources from adverse effects of opencast operations.
Policy MIN 32	Operators required to enter into Section 75 Agreements where considered appropriate
Policy MIN 33	Mineral Trust Fund contributions requested in respect of opencast operations.
Policy MIN 34	Information on tonnages of materials exported from opencast sites requested from developers on quarterly basis.
Policy MIN 35	Operators required to provide financial guarantees for restoration and reinstatement of opencast sites.

Policy MIN 36	Operators required to provide financial guarantees for aftercare of opencast sites.
Policy MIN 37	Operators requested to constitute formal Liaison Committees with local communities where considered appropriate.
Policy MIN 38	Operators required to provide the Council with monitoring information on certain stated matters.
Policy MIN 39	Operators required to present the Council with an annual Mining Progress Plan.
Policy MIN 40	Operators required to present the Council with an annual Environmental Audit addressing certain stated matters.

RECOMMENDATIONS

Recommendation REC 1	Applicants requested to seek advice from appropriate nature conservation bodies in formulating their proposals.
Recommendation REC 2	Applicants requested to seek advice of the West of Scotland Archaeological Service in formulating their proposals.
Recommendation REC 3	Operators requested to provide new rail disposal facilities to serve their developments and to provide a network of off-road haulage facilities.
Recommendation REC 4	Pre application discussion between applicants and the Planning Authority advised.
Recommendation REC 5	Applicants requested to consider passing on sites restored to predominantly nature conservation after use to an appropriate nature conservation body for future management.
Recommendation REC 6	Operators requested to form Technical Working Groups to ensure best practice in restoration schemes.
Recommendation REC 7	Developers recommended to carry out structural surveys of properties in close proximity to Opencast Sites.

AGENDA