

EAST AYRSHIRE OPENCAST COAL SUBJECT PLAN

LIST OF POLICIES AS MODIFIED
TO REFLECT THE MODIFICATIONS RECOMMENDED BY
THE REPORTER

REPORT TO DEVELOPMENT SERVICES COMMITTEE
27 AUGUST 2002

Annex 3

POLICIES AS AMENDED TO REFLECT MODIFICATIONS RECOMMENDED BY THE REPORTER FOLLOWING THE PUBLIC LOCAL INQUIRY

Justification/Reference in Text

NEW OPENCAST DEVELOPMENTS

POLICY MIN 1: (FORMER POLICY MIN 6 AS AMENDED BY MOD 99)

Paras 4.3 to 4.4

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

Paras 4.3 to 4.4

POLICY MIN 2: (FORMER POLICY MIN 6 AS AMENDED BY MOD 99)

~~-There will be a presumption of refusal of applications for The Council will not generally be supportive of any~~ new opencast coal developments outwith the Potential Coal Extraction Areas with the exception of small scale, short term extraction proposals which meet the following criteria:-

- (i) there is clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction;
- (ii) there is an overall benefit for communities affected including local employment; and
- (iii) there are no conflicts with any other Subject Plan Policies.

There will be a presumption of refusal of other opencast 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.

(NOTE: 'Small scale' proposals relate to proposals of less than 25ha of total site area. 'Short term' proposals relate to proposals with a total extraction and restoration period of less than 2 years'.

EXTENSIONS TO EXISTING OPENCAST SITES

POLICY MIN 3: (FORMER POLICY MIN 9 AS AMENDED BY MOD 102)

Para 5.10

~~-Subject to detailed consideration~~ The Council will generally be

supportive of any proposal to extend an existing operative opencast coal site within the Potential Coal Extraction Areas either laterally or through an increase in the depth of existing workings, provided that 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;
- (ii) that the extended operations utilise fully the facilities and site infrastructure serving the original opencast site; and
- ~~(iii)~~ ~~(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.
- (iv) That the proposed extension does not significantly prejudice plans for the restoration of the existing site.

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

- ~~(iv)~~ there is a clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction;
- ~~(v)~~ there is an overall benefit for communities affected, including local employment; and
- ~~(vi)~~ there are no conflicts with any other Subject Plan Policies.

Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a **total extraction** period ~~substantially~~ in excess of **510** 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.

ASSESSMENT OF APPLICATIONS

POLICY MIN 4: (NEW POLICY AS CREATED BY MOD 94)

Paras 4.5 to 4.9

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

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

and built environment;

- (ii) the impact on the area of noise, dust and the contamination of ground and surface water and air quality;
- (iii) the impact of the development on local communities, groups of houses and individual dwellings;
- (iv) the extent of any directly related community benefit to be derived from the development such as the enhancement and creation of landscapes and habitats, and the removal of dereliction;
- (v) the opportunities to maximise transportation by rail;
- (vi) any cumulative impact of the proposal in association with other existing or proposed opencast developments in the area; including any significant prejudice to restoration plans for any existing site;
- (vii) any impact on other inward investment opportunities in the area; and
- (viii) the period of extraction.

OUTLINE AND REPEAT APPLICATIONS

POLICY MIN 5: (FORMER POLICY MIN 1 AS AMENDED BY MOD 91)

Para 7.3

~~Due to the nature of opencast coal developments and the detailed information required to determine such proposals properly, outline planning applications will not be accepted by the Council. The Council may decline to determine an application will also presume against approval of any applications for the development of new opencast sites or extensions to existing sites, where a similar application has been refused either by the Council or by the Scottish Ministers on call-in or appeal, within the previous two year period, where there has been no material change in circumstances since that decision.~~

SUPPORTING INFORMATION

POLICY MIN 6: (FORMER POLICY MIN 2 AS AMENDED BY MOD 92)

Paras 7.4 to 7.5

~~The Council will require all opencast coal operators, when submitting their extraction proposals to the Council for consideration, to support their planning application:-~~

- (i) with information which addresses all the issues highlighted elsewhere in the Subject Plan; and
- (ii) with information which indicates their understanding of the

location of coal reserves in surrounding land; and

- (iii) with information about their interest in any likely future extensions to current applications and future adjacent sites in which they have an interest.

In the absence of such information, there will be a presumption against further extensions and the development of adjacent new sites which could have a significant effect, both direct and indirect, on local communities.

**POLICY MIN 7:
(FORMER POLICY MIN 3 AS AMENDED BY MOD 93)**

Paras 2.4, 7.4 & 7.5

-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 effects are unlikely to be accepted unless there are significant counter balancing benefits. In assessing opencast coal proposals, the Council will apply the following criteria:-

- (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.

Applications which do not meet any of these criteria will not be acceptable to the Council and are unlikely to receive planning permission.

In order to protect communities and the local environment from the unacceptable consequences of opencast working, the Council will assess all new applications for opencast developments against the following criteria:-

- (i) whether the proposal is environmentally acceptable or can be made so by the use of appropriate planning conditions and/or agreements designed to mitigate any adverse impacts, and if not:-
- (ii) whether the proposal provides any local or community benefits related to the proposal which sufficiently outweigh any material risk of disturbance or environmental damage.

~~Applications which do not satisfy one or other of these criteria will not be acceptable to the Council and will not receive Council support, unless exceptional circumstances can be demonstrated by the applicant that the application will result in the clearance of a substantial area of derelict or despoiled land, the stabilisation of previously undermined land to allow for future permanent development or the removal of hazards such as mine gases and polluted mine drainage.~~

ENVIRONMENTAL IMPACT ASSESSMENT

POLICY MIN 8: (FORMER POLICY MIN 4 AS AMENDED BY MOD 95)

Para 7.6

In line with the provisions of the Environmental Impact Assessment (Scotland) Regulations 1999 the Council will require applicants for opencast developments to submit formal Environmental Impact Assessments in association with all submitted planning applications for sites over 25ha in extent. The submission of Environmental Impact Assessments for sites of less than 25ha in area will be required where the development meets the requirements for an Assessment to be made under the provisions of the 1999 Regulations and its accompanying Circular 15/1999. ~~These statements will, at the discretion of the Council, be forwarded to a qualified assessor for independent appraisal and audit where considered necessary or appropriate.~~ Applicants are requested to agree the scope of any Environmental Impact Assessment with the Council prior to its formulation.

STERILISATION OF COAL RESOURCES

POLICY MIN 9: (FORMER POLICY MIN 5 AS AMENDED BY MOD 96)

Para 4.10

~~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 community.The Council will, where practicable, protect economically important coal deposits capable of being extracted by opencasting from sterilisation by permanent development but, in doing so, will not prejudice its overarching strategy of securing investment to support the economic regeneration of the area. Where development proposals would permanently sterilise opencast coal deposits suitable for extraction, the Council will encourage the working of the resource in tandem with, or as a prerequisite to the development of the land, subject to all other provisions of the Subject Plan being observed.~~

EXTRACTION OF RELATED MINERALS

POLICY MIN 10: (NEW POLICY CREATED BY MOD 97)

Para 4.10

Where the Council has granted consent for an opencast coal development, all other economic minerals should be removed at the same time as the extraction of the coal. The Council will ensure, through the imposition or appropriate conditions and Section 75 agreements as considered necessary, that the extraction, storage and transportation of the related minerals does not have any unacceptable adverse impact on ~~is not unduly detrimental to~~ the environment or amenity of residents. Once extraction is complete, the Council will presume against further working of the site for any minerals.

POLICY MIN 11: (NEW POLICY CREATED BY MOD 98)

Para 6.16

The Council will seek, wherever possible, to conserve all areas of active peat bog within the boundaries of an opencast coal development site. All peat which requires to be removed in order to access the coal reserves on site will require to be retained on site for future use in restoration of the area with storage being carried out to the satisfaction of the Council and Scottish Natural Heritage in purposely designed peat storage areas. The Council will not support any export of peat from the site for commercial purposes.

CUMULATIVE EFFECTS OF DEVELOPMENT

POLICY MIN 12: (FORMER POLICY MIN 7 AS AMENDED BY MOD 100)

Para 8.16

The Council will seek to ensure that a proliferation of opencast sites within close proximity to any one particular community or within any one particular area does not occur. In assessing opencast proposals, a prime consideration of the Council will be the possible cumulative effects that a concentration of developments may have on any one particular area or on the wider community in general. Proposals for an opencast development which may meet the provisions of all other Subject Plan Policies will not be supported where it is considered that the development would result in an unacceptable cumulative impact on the amenity of an area, either in relation to the development having, collectively, an unacceptable number of different impacts, or in relation to the development compounding the adverse effects of a number of other opencast developments or other mineral extraction sites operating either concurrently or successively in any one particular area. In this context, any proposed new opencast coal 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 3Kms of

each other or within a 3Km 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 an extended extraction period in excess of 10 years; or
- (iii) generate volumes of heavy goods traffic which, when 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 particularly locality, or an accumulation of individual impacts which collectively have a significant adverse effect on the integrity of such areas.

In situations where a concentration of workings is likely to occur, the Council will require from applicants, an assessment of the likely cumulative impacts of additional workings on local communities and the local environment, and the measures they propose to take to mitigate these impacts.

The cumulative impact of an opencast development on a community resulting from the above criteria must be addressed in any formal Environmental Impact Assessment required as part of the application submission.

(NOTE: An operative site is defined for the purposes of the Subject Plan as a site which has been commenced, a site which is coaling or a site which is undergoing restoration).

PLANNING APPLICATION DETAILS

POLICY MIN 13: (FORMER POLICY MIN 8 AS AMENDED BY MOD 101)

Paras 7.1 to 7.2

All applications for opencast coal working will require to contain details regarding the following factors and pertinent conditions will be attached to any issued planning consents as considered appropriate:

- (i) type and amount of material(s) to be extracted;
- (ii) date of commencement and anticipated completion of working;
- (iii) phasing of operations and methods of working;

- (iv) timescales for extraction operations, restoration work and aftercare;
- (v) hours of working;
- (vi) methods of transportation of extracted material;
- (vii) routing and hours of dispatch and arrival of haulage vehicles;
- (viii) stripping, storage and treatment of topsoil and subsoil;
- (ix) contouring, landscaping and seeding of topsoil, subsoil and overburden heaps;
- (x) location of topsoil, subsoil, and overburden heaps, settlement lagoons, ancillary plant, oil storage facilities, access points, explosives magazines etc;
- (xi) blasting;
- (xii) control of noise and dust;
- (xiii) landscaping and screening of the operations;
- (xiv) preparation and stocking of coal;
- (xv) protection of existing landscape, nature conservation and heritage features worthy of retention eg trees, streams, hedges etc;
- (xvi) site drainage arrangements;
- (xvii) restoration proposals, contouring, final land form;
- (xviii) reinstatement of natural features, walls, hedges, watercourses etc;
- (xix) planting and aftercare proposals;
- (xx) proposed after-uses of the restored site; and
- (xxi) removal of plant, machinery etc on completion of works.

REWORKING OF SPOIL HEAPS

POLICY MIN 14: (FORMER POLICY MIN 11)

Para 5.11

The Council will, subject to the provisions of all other relevant Subject Plan Policies, support proposals for the reworking of colliery spoil heaps or other coal based deposits, especially where this will lead to the restoration and environmental improvement of degraded land.

SITE RESTORATION

POLICY MIN 15: (FORMER POLICY MIN 12)

Para 8.19 (iii)

All developers are required to restore their operational sites progressively to the highest possible standards. The use of restored land for specific agricultural, forestry, recreational and nature conservation purposes will be acceptable to the Council and applicants are encouraged to create wildlife habitats and wetland areas, if appropriate, within their restoration proposals. 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. Professional advice from Scottish Natural Heritage and other appropriate nature conservation bodies should be sought in this regard.

POLICY MIN 16: (FORMER POLICY MIN 13)

Para 8.19 (iii)

Developers are required, wherever possible, to divert and re-route any existing rights of way affected by proposed opencast operations and to ensure that any Rights of Way or other public footpaths disrupted by opencast operations are fully reinstated as an integral part of site restoration proposals. Improved public access and the provision of additional facilities for local communities in the restoration of opencast sites is also strongly advocated by the Council.

POLICY MIN 17: (FORMER POLICY MIN 14 AS AMENDED BY MOD 104)

Para 8.19 (iii)

- The Council will require all developers, as an integral part of a submitted planning application to submit detailed restoration and aftercare plans for the development site, including:-

- (i) the identification of those areas to be restored to particular end uses such as agriculture, forestry, wildlife purposes etc.
- (ii) an assessment of the existing landscape of the development site and its wider surrounding area.
- (iii) a detailed scheme showing how the restored site will be assimilated into the landscape.
- (iv) details of the phasing, programming and implementation of the restoration scheme.

- (v) measures to enhance the environment, recreate landscape features, wildlife habitats and public access.
- (vi) measures to treat surface and groundwater run-off.
- (vii) detailed arrangements for effective aftercare of the site.

Detailed design of restoration features and implementation of the restoration and aftercare proposals will be made the subject of conditions attached to any issued planning consent and any other agreements as may be considered appropriate.

TRANSPORTATION

POLICY MIN 18: (FORMER POLICY MIN 15 AS AMENDED BY MOD 105)

Paras 9.9 to 9.13

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. Where particular market destinations can be serviced by rail, opencast operators will be expected to make a firm commitment to transporting coal using the rail facilities available, taking coal from the extraction site to the nearest rail disposal point for onward delivery along haulage routes which, where possible, avoid passing through the area's settlements. The provision of new railheads in connection with the development of new opencast sites will be particularly encouraged. Proposals which provide for rail transport will be more favourably considered than those wholly dependent on road transport. The Council will also encourage the provision of a network of off-road haulage routes and covered conveyors linking opencast sites with any existing or proposed railhead for the transportation of extracted materials. Opencast developments which do not incorporate proposals for the transportation of minerals by rail, should be accompanied by an explanation as to why this is not the case and a statement as to the alternative arrangements that are proposed to minimise the impact of road based haulage on local roads and communities.

POLICY MIN 19: (FORMER POLICY MIN 16 AS AMENDED BY MOD 106)

Para 9.15

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. The Council will ensure that all site accesses onto the public road system are located so as to avoid any unnecessary transportation of extracted material through nearby communities, en-route to its market destinations.

**POLICY MIN 20:
(FORMER POLICY MIN 17)**

Para 9.4

Any haulage of opencast coal on the public road system will 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. The Council, as Roads Authority, must be contacted for advice in this regard. Repair of damage to the road infrastructure, demonstrated to have been caused by the haulage vehicles using the routes, will also require to be carried out at the expense of the opencast operator.

**POLICY MIN 21:
(FORMER POLICY MIN 18 AS AMENDED BY MOD 107)**

Paras 7.7 to 7.12

The Council will expect and require 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 has formulated 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.

PROTECTION OF AMENITY

**POLICY MIN 22:
(FORMER POLICY MIN 19 AS AMENDED BY MOD 108)**

Paras 8.7 to 8.10

All opencast operators are required to give proper consideration to mitigating the likely impact of their proposed developments on local communities and nearby properties. Particular attention should be given to minimising any adverse impacts of a development

associated with the following:

- (i) the potential effects of the operational working of the site on existing residential properties and nearby communities;
- (ii) the effects of the proposal on the visual amenity and physical setting of nearby communities;
- (iii) the landscaping and screening measures proposed to minimise the visual and operational impact of the proposed development;
- (iv) the adequacy of the restoration and aftercare proposals and the suitability and compatibility of the intended after-uses proposed within the overall area; and
- (v) the potential adverse effects of the transportation of extracted materials on local communities, groups of dwellings and individual dwellinghouses located along proposed coal haulage routes.

**POLICY MIN 23:
(FORMER POLICY MIN 20 AS AMENDED BY MOD 109)**

Para 8.11

~~Where considered expedient and subject to the appropriate consent of the owner/occupier concerned being obtained, the Council will require a developer 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.~~

**POLICY MIN 234:
(FORMER POLICY MIN 21 AS AMENDED BY MOD 110)**

Paras 8.12 to 8.15

In order to ensure that opencast coal operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council ~~is likely to~~ may consider opencast developments unacceptable where:-

- (i) a development has a boundary working face or operational areas relating to the storage, processing or dispatch of coal which encroaches within 500 metres of the community concerned, or
- ~~(ii) storage mounds, landscaping bunds or settlement lagoons are located within 100 metres of the community concerned, or~~
- (iii) the proposal involves a substantial area for extraction over an ~~extended~~ extraction period in excess of ten years, or

- (iii) the proposal is likely to be subject to repeated extensions, perpetuating disturbance to local communities for a period substantially longer than five years.

**POLICY MIN 245:
(FORMER POLICY MIN 25 AS AMENDED BY MOD 110)**

Paras 8.12 to 8.15

The Council will require all opencast developers to demonstrate the measures they propose to minimise the effect of their operations on sensitive establishments including and on all individual or small scale groups of dwellinghouses, located outwith communities and not in the ownership or under the control of the developer. In such cases, developers will be required to provide the Council with evidence that they are prepared to enter into appropriate legal agreements with the owners or tenants of the properties concerned, in order to offset any adverse effects from the development that may be experienced.

**POLICY MIN 256:
(FORMER POLICY MIN 22 AS AMENDED BY MOD 111)**

Paras 8.12 to 8.15

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, local community, 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 proposal would, through restoration of the site, result in the removal of substantial areas of derelict or despoiled land, stabilise previously undermined land to allow for future permanent development, remove hazards such as mine gases and polluted mine drainage, or, if not, would provide other local or community benefits;~~
- (ii) 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;
- (iii) the total period of extraction and restoration within a distance of 500 metres from any sensitive establishment or dwelling ~~the 500 metre buffer zone~~ does not exceed a period of 12 months;
- (iii) the proposed extraction does not involve any blasting operations within the 500 metre buffer zone; and
- (iv) the extraction or operational areas do not encroach within 100 metres of any the community, group of dwellings, individual dwellinghouse(s) or sensitive establishment

concerned.

PROTECTION OF AREAS OF NATURE CONSERVATION INTEREST

POLICY MIN 267: (FORMER POLICY MIN 23 AS AMENDED BY MOD 112)

Paras 6.12 to 6.17

In order to ensure that areas of nature conservation interest are adequately protected from any direct or indirect adverse effects of opencast developments.

- (i) there will be a presumption against development which could adversely affect sites designated or proposed for designation as Special Protection Areas and Special Areas for Conservation. Development will only be permitted in such areas where an assessment of the proposal indicates that it will not adversely affect the integrity of the site, that there are no alternative solutions and that there are reasons of over-riding public interest, including those of a social or economic nature;
- (ii) there will be a presumption against development which could adversely affect Sites of Special Scientific Interest and National Nature Reserves. Development would only be permitted in such areas where the overall integrity of the site would not be compromised or where any significant adverse effects of the development are clearly outweighed by social or economic benefits of national importance;
- (iii) development likely to have an adverse effect on local nature reserves and listed wildlife sites will be discouraged and all sites of recognised nature conservation value will be safeguarded whenever possible. Where development is approved for such sites, appropriate measures should be taken to conserve and manage, as far as possible, the sites' biological or geological interest and to provide for replacement habitats or features where damage is unavoidable; and
- (iv) the management and conservation of existing landscape features which are of major importance for wild fauna and flora, including linear features such as rivers and existing field boundaries and other features such as ponds and small woods which are essential for the migration, dispersal and exchange of wild species, will be encouraged.

PROTECTION OF THE BUILT HERITAGE AND NATURAL ENVIRONMENT

POLICY MIN 278: (FORMER POLICY MIN 24 AS AMENDED BY MOD 113)

Paras 6.10, 6.23 to 6.27

The Council will ensure that opencast coal proposals do not have unacceptable adverse impact on the natural and built environment.

In particular, development proposals will not be supported where they would:

- (i) cause the permanent loss of or irreversible damage to prime quality agricultural land and the highest grade category of good quality, locally important agricultural land (ie Classes 1, 2, 3.1 and 3.2 in the Macaulay Land Classification System).
- (ii) have a permanent adverse impact or cause irreparable damage to heritage resources requiring conservation including listed buildings, historic gardens and designed landscapes, scheduled ancient monuments, archaeological and industrial archaeological sites;
- (iii) adversely affect air quality and the quality and quantity of water resources, water catchment areas; land drainage or flood protection interests or create air or water pollution problems;
- (iv) result in the loss of any areas of ancient and semi-natural broadleaf woodland, or any individual trees or groups of trees covered by Tree Preservation Orders; and
- (v) result in the destruction of any areas of peat which are considered to be of significant ecological value.

PROTECTION OF LANDSCAPE

POLICY MIN 289: (FORMER POLICY MIN 26 AS AMENDED BY MOD 115)

Paras 6.1 to 6.9

The Council will ensure that any opencast coal development proposal respects, in terms of its design and restoration details, the distinctive local landscape characteristics of the particular area within which it is proposed. Developers will be expected to conserve, maintain and enhance, and to reinstate or replace where appropriate, those features which contribute to the intrinsic landscape value and quality of the area concerned, including:

- (i) existing setting of settlements and buildings within the landscape;
- (ii) existing woodlands, shelter belts, hedgerows and tree features;
- (iii) existing burns, rivers, lochs and other water features;
- (iv) existing field patterns and means of enclosure including dry stone dykes, hedging and fencing;
- (v) existing Public Rights of Way, footpaths and bridleways; and
- (vi) existing skylines, landform and contours.

The Council will not be supportive of development which creates unacceptable visual intrusion or irreparable damage to areas of established landscape character as defined by the Council's Ayrshire Landscape Assessment.

PROTECTION OF TOURISM AND RECREATIONAL RESOURCES

POLICY MIN 2930: (FORMER POLICY MIN 27 AS AMENDED BY MOD 116)

Paras 6.28 to 6.31

The Council will seek to ensure that opencast proposals and related development do not have an unacceptable adverse impact on existing rural tourism, leisure and recreational resources and facilities or on areas with substantial tourism or recreational development potential. In particular, the Council will not be supportive of proposals which would impinge on, or adversely affect, the physical setting, operational viability or recreational quality of specific sites and resources considered to be of importance to the local economy or the enjoyment of local residents, especially within:-

- (i) the Irvine and Doon Valley Tourism Gateways.
- (ii) Loch Doon and its surrounding hills, lochs and mountains.
- (iii) the Glenmuir Valley.

PROTECTION OF LANDSCAPE AND VISUAL AMENITY

POLICY MIN304: (FORMER POLICY MIN 28 AS AMENDED BY MOD 117)

Paras 6.32 to 6.33

In order to ensure that opencast operations do not have an unacceptable adverse impact on the visual amenity of the area, the Council will not be supportive of proposals which could be considered to be detrimental to the visual amenity and appearance of the area or which would be visually prominent or create visual intrusion on the skyline when viewed from the area communities or from the main A class road network through the area. In particular, developments will not be considered acceptable where these would be detrimental to the landscape and scenic quality of:-

- (i) the Irvine and Doon Valley Tourism Gateways when viewed from the A71 and A713 tourist routes into the area;
- (ii) Loch Doon and its surrounding hills, lochs and mountains;
- (iii) the open views obtained from the A76 trunk road and the A70; and
- (iv) the Glenmuir Valley.

PROTECTION OF WATER RESOURCES

POLICY MIN 312: (NEW POLICY CREATED BY MOD 106)

Para 6.36

The Council will not be supportive of any opencast proposals which would disrupt or otherwise adversely impact on water catchment areas, principal water courses and their tributaries or other major water resources such as lochs and reservoirs through East Ayrshire. Where it is considered that opencast operations may impact on such water resources, the Council will not be supportive of the proposals unless:-

- (i) adequate mitigation measures can be implemented, to the satisfaction of the Council and SEPA, to prevent any pollution of the water resource concerned; and
- (ii) any changes to the levels of surface and ground water, changes to river flows and changes to water quality can be demonstrated not to have an unacceptable adverse impact on natural habitats, water abstraction schemes, or to give rise to an unacceptable increase in flood risk.

SECTION 75 AGREEMENTS

POLICY MIN 323: (FORMER POLICY MIN 29 AS AMENDED BY MOD 119)

Para 7.7

The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an application 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. Such Section 75 Agreements as requested may cover the following subjects, although the list is not considered to be exclusive:

- (i) the provision of adequate financial guarantees to ensure restoration and aftercare of a site should work be abandoned prior to completion;
- (ii) the routing of haulage vehicles;
- (iii) any necessary improvements to, and provision of maintenance costs of the public road network required as a result of the proposed development;
- (iv) contribution of monies to the Minerals Trust Fund for the benefit of communities adversely affected by opencast operations;
- (v) the provision of visitor facilities/educational visits to operational sites;
- (vi) the establishment of local Opencast Liaison Committees;

- (vii) the carrying out of structural surveys of nearby properties prior to commencement of works;
- (viii) measures for the protection and monitoring of wildlife habitats, archaeological sites etc which may be affected by nearby opencast sites;
- (ix) the establishment of any off-site monitoring programmes relative to noise, dust, blasting etc;
- (x) the employment of local labour;
- (xi) the preparation of Ecological Management Plans for sites restored to wildlife habitat uses;
- (xii) subscription to the 'Transportation of Minerals by Road Protocol';
- (xiii) subscription to the Joint Environmental Accord;
- (xiv) commitment to quality management procedures;
- (xv) any other specific issue that may be raised as pertinent in connection with any particular opencast proposal; and
- ~~(xvi) the costs of site monitoring required to meet the provisions of Policies MIN 39, 40 and 41 below.~~

MINERALS TRUST FUND

POLICY MIN 334: (FORMER POLICY MIN 30 AS AMENDED BY MOD 120)

Para 7.8

The Council, if mindful to grant planning permission for an opencast coal development will expect and encourage applicants to contribute by agreement to a general Minerals Trust Fund which will be used for community improvements, with the contributions being set at a suggested minimum rate of 27.5 pence per tonne of coal removed from the site, linked to the retail price index as of 1 January 1998. Contributions made to the Minerals Trust Fund will not be treated as a material consideration in the Councils' assessment of the particular opencast coal application to which they relate. Applicants will also be encouraged expected to contribute to an appropriate Fund with regard to any other material/minerals extracted in association with the coal, such as fireclay etc, at a rate to be agreed with the Council.

POLICY MIN 345: (FORMER POLICY MIN 30)

Paras 7.8

In order to assist the Council in determining contributions to the Trust Fund, all opencast operators are required to provide the Council, on a quarterly basis, with details of the tonnages of

materials dispatched from the site within the previous quarterly period and all records of materials dispatched from the site shall be made available for audit by the Council on request. Contributions to the Trust Fund shall be made by the operator on a quarterly basis throughout the extraction period of the site or under any other arrangements as may be agreed by the Council.

RESTORATION GUARANTEES

POLICY MIN 356: (FORMER POLICY MIN 31 AS AMENDED BY MOD 121)

Paras 7.9 to 7.10

The Council will require all applicants for opencast coal developments to provide appropriate financial guarantees prior to the issue of any planning consent in order to ensure full restoration, reinstatement and aftercare of the site should, for any reason, works be abandoned prior to completion. A financial guarantee, provided by a recognised financial institution and reassessed at regular intervals will be considered appropriate with the amount lodged being calculated on the basis of a realistic assessment of the total costs of restoration of the individual site concerned at any particular time, the amount of disturbed land, the cost of providing for the detailed afteruses agreed for the site and appropriate costs of aftercare. The Council will require a regular assessment of restoration operations to be carried out by an independent consultant, selected through an appropriate tendering process and ~~formally contracted to the Council, but~~ who is financed and funded directly by the opencast developer. The consultant will be required to provide the Council with an ongoing assessment of the degree of compliance with the approved restoration plans through the submission of updated restoration drawings and with a recalculated detailed assessment of restoration costs on a 6 monthly basis. The costs in meeting any shortfall in the agreed restoration requirements will require to be met in full by the developer through an appropriate insurance scheme or other method of funding as may be agreed with the Council. It will also be a pre-requirement of any agreement entered into in respect of restoration of the site, that ~~the landowner absolves~~ the Council is absolved of any liability if problems in the restoration of the site occur.

POLICY MIN 367: (FORMER POLICY MIN 32 AS AMENDED BY MOD 122)

Paras 7.9 to 7.10

On completion of all reinstatement, earth moving and engineering works associated with the restoration of the site and subject to all such works being carried out to the satisfaction of the Council, the Council will release the restoration financial guarantee. However, an appropriate guarantee will be retained by the Authority under the arrangements agreed for the lodging of restoration guarantees described in policy MIN36 above, to cover a five year period within

which the operator will be required to carry out any prescribed aftercare works including the provision of site drainage, landscaping, seeding, reinstatement of Rights of Way, public footpaths etc. and the enhancement of the site for nature conservation purposes. The aftercare arrangements will be reassessed on a rolling basis as and when aftercare works on any particular section of the restored site are completed to the satisfaction of the Council.

FORMATION OF LIAISON COMMITTEES

POLICY MIN 378: (FORMER POLICY MIN 33 AS AMENDED BY MOD 123)

Para 7.14

The Council may require potential opencast developers to constitute, by agreement, formal Liaison Committees with representatives of the local communities directly affected by any proposed opencast coal operation in order to identify and resolve any potential conflict associated with the development and to provide a forum through which relevant issues can be discussed. Liaison committees will not be empowered to act on behalf of the Council in relation to any matter falling within the scope of the Town and Country Planning (Scotland) Act, the Environmental Impact Assessment Regulations and other planning legislation.

MONITORING OF SITES

POLICY MIN 389: (FORMER POLICY MIN 34 AS AMENDED BY MOD 124)

Para 7.11

All opencast developers will be expected and required to assist the Council in its regular monitoring of all operative opencast sites, by providing the Council with information on the following matters:

- (i) the routing and numbers of coal haulage vehicles generated by the opencast site concerned;
- (ii) the levels of noise generated by opencast operations from agreed, sensitive locations outwith the opencast site;
- (iii) the vibration levels attributable to blasting operations from agreed, sensitive locations outwith the opencast site; and
- (iv) the dust levels generated by site operations from agreed sensitive locations outwith the opencast site.

POLICY MIN 3940: (FORMER POLICY MIN 35)

Para 7.11

All opencast developers will be required, at the expiry of one year from the commencement of the development and thereafter at 12 monthly intervals, to present to the Council a formal 'Mining Progress Plan' giving an up-to-date position statement on the opencast operations. The Mining Progress Plan should indicate on

an appropriately scaled plan, the following information:

- (i) the extent of ongoing coal operations;
- (ii) areas prepared for coaling;
- (iii) the extent of landscaping, nature conservation and agricultural works that have been implemented.

The Mining Progress Plan should detail any proposed changes or departures from the issued planning consent pertaining to the development and address any implications that these may have on the satisfactory restoration, end uses or other operational aspects of the site.

**POLICY MIN 404:
(FORMER POLICY MIN 36 AS AMENDED BY MOD 125)**

Para 7.11

During the period of operations, restoration and aftercare, the opencast operators will be required, at the expiry of one year from the commencement of the development and thereafter at 12 monthly intervals, to present to the Council an Environmental Audit addressing the following matters:

- (i) the effects of the development on the environment including noise, vibration, dust and water impacts; and
- (ii) the measures taken to implement the operational, restoration and aftercare provisions of the consent insofar as they affect the environment.
- (iii) the effectiveness of mitigation measures promoted in Environmental Impact Assessments to reduce adverse environmental impacts.

The Environmental Audit will assess the degree of compliance with all environmental conditions and obligations relating to the issued consents, including all Section 75 Agreements and detail any remedial measures which require to be taken to rectify any identified shortfalls or deficiencies in meeting agreed environmental criteria.

RECOMMENDATIONS

REC 1: Applicants for opencast coal developments, in formatting their proposals, are advised to consult fully with Scottish Natural Heritage or any other appropriate nature conservation body such as the RSPB and the Scottish Wildlife Trust, to ascertain the possible implications that their developments may have on any species of flora or fauna protected by law and to identify opportunities for natural heritage enhancement and creation. Appropriate measures should be taken to minimise any adverse effects that the proposals may have on such species and make positive provision for their protection. In restoring any part of a site for nature conservation purposes or as a wildlife habitat, it is recommended that operators engage the services of a competent ecologist to supervise the works and to ensure that an adequate quality of restoration is being achieved.

REC 2: In cases where a proposed opencast development is likely to result in the destruction of a site of known archaeological interest and where the primary aim of preserving archaeological sites cannot be achieved, it is recommended that opencast developers carry out appropriate archaeological excavations and recording of remains within the development site, prior to the operations being commenced. It is further recommended that in all cases, the West of Scotland Archaeological Service is contacted by developers in formulating their proposals in order to ascertain the archaeological importance of the site and to obtain advice regarding appropriate recording and excavation methodology.

REC 3: In order to provide more effective facilities for the transportation of opencast coal by rail, opencast operators are encouraged to develop, either individually or through co-operation with other operators, proposals for new railheads in appropriate locations, particularly to serve the Muirkirk and Cumnock/New Cumnock Areas, in conjunction with Railtrack and the rail operating companies.

REC 4: All prospective applicants for opencast coal developments are strongly urged to enter into discussion with the Planning Authority at the very earliest stages in developing their proposals (prior to any land deals being entered into between the developer and the owners of the land) in order to agree optimum, appropriate after-uses for the land concerned, to the benefit of all interested parties including the developer, the landowner and the wider general public. Early discussion would also facilitate restoration proposals which reflect the priorities and targets of the Local Biodiversity Action Plan.

REC 5 : Where an opencast site has been restored to a predominantly nature conservation after-use, developers and/or landowners are requested to consider passing on the restored site to an appropriate, interested local wildlife group, community group or other nature conservation organisation, in order that the area can be permanently retained, managed and promoted as a community facility for wider recreational or educational purposes.

REC 6 : In formulating their detailed restoration proposals, it is recommended that operators constitute formal Technical Working Groups comprising professional advisers from appropriate nature conservation, agricultural, forestry or recreational organisations with an interest in the after-uses proposed. The Technical Working Group would ensure that best practice is introduced both in the formulation of restoration plans for an opencast site and during the restoration and aftercare phases of the development, ensuring full compliance with restoration, aftercare and monitoring conditions attached to the issued planning consent.

REC7 : 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.

NOTE

THE UNDERLINED SECTIONS IN THE POLICIES REPRESENT ADDITIONS TO THE POLICIES AS RECOMMENDED BY THE REPORTER

THE DELETED SECTIONS IN THE POLICIES REPRESENT DELETIONS TO THE POLICIES AS RECOMMENDED BY THE REPORTER.

