

**EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE: 15 JANUARY 2003**

**EAST AYRSHIRE OPENCAST COAL SUBJECT PLAN**

**OBJECTIONS RECEIVED IN RESPECT OF POST INQUIRY MODIFICATIONS  
AND ADOPTION PROCEDURES**

**Report by Director of Development Services**

**1. PURPOSE OF REPORT**

- 1.1 To present to Committee the results of the advertisement exercise inviting objections to the modifications made to the Subject Plan following the Public Local Inquiry into the plan and to seek authorisation for the Head of Planning and Building Control to carry out the necessary statutory procedures to achieve formal adoption of the Subject Plan.

**2. BACKGROUND INFORMATION**

- 2.1 At its meeting on 27 August 2002, the Development Services Committee considered a series of recommendations made by the Inquiry Reporter following his consideration of outstanding objections to the East Ayrshire Opencast Coal Subject Plan. At that meeting, the Committee agreed to make a series of modifications to the subject plan and to advertise these modifications for objection in the local press, as required by statute. This agreement was ratified by the Council at its meeting on 24 October 2003. The modifications were duly advertised in the press during the weeks beginning 28 October and 04 November 2002, and objections to the modifications were invited by 13 December 2002. All objectors to the Subject Plan whose objections had not previously been withdrawn, were also informed individually by letter that the Council were proposing to further modify the plan and that objections to the modifications were being invited.

**3. REPRESENTATIONS RECEIVED**

- 3.1 Only one letter of representation was received in response to the advertisement of the modifications, this being from the Mining and Environment Group Ayrshire (MEGA). MEGA made a number of comments and observations on some 20 separate issues but recognised in the representation that not all of the responses fall within the Council's current remit. Indeed, a number of the comments made specifically constituted statements of support for the modifications made and the Reporter's recommendations. A number of representations made did, however, relate specifically to the modifications which the Council intends to make to the plan, although none of these constituted specific objection to the modifications themselves.

- 3.2 For the information of the Committee, all of the observations made by the respondent are reproduced in the Schedule attached as Annex 1 to this report together with a suggested Council response to the points raised. Having fully considered all of the issues raised by the respondent, it is not considered that any further modifications need be made to the subject plan.
- 3.3 With regard to the need for further research into the health implications of dust arising from open cast coal and other mineral extraction sites (see modification 4 in annex 1) it is recommended that the Council raise this issue with the Scottish Executive in the first instance.

#### **4. ADOPTION OF THE PLAN**

- 4.1 Should the Council agree that no further modifications be made to the Subject Plan as a result of the representation received, the Council is now open to initiate the necessary statutory procedures required to achieve final adoption of the subject plan. For the information of the Committee, the steps that require to be taken to adopt the subject plan are as follows:-
- (i) The Council requires to give notice of its intention to adopt the subject plan by local advertisement and to serve notice of its intention to do so on any person whose objections to the plan have been duly made and are not withdrawn, and on other such persons as it thinks fit.
  - (ii) The Council then requires to send to the Scottish Ministers by recorded delivery, a certificate stating that it has complied with the steps detailed in (i) above, together with a certified copy of the subject plan in the form in which it proposes to adopt it.
- 4.2 Provided that the Scottish Ministers do not direct the Council not to adopt the plan, the Council can formally adopt the subject plan on the expiry of a 28 day period following the date on which the certificate mentioned in 3.1 (ii) above has been sent to the Ministers. On adoption of the subject plan, the Council requires:-
- (i) To give notice by advertisement of the adoption of the plan in the local press;
  - (ii) To serve notice of the adoption of the plan on any person who has specifically requested the Council to do so; and
  - (iii) To send to the Scottish Ministers, no later than the date on which notice is first given under point (i) above, two certified copies of the adopted plan.

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

- 5.1 The costs involved in advertising the subject plan can be met within the existing Departmental Budget.

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

- 6.1 Advertisement and adoption procedures for the subject plan will require to be in full accord with the Town and Country Planning (Structure and Local Plan)(Scotland) Regulations 1983.
- 6.2 It should be noted that any person aggrieved by the Subject Plan has, within 6 weeks of the formal adoption of the plan, the right to question its validity. Any application to the Court of Session for judicial review of the Subject Plan will require to satisfy Section 238 of the Town and Country Planning (Scotland) Act 1997.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 None

## **8. RECOMMENDATIONS**

- 8.1 It is recommended that the Committee agrees:-

- (i) to make no further changes to the Subject Plan as a result of the representations received in respect of the modifications made to the plan following the Public Local Inquiry into the plan;
- (ii) to authorise the Head of Planning and Building Control to initiate the procedures required to formally adopt the Subject Plan as detailed in Section 3 of this report; and
- (iii) to raise with the Scottish Executive the issue of further research into the health implications of dust from open cast coal and other mineral extraction sites.

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

7 January 2003

JL/MMM

### **LIST OF BACKGROUND PAPERS**

**NIL**

For further information on the content of this report contact John Lilley, Principal Planning Officer, on 015463 576754

**Implementation Officer: Alan Neish**

**EAST AYRSHIRE OPENCAST COAL SUBJECT PLAN**

**SCHEDULE OF OBJECTIONS RECEIVED IN RESPECT OF MODIFICATIONS MADE TO THE SUBJECT PLAN  
FOLLOWING THE PUBLIC LOCAL INQUIRY**

<b>MOD NO.</b>	<b>OBJECTION</b>	<b>SUGGESTED COUNCIL RESPONSE</b>
No MOD	<p>1. MEGA</p> <p>Having been involved in the entire process of this Plan, we wish to make final comments on it.</p> <p>Overall, the Reporter gave objectors a fair hearing, but the point which was made again, and again, is it is often the misinterpretation of policies (where, - from their content, there is an expectation of careful, impartial evaluation), that cause so much anger and anxiety in the area.</p>	<p>The respondents assessment that the Reporter gave objectors a fair hearing is noted and appreciated. The interpretation of policies in the plan by users of the document is outwith the control of the Council. However, the policies have all been designed to be as clear and unambiguous as possible. No further modification is required.</p>
No MOD	<p>We support most of the Reporter's recommendations which you have included :- particularly those in respect of MIN23 in relation to distances from site boundaries to communities being no less than 500m.</p> <p>Given that there may be challenges to some policies by the operators, we are unsure as to whether we should be stating our support for some specific policies?</p> <p>To cover some of such policies, we have referred to them briefly in this submission.</p>	<p>The support of the respondent for the Reporters recommendations in relation to Policy MIN23 is noted and welcomed. For the information of the respondent, no objections to the modifications made following the Public Local Inquiry into the plan have been received.</p> <p>No further modification is required.</p>
MOD 4	<p>Modification 4:</p> <p>While welcoming the amendment to para 8.5, it includes the statement that assessment should make use of the information collected by Local Authorities in undertaking their responsibilities for Local Air Quality.</p> <p>The point made again and again at the PLI was that there was insufficient attention being paid to air quality monitoring by either operators/the Council, or SEPA; nor to analysing results, if any.</p>	<p>The respondents support of the modification is welcomed.</p> <p>It is agreed that the subject of air quality monitoring was fully discussed at the Public Local Inquiry.</p>

<p>Although not open-casting, but a similar bad-neighbour industry, emissions from the Eggar chipboard factory have high-lighted the confusion and inactivity by all parties in checking air/particulate emissions.</p> <p>The Reporter recommended on p54 of his Report. (13.26 also 4.25) that the Council should assume responsibility for dust monitoring outwith sites.</p> <p><b>He stated that: ‘This is a critical complex issue’. That ‘there is clear need for emissions from individual sites to be adequately monitored’.</b></p> <p><b>He ‘regarded this as urgent, given the large-scale of operations in East Ayrshire’. He made a recommendation in 13.28 re the need for <u>further research into dust emissions and their effect.</u></b></p> <p>Yet the Council has again side-stepped this issue, saying it should be left to a national body. If this is the case, then EAC should be taking up this matter with Cosla NOW; they should also contact the Health Board and liaise with the Centre for Infection &amp; Env. Health in Glasgow.</p> <p>We challenge the Council to do this now, <u>or explain publicly why they are taking no further action.</u></p> <p>The Council stated that shifting responsibility for monitoring dust-levels to the Council is not affordable. If that is the general opinion, then firstly the Council should find out who is responsible for what? (see the Eggar debacle above).</p> <p>Secondly, if operators were to pay for monitoring and enforcement, as suggested in NPPG58, or if part of their Contributions to the Minerals trust was used for this purpose, then the Council could keep on top of this problem.</p> <p>South Lanarkshire managed to get Sc. Coal to part fund a new Monitoring/Enforcement Officer.</p> <p>Does East Ayrshire Council consider wildlife more important than the health/welfare of residents?</p>	<p>This point is not relevant to the Subject Plan.</p> <p>The views of the respondent are duly noted. The Council does not accept that it should be responsible for independently collecting dust monitoring information on site and no modification was made to the plan. The Council does, however, restate its support for further research to be carried out on the health impact of dust from opencast or other extraction sites and will take the issue up with appropriate organisations in the first instance.</p> <p>The comments of the respondent are noted.</p> <p>The views of the respondent are noted but it remains the Councils view that operators are responsible for providing dust monitoring information to the Council.</p> <p>The Council is not aware of the particular financial arrangements in place regarding employment of monitoring/enforcement staff in other authority areas.</p> <p>The Council’s views on this issue were fully aired at the Public Local Inquiry and it is not considered necessary or appropriate to discuss this issue</p>
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		<p>further at this particular stage.</p> <p>No further modifications are required.</p>
MOD 5	<p>Modification 5: MEGA welcomes and supports the change from working face to site boundaries. (ie: The Council has reverted to what it originally proposed in the April 2000 version of the Subject Plan!)</p>	<p>The support of the respondent for this modification is welcomed by the Council. No further modifications are required.</p>
MOD 6	<p>6. As above: but MEGA still urges the Council to ensure a 600m buffer zone. (or at least through <u>dust-monitoring 600m from an o/c site</u>, understand why MEGA proposed this as the minimum distance).</p>	<p>The support of the respondent for this modification is welcomed. The case for a 600 metre buffer zone was given full consideration by the reporter at the Public Local Inquiry and was rejected in favour of the 500 metre buffer zone. No further modifications are required.</p>
MOD 9	<p>9. Welcome recognition of cumulative impact of other HGVs on roads used by coal-related HGVs.</p> <p>Recent research has shown that many more people die from traffic-fume pollution, than dies in road traffic accidents, - so is another reason for the Council undertaking its duties in relation to monitoring air quality.</p>	<p>The support of the respondent for this modification is welcomed and the respondents views on deaths from pollution generated by traffic fumes is duly noted. No further modifications are required.</p>
MOD 14	<p>14: (new MIN 3)</p> <p>MEGA still believes that the wording of this policy is ambiguous, as it implies that an extension with a 10 year life is acceptable.</p> <p>We find no ambiguity in para. 43 of NPPG16, which specifically refers to extension perpetuating disturbance for a period substantially longer than 5 years.</p> <p>We would reluctantly accept the modification you propose, if the word 'existing' was omitted in the last sentence.</p> <p>We do however object very strongly to your omission of the Reporter's recommendation on page 59. 14:16, in his Report, - to add the criterion; 'That the proposed extension does not significantly prejudice plans for the restoration</p>	<p>Notwithstanding the views of the respondent, the modification was made at the specific recommendation of the Reporter. The word 'existing' in the last sentence did not form part of any modification made to the plan as a result of the Reporters' recommendations and the objection to the inclusion of this word in the policy cannot therefore be considered as part of this particular exercise.</p> <p>Contrary to the statement of the respondent, the additional criterion has indeed been added to the new policy MIN3 as detailed in modification</p>

	<p>of the existing site.</p> <p>It appears to our members that operators are being granted planning consent for open-casting for a specific period, which is also conditional on site restoration; (This is often even given as part of the title of the proposal: (eg: 'Restoration of derelict land.')</p> <p>Yet <b>we are being conned</b>, as large part of sites are then left unrestored, and used to service the extension.</p> <p>Without including the Reporter's recommendation to take account of the need to restore, the Council is <b>committing a breach of trust</b> with its people.</p>	<p>MOD13.</p> <p>The views of the respondent are noted.</p> <p>The view of the respondent is noted. However, reference to restoration not being prejudiced by a proposed extension is already included in the plan. No further modifications are required.</p>
<p>No MOD</p>	<p>You will note that in our response, we may mention some additions to the modifications proposed.</p> <p>You may regard these as not within your current remit, but we have no other opportunity to have these points raised.</p> <p>We noted in August, at Dev. Service's Committee, that some Councillors also wished for more time to consider what the Report had concluded: And to study what the Council proposed to adopt: And what is proposed to omit from his findings; (as they had very little time to study a complex and far-reaching document.)</p> <p>Thus our representations on fundamentally important matters, including:-</p> <ol style="list-style-type: none"> <li>1. The need for the Transport Protocol to be signed/sealed and implemented:</li> <li>2. The need for Liaison Groups to be worthy of this name/function:</li> <li>3. The need for the Council to examine the effectiveness of the Minerals trust:</li> <li>4. The need for the Council or Enterprise Ayrshire, to commission a study of the financial costs/benefits of open-casting on Council infrastructure.</li> </ol> <p>If there is to be an Open-Cast Subject Plan, then the content of all policies needs to be matched by an implementational framework, - through correct and impartial development control.</p>	<p>As stated by the respondent, it is not considered appropriate to make any further changes to the modifications proposed at this stage, the modifications being made to reflect the recommendations of the Inquiry Reporter after full and open debate at the Inquiry. It is considered that the points now raised by the respondent would have been best raised at the Inquiry itself. The points raised have, however, been noted by the Council.</p> <p>All opencast operations are always assessed objectively and impartially by the Council against its approved development policies as contained in the subject plan. No further modifications are required.</p>
<p>MOD 18</p>	<p>Modification 18: (new MIN7) The Reporter proposed the insertion of 'or' between</p>	<p>As stated by the respondent, the wording of the</p>

	<p>each criteria, for clarity.</p> <p>As the Council is on record as saying 'that the unacceptable can be made unacceptable, by the imposition of planning conditions/agreements', (yet does not monitor all of these); then criteria i) MUST be backed up by another criteria: ie:- ii/iii.</p>	<p>policy has been amended precisely as recommended by the Reporter, following consideration of all evidence presented at the Inquiry. It is not recommended that any further changes to the policy be made. No further modifications are required.</p>
No MOD	<p>We must protest that the Reporter's recommendation re. a <u>derelict land survey</u>, has not been taken up. The Council <u>has a duty to make such returns</u>. (-indeed it becomes quite enthusiastic about identifying derelict land, when government grants are available)</p>	<p>The views of the respondent are noted. However, it is pointed out that the Council already carries out a Vacant and Derelict Land Survey but maintains that this information should not be used to identify future locations for opencast operations. No further modifications are required.</p>
No MOD	<p>The Council should also adhere to the newly accepted Government principle:- <b>'That the Polluter Pays'</b>.</p>	<p>The views of the respondent are noted. No further modifications are required.</p>
MOD 52	<p>With regard to derelict land, we also make strong objection to the inclusion of vacant land or as it is termed in the glossary, 'land which is not being used' in the proposed definition.</p>	<p>The respondents objection to the definition of vacant land in the glossary is duly noted. However, 'vacant land' is not included as a definition in the glossary attached to the plan. It is accepted that the words 'land which is not being used' is included in the definition of 'Derelict Land' in the Glossary but it is pointed out that this phrase is itself linked to the phrase 'where contamination is known or suspected'. The wording of this definition was given due consideration by the Reporter and the wording of the definition was agreed taking on board the Reporters specific Recommendations in this regard. It is recommended that no further changes be made to the definition.</p>

MOD 22	<p>Modif. 22: Cumulative Impact: MEGA welcomes the addition:- ie: 'the other mineral extraction sites', but asks the Council to go further to cover other major 'Bad Neighbour' sites, - with traffic implications; the potential for environmental pollution (air emissions etc), - such as landfill, waste treatment, Eggar etc.)</p>	<p>The support for the modification is welcomed. However, this matter was considered by the Reporter at the Public Local Inquiry and it is not considered competent or appropriate to make any further changes to the policy at this juncture. No further modifications are required.</p>
MOD 44	<p>44. Addition of 'and related development' welcomed, if it made quite clear that this <u>includes haul-roads</u>, as MEGA proposed at the PLI.</p>	<p>The support for the modification is welcomed. It is considered that 'haul roads' could well be classed as a 'related development' in this regard. No further modifications are required.</p>
MOD 49	<p>49. Accept this proposed deletion, but new POL36 is extremely important, because restoration is neither progressive at the rate envisaged, nor is it being done to the standard envisaged, when open-casting was proposed and approved: ie. 'Removal of dereliction &amp; enhancement of nature conservation interests etc'.</p> <p>Elected members should be made aware of the content of the Written Submissions (to the PLI) of <u>some o/c operators</u>:-</p> <p><b>'That there are NO independent consultants available with the (required) specialist expertise, to assess costs of restoration, and to audit progress'</b> (let alone the QUALITY of the end-result:- TOTAL restoration)</p>	<p>The views of the respondent are noted. No further modifications are required.</p>
No MOD	<p>Appendix 1:</p> <p>Gateway Valleys: The Reporter expressed no views, yet the main link east to the M74 (and thus southern markets) from the south part of Ayrshire, IS the Muirkirk Valley, via the A70. MEGA asks again that this be included in the Gateways to Ayrshire; (It was after all included as an area of high landscape significance.)</p>	<p>The views of the respondent are noted. This matter was fully debated at the Public Local Inquiry and, as stated by the respondent, the Reporter suggested no modification to this plan in this regard. It is recommended that no further action be taken in this regard.</p>

<p>MOD 52</p>	<p>Glossary:</p> <p>1. Cumulative Impact:- MEGA offered a simple definition: Surely such an important aspect of o/c development on which policies depend, should somehow be included? The Reporter suggested an easy way of dealing with this, 'by reference to policy x'.</p> <p>2. Extension: MEGA members are again disappointed to see no reference to define an extension, such as we recommended at the PLI and subsequently in our additions to the proposed glossary. We think that this is vitally important, so that extensions do not come to dominate the original site. <u>If such a definition can be applied to buildings and extensions, why not with o/c sites?</u></p> <p>3. Community: We welcome the insertion of 'about', although we would have preferred a narrower definition to suit the reality of rural development in the Cumnock &amp; Doon Valley area. The Reporter, in his Report, acknowledged that a group of 5/6 households may well be the reality of a local community: From our knowledge, often just 2/3 are the norm, as they would originally house part of the work-force for one large farm.</p> <p>The question of the effect of open-casting on local people is extremely pertinent in terms of <b>Human Rights and the Community</b>: in particular in terms of Art 8 of the Human Rights Act: Respect for private and family life, - (often greatly diminished, due to open-casting activities). Also in respect of Art 1 of Protocol 1: The right to peaceful enjoyment of ones' possessions/property.</p> <p>In view of MEGA's continuing concerns about the effect of open-casting on individual households and communities in East Ayrshire and beyond, we request that you take up this issue with EAC Legal Section, - to ensure that the <u>O/c Plan recognises the rights of individuals</u>.</p> <p>4. Bio-diversity: We cannot understand why a definition is not included in the Glossary, when the Council has signed up to this, and can mention sustainability. Is it not now mentioned in the text? We note that a definition of Bio-Diversity Action Plans, is included in the EAC Finalised</p>	<p>The Reporter has given full consideration to all definitions contained in the Glossary to the plan and has made Recommendations to the Council to amend certain of the definitions as considered appropriate. The Council has agreed to make these modifications and it is not considered that any further modifications should be made at this stage of the plan preparation process.</p> <p>No modifications to the plan were made in respect of the definition quoted by the respondent with the exception of the definition of Community, which was suggested by the Reporter, and which is welcomed by the respondent. Any objection to definitions which are not subject to modification are not appropriate objections to be addressed in this particular exercise.</p> <p>It is considered that the introduction of new definitions into the plan would best be considered as part of a future review of the plan.</p> <p>No further modifications are required.</p>
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	<p>Local Plan, so request inclusion here, and in the text:</p> <p>It may be that when the Plan as first produced, that the Council had not signed up to the Ayrshire Bio-Diversity Action Plan. It has now, so must take its responsibilities seriously:</p> <p>We suggest that specific reference to Bio-diversity should be made in the new Policy MIN17: ie: added to iii) &amp;/or iv. Also in new MIN27, at the end of iii) and end of iv).</p>	
No MOD	<p>We appreciate you do not wish to alter the Plan, but surely it must be in line with current commitments etc.?</p> <p>We expect you will alter 'consultation with WOSW' to 'Scottish Water', so our suggestion is really little different.</p> <p>Also: HSE are not listed as consultees, yet there was recommendation by the Reporter to add conditions, to give the Council some control, - after hearing at the PLI, of the fly rock 'incident' at Muirkirk.</p> <p>You dismissed his recommendation as duplicating the work of HSE: <b>This is not so</b>, as they are 'on record', as saying that operations associated with blasting are in effect left up to the operators, to self-regulate.</p> <p>We have already stated in relation to air quality/particulate monitoring, that there is <u>confusion as to whom does what</u>, so it behoves the Council to try to take some responsibility for the safety of its residents.</p>	<p>It is agreed that a minor technical amendment will be made to Appendix 5 to refer to 'Scottish Water' rather than 'West of Scotland Water'. Contrary to the statement made by the respondent, the Health and Safety Executive are listed in Appendix 5 as 'Bodies to be consulted on both Environmental Assessments and on Opencast Coal Planning Applications.' No further modifications are required.</p>
No MOD	<p>Finally we would add that at the end of the PLI, the Reporter requested the Council to produce <b>employment figures</b>: A total figure for those employed from East Ayrshire's potential labour-force; then a breakdown to show this industrial sector, in relation to the other categories of local employed people.</p> <p>As far as we know, this was <u>not</u> produced, although he included some statistics in 1.2 of his Report.</p> <p>For an update, Coal Pro figures are : 687 workers on 15 sites, although not all of these come from East Ayrshire.</p> <p>That 42% of Scotland's coal is produced in E. Ayrshire from 15 sites.</p> <p>It is also noteworthy, that sites in our district are very much larger than those on most other areas, excluding perhaps S. Lanarkshire.</p>	<p>For the information of the respondent, the employment figures requested by the Council were, indeed, forwarded to the Reporter for his consideration. No further modifications are required.</p>

No MOD	<p>Conclusion:</p> <p>We trust that you will read our submission carefully, particularly in respect of new Local &amp; Subject Plans being drawn up, and subject to legal scrutiny, - to comply with Human Rights' Legislation.</p> <p>We now wait to see whether planning applications will be subject to such rigorous assessment, as has this Subject Plan:</p> <p>That the Council's credibility will not be compromised, by making exceptions for some developments which cannot satisfy all necessary criteria:</p> <p>And that urgent steps will be taken to <b>monitor compliance with all planning conditions/agreements</b>, imposed on open-cast developments. If the latter does not happen, then all our work, and yours, will have been in vain.</p>	<p>The submission of the respondent has been given full consideration and the views of the respondent on the matters raised are appreciated. No further modifications are required.</p>
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