

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 17 JANUARY 2003

**02/0691/FL: PROPOSED OPENCAST COAL MINING WITH RESTORATION
TO NATURE CONSERVATION USES,
LAND AT HINDSWARD, SKARES, NEAR CUMNOCK.**

APPLICATION BY ATH RESOURCES

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for an extension to Area F of the existing opencast site covering an area of 24.9 hectares. This would be mined as a continuation of existing excavations in Area F, continuing the workings in a generally easterly direction. The application area is underlain by some 600,000 tonnes of coal in the Lugar Main seam, the 30 Inch seam and the 3 Dirt seam. These seams are currently being extracted in Area F.

1.2 As working of the proposed extension will be a continuation of Area F, additional storage of overburden will not be required or necessary. Overburden excavated within the proposed extension area will be placed in the void of Area F to complete restoration of this part of the site. Subsequently, when extraction in the proposed extension area is completed, overburden from the southern part of Area F will be deposited in the proposed extension area to complete its restoration.

1.3 Topsoil stripped from the proposed Hindsward extension will be used to construct a 5 metres high grassed bund along the northern boundary of the extension area to provide a visual barrier to the opencast operations in the extension area. All other site infrastructure will be provided through the existing facilities within the Skares Road site. All coals won from the proposed extension area will be taken to the existing coal processing area within the existing Skares Road site and thereafter dispatched by road, using the existing agreed transportation routes, to the existing railhead at Killoch.

1.4 The applicant has indicated that the blasting of overburden prior to extraction is not anticipated to be necessary within the proposed extension area, but that the possibility that some rock may require to be blasted cannot be ruled out completely. To date approximately only 3% of overburden material extracted within the site has necessitated blasting. Any blasting would however be undertaken in accordance with the existing planning conditions pertaining to the Skares Road site.

1.5 As a result of the proposed extension, three existing dwellings within the Hindsward steading will be demolished, the applicant having reached agreement with the owners regarding acquisition of these properties.

1.6 The application also involves the deletion of part of the approved excavation area from the proposed site working. Consent was granted in 2001 for an extension to Area C of the approved Skares Road site, known as Area C (South). This area was contained within the existing Skares Road site boundaries. Area C (South) comprised two areas of working, for which a nightshift consent was also approved for the most southern area. The applicant now proposes to delete the southern part of Area C (South) from the approved scheme as the working of coal in this area has been proved not to be economically viable. This will leave approximately 500,000 tonnes of coal unworked.

1.7 The proposed Hindsward extension represents a 4.6% increase in the site area, while the deletion of part of Area C (South) represents a 7.7% reduction in site area. The applicant has stated that operations within the proposed Hindsward extension will take 12 months to complete with operations commencing in Spring or early Summer 2003.

1.8 The current planning consents for the Skares Road site allow for operations until 2010. However with the introduction of a limited nightshift operation in Area F in May 2000, this has reduced the anticipated life of the site with coaling operations now expected to cease in 2005/2006 with completion of restoration of the site in 2007/2008. The working of the proposed Hindsward extension and the deletion of part of Area C(South) will have no significant effect on the overall anticipated timescale for completion of the development.

1.9 The limited nightshift operation is due to cease in May 2003 and works within the proposed extension area will be undertaken between 0700 hours to 1900 hours Mondays to Fridays and between 0800 hours and 1200 hours on Saturdays. All other operations regarding the processing and dispatch of coal will be undertaken in accordance with the conditions of the existing consents for the Skares Road site.

1.10 The working of the proposed Hindsward extension will also result in the removal of a colliery spoil heap associated with the former Hindsward Colliery abandoned in 1924. This will also result in the removal of existing mineshafts (some 23 shafts or adits) and ground instability associated with workings in the Lugar Main seam.

1.11 Restoration of the Hindsward extension area is aimed at improving the wildlife conservation value of the land to provide greater benefits to the area both in bio-diversity and general amenity terms. The proposed scheme has been designed to compliment that envisaged for Area F and the northern part of Area C (South), thus providing habitat linkage between these areas.

1.12 The application supporting statement is also accompanied by environmental information that considers environmental impact that may result from working the proposed Hindsward extension. The principal elements of this environmental information focus on noise impact and visual impact associated with the proposed development.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet 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 of this report.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plans. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 of the report, there are material considerations relevant to this application, but in this regard, the proposed development is also considered to be consistent with the policy provisions of the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) 2002 (EAOCSP) which is a prime material consideration in the determination of this application.

3.2 Although the proposed Hindsward extension scheme will result in the encroachment of opencast operation closer to the village of Skares, it has been designed to be consistent with the new policy provisions of the EAOCSP. Subject to the imposition of appropriate conditions to ensure that the site is operated to acceptable environmental standards, it is considered that given the short timescale for the scheme, there would be no significant impact on the village of Skares.

3.3 The applicant has contacted all residents in Skares with respect to the proposed development and has participated in a public meeting to discuss the proposals with the community. It is noted that there is no significant body of objection to the proposed development with only two letters of object from residents in Skares village.

3.4 The approval of the proposed extension will not have any impact on the timescale for completion of the Skares Road development which is anticipated to be completed 2/3 years earlier than the life of the current consent.

3.5 Approval of the scheme would result in the deletion of the south part of Area C (South) which would also remove the proposed nightshift operation from this part of the site. Further benefit is to be gained through the removal of an area of dereliction associated with the former Hindsward Colliery. Similarly the proposed restoration scheme for this part of the site will afford opportunities for landscape and habitat enhancement as welcomed by both RSPB and SNH.

3.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are environmental and community benefits which would outweigh any temporary adverse impacts. 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 existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the Skares Road site has been amended to extend its obligations to the Hindsward extension site. Additional obligations covering the following matters should also be included:

- (i) the setting up of an additional dust monitoring station within the village of Skares;
- (ii) the deletion of the southern part of Area C (South) from the existing consented operations at the Skares Road site in order that the commitment by the applicant not to work this part of the site is honoured.
- (iii) The undertaking of additional structural surveys as considered appropriate in consultation with the Planning Authority.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application will require to be referred to the Development Services Committee because the principle of the development is in accordance with the Development Plan.

Alan Neish
Head of Planning and Building Control

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.

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TO NATURE CONSERVATION USES,
LAND AT HINDSWARD, SKARES, NEAR CUMNOCK.****APPLICATION BY ATH RESOURCES****Report by Head of Planning and Building Control****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 Local Planning Committee under the scheme of delegation because it represents an extension to an existing opencast site which is in accordance with the Opencast Coal Subject Plan and is subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 3 miles south west of Cumnock and 2.5 miles south of Ochiltree and lies on the south side of the B7046 Skares Road, immediately south of the small village of Skares. The site extends to approximately 24.9 hectares (61 acres) and consists of agricultural land associated with and including the former farm steading at Hindsward.

2.2 The application site represents an extension to the Skares Road Opencast Coal site for which planning permission was granted by East Ayrshire Council for the winning and working of coal on 13 March 1997 under application CD/95/0254/MIN. This site was to be operated in two main phases by two mineral developers. The Milzeoch Farm phase of operation commenced coaling in Summer 1997 this being undertaken by William Grant (Mining) Limited. The main phase of operation at Skares Road was to be operated by Rackwood Colliery Company Limited, with operations on this part of the site scheduled to commence during 1998.

2.3 William Grant (Mining) Limited, however, went into receivership and the personal consent granted to this company has been transferred to the Miller Group under application 97/0686/FL, following approval of this application by the Development Services Committee at its meeting on 02 December 1997. The Milzeoch Farm phase of development is now in the restoration phase under the terms of the original planning consent CD/95/0254/MIN. Restoration of this site

is now the responsibility of the current applicant and restoration works on Milzeoch are due to be completed during 2003.

2.4 The Development Services Committee approved a revised application for the Skares Road site on 27 January 1998 under application 97/0596/FL. The decision notice was issued on 15 May 1998 following the completion of a Section 75 Agreement under the Town and Country Planning (Scotland) Act, 1997. Works commenced on site in 1998 with some 2.5 million tonnes of coal having been extracted to date and coaling operations are continuing at present. The Skares Road site comprises 4 separate coal extraction areas known as Areas B, C, E and F. The current operational Skares Road site extends to approximately 608 hectares. More recent planning history is indicated in Section 6 of this report.

2.5 **Proposed Development:** Permission is sought for an extension to Area F of the existing opencast site covering an area of 24.9 hectares. This would be mined as a continuation of existing excavations in Area F, continuing the workings in a generally easterly direction. The application area is underlain by some 600,000 tonnes of coal in the Lugar Main seam, the 30 Inch seam and the 3 Dirt seam. These seams are currently being extracted in Area F.

2.6 As working of the proposed extension will be a continuation of Area F, additional storage of overburden will not be required or necessary. Overburden excavated within the proposed extension area will be placed in the void of Area F to complete restoration of this part of the site. Subsequently, when extraction in the proposed extension area is completed, overburden from the southern part of Area F will be deposited in the proposed extension area to complete its restoration.

2.7 Topsoil stripped from the proposed Hindsward extension will be used to construct a 5 metres high grassed bund along the northern boundary of the extension area to provide a visual barrier to the opencast operations in the extension area. All other site infrastructure will be provided through the existing facilities within the Skares Road site. All coals won from the proposed extension area will be taken to the existing coal processing area within the existing Skares Road site and thereafter dispatched by road, using the existing agreed transportation routes, to the existing railhead at Killoch.

2.8 The applicant has indicated that the blasting of overburden prior to extraction is not anticipated to be necessary within the proposed extension area, but that the possibility that some rock may require to be blasted cannot be ruled out completely. To date approximately only 3% of overburden material extracted within the site has necessitated blasting. Any blasting would however be undertaken in accordance with the existing planning conditions pertaining to the Skares Road site.

2.9 As a result of the proposed extension, three existing dwellings within the Hindsward steading will be demolished, the applicant having reached agreement with the owners regarding acquisition of these properties.

2.10 The application also involves the deletion of part of the approved excavation area from the proposed site working. Consent was granted in 2001 for an extension to Area C of the approved Skares Road site, known as Area C (South). This area was contained within the existing Skares Road site boundaries. Area C (South) comprised two areas of working, for which a nightshift consent was also approved for the most southern area. The applicant now proposes to delete the southern part of Area C (South) from the approved scheme as the working of coal in this area has been proved not to be economically viable. This will leave approximately 500,000 tonnes of coal unworked.

2.11 The proposed Hindsward extension represents a 4.6% increase in the site area, while the deletion of part of Area C (South) represents a 7.7% reduction in site area. The applicant has stated that operations within the proposed Hindsward extension will take 12 months to complete with operations commencing in Spring or early Summer 2003.

2.12 The current planning consents for the Skares Road site allow for operations until 2010. However with the introduction of a limited nightshift operation in Area F in May 2000, this has reduced the anticipated life of the site with coaling operations now expected to cease in 2005/2006 with completion of restoration of the site in 2007/2008. The working of the proposed Hindsward extension and the deletion of part of Area C(South) will have no significant effect on the overall anticipated timescale for completion of the development.

2.13. The limited nightshift operation is due to cease in May 2003 and works within the proposed extension area will be undertaken between 0700 hours to 1900 hours Mondays to Fridays and between 0800 hours and 1200 hours on Saturdays. All other operations regarding the processing and dispatch of coal will be undertaken in accordance with the conditions of the existing consents for the Skares Road site.

2.14 The working of the proposed Hindsward extension will also result in the removal of a colliery spoil heap associated with the former Hindsward Colliery abandoned in 1924. This will also result in the removal of existing mineshafts (some 23 shafts or adits) and ground instability associated with workings in the Lugar Main seam.

2.15 Restoration of the Hindsward extension area is aimed at improving the wildlife conservation value of the land to provide greater benefits to the area both in bio-diversity and general amenity terms. The proposed scheme has been designed to compliment that envisaged for Area F and the northern part of Area C (South), thus providing habitat linkage between these areas.

2.16 The application supporting statement is also accompanied by environmental information that considers environmental impact that may result from working the proposed Hindsward extension. The principal elements of this environmental information focus on noise impact and visual impact associated with the proposed development.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Roads Division has no objections to the proposed development, as there would be no increase in traffic over the volume currently allowed. The traffic-calming offer was made at a public meeting but as this is unrelated to coal output from the site, it is agreed that this should not form part of any consent but should be left open for further discussions.

Noted.

3.2 Ochiltree Community Council has not responded to the consultation letter.

Noted.

3.3 East Ayrshire Council's Environmental Health Division advises that it has no objections in principle to the proposed development subject to the proposed works being undertaken in compliance with previously approved conditions applicable to the existing workings and no nuisance being created.

Should consent be granted for the proposed extension, the consent would be subject to compliance with the existing conditions applicable to the existing Skares Road site.

The Division further notes that the environmental impact assessment report carried out by Vibrock confirms that the noise levels at George Terrace and Whitesmuir, on the southern side of Skares village and probably the closest occupied properties to the Hindsward extension site, will all fall within the guidelines expressed in PAN50, Annex A. The Division also notes that no nightshift operations will take place on the Hindsward extension site.

Noted.

The Division further states that it is not aware of any significant dust problems arising from existing operations. Nevertheless the relative proximity of the Hindsward extension site to Skares means that continuing diligence is required on the operator's part to ensure that no such problems arise. In this connection it is noted that the applicant has agreed to provide an additional monitoring station in the rear of one of the houses in the village, which should provide a useful check on local conditions there. It would appear that blasting will not be an integral part of the operation, but that the applicant does not discount the possibility of such activity should difficult strata be met. It is noted that the

applicant has undertaken to repeat structural property surveys on completion of the operations.

The existing dust monitoring scheme can be extended by the imposition of appropriate conditions in any planning consent granted for the proposed development or by amendment to the obligations in this regard contained within the existing Section 75 Agreement in place for the Skares Road site. Any blasting operations required would be carried out in accordance with the conditions pertaining to the existing Skares Road site, but it should be noted that blasting is not routinely required as part of existing operations.

3.4 Scottish Natural Heritage does not object to the development being undertaken strictly in accordance with the submitted plans and documents and subject to the production and implementation of a detailed restoration plan as described in the submitted environmental information.

The applicant has engaged the services of appropriate consultants to produce a detailed restoration plan for the development site. The details of the proposed restoration scheme will be the subject of further consultation, including SNH.

SNH further states that the ecological status of the proposed extension and the potential impacts thereon have not been assessed within the submitted environmental information. Nonetheless information available to SNH including that provided with previous applications indicates that the land within the proposed extension is of low ecological value and SNH do not have any specific concerns in this regard taking into account provision for appropriate restoration.

Noted.

Landscape and visual impacts have been considered quite thoroughly using the appropriate methodologies and the conclusions regarding likely landscape and visual impacts have been well analysed and adequately justified. There is no assessment of potential effects arising from lighting outwith daylight hours. It is assumed that as the hours of operation are restricted to 0700 -1900 hours, there will be no significant lighting required outwith this period. If this is not the case, consideration should be given to the means of mitigating any adverse effects on visual amenity that might arise.

Appropriate conditions can be attached to any consent granted for the proposed development to ensure that any lighting requirements associated with working in the proposed extension area are sited in a manner such as to minimise any potential adverse impact on visual amenity.

The outline restoration plan submitted indicates that restoration will create more valuable habitats and a more visually attractive resource than exists at present. There is no indication of new footpath access to the restored area and SNH would encourage the incorporation of public amenity access within the final detailed restoration plan.

The comments of SNH have been forwarded to the applicant. Details of restoration of the site will be prepared by consultants appointed by the applicant and will be the subject of further consultation. The comments of SNH regarding footpath access can be taken on board as appropriate to the details of the restoration scheme. Further consultation with SNH can be undertaken at that time.

3.5 Scottish Power, Transco and The Coal Authority have no adverse comments to make on the proposed development.

Noted.

3.6 The Scottish Environment Protection Agency has no objections to the proposed development provided the drainage arrangements are to SEPA's satisfaction. The drainage from the extension site is to be treated in existing effluent treatment systems consented under the terms of the Control of Pollution Act, 1974 (as Amended). Extracted coal will be processed in the existing Authorised coal processing area. SEPA regularly inspects the coal processing area and samples these discharges for compliance with consent conditions. Clean water from around the site should be intercepted and diverted away from the working area. Freshly cut ditches on steep ground will require careful profiling and possibly some protection or the inclusion of plunge pools to prevent erosion and pollution from mineral solids. Temporary settlement 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 the degradation of habitat in the area. An assessment should be made of the likely effects of the flows of any diverted watercourse to ensure that downstream structures such as bridges/culverts and burn channels are not adversely affected.

Conditions covering the issues raised by SEPA are contained within the existing planning consent for the Skares Road site. In any consent granted for the proposed development, the existing conditions would be applied similarly to the Hindsward extension site.

3.7 Scottish Water has not responded to the consultation letter.

Noted.

3.8 The Ayrshire Joint Structure Plan and Transportation Committee states that the application requires to be assessed within the context of Policy E13 and

Policy E14 of the approved Structure Plan. This policy framework indicates that the site lies within a preferred area of search for opencast working, and subject to the relevant criteria within Policy E13 being addressed, no strategic objections are made to the proposals.

Assessment against the policies of the Ayrshire Joint Structure Plan is given in Section 5 of this report.

3.9 The Forestry Commission advises that the restoration lacks detail on how this will be carried out and to what standards and indicates that it is very important to have a well aerated medium which is free from compaction if long term tree preservation is proposed. The restored site should have a topsoil and soil forming material which is free from compaction and is at least one metre in depth. This would allow the new woodland to quickly establish and grow on successfully. The quality of restoration is very important and this should be done with trees in mind from the start. The Forestry Commission would be obliged to withdraw any offers of grant aid for tree planting if it was not satisfied it could successfully support a woodland.

The comments of the Forestry Commission have been forwarded to the applicant. Details of restoration of the site will be prepared by consultants appointed by the applicant and will be the subject of further consultation. The comments of the Forestry Commission can be taken on board as appropriate to the details of the restoration scheme. Further consultation with the Forestry Commission can be undertaken at that time.

3.10 The Royal Society for the Protection of Birds does not object to the proposed development but makes a number of recommendations in relation to the restoration of the site. The proposals to restore the site to a nature conservation use are welcome, but RSPB is concerned that the focus on planting native woodland and creating relatively large water features may not be the best option with the greatest conservation benefit for this area. RSPB recommends less woodland planting than is in the current restoration plan. Restoration to a landscape with a greater proportion of open habitats would be more in keeping with the description given of the landscape character type for this area. The original bird survey for the site carried out for the main working area, indicates the presence of skylark, curlew, snipe and meadow pipit in the proposed extension area. These species require open ground habitats and would not benefit from such wide scale woodland planting. Rather than the creation of a large open water feature, RSPB recommends the creation of wetland areas.

The comments of RSPB have been forwarded to the applicant. Details of restoration of the site will be prepared by consultants appointed by the applicant and will be the subject of further consultation. The comments of RSPB can be taken on board as appropriate to the details of the restoration scheme. Further consultation with RSPB can be undertaken at that time.

RSPB would welcome the opportunity to work with the applicant as part of the Coalfield Environmental Initiative, which aims to improve the landscape, wildlife habitat and recreational resources of East Ayrshire that have been affected by opencast coal mining. Habitat enhancement measures at Hindsward could make a valuable contribution to this project.

Noted.

3.11 The West of Scotland Archaeology Service states that there are recorded mining remains within the area that are to be expected, but the farmhouse at Hindsward has also been picked up as a record in the National Monuments Record of Scotland in Edinburgh. This latter record may be because of the architectural merits of the building. The adjacent farmstead of Ward appears already to have been quarried away by opencast making the remaining steading at Hindsward more important for understanding the historical development of this area. Hindsward too is now to be demolished and removed and any archaeological deposits of earlier periods which may be associated with it, will be destroyed. WOSAS therefore recommends that should the Council intend to grant planning consent for this proposal an archaeological condition should be attached so that any archaeological resources within the area may be recorded prior to destruction.

A condition, to meet the requirements of WOSAS, can be attached to any consent granted for the proposed development.

3.12 Historic Scotland advises that it has no comments to make on the proposed development. For advice on the possible effects on unscheduled archaeological remains in the area contact should be made with the West of Scotland Archaeology Service.

WOSAS has been consulted as indicated in paragraph 3.11 above.

4. REPRESENTATIONS

4.1 Three letters of representation have been received objecting to the proposed development. The points of objection are summarised as follows:

4.2 The noise from the site is very disruptive and will be even worse if mining comes closer to the village. We have been advised that the nightshift will soon cease which will help but two of my family work night shift and have trouble sleeping during the day. While the noise is not loud it is most annoying as even when listening to television you can hear the drone of machinery and reversing vehicles in the background.

The environmental information submitted with the planning application indicates that in the worst case scenarios, the proposed

operations on the Hindsward extension can be undertaken within acceptable noise limits for daytime working as indicated in Planning Advice Note 50 , Annex A to be normally justified for mineral extraction operations. No night shift operations are proposed within the Hindsward extension area.

4.3 If mining is allowed to come closer to the village, then the dust problem will get much worse.

Neither the applicant, the Planning Division nor the Environmental Health Division is aware of any significant dust nuisance arising from existing site operations. The issue of fugitive dust is appropriately and continually monitored by the applicant and appropriate management measures and systems are in place within the existing site to ensure that fugitive dust nuisance does not give rise to complaint. It is recognised that the Hindsward extension will result in operations coming closer to Skares village, but it is considered that given the 500 metre stand off distance, the provision of the bund feature and the fact that operations will take place mainly at depth, the likelihood of dust nuisance should be minimal.

4.4 The longer mining goes on, the longer we have to suffer secondary problems such as speeding service and workers cars through the village and lorries causing an obstruction outside the site waiting for entry in the mornings. As we do not have a 30 mph speed limit, they are often travelling at speeds in excess of 50/60 mph.

The points raised by the objector are matters for the police to address. However, it should be noted that the applicant has attempted to impress upon its workforce the importance of driving slowly through the village of Skares and has offered financial assistance to a proposal for traffic calming measures within the village. The Roads Division has however indicated that traffic calming for Skares should not form part of this consent but that discussion with the applicant should continue. The recent introduction of a site booking system has reduced the problem of lorries arriving early on site causing obstruction on the B7046 road.

4.5 Residents of Skares are being bombarded with everything you wouldn't have on your own doorstep courtesy of ATH, Barr and Portcullis. I would request that this application be refused even if only on moral grounds in recognition of the tax-payers of Skares who have already and will for many years to come, have had more than their fair share to contend with. Skares is just a dumping ground

The views of the objectors are noted.

4.6 There will be an increased hazard to children in the village. We will be faced with inquisitive children able to see and wanting to explore the site when closer to the village.

The applicant will require to ensure that site operations are consistent with Mines and Quarries legislation in respect of public safety issues.

4.7 What guarantees do we have that the site will be landscaped – none. It is more likely to end up as landfill, look at the site at Garlaff. This was supposed to be landscaped and will now be landfilled for the next 10 to 15 years.

The applicant has advised that there is no intention to seek approval for landfill operations on the site. Such a proposal would require to be the subject of a planning application. Given the recent approval of the extension to the Garlaff Landfill Site, it is unlikely that there would be a requirement for a further landfill site in this locality given the available capacity of the approved site.

4.8 It is ok for the opencast to say that they are going to stay 500 metres from the village but what happens when they get to that boundary? ATH Resources say they will write into their agreement that they undertake to make no further applications to extend the site. However, this site has been extended several times since it first began.

The proposed Hindsward extension scheme has been designed to ensure compliance with the policy provisions of the East Ayrshire Opencast Coal Subject Plan. Under the current policies, there would be a general presumption against any opencast proposal that encroached within 500 metres of the boundary of a settlement. Any proposed encroachment within the 500 metres stand off would be unlikely to receive favourable consideration. The applicant has stated that it has no future plans to further extend the operations on the Skares Road site.

4.9 What do Skares residents get from paying council tax? The council do nothing for us but everything they can for companies such as opencast and landfill. We can't even get a reduction in council tax because these nuisances are considered temporary. If the Council stopped granting extensions such as this one then we would at least know when this nuisance is going to end.

The views of the objectors are noted.

4.10 The value of houses will be nil compared to what they would be if we did not have all these sites surrounding the village. Who will want to buy any of our houses now?

The loss of value of property is not a material consideration in the determination of this planning application.

4.11 How can we be sure that the opencast will only be worked on for a year? What happens if work cannot be completed in a year, is that when night shift working will begin or an extension to the site applied for?

The applicant has indicated that there is no intention to apply for further extension to the site or to introduce a night shift operation on this part of the site. The scheme has been designed to be completed within 12 months and a condition can be attached to any planning consent granted to ensure completion of the Hindsward extension within 12 months of commencement of operations.

4.12 If in 2001, ATH could not estimate its plans and interests as required by planning policy, then it is unlikely to be truthful now. It has conveniently forgotten to say that it managed to get out of its responsibilities for the restoration of Area B as this has become part of an extended landfill site. It also gained an additional area for opencasting in order to link the old and the new parts of the landfill site.

The applicant has stated that it does not intend to seek approval for further extensions to the Skares Road site. Area B was the subject of a planning application for a landfill site by another applicant that was approved and will be implemented in due course. The decision to approve this landfill site has no bearing on the determination of the current application.

4.13 The site boundary would be exactly 500 metres from George Terrace, Skares. The cumulative impact of opencasting to the east and west of the village and now coming nearer to the south together with the dubious operations at Whitehill Bing, vehicles travelling to Piperhill and landfill nuisance at Garlaff – all these combine to the clear detriment of people living, working and visiting the Skares area.

It is not considered that there would be significant cumulative impact resulting from the proposed Hindsward extension. The extension scheme will be completed within a period of 12 months. Furthermore, operations at Whitehill Bing have now been completed and restoration of the Piperhill site is due to be completed in Spring of this year. There are no significant vehicle movements currently associated with the restoration operations at Piperhill. While it is acknowledged that the Hindsward extension will result in encroachment towards Skares village, the proposed timescale for the scheme is short and will in any case be undertaken within the current consented life of the site. Approval of this application will also result in removal of part of Area C (South) which will mean that all nightshift operations on site will cease in Area F in May 2003.

4.14 The Council must require a detailed dust assessment, as dust from a bund so close to people will cause nuisance if not harm to health. The Council is now required to flag up a dust generator within 1000 metres of residents.

As stated previously in this report, nuisance arising from fugitive dust has not been an issue with respect to the Skares Road site. Results from dust monitoring have consistently shown that there are no significant issues arising from fugitive dust. No formal complaints have been received by the Council or the applicant in this regard. While it is appreciated that workings will come closer to the village of Skares, the current dust management procedures in place within the site together with the fact that workings will generally take place at depth mean that dust nuisance is unlikely to arise. The applicant proposes to install an additional dust monitoring station within the village to ensure that the current operational standards of the site are maintained. The screen bund is to be grassed to ensure that there will be no fugitive dust from this feature that will also serve as a physical barrier.

4.15 Blasting so close to a community is unacceptable.

The applicant has indicated that the blasting of overburden prior to extraction is not anticipated to be necessary within the proposed extension area, but that the possibility that some rock may require to be blasted cannot be ruled out completely. To date approximately only 3% of overburden material extracted within the site has necessitated blasting. Any blasting would however be undertaken in accordance with the existing planning conditions pertaining to the Skares Road site.

4.16 We query the assertion that ATH can extract 600,000 tonnes of coal in one year without causing additional noise, dust and other disturbance to local people. The nightshift is causing disturbance already, so the Council should not approve any development which will aggravate already unsatisfactory conditions for local people.

The current operations are being undertaken within the terms of the planning consents granted for the site and operations will continue in the Hindsward extension within the same conditions and to existing levels of production. Although this Division is aware of complaints regarding noise from the nightshift operation, this has generally been from a single complainant with no evidence of breaches of noise limits at the time of complaint. No nightshift operation will be undertaken as part of the Hindsward extension scheme and the current approved limited nightshift in Area F will cease in May 2003. Approval of this application will also result in a nightshift operation being deleted from the current consented scheme for the site.

4.17 If the developer assures the Council that it will not operate a nightshift on this particular area, how is the Council to monitor operations at night in the dark. If conditions and Section 75's are unenforceable then they are incompetent.

Any unauthorised nightshift activity within the Hindsward extension area would undoubtedly come to the attention of the Planning Authority as given the proximity of Skares village night time noise would certainly generate nuisance and complaint. The objector is questioning the integrity of the operator which is not founded in neither fact nor experience of the operator.

4.18 It is ludicrous for the developer to try to justify this extension on the grounds it will remove any ground stability from a mine abandoned in 1924.

The applicant does not try to justify the proposal solely on this issue. However, it is noted that the consultation response from the Coal Authority indicates the presence of 23 mineshafts or adits within the site and the proposal will result not only in the removal of these but also the existing spoil heap associated with the former Hindsward colliery.

4.19 A supposed planning gain of an unspecified contribution to traffic calming in Skares should be rejected, as this is the Council's responsibility. If HGV traffic does not have a specified route through the village, such a proposal is not relevant to the current application.

While it is acknowledged that traffic calming measures would generally be the responsibility of the Council as Roads Authority, employees of the Skares Road site use the route through Skares and issues regarding the speed of employees driving through the village have been raised with the applicant. In this regard the planning gain of traffic calming could be legitimately linked to the development proposed. The Roads Division has however indicated that traffic calming for Skares should not form part of this consent but that discussion with the applicant should continue on this matter.

4.20 That restoration will be to nature conservation uses should be queried as ATH has managed to evade many of its previous responsibilities/ agreements.

The views of the objector are not founded in fact. Indeed the restoration scheme, subject to the submission of detailed proposals, is welcomed by both RSPB and SNH. There is no evidence to suggest that the applicant has evaded its responsibilities in respect of the existing site operations.

4.21 If as it appears that coal freight facilities at Killoch will be unavailable if the Alba application is approved, then the Council must request a statement from

ATH indicating how they propose to transport 600,000 tonnes of coal mentioned in this application.

The applicant has a current agreement with the operator of the Killoch railhead for the dispatch of coals won from the Skares Road site by rail. The statement by the objector is speculative and is not founded on the facts of the current situation.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (1999) and the Adopted Cumnock and Auchinleck Local Plan (1992). The Adopted Local Plan was prepared within the context of the approved Strathclyde Structure Plan.

Cumnock and Auchinleck Local Plan

5.2 Notwithstanding the age of the Adopted Local Plan, the proposed development site falls within a Preferred Opencast Coal Area/ Opencast Coal Priority Area. The proposal would therefore fall to be considered principally against the relevant mineral policies relating to opencast development as follows:

(i) Policy 36: A presumption in favour of protecting locally important agricultural land, listed wildlife sites, sites of special scientific interest, heritage resources and water catchment areas.

No statutory or non-statutory sites of natural heritage or built heritage importance are affected by the proposed development. The proposed development does not conflict with the provisions of this policy.

(ii) Policy 37: Presumption in favour of opencast coal operations in preferred opencast coal mining areas.

The proposed development is consistent with the provisions of this policy.

(iii) Policy 38: The Council will require private operators to lodge a restoration bond.

The Skares Road opencast site is covered by an existing Section 75 Agreement that includes appropriate restoration bonding.

(iv) Policy 39: Restoration of sites to agriculture, forestry, recreational and other appropriate uses to the highest possible standards.

The development site is to be restored in accordance with a scheme that will be agreed in consultation with SNH and the RSPB to secure enhancement of the site for flora and fauna.

(iv) Policy 45: The Council will pay particular regard to the proximity of residential properties in the processing of planning applications for opencast operations.

The proposed Hindsward extension scheme has been designed to meet the 500 metres stand off from settlement boundaries now promoted within the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) 2002 as discussed in section 6 below.

Ayrshire Joint Structure Plan

5.3 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the Skares Road development site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads. The proposed development requires to be assessed against Policy E14 which states: -

Development opportunities for opencast coal working shall be directed to Preferred Areas of Search in East Ayrshire identified on the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.

The Hindsward extension site falls within a Preferred Area of Search.

5.4 Policy E13 states that proposals to extend the supply of land with planning consent for the winning and working of minerals shall be considered against the following criteria:

- (i) impact on the countryside, landscape character, visual amenity and the natural and built environment.
- (ii) the impact caused by noise, dust and the contamination of ground and surface water.
- (iii) any adverse effect on communities within Ayrshire.
- (iv) opportunity to maximise transport by rail or sea.
- (v) extent of directly related community benefit derived such as enhancement and creation of landscapes and habitats, and removal of dereliction.
- (vi) cumulative impact of proposals in one area and the extraction period.

The revised application for the Skares Road opencast site (Ref. No. 97/0596/FL) was assessed and determined against the stated criteria. The proposals promoted by the current application will be implemented under the existing planning controls within the existing consent and Section 75 Agreement and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed Hindsward extension would not conflict with the stated criteria in terms of its operational conduct.

The current application is therefore considered to be in accordance with the Development Plans.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) 2002, NPPG 16 – ‘Opencast Coal and Related Minerals’, appropriate Planning Advice Notes, consultation responses, the representations received and relevant planning history.

East Ayrshire Opencast Coal Subject Plan

6.2 The Adopted Local Plans covering the development site are considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed, following the public local inquiry process, that the East Ayrshire Council Opencast Coal Subject Plan (Finalised Version with Modifications) 2002, (EAOCSP), should be considered as a prime material consideration. The application now requires to be assessed against relevant pertinent policies promoted within this modified plan. *Note that in the following paragraphs some of the policies are summarised.*

(i) Policy MIN 1: 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 proposed Hindsward extension area does not lie within a Potential Coal Extraction Area and therefore requires to be assessed against Policies MIN2 or MIN3.

(ii) Policy MIN 2: There will be a presumption of refusal of applications for 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.
- (b) there is an overall benefit for communities affected including local employment; and
- (c) there are no conflicts with any other Subject Plan Policies.

The proposed development represents an extension to the existing Skares Road operational opencast coal site and therefore requires to be assessed against Policy MIN3.

(iii) Policy MIN 3: Subject to detailed consideration the Council will generally be supportive of any proposal to extend the existing operative opencast coal site within the Potential Coal Extraction Areas either laterally or through an increase in the depth of existing workings provided that the following criteria are met:

- (i) that the proposed extraction operations are carried out as a sequential phase of development and not independently or in isolation from the extraction programme of the original approved site;

The proposed development represents an extension to the existing operations and will be carried out as a sequential phase of the approved development in Area F of the Skares Road site.

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

The proposed development will be carried out utilising existing site facilities and infrastructure.

- (iii) that the scale of operations, rate of extraction and number of vehicle movements generated by the extended site are commensurate with those as existing on the original site.

The scale of operations, rate of extraction and number of vehicle movements generated by the extended site operations will be commensurate with current site operations.

- (iv) that the proposed extension does not significantly prejudice plans for the restoration of the existing site.

The proposed extension will not impact significantly on the restoration of the existing operational site.

However the proposed extension area lies outwith a Potential Coal Extraction Area.

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

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

The proposed extension of operations and restoration will result in the removal of the spoil heap associated with the former Hindsward Mine workings (approximately 1.2 hectares) including former shafts and adits. The removal of these will constitute a significant environmental benefit.

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

The coaling within the proposed extension area will safeguard the jobs of approximately 110 employees, contractors and service providers for a further year, over the current scheme being worked.

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

It is considered that the proposed development does not conflict with the other Subject Plan Policies as noted below.

Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a total extraction period in excess of 10 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.

The existing Skares Road opencast site has a current consent for a 12-year period (2010). The proposed operations will be undertaken within this current consented timescale. The applicant has indicated that the Skares Road site is anticipated to be complete 2 to 3 years prior to this date.

- (iv) Policy MIN 4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against the following criteria:

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

The landscape and visual assessment report that accompanies the application indicates that the impact on the landscape character and quality of the site will be minimal, particularly given the short term

nature of the proposed development. Furthermore with the restoration proposed there will be a net benefit in landscape character and visual amenity of the site. No statutory or non-statutory natural or built environment interests will be affected by the proposals.

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

It is considered that in line with the existing controls imposed in the existing consents for the Skares Road site, the proposed Hindsward extension can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards.

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

It is considered that in line with the existing controls imposed in the existing consents for the Skares Road site, the proposed Hindsward extension can be operated in such a manner as to minimise any adverse impacts on the village of Skares and other residential properties and can be undertaken to environmentally acceptable standards.

(iv) the extent of any directly related community benefit to be derived from the development such as the enhancement and creation of landscapes and habitats, and the removal of dereliction;

The proposed extension operations and restoration will result in the removal of the spoil heap associated with the former Hindsward Mine workings (approximately 1.2 hectares) including former shafts and adits. The removal of these will constitute a significant environmental benefit. Similarly the proposal to enhance wildlife habitats will also result in net ecological gains.

(v) the opportunities to maximise transportation by rail;

Coals won from the site at the Hindsward extension will, with the exception of coals destined for local markets, be transported by road to the Killoch railhead for onward dispatch to the power generation market, consistent with the existing operations.

(vi) any cumulative impact of the proposal in association with other existing or proposed opencast developments in the area, including any significant prejudice to restoration plans for any existing site;

The proposed Hindsward extension will result in no significant prejudice to the existing restoration plans for the site. It is not

considered that there would be significant cumulative impact resulting from the proposed Hindsward extension. The extension scheme will be completed within a period of 12 months. Furthermore, operations at Whitehill Bing have now been completed and restoration of the Piperhill site is due to be completed in Spring of this year. While it is acknowledged that the Hindsward extension will result in encroachment towards Skares village, the proposed timescale for the scheme is short and will in any case be undertaken within the current consented life of the site. Approval of this application will also result in removal of part of Area C (South) which will mean that all nightshift operations on site will cease in May 2003.

(vii) any impact on inward investment opportunities in the area; and

Given the short term nature of the Proposed Hindsward extension scheme, it is considered that it would have minimal impact on inward investment opportunities in the area.

(viii) the period of extraction.

The proposed Hindsward extension scheme will be undertaken within the current consented life of the Skares Road site. Indeed, the anticipated completion of all operations is now 2007/2008 as opposed to the life of the consent which expires in 2010.

(v) Policy MIN 12: The Council will seek to ensure that a proliferation of opencast coal sites within close proximity to any one community or within one particular area does not occur. In this context, any proposed new opencast developments may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where that development would:

(i) constitute a third approved or operative site within 3 Kms of each other or within a 3 Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or

(ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or

(iii) generate volumes of heavy traffic which taken together with the volumes of coal haulage vehicles already using the routes concerned, would cause unacceptable detriment to the amenity of any community or group of dwellings located along proposed haulage routes; or

(iv) result in an unacceptable accumulation of adverse impacts on international or nationally designated sites of nature conservation interest

over time and place within a particular locality, or an accumulation of individual impacts which collectively have a significant adverse effect on the integrity of such areas.

The proposed Hindsward scheme is not a new site but an extension to the existing Skares Road site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12.

(vi) Policy MIN 15: All developers are required to restore their operational sites progressively to the highest possible standards. Developers will be required to provide for the creation of new habitats appropriate to the particular after uses of the site concerned as an integral part of their detailed restoration and aftercare proposals.

The restoration of the extension area is to be designed to match that of the existing scheme for Area F and the northern parts of Area C (South) of the Skares Road site. The scheme is designed to improve the wildlife conservation value of the land which would provide for greater benefits to the area both in bio-diversity terms and also in general amenity terms.

(vii) Policy MIN 18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

Coals won from the proposed extension area will be processed through the existing coal preparation area with the majority of coal thereafter being dispatched by road to the existing railhead facilities at Killoch Disposal Point.

(viii) Policy MIN 19: All haulage of extracted materials between the area of excavation and the point of dispatch from the opencast site should be via internal haul roads only.

All coals won from the proposed extension area will be taken to the coal preparation area via existing internal haul roads.

(ix) Policy MIN 20: 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.

Improvement works on the B7046 Skares - Mote Toll road have already been secured through existing consents for the Skares Road opencast site.

- (x) Policy MIN 21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-
- (i) to ensure the highest possible operational standards for the transportation of extracted minerals;
 - (ii) to ensure best operational practice regarding road safety and operational matters;
 - (iii) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes
 - (iv) to audit and record operational details of the transportation of coal on a regular basis; and
 - (v) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

The Council 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 and their approved sub-contractors will be invited to subscribe.

The existing Skares Road opencast site is the subject of a Section 75 Agreement encompassing the above matters. The existing Agreement can be amended to encompass the proposed extension area to ensure the obligations are met by the operator.

- (xi) Policy MIN 23: In order to ensure that opencast operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council is likely to consider opencast developments unacceptable where:

- (i) a development has a boundary which encroaches within 500 metres of the community concerned.

The proposed extension area does not encroach within 500 metres of the settlement boundary of Skares village.

- (ii) the proposal involves a substantial area for extraction over an extraction period in excess of 10 years.

The proposed extension area extends to 24.9 hectares and operations within this area will be completed within 12 months. It is

considered that the proposed development does not conflict with this policy provision.

(iii) the proposal is likely to be the subject of repeated extensions, perpetuating disturbance to local communities for a period substantially longer than 5 years.

The proposal under consideration is unlikely to be the subject of repeated extensions given the proximity of Skares village.

(xii) Policy MIN 25: 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, group of dwellings or individual dwellinghouses not in the ownership or under the control of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where all of the following criteria are met:

(i) the 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;

There is only one property at Whitesmuir that lies within 500 metre of the extension site boundary. No objections have been received from the owner of this property.

(iii) the total period of extraction and restoration within a distance of 500 metres from any sensitive establishment or dwelling does not exceed a period of 12 months

The proposed Hindsward extension scheme is to be completed within a 12-month period.

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

It is not anticipated that blasting will be required within the extension site but this has not been totally discounted by the applicant. A condition can be attached to any consent granted for the development to ensure that no blasting operations take place within a 500-metre buffer zone of any residential property not within the control of the applicant. This would be of particular relevance in respect of the residential property at Whitesmuir that lies 400 metres from the extension site boundary

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

The proposed Hindsward extension does not encroach within 100 metres of any residential properties or sensitive establishment.

(xiii) Policy MIN33: The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an applicant 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 that may require to be subject of such an agreement.

(xiv) 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 is a significant contributor to the Mineral Trust Fund in respect of the existing Skares Road opencast site.

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

The existing Skares Road opencast site is subject to a Section 75 Agreement encompassing the above matters. The existing Agreement would be amended to include the proposed extension area.

It is therefore considered that the proposed development is consistent with the relevant EAOCSF policies pertinent to this application.

National Planning Policy Guidelines

6.3 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 coaling may take place.

6.4 Many of the provisions of NPPG 16 are addressed within the EAOCSF with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. The proposal is thus considered to be consistent with NPPG 16.

Planning Advice Notes

6.5 The proposed operations have also been designed to comply with the advice contained within Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D.

Planning History

6.6 The more relevant planning history of the Skares Road site and other relevant information is as follows:

- (i) CD/95/0254/MIN: Winning and Working of Coal by opencast methods at Skares Road approved on 13 March 1997
- (ii) 97/0596/FL: Revised application for winning and working of coal by opencast methods at Skares Road approved on 15 May 1998.
- (iii) 00/0010/FL: Modification of Consent 97/0596/FL to allow a nightshift operation at Skares Road opencast site approved on 08 June 2000.
- (iv) 00/0685/FL: Proposed extension to existing landfill site in Area B of Skares Road opencast site approved on 22 June 2001 subject to a Section 75 Agreement.
- (v) 01/0459/FL: Proposed modification of conditions 31 and 43 of consent 97/0596/FL to permit coal extraction beneath tips approved on 02 November 2001.

Consultation Responses

6.7 There are no consultation responses that would suggest refusal of the application is appropriate.

Representations Received

6.8 It is considered that the representations received can either be appropriately addressed through the imposition of appropriate conditions in any planning consent granted for the proposed development or the points of objection are not valid.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council associated with the determination of this application. It is considered that the proposed development will necessitate an amendment to the existing Section 75 Agreement relating to the Skares Road site should the application be approved.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plans. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 above, there are material considerations relevant to this application, but in this regard, the proposed development is also considered to be consistent with the policy provisions of the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) 2002 (EAOCSP) which is a prime material consideration in the determination of this application.

8.2 Although the proposed Hindsward extension scheme will result in the encroachment of opencast operation closer to the village of Skares, it has been designed to be consistent with the new policy provisions of the EAOCSP. Subject to the imposition of appropriate conditions to ensure that the site is operated to acceptable environmental standards, it is considered that given the short timescale for the scheme, there would be no significant impact on the village of Skares.

8.3 The applicant has contacted all residents in Skares with respect to the proposed development and has participated in a public meeting to discuss the proposals with the community. It is noted that there is no significant body of objection to the proposed development with only two letters of objection from residents in Skares village.

8.4 The approval of the proposed extension will not have any impact on the timescale for completion of the Skares Road development which is anticipated to be completed 2/3 years earlier than the life of the current consent.

8.5 Approval of the scheme would result in the deletion of the south part of Area C (South) which would also remove the proposed nightshift operation from this part of the site. Further benefit is to be gained through the removal of an area of dereliction associated with the former Hindsward Colliery. Similarly the proposed restoration scheme for this part of the site will afford opportunities for landscape and habitat enhancement as welcomed by both RSPB and SNH.

8.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are environmental and community benefits which would outweigh any temporary adverse impacts. 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 existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the Skares Road site has been amended to extend its

obligations to the Hindsward extension site. Additional obligations covering the following matters should also be included:

- (i) the setting up of an additional dust monitoring station within the village of Skares;
- (ii) the deletion of the southern part of Area C (South) from the existing consented operations at the Skares Road site in order that the commitment by the applicant not to work this part of the site is honoured.
- (iii) The undertaking of additional structural surveys as considered appropriate in consultation with the Planning Authority

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet 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 of this report.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application will require to be referred to the Development Services Committee because the principle of the development is in accordance with the Development Plan.

Alan Neish
Head of Planning and Building Control

08 January 2003
HM/HM/SMB
FV/DVM

LIST OF BACKGROUND PAPERS

- 1. Application form and plans.
- 2. Statutory notices and certificates.
- 3. Supporting Environmental Information.
- 4. Consultation responses.

5. East Ayrshire Opencast Coal Subject Plan (Finalised version with Modifications).
6. Adopted Cumnock and Auchinleck Local Plan.
7. Previous application CD/95/0254/MIN.
8. Previous application 97/0596/FL.
9. Previous application 00/0010/FL.
10. Previous application 01/0459/FL
11. NPPG 16: Opencast Coal and Related Minerals.
12. PAN 50, Annexes A, B, C and D.
13. The Approved Ayrshire Joint Structure Plan.
14. The Approved Strathclyde Structure Plan.

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

Implementation Officer: Dave Morris

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 02/0691/FL

Location	Skares Road Opencast Coal Site Skares Near Cumnock
Nature of Proposal:	Proposed opencast coal mining with restoration to nature conservation uses,
Name and Address of Applicant:	ATH Resources Richmonds House White Rose Way DONCASTER DN4 5JH
Name and Address of Agent	

DPO's Ref: [Hugh Melvin]
PPO's Ref; []

The above FULL application should be granted subject to the following conditions:-

1. The proposed Hindsward extension shall be completed within 12 months of the date of commencement of operations on the site and the applicant shall give the Planning Authority two weeks notice in writing of this commencement date.

REASON: To ensure that the proposed development is completed within an appropriate timescale in the interests of residential amenity.

2. No development shall take place within the development site until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, this scheme to be submitted for approval by the Planning Authority following consultation and agreement with the West of Scotland Archaeology Service. Thereafter the developer shall ensure that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeological Service.

REASON: To ensure that appropriate archaeological work is undertaken before the development commences.

3. No blasting operations shall take place within 500 metres of any occupied residential properties not within the control of the applicant.

REASON: In the interests of residential amenity.

4. The applicant shall submit to and have approved by the Planning Authority, the details of any lighting equipment to be used within the proposed Hindsward extension site, the siting of which should be in such a manner as to minimise impact on visual amenity.

REASON: In the interests of visual amenity.

5. Within three months of the date of commencement of operations on the Hindsward extension, the applicant shall submit to and have approved by the Planning Authority, a detailed restoration scheme for the site that shall be the subject of prior consultation with Scottish Natural Heritage, the Royal Society for the Protection of Birds and the Forestry Commission.

REASON: To ensure that the site is restored to the highest possible standards in the interest of habitat creation.

6. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 97/0596/FL dated 15 May 1998 as amended by planning consent 00/0010/FL dated 08 June 2000.

REASON: To retain effective planning control over the proposed development in accordance with current consents relating to the Skares Road opencast site.

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