

**EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE: 27 AUGUST 2002**

**EAST AYRSHIRE OPENCAST COAL SUBJECT PLAN**

**REPORT OF LOCAL PLAN INQUIRY INTO UNRESOLVED OBJECTIONS TO  
THE EAST AYRSHIRE OPENCAST COAL SUBJECT PLAN**

**Report by Director of Development Services**

**1. PURPOSE OF REPORT**

1.1 To inform the Committee of the conclusions and recommendations made by the Inquiry Reporter, following his consideration of unresolved objections to the East Ayrshire Opencast Coal Subject Plan at the Local Plan Inquiry; to present to the Council for consideration a Schedule of the Recommendations made by the Reporter; to seek approval for a Schedule of Modifications which it is recommended the Council makes to the Subject Plan in order to meet the Reporters recommendations; and to seek adoption of a series of modified policies as a basis for the determination of all future opencast coal planning applications.

**2. BACKGROUND INFORMATION**

2.1 On 1 September 1998, the Development Services Committee approved the Finalised Version of the East Ayrshire Opencast Coal Subject Plan and, following approval, the plan was duly placed on deposit and advertised in the local press for formal objections. Some 36 responses were received, encompassing a total of 460 separate points of objection. Following an assessment of the representations made, the Development Services Committee approved on 9 May 2000, a series of modifications which it agreed should be made to the Plan. These modifications were, again, duly advertised in the local press for formal objection and a total of 178 points of objection from 11 respondents were received.

2.2 While many of the objections received in respect of both the finalised plan and the approved modifications were resolved through negotiation, a number remained unresolved. A Public Local Inquiry to consider these unresolved objections was held at Cumnock Town Hall between 25 October 2001 and 2 November 2001, conducted by Mr Maurice O'Carroll, Dip Phil, MRTPI, a Reporter from the Scottish Executive Inquiry Reporters Unit. The Reporter's report into the Inquiry, which covers both objections considered at the Inquiry and those dealt with on the basis of written submissions, was forwarded to the Council for consideration on 15 April 2002 and forms the subject of this report. Copies of the Reporter's report have been placed in the Member's Lounge.

2.3 The Council is not required to accept recommendations for modifications to the Subject Plan made by the Reporter, but rejection of recommendations could be challenged as unreasonable if not based on clear reasons. Modifications agreed following consideration of the Reporter's recommendations will require to be further advertised. The Council will, however, only be required to consider any further objections received if they relate to the advertised modifications. Following consideration of any such objections the Council may then move to adoption of the plan.

### **3. OVERVIEW OF PROPOSED MODIFICATIONS**

3.1 In his report, the Reporter is supportive of the approach taken by the Council in the preparation of the Plan, particularly as regards the methodology and information base used in the identification of the Potential Coal Extraction Areas, towards which all new opencast developments are directed. The Reporter is also supportive of the overall policy framework which has been formulated in the Plan, against which all opencast coal proposals will be assessed.

3.2 The report, however, details a number of modifications which the Reporter recommends should be considered by the Council for inclusion in the plan. It should be noted that the subject of the Inquiry was the Plan as originally approved together with the modifications subsequently approved and advertised by the Council. Some of these modifications resulted in a change in the Policy reference numbers in the Plan (the Reporter refers to policies by their original numbers, not the numbers which the Council has used since approval of the modifications).

3.3 Members have been issued with:

- ◆ Annex 1: a schedule setting out proposed reasons for accepting or rejecting each of the Reporter's recommendations
- ◆ Annex 2: a schedule of proposed modifications (including a revised glossary and listing of policies)
- ◆ Annex 3: a full listing of the Policies in the plan as amended to incorporate the proposed modifications (which also shows the changes)

***\* The above annexes have been bound separately and issued with the full set of committee reports.***

3.4 Many of the Reporter's recommendations are to agree modifications previously incorporated into the Plan by the Council.

3.5 The Reporter has also recommended a number of changes designed to clarify Policies without a substantial change in the direction of the Policies, which is proposed should be accepted. More significant wording changes recommended include:

- ◆ A change to MIN 2 (new reference) which would replace the reference to the "Council will not be supportive of "developments outside the preferred Coal Extraction Areas to "there will be a presumption against"
- ◆ The addition to MIN3 (policies relating to extensions) of a further criterion that extensions should not significantly prejudice plans for the restoration of the existing site, and clarification that the total period of extraction from the start of the existing site to the completion of the extensions should not generally exceed 10 years
- ◆ Deletion of the reference in MIN5 that outline applications will not be accepted (MIN6 provides adequately for full information needed to assess the proposals to be required)
- ◆ General re-wording to clarify MIN7 relating to impact on communities
- ◆ General rewording to clarify MIN9 relating to sterilisation of reserves
- ◆ The replacement of the Policy requirement to undertake structural surveys of nearby properties if blasting is proposed, with a Recommendation in similar terms (which could be required by the Council before determining applications)
- ◆ Addition to MIN24, which requires operators to minimise the effect of their operations on sensitive establishments, to extend exceptions for properties "in their ownership" to include properties "under their control"
- ◆ The deletion from MIN25 of the requirement to demonstrate a specific environmental gain in considering developments near to isolated properties (or groups of less than ten)
- ◆ A replacement of "expect" with "encourage" operators to contribute to the Minerals Trust in MIN33 (since Agreements are voluntary this is a more appropriate term)
- ◆ The introduction of a definition of a community in the Glossary as "a town, village or hamlet and including any cluster or group of about 10 houses in the countryside" (this clarifies the application of the policy relating to separation distances between communities and opencast operations)

3.6 The Reporter recommends that a substantial modification be made to Policy MIN23. As it stands, this states that the Council may consider opencast developments unacceptable where a development has a working face or operational areas relating to the storage, processing or dispatch of coal which encroaches within 500 metres of communities and which has storage mounds, landscaping bunds or settlement lagoons located within 100 metres of communities. The Reporter recommends that the policy be modified to state that the Council is likely to consider any opencast development unacceptable where it has a boundary which encroaches within 500 metres of a community. The modified policy would be essentially the same as the policy originally proposed by the Council. The policy was subsequently amended to bring it into line with the NPPG published after the original Council policy was drawn up. The Reporter recommends that it would be justified for the Council to adopt a policy at variance with the NPPG in this respect. There are arguments in favour of either formulation. The underlying principle is that communities should be protected from any potential adverse impacts resulting from close proximity of development. It is proposed that the Council should accept the Reporter's recommendations on this point.

3.7 A number of recommendations on points which do not reflect substantial points of policy have been made by the Reporter which it is proposed should not be adopted:

- ◆ The Reporter recommends that MIN38 should be amended to shift responsibility for monitoring dust levels from operators to the Council. It is a fundamental principle of the Council's approach to enforcement that impact data should be provided at developers' expense to the Council for assessment. Reversal of this principle would set a precedent, would not be affordable, and would enable operators to escape responsibility for their own quality control. This modification should not be accepted.
- ◆ In addition, the Reporter recommends that the Council should explore the possibility of combining dust monitoring with a programme of basic research by a university. While agreeing that such a study would be of benefit, it is considered that this would best be implemented by a national body rather than by an individual council
- ◆ The Reporter recommends that all the High Visual Amenity Areas from Figure 9 should be included in the list of areas deserving especial consideration in Policy MIN29. All of these areas are already listed in MIN30. To avoid duplication, it is not considered necessary or appropriate to make the changes recommended by the Reporter.
- ◆ The Reporter recommends that the Council prepare a constitution and set of rules for liaison committees and consider authorising an official to be in attendance. The Council has taken the view to date that the constitution and rules of individual committees are for the Committees themselves to arrange although the Council will provide advice to enable a suitable constitution and procedural arrangements to be put in place. Officials are already authorised to attend Committees as and when necessary. No change to the plan is considered necessary.
- ◆ The policy, MIN37, which states that operators "may" be required to establish liaison committees should be strengthened to "will" be required to do so. It is proposed that this should continue to be considered on a case by case basis since circumstances differ between sites and communities.
- ◆ The Reporter suggests that the Plan should be amended to indicate that in negotiating the level of contributions to the Mineral Trust the Council should take into account any other community benefits provided by the operator, and to prepare a constitution and rules for the Trust which would provide for representation on the Trust by a senior Council official. Adopting these principles would reduce the clarity of current arrangements. The Trust already has a constitution and rules. It is not proposed to adopt the recommended modifications

3.8 The Reporter has also made some recommendations relating to the Council's procedures in determining applications and other matters which it is not proposed to implement:

- ◆ Conditions should be applied to applications relating to blasting. The Council already applies conditions relating to blasting which can be properly applied through planning procedures. The Reporter's recommendations would result in duplication of HSE responsibilities

- ◆ The Reporter suggests that the Council should undertake a derelict land survey to help identify locations where opencast coal extraction could make a positive contribution to the improvement of amenity. Given the extent of dereliction in the area it is considered that this would be unrealistic and unlikely to assist significantly in the direction of opencast coal operations

A number of other suggestions are made by the Reporter which do not require any change in the Council's current procedures.

#### **4. THE WAY FORWARD**

4.1 Following consideration of the Reporters Report into the Inquiry, the Council is required in terms of the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983 to follow certain procedures, these being as follows:-

- (i) to prepare a statement detailing any action that the Council may agree to take in light of the Reporters recommendations. This statement is attached as Annex 1 to this report.
- (ii) to make a certified copy of the Reporters Report and the statement available for inspection.
- (iii) to prepare a list of any modifications that the Council agrees should be made to the plan as a result of the Reporters recommendations, giving their reasons for doing so. A suggested list of modifications is attached as Annex 2 to this report.
- (iv) to advertise any modifications to the plan, as may be agreed, in the local press, inviting objections to the modifications within a stipulated 6 week period. At the same time, all previous objectors to the plan, whose objections have not been withdrawn, also require to be given notice of the Reporters recommendations and any proposed modifications to be made to the plan.
- (v) to further consider any additional objections that may be received in respect of the proposed modifications.

4.2 It is important to note that all of the suggested modifications detailed in Annex 2 to this report, have been proposed as a direct result of recommendations made by the Reporter and relate specifically to matters which have already been considered at the Inquiry. Although all objections that may be received in respect of the suggested modifications will require to be considered by the Council, none of the proposed modifications relate to matters which have not previously been considered at the Inquiry.

#### **5. FINANCIAL IMPLICATIONS**

5.1 There are no direct financial implications incurred as a result of this report, other than the costs involved in advertising the Reporters Recommendations and the Schedule of Modifications and expediting the objection procedures.

## **6. LEGAL/AUTHORITY IMPLICATIONS**

6.1 Once agreed by Council, the Subject Plan, as further modified as a result of the Reporters recommended changes, will become the policy base for the determination of subsequent opencast coal related planning applications.

## **7. PERSONNEL IMPLICATIONS**

7.1 None.

## **8. RECOMMENDATIONS**

8.1 It is recommended that the Committee agree:-

- (i) to note the contents of the Inquiry Reporter's report.
- (ii) to approve the suggested Council response to the Recommendations made by the Reporter, as detailed in ANNEX 1 to this Report;
- (iii) to recommend approval of the Schedule of Modifications as detailed in ANNEX 2 of this Report and to authorise the Head of Planning and Building Control to advertise the modifications detailed in the Schedule of Modifications for objection, as required by statute;
- (iv) to recommend adoption of the modified policies, as detailed in ANNEX 3 of this report, as a basis for the determination of all future opencast coal planning applications lodged with the Council for determination;

**Thereafter**

- (v) to progress the Subject Plan to adoption through the statutory process.

**Stephen Chorley**  
**Director of Development Services**

(JL/MS)

26 July 2002

**LIST OF BACKGROUND PAPERS**

1. **The East Ayrshire Opencast Coal Subject Plan – Finalised Version, as approved by the Development Services Committee on 1 September 1998 and amended on 24 November 1998.**
2. **Report to Development Services Committee on 9 May 2000 entitled ‘East Ayrshire Opencast Coal Subject Plan: Outstanding Objections to Subject Plan and Objections Received in Respect of Agreed Modifications’.**
3. **Report to Development Services Committee on 24 April 2001 entitled ‘East Ayrshire Opencast Coal Subject Plan: Outstanding Objections to Subject Plan and Objectives Received in Respect of Agreed Modifications’.**
4. **Report of Local Plan Inquiry into Unresolved Objections to the East Ayrshire Opencast Coal Subject Plan submitted to the Council by the Inquiry Reporter on 15 April 2002.**

For further information on the contents of this report contact John Lilley, Principal Planning Officer. Telephone 01563 576754.

**Implementation Officer: Alan Neish**

**AGENDA**