

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE : 06 JUNE 2000

99/0791/FL: WINNING AND WORKING OF COAL BY SURFACE MINING METHODS AND RESTORATION OF THOSE AREAS TO A MIXTURE OF WOODLAND AND MOORLAND AS EXTENSION TO BURNFOOT MOOR OPENCAST SITE (AMENDED APPLICATION)

APPLICATION BY R.J.B. MINING (UK) LIMITED

Report by Director of Development Services

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Development Services Committee under the scheme of delegation because the proposed development relates to the extension of an existing mineral extraction site which is considered to require minor departures from the details of certain policies in the Opencast Coal Subject Plan and is the subject of letters of representation.

2. APPLICATION DETAILS

2.1 **Site Description** : The proposed development site lies immediately north of Muirkirk village, extending from north of the Smallburn residential estate in the western part of Muirkirk towards Middlefield Drive and Muirkirk cemetery in the north-eastern part of the village. The site comprises lands associated with the existing Burnfoot Moor opencast coal site and land associated with the former steading of Bankend and the former Muirend Colliery. The site lies to the north of the A70 Cumnock – Muirkirk road and to the west of the B743 Muirkirk – Strathaven road.

2.2 Apart from the existing opencast coal site which occupies some 77% of the application site area, other uses of the land consist of small areas of coniferous plantation, peatland, wetland associated with the Small Burn and rough grassland used for grazing. In addition, a small area of dereliction remains from the former Muirend Colliery which ceased operations in 1968.

2.3 The entire application site extends to 87.7 hectares (216.6 acres) comprising 68 hectares relating to the existing Burnfoot Moor site and 19.7 hectares relating to the proposed extension area. In topography terms, the application site extends along a relatively low and broad watershed between the River Ayr and the Greenock Water valleys, with the proposed extension area located on the southern side of this broad ridge and encompasses the minor valley slopes of the Small Burn tributary. The site lies typically between 245 to

280 metres AOD, with the extension area lying between 245 to 275 metres AOD.

2.4 The land to the north of the application site comprises the Burnfoot Moor Plantation, a commercial coniferous forest. Further areas of coniferous plantation lie between the southern part of the application site and the residential area at Smallburn. The north-eastern part of the site is separated from Muirkirk cemetery and residential areas at Middlefield Drive and Wellwood Avenue by rough grassland and a small coniferous tree belt.

2.5 **Proposed Development** : Full planning permission is sought for the extraction of some 750,000 tonnes of high quality coal by opencast method from the application site. The coals to be extracted will be partly recovered from an unworked area of the existing Burnfoot Moor site (Cut 1 of the original approved scheme) and from an area known as the Bankend extension which extends north-eastwards from the existing opencast site.

2.6 In order to facilitate the comprehensive working of the contiguous coal seams running from Cut 1 of the existing site into the proposed Bankend extension area, the existing Burnfoot Moor site will be utilised for overburden and soils storage, water treatment areas, office and amenity accommodation, coal preparation and storage and site access.

2.7 Coaling operations in the existing Burnfoot Moor site ceased in October 1999 and the site has been 'standing' pending the submission and determination of this present application. Planning permission for the Burnfoot Moor site was granted by East Ayrshire Council on 17 April 1996 with the consent due to expire at the end of July 2002.

2.8 The proposed Bankend extension area extends to 16 hectares in respect of the extraction area. Coals will be taken from nine seams down to a maximum depth of 80 metres. Within the Bankend extension area, the only other physical elements of the scheme relate to the excavation area and a 5 metres high soil storage mound to be used for visual and acoustic screening. All other elements associated with opencasting such as overburden storage, water treatment lagoons, coal processing plant and site facilities will be located within the existing Burnfoot Moor site.

2.9 Coaling operations will commence in Cut 1 of the currently consented Burnfoot Moor site and will advance in a series of box cuts in a general north-east direction. Overburden from the initial extension excavations will be backfilled into the current void area of the existing Burnfoot Moor site, with this void being restored by Summer 2001. Additional overburden produced as excavations progress will then be stored on the existing Burnfoot Moor overburden mound. This overburden mound will be a maximum of 25 metres high and the outer faces will be regraded and seeded to minimise visual impact.

2.10 When the excavation void has reached the central part of the Bankend extension area, this will represent the maximum void stage and the maximum extent of surface mounds. Thereafter, all further excavated overburden will be backfilled below ground level behind the advancing coal extraction area. The final void in the Bankend extension area will be backfilled from the overburden storage mound in the Burnfoot Moor site.

2.11 The site office complex for the existing Burnfoot Moor site is currently located adjacent to the proposed extension area (Cut 1). It will therefore be necessary to relocate the site office complex and coal preparation plant to a position at the south-western corner of the Burnfoot Moor site. The temporary office and amenity accommodation provided will be similar to that already existing on the site and will include facilities for the treatment and disposal of sewage, car parking, a plant yard for maintenance of site plant and machinery, coal preparation and loading, together with associated vehicle wheel wash facilities, weighbridge and fuel storage areas.

2.12 The remaining part of the extended site area comprises 3.7 hectares which will be used to provide a new site access road and access point onto the A70 road. This new access will be located to the west of Muirkirk village, some 150 metres west of Smallburn residential estate. The new access road will be surfaced from its junction with the A70 road to the site office complex in order to reduce impacts associated with noise and dust. Soils and peat stripped from the new access road area will be subsequently used to screen the new haul road from views along the A70 road and from properties lying immediately to the east in Smallburn. These screening mounds will also serve as acoustic barriers as a means of mitigating noise impact.

2.13 In terms of timescale, the proposed operations associated with the Bankend extension will last for 42 months of which there will be 30 months coaling and a further 12 months restoration. However, given that the existing consent for Burnfoot Moor is not due to expire until July 2002, the life of the site overall will be extended by a period of 24 months.

2.14 The proposed working hours of the site are 7:00am to 7:00pm Mondays to Friday and 7:00am to 12:00 midday on Saturdays (other than the carrying out of operations related to pumping of water, servicing and maintenance). The dispatch of coal from the site would be confined to between 7:00am and 6:00pm Mondays to Fridays, 7:00am to 12:00 midday on Saturdays with no dispatch of coal on Sundays. Given a projected output of approximately 7000 tonnes of coal per week during coaling operations, this equates to a total 47 laden vehicles per day (24 on Saturdays) leaving the proposed development site (94 vehicle movements per day Monday to Friday or an average of 10 vehicle movements per hour).

2.15 Coals extracted from the site will be transported in sheeted lorries from the site via the new access road onto the A70, west of Muirkirk and taken west along the A70, through Lugar, Cumnock and Ochiltree to the Killoch Coal Disposal Point for onward dispatch via rail to markets. The applicant has

indicated that should the recently approved railhead facility at Gasswater OCCS become available during the life of the extended Burnfoot Moor site, then measures would be taken to seek agreement with the operator for the use of the new railhead facility.

2.16 The applicant has indicated that, like the existing Burnfoot Moor site, blasting operations are likely to be undertaken, given the expectation of similar ground conditions. Prior to any blasting taking place, the applicant has indicated that test blasting would be undertaken in order to ascertain vibration characteristics of the rock. This would allow appropriate blast design to minimise impacts and to ensure compliance with planning conditions. Blast monitoring will take place during the operational life of the extended site.

2.17 As indicated above, the site is currently 'standing' pending the determination of this present application. With the exception of essential maintenance personnel, the workforce of 28 is no longer employed on site. Should this present proposal succeed, these 28 jobs would be re-established for the additional 42 months of operation. The applicant has indicated that, in line with company practice, a high percentage of this workforce will be employed locally.

2.18 The proposed Bankend extension operation will have an impact on the restoration of the existing Burnfoot Moor site. Final restoration of the site as extended will not be completed until 2 years after the original date for completion of site restoration. However, a substantial part of the site, in particular the area adjacent to the Smallburn estate itself, will be restored in the timescale previously approved under the original planning consent for the Burnfoot Moor site i.e. Summer 2001.

2.19 The operations within the Bankend extension area will necessitate the cropping of existing coniferous plantation, with areas left untouched on the fringes to be used for screening purposes. In terms of site restoration, these cropped areas will not be replanted and remaining conifers will be felled and the land subsequently used to promote positive restoration, through the protection of existing peat bog, restoration for habitat creation and enhancement and replanting with broadleaf tree species.

2.20 The planning application for the Bankend extension to the Burnfoot Moor site has been accompanied by a comprehensive Environmental Statement due to the nature and scale of the proposed development

2.21 The Environmental Statement and associated technical appendices have provided a comprehensive assessment of dust and air quality, noise, archaeology, hydrology and soils, ecology, landscape and visual impact. This has given considerable environmental information to the Planning Authority and statutory consultees. The process of gathering this environmental information has allowed the planning proposals to be shaped, influenced and amended with the operational proposals and mitigation measures developed from the impact assessment.

2.22 In addition, the present proposals under consideration represent a revised scheme which has been submitted in order to address policy issues contained within the Ayrshire Joint Structure Plan and the finalised East Ayrshire Opencast Coal Subject Plan, particularly in light of the progress to approve and adopt these plans. The main issue addressed relates to the proximity of working to residential properties. Under the original scheme proposed by the applicant, excavations were proposed within 400 metres of residential properties at Middlefield Drive. Under the amended scheme, there are no excavation operations taking place within 500 metres of residential property.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Statutory and non-statutory consultations have been carried out in respect of both the planning application and the Environmental Statement including the amended proposals. The consultees' responses and comments on the issues raised are as follows:-

3.2 East Ayrshire Council Roads Division has indicated that there are no objections to the proposed development subject to conditions as follows:

- (i) street lighting will require to be extended from Henderson Drive in Muirkirk to cover the new junction on the A70 road;
- (ii) the traffic islands outwith the 40mph restriction must be deleted and replaced with red coloured Zebraflex strips and the proposed island at the village gateway must be provided with lay-by over-run areas to either side to accommodate wide loads and will require lit signing;
- (iii) the location of the proposed access junction must be agreed on site with the Roads Authority;
- (iv) a visibility splay of 4.5 metres by 215 metres to the west of the proposed access must be provided and maintained with no object greater than 1 metre in height allowed within this area;
- (v) the visibility splay of 4.5 metres by 140 metres to the east of the access must be maximised by lowering of the verge and setting back the fenceline on the inside of the bend;
- (vi) the central hatched area on approach to the gateway must extend from the site access and be coloured red; and
- (vii) 30 mph and 40mph countdown signing must be provided on the approaches to Muirkirk, Lugar and Cumnock.
- (viii) A junction design incorporating the requirements of the Design Manual for Roads and Bridges Volume 6, Section 2 must be submitted for approval to the Roads Authority for Construction Consent with kerbed 15 metre radii, a bituminously surfaced access road width of 7.3 metres for 20 metres back from the edge of the A70 and incorporating drainage to prevent water discharging onto the public road. The A70 at the junction position will also require widening to 7.3 metres and structural strengthening by overlaying with 40mm HRA over a kerbed length of 30 metres either side of the access point;

- (ix) To avoid vehicles waiting on the A70 at any time, any access gates must be at the northern end of the access road; and
- (x) The applicant should be encouraged to utilise the proposed railhead at Gasswater for transportation of coal.

The requirements of the Roads Division can be achieved either by the imposition of appropriate conditions attached to any consent granted for the development or through obligations imposed in a Section 75 Agreement under the Town and Country Planning (Scotland) Act, 1997.

The Roads Division also states that both visibility splays may be over land outwith the developers control and may require a legal agreement with the landowner.

The requirements of the Roads Division in respect of providing and maintaining the necessary visibility splays can be achieved through a legal obligation imposed in a Section 75 Agreement under the Town and Country Planning (Scotland) Act, 1997. The owner of the land concerned would require to be a party to such an agreement.

The Roads Division further assumes that standard conditions relating to wheel washing, happing of vehicles will be incorporated as per the transportation protocol and provision for recovery of road maintenance costs should be incorporated into any legal agreement and would require the above conditions to be applied in the interests of road safety and with the works being completed prior to the transportation of coal from the site.

Standard conditions referred to by the Roads Division can be attached to any consent granted for the proposed development. The Council, as Roads Authority, would be able to recover any extraordinary road maintenance costs attributable to this development through the Roads (Scotland) Act 1984, which can be reinforced through a Section 75 Agreement.

3.3 East Ayrshire Council's Economic Development Division has no adverse comments on the proposed development. The Division notes that the development will lead to the continuation of about 28 jobs for several years in an area where the rate of adult male unemployment is unacceptably high.

Noted.

3.4 The Coal Authority, British Telecom, British Gas Transco and Scottish Power have no adverse comments to make on the proposed development.

Noted.

3.5 West of Scotland Archaeology Service states that the report on cultural impacts has been competently executed and has no disagreement with its

conclusion that further archaeological work will not be necessary on the proposed Burnfoot Moor extension.

Noted.

WOSAS draws attention to the reference to the Long Stone of Convention which has covenanting associations and is a very important historical site. The archaeological consultants note that care should be taken over the use of machinery in the vicinity of the monument in order not to disturb the stone itself or any burials which may be associated with it. The stone should be properly fenced off to ensure that machinery cannot come anywhere near it.

The Long Stone of Convention lies outwith the application site. Provision can be made within any Section 75 Agreement relating to the development to secure appropriate fencing to prevent any potential damage from machinery associated with the development.

3.6 West of Scotland Water, for its water and sewerage functions, has no adverse comments to make on the proposed development.

Noted.

3.7 The Scottish Wildlife Trust objects to the proposed development on the following points:

- (i) permanent loss of important blanket bog habitat and related species;
- (ii) loss of important breeding bird habitat particularly of species in perilous decline such as upland breeding waders and skylark;
- (iii) loss of watercourse throughways for otter and/or water vole; and
- (iv) impact on species and habitats of Local Biodiversity Action Plan species and habitat priorities list.

The application site does not contain or impinge upon any statutory or non-statutory wildlife interests. Neither SNH nor RSPB raise any objection to the proposed development. The greater part of the extension site is currently occupied by coniferous plantation which will be removed, while the more important areas of blanket bog will remain undisturbed. Measures to be undertaken at the outset of the operations will result in management of the land to protect and enhance these areas. Restoration of the site will not result in replanting of commercial forest, but will lead to overall enhancement of the site for habitat creation and diversification. Although the application site has been reduced in size as a result of the amended scheme, the applicant has still retained a commitment to provide restoration benefits for the original larger site.

3.8 Historic Scotland has no comments to offer on the Environmental Statement since the proposed development would not affect any sites or

structures of archaeological or historic importance which are protected at the national level.

Noted.

Historic Scotland is pleased to note that an archaeological evaluation of the application area has been undertaken as part of the Environmental Assessment process and note that this has identified a number of features of local archaeological interest. Since the appropriate protection of such sites lies with the Council, it is recommended that you seek the further advice of West of Scotland Archaeology Service.

Appropriate consultation has been carried out with West of Scotland Archaeology Service as detailed in section 3.5 above.

3.9 The Scottish Executive Environment Department and Rural Affairs Department have no comments to make on the Environmental Statement.

Noted

3.10 The Ayrshire Joint Structure Plan Team states that the application requires to be assessed within the context of Structure Plan policies E13 and E14. As the proposed extension scheme is outwith a preferred area, containing approximately 750,000 tonnes of coal and covering an area less than 25 hectares, policy E14B is relevant. This policy context is permissive of small scale opencast coal proposals within Ayrshire where there is a clearly demonstrated environmental benefit through the removal of an existing area of dereliction and there is overall benefit to the local community including local employment. As the proposal appears generally to fall within the threshold for small scale development, the key tests will be whether or not the criteria for clearly demonstrated environmental benefit achieved through the removal of dereliction, overall benefit to the community and local employment prospects have been met. Should it be your view that the proposal can be considered within this policy framework and that the criteria set out in E13 are addressed in full, the AJSPT raises no objection to the proposal.

The policy considerations relative to the approved Ayrshire Joint Structure Plan are set out and discussed in section 5 of this report.

3.11 The Scottish Environment Protection Agency states that there will be no objections in principle to the proposed development provided that all necessary steps are taken to prevent or minimise pollution. In this regard the following points are relevant:

- (i) the water treatment areas should be located to receive all contaminated water from the excavation, haul roads, overburden tips, plant areas and the coal preparation site. All this drainage requires treatment before being discharged to a watercourse. Ground water from the dewatering of

the site may need treatment to reduce iron concentration and that flow balancing to cope with expected storm conditions appears to have been addressed by means of utilising the site void.

The applicant has been advised of the comments of SEPA.

- (ii) Clean water from around the site is to be intercepted and diverted away from the working area. Freshly cut ditches on steep ground will require some protection to prevent erosion and pollution from mineral solids. Temporary settlement facilities may also be required on these ditches to prevent pollution from mineral solids. Burn diversions should be carried out in such a manner as to prevent any degradation of the habitat in the area. This will require that a detailed ecological study of the aquatic flora and fauna associated with the watercourse is carried out before the diversion is carried out.

The requirement for a detailed ecological study of the aquatic flora and fauna associated with the watercourse to be carried out before any diversion is carried out can be secured through an obligation in a Section 75 Agreement for the site.

- (iii) All foul drainage from offices, canteens etc., will require treatment prior to discharge to a watercourse and SEPA's consent will be required for the discharge of sewage effluent to a watercourse.

The applicant has been advised of the comments of SEPA.

- (iv) All oil storage tanks/drums should be stored within a properly bunded compound capable of holding 110% of the contents of the largest tank. Delivery and outlet points should also be contained within the bunded compound. All valves and fillers should be padlocked when not in use.

Conditions can be attached to any consent granted for the proposed developments to meet the requirements of SEPA.

- (v) vehicle underbody / wheelwash should operate on a closed cycle system and be sited to prevent coal / mud contamination of the highway.

Conditions can be attached to any consent granted for the proposed developments to meet the requirements of SEPA.

- (vi) Any stockpile maintained on site should be profiled to prevent whipping action of the wind. In addition, stockpiles and haul roads must be dampened or compacted to reduce particulate emissions.

Mitigation measures proposed within the Environmental Statement have been designed to minimise particulate emissions resulting from site operations. Such measures can be ensured through the

imposition of appropriate conditions in any consent granted for the proposed development.

- (vii) any discharges of trade effluent to watercourses from the site will require the formal consent of SEPA.

The applicant has been advised of the comments of SEPA.

3.12 The Forestry Commission has no adverse comments to make on the proposed development.

Noted.

3.13 East Ayrshire Council's Environmental Health Division states that the principal points of concern are in respect of dust, noise, blasting and other related issues. According to the revised development proposals no blasting will take place within 500 metres of residential properties. Whilst experiences with the existing site have been predominantly in respect of complaints associated with blasting from householders in close proximity to the site boundary, there have been a number of exceptions with occasional complaints from a considerably further distance from the site. It is apparent that this site cannot operate efficiently without extensive use of blasting, so it must be presumed that it will be a regular feature of the site extension operations.

The applicant has indicated that blasting was a common requirement on the existing Burnfoot Moor site and it is likely that ground conditions will be similar on the Bankend extension area.

The Division states that greater separation distances between the site and residential properties has not in the past automatically resulted in elimination of complaints, although in general it is anticipated that the greater the separation distance as in this instance should result in lesser problems arising.

Prior to any blasting taking place, the applicant will undertake test blasting to allow assessment of vibration characteristics of rock strata within the extension area. This should enable appropriate blast design to minimise potential impacts associated with vibration. With the 500 metres separation distance between the nearest residential properties and the limit of site excavation, and with the imposition of strict blast vibration limits, this should also mitigate impacts relating to blasting operations.

The Division states that in terms of noise, the proposed site should be capable of operating within the prescribed parameters within PAN 50 Annex A. Predicted noise levels within the Environmental Statement indicate that the specified noise level of 55 dB(A) can be comfortably achieved. As the operations will be confined to daytime working hours, the night time restrictions of PAN 50 Annex A will not be applicable.

The Environmental Statement indicates that noise predictions in a worst case scenario would result in noise levels of between 47 and 48 dB laeq, 1hour, significantly below the 55 dB(A) limit within PAN 50 Annex A.

The proposed new site access road on the western edge of Muirkirk could have some implications in respect of noise and dust, although it would be beneficial to the community in that it would virtually eliminate lorry traffic from the site running through the centre of the town.

The location of the haul route, the proposal to fully surface the route and the provision of soil mounds for visual and acoustic screening should minimise noise and dust impacts associated with site traffic.

The applicant makes reference in the application regarding precautions and protocols to mitigate dust and noise arisings. It is hoped that comprehensive implementation of the various control measures, backed up by suitable monitoring and provision of data to the local authority, as at present, would provide adequate safeguards in this respect. Blasting should also be included in this regime.

The applicant, through the imposition of appropriate conditions in any planning consent granted, will be required to implement in full the mitigation measures advocated within the Environmental Statement which accompanied the planning application. The undertaking of noise, dust and vibration monitoring can be achieved through a Section 75 Agreement and the applicant has indicated the intention to undertake such monitoring.

3.14 The Royal Society for the Protection of Birds states that in relation to the Environmental Statement, it is evident that the necessary ecological data has been collected and incorporated into the assessment process. RSPB also notes that ecological issues raised with the applicant and the consultants have been responded to in the Environmental Statement.

Noted.

RSPB therefore generally supports the recommendations of Annexure F of the ES and the proposed restoration scheme. RSPB recommends that these form the basis of a Section 75 Agreement to be put in place immediately should the proposed development proceed. It is further suggested that restoration implementation be overseen through the technical Support Group already established for the restoration work at Gasswater OCCS.

The recommendations of RSPB can be secured through a Section 75 Agreement should consent be granted for the proposed development.

RSPB is concerned that the guidelines in place to promote sustainable opencast development are being breached, insofar as the proposed working area falls within the 500 metres limit from a settlement, proposed as a minimum by NPPG16. RSPB would encourage that this be resolved by adjustments to the details of the proposed development through full and open consultation with the neighbouring community.

The application has been amended by the applicant to introduce a 500 metres separation distance between the excavation area and residential properties, in compliance with the limits suggested in NPPG16.

3.15 Muirkirk Community Council states that in principle it has no objections to the proposed development although it is concerned with the possible effects of blasting on memorials in Muirkirk Cemetery and houses in close proximity to the site. When many of the headstones in the cemetery were erected, it was never envisaged that opencast operations would be conducted in the vicinity, with the result that many headstones have little or no foundations. It is felt that in the interests of good relations, it would be in the interests of the applicant to undertake a survey of the cemetery to establish the present condition of the headstones prior to the commencement of operations and that the applicant agrees to repair any subsequent damage which can be attributable to blasting.

It is considered prudent for the applicant to undertake a survey of the condition of headstones within the cemetery and this survey can be secured through a Section 75 Agreement.

The Community Council also expresses concern regarding the properties adjacent to the proposed site. Many complaints of property damage have been received during the current operations at the Burnfoot Moor site and it is considered that a survey would establish the exact state of the properties at the current time. It would then make any future damage more easily attributable, which can only be to the benefit of all parties.

The applicant has indicated a willingness to arrange for structural surveys to be undertaken on a number of representative properties around the site boundary. This can also be secured through a Section 75 Agreement.

3.16 Scottish Natural Heritage does not object to the proposal as submitted but would comment as follows:

The proposed development site lies within approximately 1.5 kilometres of the boundary of the Muirkirk and North Lowther Uplands possible site of Scientific

Interest (pSSSI) and potential Special Protection Area (pSPA). The site's proximity to a pSPA under the EC Directive 79/409/EEC on the conservation of wild birds (The Birds Directive) means that the provisions of Scottish Office Circular 6/1995 apply. This sets out the obligations of the EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (The Habitats Directive) which applies a common protection regime to all European sites such that *“any plan or project likely to have a significant effect on a European site and which is not directly connected with or necessary to the management of that site must undergo an appropriate assessment as required by Article 6.3 of the Directive.”*

Noted

Under Regulation 48, East Ayrshire Council, as competent authority has a duty to determine whether the proposal is directly connected with or necessary to site management for conservation and if not, determine whether the proposal is likely to have a significant effect on the site individually or in combination with other plans or projects and if so, then make an appropriate assessment of the implications of the proposals for the site in view of that site's conservation interests. The competent authority can agree to the proposal after having ascertained that it will not adversely affect the integrity of the site. If this is not the case, the proposal can only be allowed to proceed if there are imperative reasons of over-riding public interest which can include those of a social or economic nature.

The Council as competent authority is of the view that the proposed development is not directly connected with or necessary to site management for conservation of the pSPA. Given that the pSPA extends to over 27,000 hectares and the proposed development does not directly impinge on the pSPA or pSSSI, it is considered that it will not significantly adversely affect the integrity of the pSPA.

SNH's advice to the Council is that the proposal is not directly connected with or necessary to site management for conservation. However, SNH considers that it is likely that no qualifying features will be affected significantly either directly or indirectly and an appropriate assessment is therefore not required. This view is offered notwithstanding some shortcomings in respect of the submitted Environmental Statement.

Noted.

In conclusion SNH offers no objection to the proposed development subject to the following matters:

- (i) the development is carried out strictly in accordance with the terms and conditions of the submitted plans;
- (ii) any modifications or amendments are notified to SNH prior to the acceptance of variations;

- (iii) the applicant enters into a Section 75 Agreement prior to the granting of planning permission in respect of (a) the development of an agreed restoration plan to incorporate all the elements presented in the restoration plan; (b) the long term commitment to the control of agricultural management after restoration to achieve conservation benefit; and (c) the development and implementation of an agreed monitoring and mitigation plan based on the detailed commitments provided in sections 4.8.19-24 of the Environmental Statement.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of SNH. In addition, it is considered that the establishment of a Technical Working Group for this site to monitor restoration and mitigation would assist in addressing the issues raised by SNH. This can be achieved through obligations within a Section 75 Agreement.

3.17 The River Ayr District Salmon Fishery Board has not responded to the consultation letter.

Noted.

3.18 The Health and Safety Executive has no objections to raise regarding the proposals. The site operator will be subject to the Health and Safety at Work etc. Act 1974 and to the requirements of the Quarries Regulations 1999 which came into force on 01 January 2000.

Noted.

HSE also states that a Prohibition Notice was served on the operator of the existing Burnfoot Moor site in 1998 prohibiting the carrying out of blasting operations thereat without the use of blasting nets due to the close proximity to the village. This followed a serious fly-rock incident at the site. The Planning Authority may consider that similar restrictions may be necessary within the extension area as part of the overall planning conditions.

While the proposed excavation area within the Bankend extension lies at a greater distance from residential properties than the existing Burnfoot Moor site, the applicant has indicated a willingness to utilise blasting nets. This can be formally secured through the imposition of an appropriate condition in any consent granted for the proposed development.

4. REPRESENTATIONS

4.1 A total of 55 letters of representation have been received objecting to the proposed development. The Scottish Wildlife Trust has also objected as indicated in section 3.7 above. A further 8 representation letters have been

received lending support for the development. A petition containing 297 signatures in support of the development has been received. The main points of objection are summarised as follows:

4.2 The proposed development is too near the village of Muirkirk.

The original proposals by the applicant have been amended to increase the separation distance between the limit of excavation and the nearest residential properties from 400 metres to 500 metres. This is consistent with the provisions of NPPG 16.

4.3 The proposed development will result in dust nuisance and will pose a risk to health.

The Environmental Statement promotes mitigation measures which should result in minimising any adverse impacts associated with dust. In terms of Environmental Management Systems, the applicant also proposes to implement a Dust Action Plan as a means of addressing weather related dust arisings. An appropriate dust monitoring scheme will be introduced to ensure that the operations comply with acceptable environmental standards. In such circumstances the risk to health should be minimal.

4.4 The proposed development will result in traffic problems and pollution.

With respect to the existing Burnfoot Moor site, coal traffic associated with the site travelled through Muirkirk village to access the A70 road, thereafter travelling west and east along this route to market or to the coal disposal point at Killoch. Under the present application for the Bankend extension area, it is proposed to construct a new access road into the existing site, west of the Smallburn residential estate. Consequently, there should be no coal laden lorries travelling through the village of Muirkirk. It is accepted that coal traffic from this site will travel through Lugar, Cumnock and Ochiltree on route to Killoch Disposal Point

4.5 The proposed development will devalue my property.

This is not a valid planning ground for objection to the proposed development.

4.6 The proposed development is too close to the cemetery.

It is accepted that the proximity of the extension area to Muirkirk Cemetery is a sensitive issue. However, with the increase in the separation distance from 400 metres to 500 metres, the provision of visual and acoustic screening and other mitigation measures, there should be no significant adverse impact on the cemetery. With

respect to blasting operations, these would generally be undertaken to a prescribed timetable. The defining of blasting hours can be the subject of consultation with the Parks and Cemeteries section to ensure that these operations will have minimal impact on the functioning of Muirkirk Cemetery.

4.7. The proposed development will result in visual intrusion and be detrimental to visual amenity.

Although commercial forestry within the Bankend extension area is to be harvested, there will be some retention of trees along the boundary of the site for visual screening purposes. Furthermore, it is intended to create a screening mound on the eastern boundary of the excavation site. With the exception of this feature there will be no other visually intrusive elements associated with the extension itself. Overburden excavated from the extension area will be stored on the existing overburden mound, this having a maximum height of 25 metres. It is further intended by the applicant to regrade the faces of the overburden mound and to seed them to minimise visual impact. While it is accepted that there will be some adverse impact on visual amenity, this will not be significant and will be short term in nature. This has to be balanced against the positive benefits to landscape and visual amenity accrued through the proposed restoration scheme for the site.

4.8 Blasting operations will present a danger to the community.

It is considered that the 500 metre separation distance, together with the use of blasting nets advocated by the Health and Safety Executive, should result in no danger to residents in Muirkirk as a result of blasting operations.

4.9 The blasting operations will cause damage to residential and other properties.

It is considered that the 500 metre separation distance, together with the imposition of conditions relating to appropriate vibration limits, should not result in damage to residential and other properties as a result of blasting operations. The applicant has indicated a willingness to undertake structural surveys of a number of representative properties on which any future claims of damage attributable to blasting operations can be assessed.

4.10 One of my main concerns is the stability of headstones within the cemetery, some of which are in excess of 1 ton in weight. The applicant states that vibration would not affect these stones and there is more danger to them from wind. Has the applicant seen the state of the foundations of some of these stones? This could result in the stability of the headstones being compromised and lead to injury.

It is considered prudent for the applicant to undertake a survey of the condition of headstones within the cemetery and this survey can be secured through a Section 75 Agreement.

4.11 A cemetery is a place where one goes for quiet contemplation and for memories. Are the people of Muirkirk to be deprived of this right and will the applicant halt production before, during and after a funeral?

It is considered that while this is a sensitive community issue, the operation of the extended site can be undertaken without significant impact on the amenity of the cemetery. The defining of blasting hours can be the subject of consultation with the Parks and Cemeteries section to ensure that these operations will have minimal impact on the functioning of Muirkirk Cemetery.

4.12 The proposed extension site lies outwith the potential coal extraction area identified in the East Ayrshire Opencast Coal Subject Plan.

The extension site does not lie within the identified potential coal extraction areas in the subject plan. However, the Subject Plan indicates that subject to certain criteria being met, short term, small scale proposals may be acceptable outwith these areas. This is more fully addressed in section 5 of this report.

4.13 The Vincent Wildlife Trust state that otters are present in the application site as well as water voles. It is a criminal offence to disturb otters. Several species of birds on the 'red list' for protection are in the area of the extension. Birds on the 'amber list' for high conservation concern are also present.

The application site does not contain or impinge upon any statutory or non-statutory wildlife interests. Neither SNH nor RSPB raise any objection to the proposed development. The applicant recognises the potential ecological value of the extension site and has put forward recommendations and mitigation measures which have been endorsed by RSPB.

4.14 The applicant has not indicated any market for this coal.

The provisions of National Planning Policy Guideline 16: Opencast Coal and Related Minerals indicate that it is not for Planning Authorities to regulate the markets for coal and that it is for individual operators to determine the level of production they wish to aim for in light of market conditions. In this regard the identification of a market for the coal is considered unnecessary and is not a material consideration in the determination of this application.

4.15 Community benefits in the form of Trust Funds are minuscule in value in comparison to the profits of the mining companies and do not prevent or offset the harm done to communities.

Contributions to the Mineral Trust Fund are not material to the consideration and determination of this application.

4.16 The present Burnfoot Moor site has worked for approximately 3 years. The proposed extension is for a further 3 years production plus 1 year restoration. This will cause perpetual disturbance to local communities for a period in excess of 5 years.

The original proposal have been amended such that the proposed extension area will be worked in a shorter timescale on a reduced site area. This will result in a total of two years added to the life of the existing Burnfoot Moor site, consent for which is not due to expire until July 2002. This disbenefit of this extended timescale will require to be considered against any benefits, socio-economic, environmental or community based, which may result from the proposed development.

4.17 Muirkirk is being promoted as an area of tourism and the proposed development will adversely affect tourist interests in Muirkirk.

Given the short term, non-permanent nature of the proposed development, it is considered that there will be no adverse impact on tourism within the Muirkirk area. The proposed restoration scheme for the site will result in landscape and wildlife habitat enhancement with increased access to the surrounding area. It is considered that there could be a longer term positive benefit to tourism as a result of the proposed development.

4.18 Too many sites are currently in production in the River Ayr basin. The extension in addition to other proposed sites will lead to the pollution of controlled waters, especially during the Summer low water level months.

Since the submission of the present application, coaling has ceased at Airdsgreen/ Viaduct OCCS and Tardoes is presently undergoing restoration. A further site at Spireslack has been approved but is not yet in operation. The only site currently in production is the Gasswater OCCS. No objections have been raised by SEPA in respect of pollution of controlled waters.

4.19 The proposed extension does not meet the conservation of landscape features by removing existing woodland and tree features and replacing them with soil bunds.

The existing woodland is a commercial coniferous plantation which would eventually be harvested for its timber. The proposed

development will see the majority of this being removed while partly retaining areas for screening purposes. On completion of the extension area, all of the commercial timber crop will be removed and replaced by a mixture of broadleaf, indigenous woodland. The applicant has already undertaken, in conjunction with East Ayrshire Woodlands, advance tree planting around the application site. It is considered that this will be of greater long term value to the Muirkirk landscape than that offered by coniferous woodland destined for cropping.

4.20 There are huge stockpiles of coal, so there is no need for new sites, as those which have permission already hold reserves which will last for a number of years. What kind of market is there for Scottish coal in view of the known oversupply?

The provisions of National Planning Policy Guideline 16: Opencast Coal and Related Minerals indicate that it is not for Planning Authorities to regulate the markets for coal and that it is for individual operators to determine the level of production they wish to aim for in light of market conditions.

4.21 The Cumnock and Doon Valley District is very deprived and the concentration of opencast activity to the exclusion of everything else is not even going to make a dent in these problems. The area is one of the worst in terms of chronic long term unemployment in the UK. The landscape is being desecrated for the sake of a few hundred temporary jobs.

The opencast industry within East Ayrshire has, over a considerable number of years, sustained a significant level of employment both direct and indirect with considerable socio-economic benefits for local communities. In the absence of a sustainable opencast industry, chronic long term unemployment would be at a higher level.

4.22 East Ayrshire Council should take heed of the cumulative effect on local people's health as a result of so much opencast mining. In health matters, as in the environment, we should be prepared to adopt the precautionary principle.

The Planning Authority has to determine applications on the basis of current best practice, environmental information and government advice. In relation to opencast mining, there is currently no convincing evidence to support the suggestion that air pollution from opencast mining may have a detrimental effect upon the health of those living in proximity to sites. Further research has been commissioned by the Government, the result of which has recently been published. However, further advice has not yet been issued in respect of this research.

4.23 The proposed operations will destroy a nationally important blanket bog.

The application site does not contain or impinge upon any statutory or non-statutory wildlife interests or nature conservation interests. Neither SNH nor RSPB raise any objection to the proposed development. The applicant has submitted proposals which seek to protect the areas of blanket bog and through the restoration proposals, promotes opportunities for habitat enhancement and creation.

4.24 MEGA objects to the proposed development being so close to Muirkirk. The proposal is contrary to Policies MIN21 and MIN22 of the finalised opencast coal subject plan.

Since the submission of the objection, the applicant has submitted amended plans which have resulted in the extraction area being located a minimum distance of 500 metres from residential property in line with the guidance contained within NPPG16. The resulting policy implications are considered fully within section 5 of this report.

4.25 The proposed development will result in the delayed restoration of the existing Burnfoot Moor site.

The proposed development will delay the restoration of the areas to be retained for overburden storage and site infrastructure relative to the Bankend extension area. The remaining part of the site, particularly the area closest to the Smallburn estate, will be fully restored by Summer 2001. It should be noted that the existing consent for the Burnfoot Moor site does not expire until July 2002 and the coals contained within Cut 1 can still be extracted under the existing consent for the site.

4.26 Adding to the existing overburden mound up to a height of 25 metres will have an adverse visual effect particularly with respect to long views from the south across the valley. Given the severity of weather, MEGA believes that there is greater potential for dust blow and slippage.

Any adverse visual impact will be temporary in nature. Mitigation measures promoted through the Environmental Statement will result in the overburden mound being regraded with the faces seeded in grass to minimise visual impact and to minimise potential dust nuisance. The overburden area is also located within the visual screen provided by the existing Burnfoot Moor plantation.

4.27 MEGA objects to work commencing at 7am as this will cause disturbance to residents nearby who are sleeping. A 12 hour working day is also an unacceptable bad neighbour development.

The proposed working hours of the site are standard for the industry, are within recognised day time hours, and reflect the working hours of the existing Burnfoot Moor site. It is however considered that in order to provide some respite from early morning activity, Saturday working should be confined to between 8:00am to 1:00pm. Apart from essential maintenance no work shall be carried out on Sundays.

4.28 MEGA objects to any dispatch of coal occurring before 8:00am and after 5:00pm. The effect of 1 HGV every 5 minutes for 12 hours a day is unacceptable approximately 100 metres from houses in Smallburn.

Hours of coal dispatch from opencast sites have been generally applied in a consistent manner and in this regard, it is considered that the hours of dispatch should be confined to between 8 am. until 6 pm. Mondays to Fridays with no dispatch of coal on Saturdays or Sundays. Appropriate mitigation measures are proposed to minimise traffic impacts associated with the development. The new access road will avoid the routing of HGV's associated with the extended site through Muirkirk village itself.

4.29 MEGA objects to further 40 tonne HGV lorries using Welltrees Bridge which has a structural capacity of 3 tonnes.

There is no weight restriction applicable for normal traffic on Welltrees Bridge and this includes 40 tonne HGV lorries.

4.30 If the company went into liquidation who would be responsible for restoration?

Should consent be granted for the proposed extension, the applicant will be required to lodge an appropriate restoration bond with the Council in order to secure site restoration in the event of default.

4.31 MEGA objects to the installation of a coal preparation area so close to residential properties.

With the presence of the existing coniferous tree belt located between the proposed site infrastructure and houses to the north of Smallburn, it is considered that there will be no significant adverse impacts arising through noise or dust nuisance, taking account of the mitigation measures proposed in the Environmental Statement.

4.32 MEGA notes that the applicant only proposes to divert one right of way. Under the Coal Act, there is a duty to divert all rights of way.

Only one right of way is directly affected by the proposed development and a temporary diversion is proposed. On restoration of the site, this will be re-instated and improved access will be provided to this overall Burnfoot Moor site.

4.33 MEGA objects to the lack of details of possible blasting times.

Blasting hours will be set out in a standard condition. In addition they will be the subject of consultation with the Parks and Cemeteries Section to ensure that these operations will have minimal impact on the functioning of Muirkirk Cemetery.

4.34 MEGA objects to increased coal traffic on the 'sub-standard' A70 particularly when HGV's have to travel 15 miles over this road through Lugar, Cumnock and Ochiltree to Killoch.

The Roads Division has not expressed any concerns with respect to the capacity of the A70 road to cope with traffic associated with the proposed development.

4.35 The proposed site lies outwith a Preferred Area in terms of the Structure Plan and outwith the potential opencast coal areas in the finalised East Ayrshire Opencast Coal Subject Plan.

The extension site does not lie within a preferred area of search as indicated in the structure plan or within the identified potential coal extraction areas in the subject plan. However, both plans indicate that subject to certain criteria being met, short term, small scale proposals may be acceptable outwith these areas. This is more fully addressed in section 5 of this report.

4.36 The applicant mentions a 'sticky paper' system for dust monitoring. This is a crude and inaccurate system and is not suitable in an area of high rainfall and moisture content. It should be a metered air system through a filter as this would be more reliable.

The dust monitoring scheme, including the equipment to be used in monitoring, will be agreed with the applicant in consultation with the Environmental Health Division.

4.37 The people of Middlefield Drive will be the ones who suffer most from any new opencast to the west. No proper study has been made of hazards such as airborne dust and chemical particles, noise pollution and rodent infestation of their houses.

The planning application has been accompanied by a comprehensive Environmental Statement which considers the potential for adverse impacts referred to by the objector. The ES promotes mitigation measures to ensure that any adverse impacts

are removed or minimised to acceptable environmental standards. It does not however address any potential impacts associated with rodent infestation, which has not been identified by any consultee as a potential adverse impact associated with the proposed development.

4.38 The letters and petition in support of the proposed development refer in the main to the employment opportunities, both direct and indirect, associated with the proposals.

Noted.

5. DEVELOPMENT PLAN STATUS

5.1 The relevant policy document is now the modified East Ayrshire Council Opencast Coal Subject Plan which was approved by the Council on 18 May 2000 and the application now requires to be fully assessed against the principles promoted within this modified plan. Note that in the following paragraphs some of the Policies are summarised..

(i) Policy MIN1: All future opencast coal developments will be directed towards and limited to 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.

The application site does not fall within the Potential Coal Extraction Areas as identified within the Subject Plan. Unless the proposed development can conform to the provisions of Policy MIN2, then the proposals will be contrary to the provisions of Policy MIN1.

(ii) Policy MIN2: 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:

(a) there is clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction;

The proposed development will result in the removal of small areas of derelict land associated with the former Muirend Mine and opencast workings, and also lead to the improvement of degraded land in the restoration of the site. The proposals are considered to be short term and small scale. The restoration of the existing Burnfoot Moor site will be partially delayed but the overall

restoration scheme for the development site should deliver net environmental gain through wildlife habit creation and provision.

- (b) there is an overall benefit for communities affected including local employment; and

The re-establishment of around 28 jobs associated with the Bankend extension will provide significant socio-economic benefits, both directly and indirectly, to the local area. The site has been subject to previous deep mining and opencast development and the proposals will result in small areas of dereliction being removed. In addition, the site is considered to partly consist of degraded land as a result of the previous mining history and restoration proposals will result in net environmental and landscape character improvement .

- (c) there are no conflicts with any other Subject Plan Policies.

'Small scale' proposals relate to proposals of less than 25ha of total site area. In this respect, the amended site area of the Bankend extension is 19.7 hectares. 'Short term' proposals relate to proposals with a total extraction and restoration period of less than 2 years'. The operations proposed will take 3½ years to complete. However, it should be noted that the proposals include working of the Cut 1 area of the original Burnfoot Moor site which can be exploited in terms of the original Burnfoot Moor consent. The proposed Bankend extension will not extend the consented timescale by more than 2 years.

The implementation of the proposed development will result in both environmental and community benefits. In this respect it is considered that the proposals are consistent with subject plan policy.

- (iii) Policy MIN3: Outwith the Potential Coal Extraction Areas, the Council will assess any extension to an existing opencast site on its own merits and against the following criteria:

- (a) 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;

The proposed development will be carried out as a sequential phase of development following on from the existing consented Cut 1 area of the original site.

- (b) that the extended operations utilise fully the facilities and site infrastructure serving the original opencast site; and

The proposed development will result in the use of existing Burnfoot Moor site facilities in respect of the overburden and soil storage areas. Water treatment facilities will also be used while new provision is to be made for site offices, coal preparation area and new site access. In respect of the new site access, it is considered that this is more acceptable in environmental terms, as no coal laden traffic will require to travel through Muirkirk village.

- (c) 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.

Output from the site will be in the region of 7000 tonnes of coal per week, as opposed to the 5000 tonnes per week extraction rate for the original Burnfoot Moor site. Traffic generated will also be greater rising from 60 movements to 94 movements per day. While the scale of production and traffic generated will be higher the impact of this traffic flow will, however, be mitigated by the provision of a new access bypassing the village of Muirkirk and coincides with reduced traffic flows from other sites within the Muirkirk Valley.

The Council will only be supportive of such developments where, additionally:-

- (d) there is a clearly demonstration environmental benefit to be achieved through the removal of existing areas of dereliction;

Comments as per Policy MIN2(a) above.

- (e) there is an overall benefit for communities affected, including local employment; and

Comments as per Policy MIN2(b) above.

- (f) there are no conflicts with any other Subject Plan Policies.

Comments as per Policy MIN2(c) above.

- (g) Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a period substantially in excess of 5 years will not 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.

With the extension period the Burnfoot Moor site will have been in operation for 8 years from 1996. Because, however, the original operations are permitted to run until July 2002, the extension period is only 2 years. This is not considered to be a substantial increase relative to the previously approved period. It is considered that the development will result in over-riding local community and environmental benefits as detailed elsewhere.

(iv) Policy MIN4 : 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:-

(a) the impact on agricultural land quality, the landscape character and visual amenity of the area, and the natural and built environment;

With respect to statutory and non-statutory consultations, only one objection has been received from the Scottish Wildlife Trust mainly relating to the impact on an area of blanket bog. The proposed development mainly avoids this area and the proposed restoration scheme for the site seeks to enhance the ecological value of the bog and other areas within the site through restrictive drainage practices. It is accepted that there will be adverse impacts with respect to landscape character and visual amenity. However, these will be short term in nature and it is considered that through the positive restoration and aftercare proposals for the site, there will be overall significant improvement to the landscape character and visual amenity of the area, extending beyond the application site itself. Apart from protection measures suggested for the Long Stone of Convention, there are no built heritage issues associated with the proposed development.

(b) the impact on the area of noise, dust and the contamination of ground and surface water and air quality;

With the mitigation measures proposed within the Environmental Statement, the imposition of appropriate planning and the establishment of appropriate environmental monitoring systems, it is considered that the proposed development can operate within environmentally acceptable standards relating to noise, dust, vibration, air quality and water quality.

(c) the impact of the development on local communities, groups of houses and individual dwellings;

A significant number of objections were received on environmental and amenity grounds, particularly in relation to the separation distance between the site working and residential and other

properties. Amended plans have been submitted which, in the main, seek to comply fully with the provisions of NPPG16. A separation distance of 500 metres from the excavation area is now proposed. It is considered that the principle amenity objection has been addressed by the applicant and that other matters of environmental concern can be addressed through the implementation of the mitigation measures advocated within the Environmental Statement.

(d) 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;

It is considered that through the positive restoration and aftercare proposals for the site, there will be overall significant improvement to the landscape character and visual amenity of the area, extending beyond the application site itself. With the permanent removal of a substantial area of coniferous plantation, the proposed restoration of the site will promote greater opportunities for wildlife and habit creation. Furthermore, the proposed development will result in the removal of small areas of derelict land associated with the former Muirend Mine and opencast workings, and also lead to the improvement of degraded land in the restoration of the site.

(e) the opportunities to maximise transportation by rail;

The nearest available railhead is the Killoch Disposal Point to the west of Ochiltree. Given the scale and short term nature of the proposed extension operations, the provision of a dedicated railhead facility is not considered feasible or appropriate. This will result in coal traffic passing through Lugar, Cumnock and Ochiltree. The applicant has, however, indicated a willingness to pursue access to the proposed railhead at Gasswater, if this is constructed before coaling has finished.

(f) any cumulative impact of the proposal in association with other existing or proposed opencast developments in the area;

The cumulative effects of development are discussed fully under Policy MIN12 below.

(g) any impact on other inward investment opportunities in the area;

It is considered that the proposed development will not have any significant impact on inward investment opportunities in the Muirkirk area.

(h) the period of extraction.

The proposed development will result in an extension of operations for a further two years beyond the existing timescale for operations at Burnfoot Moor. The proposals are considered to be short term in nature.

(v) Policy MIN5: Outline planning applications will not be accepted by the Council.

The submitted application for the Bankend extension to the Burnfoot Moor site is a detailed application.

(vi) Policy MIN6 : The Council will require all opencast coal operators, when submitting their extraction proposals to the Council for consideration, to support their planning application:-

(a) with information which addresses all the issues highlighted elsewhere in the Subject Plan; and

(b) with information which indicates their understanding of the location of coal reserves in surrounding land; and

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

The applicant has not provided information in respect of the location of coal reserves in surrounding land or likely future extensions to current sites and future adjacent sites. 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.

(vii) POLICY MIN 7: All applicants for opencast coal developments will be required to demonstrate conclusively to the Council that their proposals will not pose a potential risk to the amenity of communities or to the local environment. 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:-

(a) 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:-

(b) whether the proposal provides any local or community benefits related to the proposal which sufficiently outweigh any material risk of disturbance or environmental damage.

With the mitigation measures proposed within the Environmental Statement, the imposition of appropriate planning and the establishment of appropriate environmental monitoring systems, it is considered that the proposed development can operate within environmentally acceptable standards. Notwithstanding this, it is considered that the re-establishment of around 28 jobs associated with the Bankend extension will provide significant socio-economic benefits, both directly and indirectly, to the local area. The site has been subject to previous deep mining and opencast development and the proposals will result in small areas of dereliction being removed and restoration proposals will result in net environmental and landscape character improvement. It is considered that such benefits sufficiently outweigh any minor adverse temporary impacts associated with the development.

(viii) Policy MIN8 : 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.

The planning application for the Bankend extension is accompanied by a comprehensive Environmental Statement.

(ix) Policy MIN10 : 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 applicant has indicated that fireclays may be present within the site and if identified marketable fireclays are encountered, these will be recovered. Similarly, limestone encountered will also be recovered if of marketable quality. No workable reserves of sand and gravel are present on site.

(x) Policy MIN11 : 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.

The applicant has indicated that the peat present on the site is not of marketable quality. A condition can be attached to any consent granted for the development to ensure retention of peat for restoration purposes.

(xi) POLICY MIN 12: 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 geographical area does not occur. 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:

- (a) constitute a third 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;

At present there are two other operational sites within 3 kilometres of Muirkirk. The Airdsgreen/Viaduct site lies 3 kilometres to the east and coaling operations on this site have now ceased. Operations on the Spireslack site have not yet commenced, but this site lies outwith 3 kilometres of Muirkirk. Tardoes lies adjacent to the settlement but coaling operations have also ceased on this site and restoration is underway. As an extension to the existing Burnfoot Moor site the proposal would not increase the number of operational sites beyond 3.

The total time of operations at Burnfoot and Tardoes will be less than 10 years. Airdsgreen was operational from an earlier date. But most of these operations were located over 3 kilometres beyond Muirkirk.

- (b) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from successive opencast operations over an extended extraction period in excess of 10 years;

- (c) 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.

In terms of traffic impact, the proposed new site access would remove HGV movements through Muirkirk itself. As traffic associated with other sites which have ceased coaling has been removed from haulage routes, it is further considered that there would be no unacceptable detriment to communities located along the haul route.

- (d) 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 such areas.

The proposed development will not impinge upon any international or nationally designated sites of nature conservation interest. Neither SNH nor RSPB has objected to the proposed development.

(xii) Policy MIN13 : Planning applications to contain details of operational procedures including restoration proposals and aftercare.

Full details of the method of working, restoration and aftercare proposals are contained within the Environmental Statement and the planning application.

(xiii) Policy MIN15: All developers are required to progressively restore their operational sites 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.

Progressive restoration during the course of operations is to be undertaken on site. Provision can be made within a Section 75 Agreement to ensure positive restoration of the site in the interests of habitat mitigation and enhancement as indicated by RSPB and SNH.

(xiv) Policy MIN16: Requirement to re-instate rights of way and provide improved access to restored sites for local communities.

One right of way is directly affected by the proposed development and the applicant proposes a temporary diversion. This right of way is to be re-instated on restoration of the site with proposals for improved access overall in the restored areas.

(xv) Policy MIN17: Developers required to submit detailed restoration and aftercare plans with their submitted applications.

Detailed restoration and aftercare plans have been submitted as part of both the planning application and the Environmental Statement. The implementation of the site restoration and aftercare proposals will be monitored through the establishment of a Technical Support Group with input from representatives of SNH and RSPB. This will be secured through any Section 75 Agreement for the site.

(xvi) Policy MIN18: Operators will be strongly encouraged to transport coal by rail 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 nearest available railhead is the Killoch Disposal Point to the west of Ochiltree. Given the scale and short term nature of the proposed extension operations, the provision of a dedicated railhead facility is not considered feasible or appropriate. This will result in coal traffic passing through Lugar, Cumnock and Ochiltree. The applicant has, however, indicated a willingness to pursue access to the proposed railhead at Gasswater.

(xvii) Policy MIN20: Haulage of opencast coal on the public road system to be along clearly defined haulage routes agreed with the Council. With the exception of the 'A' Class Roads throughout East Ayrshire, opencast operators will be required, at their own expense, to bring all roads used by their haulage vehicles up to an acceptable standard for haulage purposes, prior to the use of the route for dispatch purposes. Requirement for operators to pay for any necessary upgrading and maintenance of routes used by opencast traffic.

Coal is to be transported to the Killoch Coal Disposal Point with vehicles travelling along the A70 road. Provision for recovery of extraordinary road maintenance costs attributable to the proposed development will be made in any Section 75 Agreement for the site which will also define routes to be used.

(xviii) Policy MIN21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

- (a) to ensure the highest possible operational standards for the transportation of extracted minerals;
- (b) to ensure best operational practice regarding road safety and operational matters;
- (c) 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;
- (d) to audit and record operational details of the transportation of coal on a regular basis; and
- (e) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

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

The applicant has indicated a willingness to enter into a Section 75 Agreement in respect of these matters and a willingness to subscribe to the protocol which will be included as part of any Section 75 Agreement.

(xix) Policy MIN22: Consideration of impact of proposed opencast development on local communities to be given by developers.

The Environmental Statement considers the potential impacts that the proposed development will have on residential properties in proximity to the site as well as the impact on nearby communities. The amended proposals submitted by the applicant seek to minimise such impacts.

(xx) Policy MIN23: Requirement for developers to carry out structural surveys of nearby residential properties if considered necessary.

The applicant has indicated a willingness to undertake such surveys if necessary and this can be incorporated within a Section 75 Agreement.

(xxi) Policy MIN 24: In order to ensure that opencast coal operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council may consider opencast developments unacceptable where:-

- (a) a development has a working face or operational areas relating to the storage, processing or dispatch of coal which encroach within 500 metres of the community concerned, or
- (b) storage mounds, landscaping bunds or settlement lagoons are located within 100 metres of the community concerned, or
- (c) the proposal involves a substantial area for extraction over an extended extraction period in excess of ten years, or
- (d) the proposal is likely to be subject to repeated extensions, perpetuating disturbance to local communities for a period substantially longer than five years.

The applicant has submitted amended proposals which have resulted in a separation distance of 500 metres between the limit of excavations and sensitive residential properties. A screen bund is to be located within the 500 separation distance but this is a mitigation feature designed to reduce and minimise visual, dust and noise impacts. This screen bund will be located some 410 metres from the nearest residential properties in Middlefield Drive. No extraction of coal will now take place within 500 metres of residential properties apart from the coals in Cut 1 which lie within

400 metres of residential properties. However these coals can be extracted in terms of the current consent for Burnfoot Moor. The applicant's amended proposals are generally in compliance with NPPG16. The extension proposal will extend the life of the site by two years overall. The applicant has indicated that there are no proposals to further extend the Burnfoot Moor site.

(xxii) Policy MIN26 : 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 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;

It is considered that the development will result in over-riding local community and environmental 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;

With the mitigation measures proposed within the Environmental Statement, the imposition of appropriate planning and the establishment of appropriate environmental monitoring systems, it is considered that the proposed development can operate within environmentally acceptable standards.

(iii) the total period of extraction and restoration within the 500 metre buffer zone does not exceed a period of 12 months;

No extraction of coal will now take place within 500 metres of residential properties apart from the coals in Cut 1 which lie within 400 metres of residential properties. However these coals can be extracted in terms of the current consent for Burnfoot Moor.

(iv) the proposed extraction does not involve any blasting operations within the 500 metre buffer zone; and

Blasting may take place in Cut 1 which lies within 400 metres of residential properties. However these coals can be extracted in terms of the current consent for Burnfoot Moor.

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

The proposed development does not encroach within 100 metres of any residential properties or other sensitive establishments.

(xxiii) Policy MIN27: Protection of areas of nature conservation interest from adverse effects of opencasting.

Although the Scottish Wildlife Trust has objected to the proposed extension to the Burnfoot Moor site, there are no areas of statutory or non-statutory nature conservation interest within the application site. There are no objections from RSPB or SNH. The proposed operations at the Burnfoot Moor extension will therefore not conflict with the provisions of Policy MIN27.

(xxiv) Policy MIN28: Protection of built heritage resources and the natural environment from adverse opencast proposals.

The proposals would not conflict with policy. The site of the Long Stone of Convention site is not impinged upon as a result of the proposed development

(xxv) Policies MIN29 and MIN31: Protection of landscape value and quality of areas from opencast developments.

The Environmental Statement for the Burnfoot Moor extension incorporates a comprehensive section on visual and landscape impacts. The Environmental Impact Assessment process has recognised that mitigation is required to avoid or reduce visual and landscape impacts from identified locations. Such impacts are considered to be temporary in nature.

(xxvi) Policy MIN30: Protection of existing rural tourism, leisure and recreational resources and facilities.

The proposed development will not adversely affect the physical setting, operational viability or recreational quality of any specific site or resource considered to be important to the local community.

(xxv) Policy MIN33: 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.

The applicant has indicated a willingness to enter into a Section 75 Agreement in respect of the matters contained within Policy MIN33.

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

The applicant has indicated a willingness to contribute to the Minerals Trust.

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

The applicant is willing to provide necessary Restoration and Aftercare Bonds with respect to the proposed development.

(xxviii) Policy MIN38 : Establishment of liaison committees.

The applicant has indicated a willingness to re-establish the existing Burnfoot Moor Liaison Committee.

5.2 In terms of the adopted development plan the application site falls within the Muirkirk Local Plan area. In the Muirkirk Local Plan the proposal is affected by policies which have now been superseded for the purposes of assessing opencast coal developments.

Noted.

5.3 The finalised East Ayrshire Local Plan also includes mineral policies but indicates that the appropriate policies for opencast coal are those identified in the Opencast Coal Subject Plan.

Noted.

5.4 The development requires also to be assessed against the Ayrshire Joint Structure Plan and in particular Policy E14 which states that development opportunities for opencast coal working shall be directed to Preferred Areas of Search.

The proposed extension site does not lie within a Preferred Area of Search. However, under the provisions of Policy E14B, outwith the Preferred Areas of Search, opencast coal working shall not conform to the structure plan except where there is clearly demonstrated environmental benefit achieved through the removal of existing areas of dereliction and there is overall benefit for communities affected, including local employment. In these circumstances, proposals for small-scale, short-term extraction

shall be supported. The proposed development will result in the removal of small areas of derelict land associated with the former Muirend Mine and opencast workings together with the improvement of degraded land in the restoration of the site. The proposals are short term and small scale and will result in both environmental and community benefits. In this respect it is considered that the proposal is consistent with structure plan policy.

6. OTHER PLANNING CONSIDERATIONS

6.1 Recent guidance on opencast coal extraction has been given in National Planning Policy Guideline 16: Opencast Coal and Related Minerals. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coal may take place.

The Burnfoot Moor extension proposals have been assessed against the benefits and disbenefits to communities and the environment and it is considered that the proposal is environmentally acceptable, taking into account the use of planning conditions and agreements which would offset or mitigate adverse impacts.

6.2 Many of the provisions of NPPG 16 are addressed within the finalised East Ayrshire Opencast Coal Subject Plan with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport.

These issues have been addressed fully in Section 5 of the report. The applicant has submitted amended proposals which have been designed to comply fully with the provisions of NPPG16.

6.3 In terms of the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No.2) Direction 1998, certain categories of opencast development require to be formally notified to the Scottish Ministers should the Planning Authority be minded to approve opencast proposals.

As the combined Burnfoot Moor extension site and the existing site is less than 100 hectares in area, albeit there are three other sites operating within 5 kilometres of the proposed site, then the application will not require to be notified to the Scottish Ministers in terms of the Order.

6.4 Planning History : CD/94/300/MIN : Full planning consent was granted on for the extraction of coal by opencast method at Burnfoot Moor on 17 April 1996. A subsequent application for an amendment to the haulage route was approved by the Development Services Committee on 23 September 1998 (Ref. No.

97/0749/FL). This was subject to a Section 75 Agreement which has not been concluded with the Burnfoot Moor site operator.

6.5 Operations at the current Burnfoot Moor site were the subject of an investigation by the Health and Safety Executive as a result of a fly rock incident. The new application will result in all blasting operations taking place at a substantially greater distance from any properties. The safety provisions required by the Health and Safety Executive will be incorporated into conditions.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Should the Council agree to approve the application, this would necessitate the Council entering into a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 with the applicant and adjoining land owners to secure obligations on the developer as detailed below in section 8.9 of this report.

8. CONCLUSIONS

8.1 In terms of planning policy, the proposals would result in departures from MIN3 (a, b and g).

It is considered that the departures from the finalised Opencast Coal Subject Plan (as modified) are minor in nature and justification for departure can be made in respect of mitigating factors and the over-riding environmental and community benefits accruing from the development. The Opencast Coal Subject Plan has been modified to conform with NPPG 16.

8.2 The submitted Environmental Statement indicates that the site can operate to environmentally acceptable standards subject to the implementation of appropriate mitigation and application of appropriate planning conditions.

8.3 Apart from an objection raised by the Scottish Wildlife Trust, there are no significant consultee objections or concerns with respect to the proposed development. Although the Scottish Wildlife Trust has objected to the proposed development, the Bankend extension site does not contain or impinge upon any statutory or non-statutory sites of nature conservation interest. However, it is significant that neither Scottish Natural Heritage nor the Royal Society for the Protection of Birds objects to the proposed development subject to appropriate restoration which would provide net environmental gains.

8.4 The proposed development has attracted a significant level of objection of which the principal concern is the proximity of the site to residential properties. In this regard the amended proposals by the applicant has increased the separation distance to meet NPPG16 guidelines. The other significant concern

relates to Muirkirk Cemetery and again with the increase in the separation distance and the introduction of the acoustic and visual screening bund, adverse impacts should be minimised. The issue of blasting potentially affecting the functioning of the cemetery can be resolved through the establishment of blasting hours in consultation with the Parks and Cemeteries Section.

8.5 The removal of previous dereliction and improvement of degraded land through the restoration process is considered to deliver net environmental gains. Equally the re-establishment of 28 jobs within the Muirkirk area is also of significant socio-economic importance, given the cessation of coaling operations on other sites in the locality in an area of high unemployment.

8.6 The extension area is relatively small (19.7 hectares) and is short term and the operations should not create any greater impacts than those associated with the existing site. The new access road will avoid the need for coal laden lorries to travel through Muirkirk village itself.

8.7 It is considered that the development is environmentally acceptable, taking account of the use of planning conditions and appropriate agreements to offset or mitigate the short term adverse impacts identified. It is further considered that there are local and community benefits related to the proposal which sufficiently outweigh any material risk of disturbance or environmental damage or minor conflict with policy considerations.

8.8 In respect of all relevant matters and material considerations to be taken into account, it is considered that there over-riding environmental and community benefits which would outweigh any adverse impacts or minor contravention of the Opencast Coal Subject Plan. Consequently it is considered that the application should be approved. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the appropriate Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, covering the following matters, has been duly concluded :

Section 75 Agreement

(i) A Restoration Bond set at the rate of £25,000 per hectare of disturbed land, subject to a maximum of £2.5 million, with a sum of £5,000 per hectare being retained following earth-moving and engineering aspects of restoration in the form of an Aftercare Bond.

(ii) The undertaking of structural surveys of residential properties and of headstones within Muirkirk Cemetery, in consultation with the applicant, the Planning Authority and the Environmental Health Division.

(iii) The re-establishment of the site liaison committee for the Burnfoot Moor site, the composition of which shall be the subject of discussion between the applicant and the Planning Authority.

(iv) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate ;

(v) The setting up of noise, dust and vibration monitoring programmes for the Burnfoot Moor extension site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;

(vi) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the Burnfoot Moor extension site ;

(vii) The establishment of a Technical Support Group to oversee the progressive restoration of the site to ensure appropriate opportunities for habitat creation and enhancement. The Technical Support Group shall include representatives from SNH, RSPB and the Planning Authority;

(viii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement which accompanied the planning application;

(ix) Provision and maintenance of visibility splay areas associated with the proposed site access;

(x) The subscription of the applicant to the Council's Transportation Protocol;

(xi) The definition of agreed dispatch routes for minerals taken off site with an in-built mechanism for flexibility to take account of market conditions;

(xii) The erection of fencing around the Long Stone of Convention to prevent encroachment or damage by plant and machinery associated with the development.

(xiii) The undertaking by the applicant to pay to the Council, in the event of the Council incurring any extraordinary expense with the maintenance of the A70 road, so much of the expenses of maintaining this road attributable to damage caused by heavy vehicles operated by the applicant, all in terms of the Roads (Scotland) Act, 1984.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions on the attached sheets and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal agreement under Section 75 of the Town and

Country Planning (Scotland) Act 1997 with the applicant and other land owners requiring to be parties to the agreement in respect of the matters described in Section 8.8 of this report.

Stephen Chorley
Director of Development Services

1 June 2000
SC/HM/JR
Rev2

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Environmental Statement.
4. Representation Letters.
5. Consultation Responses.
6. East Ayrshire Local Plan (finalised)
7. East Ayrshire Opencast Subject Plan (finalised and modified)
8. Ayrshire Joint Structure Plan (approved)
9. Muirkirk Local Plan (adopted)
10. NPPG16 : Opencast Coal and Related Minerals
11. PAN50 : Controlling Environmental Effects of Surface Mineral Workings (Annexes A, B, C and D)
12. Previous applications CD/94/0300/MIN and 97/0749/FL.

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

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE : 06 JUNE 2000

99/0791/FL: WINNING AND WORKING OF COAL BY SURFACE MINING METHODS AND RESTORATION OF THOSE AREAS TO A MIXTURE OF WOODLAND AND MOORLAND AS EXTENSION TO BURNFOOT MOOR OPENCAST SITE (AMENDED APPLICATION)

APPLICATION BY R.J.B. MINING (UK) LIMITED

EXECUTIVE SUMMARY SHEET

1 DEVELOPMENT DESCRIPTION

1.1 Site Description: The proposed development site lies immediately north of Muirkirk village, extending from north of the Smallburn residential estate in the western part of Muirkirk towards Middlefield Drive and Muirkirk cemetery in the north-eastern part of the village. The site comprises lands associated with the existing Burnfoot Moor opencast coal site and land associated with the former steading of Bankend and the former Muirend Colliery. The site lies to the north of the A70 Cumnock – Muirkirk road and to the west of the B743 Muirkirk – Strathaven road. The entire application site extends to 87.7 hectares (216.6 acres) comprising 68 hectares relating to the existing Burnfoot Moor site and 19.7 hectares relating to the proposed extension area.

1.2 Proposed Development: Full planning permission is sought for the extraction of some 750,000 tonnes of high quality coal by opencast method from the application site. The coals to be extracted will be partly recovered from an unworked area of the existing Burnfoot Moor site (Cut 1 of the original approved scheme) and from an area known as the Bankend extension which extends north-eastwards from the existing opencast site.

The proposed Bankend extension area extends to 16 hectares in respect of the extraction area. Coals will be taken from nine seams down to a maximum depth of 80 metres. Within the Bankend extension area, the only physical elements of the scheme relate to the excavation area and a 5 metres high soil storage mound to be used for visual and acoustic screening. All other elements associated with opencasting such as overburden storage, water treatment lagoons, coal processing plant and site facilities will be located within the existing Burnfoot Moor site.

In terms of timescale, the proposed operations associated with the Bankend extension will last for 42 months of which there will be 30 months coaling and a further 12 months restoration. However, given that the existing consent for Burnfoot Moor is not due to expire until July 2002, the life of the site overall will be extended by a period of 24 months.

The applicant has indicated that, like the existing Burnfoot Moor site, blasting operations are likely to be undertaken, given the nature of expectation of similar ground conditions. Prior to any blasting taking place, the applicant has indicated that test blasting would be undertaken in order to ascertain vibration characteristics of the rock. This would allow appropriate blast design to minimise impacts and to ensure compliance with planning conditions. Blast monitoring will take place during the operational life of the extended site.

As indicated above, the site is currently ‘standing’ pending the determination of this present application. With the exception of essential maintenance personnel, the workforce of 28 is no longer employed on site. Should this present proposal succeed, these 28 jobs would be re-established for the additional 42 months of operation. The applicant has indicated that, in line with company practice, a high percentage of this workforce will be employed locally.

Coals extracted from the site will be transported in sheeted lorries from the site via the new access road onto the A70, west of Muirkirk and taken west along the A70, through Lugar, Cumnock and Ochiltree to the Killoch Coal Disposal Point for onward dispatch via rail to markets. The applicant has indicated that should the recently approved railhead facility at Gasswater OCCS become available during the life of the extended Burnfoot Moor site, then measures would be taken to seek agreement with the operator for the use of the new railhead facility.

The planning application for the Bankend extension to the Burnfoot Moor site has been accompanied by a comprehensive Environmental Statement due to the nature and scale of the proposed development.

2 RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions on the attached sheets and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matters described in Section 8.8 of this report.

3 SUMMARY OF ANALYSIS

3.1 The application has been assessed against the Council’s finalised opencast coal subject plan as modified by the Council on 18 May. The application would require minor departures from the details of certain policies but these are balanced by mitigating circumstances. The proposal meets all the core requirements of the opencast coal subject plan and will provide over-riding and environmental community benefits through the clearance of localised dereliction, the restoration proposals, and the generation of 28 full-time jobs for a 42 month period.

3.2 The submitted environmental statement indicates the site can operate to environmental acceptable standards subject to the implementation of appropriate mitigation and the application of appropriate planning conditions. No objections have been submitted by Scottish Natural Heritage or the Royal Society for the Protection of Birds. An objection has been submitted by the Scottish Wildlife Trust but the specific points of objection have been met by revisions in the application or can be met by appropriate conditions. No other consultee objections have been received.

3.3 The proposed proposal has attracted a significant level of other objections of which the principal concern is the proximity of the site to residential properties. Following revision of the application the proposal now meets all the requirements of the opencast coal subject plan and NPPG 16 in relation to separation distances from residential properties. Concerns were also raised relating to the proximity to Muirkirk Cemetery. Again the separation distance from the cemetery has been increased as a result of alterations to the application and an acoustic and visual screening bund is now proposed. Conditions will also be imposed controlling blasting hours in the vicinity of the cemetery.

Stephen Chorley
Director of Development Services

1 June 2000

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

AGENDA