

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 11 JANUARY 2002

**01/0629/FL: PROPOSED VARIATION TO APPROVED SCHEME OF WORKING
AND RESTORATION CONTOURS OF PLANNING CONSENT 99/0355/FL,
RIGGHEAD OPENCAST COAL SITE, NEAR NEW CUMNOCK**

APPLICATION BY SCOTTISH COAL COMPANY LIMITED

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought for a variation to the approved scheme for the winning and working of coal from the Rigghead site. Scottish Coal has undertaken a detailed re-examination of the operational layout of the site, its phasing and restoration, the result being that a number of changes are being sought as follows:

- (i) the inclusion of two small extensions to the development site;
- (ii) changes to the layout of overburden storage within the site;
- (iii) changes to the location of subsoil and topsoil storage areas;
- (iv) an increase in the areas restored to grass in the first year of operations;
- (v) amendments to the restoration scheme for the development site.

1.2 With respect to the two small extension areas, these extend to total of 4.6 hectares. One area lies to the north of the existing access drive to Hall of Auchincross Farm and this extension will release a further 20,000 tonnes of coal. The other area relates to the steading of Rigghead. The working of this area will result in the removal of the farm steading and will release a further 90,000 tonnes of coal.

1.3 A new area for overburden storage is proposed for the north east part of the original Hall of Auchincross part of the development site. This proposal will also allow the commensurate dismantling of the existing overburden storage mound within the development site by more than half of its mass. This will result in the earlier restoration of this part of the development site.

1.4 Some soil storage is now proposed to be relocated from the periphery of the development site to a single central location, resulting in topsoil being stored in locations directly adjacent to boundaries where it potentially will have maximum visual benefit.

1.5 A number of changes are also proposed to the restoration scheme for the development site. To allow for the increased bulkage in the backfill material experienced to date at the original Hall of Auchincross site, the final restoration contours have been modestly adjusted. This involves the tightening up of the batters around the preserved peat bog in the southern part of the development site and the relocation of the proposed

final water feature to the north east of the Hall of Auchincross steading. The water feature will also be made larger than originally proposed by the slight steepening of slopes.

1.6 The amendments to the restoration scheme also include increased tree planting to provide screening to the remaining farmsteads as well as enhancing the general landscape. The locations have also been chosen to enhance the general landform for wildlife.

1.7 The proposed amendments indicated will not result in any change in the overall life of the opencast operations approved under the Rigghead extension scheme and all other operational matters and mitigation measures will be governed by the existing planning consent and conditions and Section 75 Agreement relating to the development site.

1.8 The applicant has stated that the proposed amendments will not only result in improvements to the working methods of the opencast coal site, but will also result in additional environmental benefit through improved restoration and further minimising environmental impact by reducing internal vehicle haulage distances, such vehicle movements being recognised as potential generators of noise and dust on opencast sites.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions on the attached sheets and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily amended the existing agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matter described in Section 8.4 of the 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) which is a prime material consideration in the determination of this application.

3.2 The proposed variations represent modest alterations to the existing approved scheme for the Rigghead development both in relation to the two small extension areas

and the revisions to the restoration scheme for the site. The proposal to extend the workings will not result in the proposed operations encroaching any nearer to residential properties than the existing operations. 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. The existing Rigghead opencast site has a current consent for a three-year period and the proposed operations will be undertaken within this timescale.

3.3 With regard to the letters of objection, it should be noted that permission already exists for the Rigghead development. The proposed variations should in some respects assist in further minimising any adverse impacts particularly those associated with internal vehicle haulage movements. While it is considered that issues will arise through noise, dust and visual impacts, the mitigation measures promoted in the original Environmental Statement and the controls incorporated within the existing planning consent for the Rigghead development should ensure that the proposed variations can be implemented in an environmentally acceptable manner without any additional impact on residential properties.

3.4 Should the Committee agree to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 has been duly amended to include the two additional extension areas within this Agreement.

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 would not require to be referred to the Development Services Committee as it would not be a significant departure in terms of principle from the East Ayrshire Opencast Coal Subject 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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APPLICATION BY SCOTTISH COAL COMPANY LIMITED

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 the proposed development relates to the extension of an existing mineral extraction site and is the subject of letters of representation.

2. APPLICATION DETAILS

2.1 **Site Description:** The proposed development site lies approximately 4 kilometres west of New Cumnock and 6 kilometres south of Cumnock within the rural area and relates to the now operational Rigghead extension to the Hall of Auchincross Opencast Coal Site.

2.2 The existing operational opencast site extends to 106.5 hectares comprising 61.5 hectares relating to the existing Hall of Auchincross site and 45 hectares relating to the proposed Rigghead extension site. The steading of Rigghead lies in the northern part of the development site and is in effect enclaved by the existing approved development. The steadings of Wellhill, Hall of Auchincross and Auchincross lie respectively on the northern, north-eastern and western boundaries of the development site. Lying further south on the southern side of the River Nith are the steadings of Braehead and Riggfoot.

2.3 Planning permission for the Rigghead extension site was granted on 02 May 2001 under application 99/0355/FL following completion of a Section 75 Agreement. This application was originally submitted by Miller Mining, the original operator of the Hall of Auchincross site. However, the interests of Miller Mining were latterly acquired by the Scottish Coal Company Limited and Scottish Coal commenced operations on the Rigghead extension in May 2001.

2.4 **Proposed Development:** Full planning permission is sought for a variation to the approved scheme for the winning and working of coal from the Rigghead site. Scottish Coal has undertaken a detailed re-examination of the operational layout of the site, its phasing and restoration, the result being that a number of changes are being sought as follows:

- (i) the inclusion of two small extensions to the development site;
- (ii) changes to the layout of overburden storage within the site;
- (iii) changes to the location of subsoil and topsoil storage areas;
- (iv) an increase in the areas restored to grass in the first year of operations;
- (v) amendments to the restoration scheme for the development site.

2.5 With respect to the two small extension areas, these extend to a total of 4.6 hectares. One area lies to the north of the existing access drive to Hall of Auchincross Farm and this extension will release a further 20,000 tonnes of coal. The other area relates to the steading of Rigghead. The working of this area will result in the removal of the farm steading and will release a further 90,000 tonnes of coal.

2.6 A new area for overburden storage is proposed for the north east section of the original Hall of Auchincross part of the development site. This proposal will also allow the commensurate dismantling of the existing overburden storage mound within the development site by more than half of its mass. This will result in the earlier restoration of this part of the development site.

2.7 Some soil storage is now proposed to be relocated from the periphery of the development site to a single central location, resulting in topsoil being stored in locations directly adjacent to boundaries where it potentially will have maximum visual benefit.

2.8 A number of changes are also proposed to the restoration scheme for the development site. To allow for the increased bulkage in the backfill material experienced to date at the original Hall of Auchincross site, the final restoration contours have been modestly adjusted. This involves the tightening up of the batters around the preserved peat bog in the southern part of the development site and the relocation of the proposed final water feature to the north east of the Hall of Auchincross steading. The water feature will also be made larger than originally proposed by the slight steepening of slopes.

2.9 The amendments to the restoration scheme also include increased tree planting to provide screening to the remaining farmsteads as well as enhancing the general landscape. The locations have also been chosen to enhance the general landform for wildlife.

2.10 The proposed amendments indicated will not result in any change in the overall life of the opencast operations approved under the Rigghead extension scheme and all other operational matters and mitigation measures will be governed by the existing planning consent and conditions and Section 75 Agreement relating to the development site.

2.11 The applicant has stated that the proposed amendments will not only result in improvements to the working methods of the opencast coal site, but will also result in additional environmental benefit through improved restoration and further minimising environmental impact by reducing internal vehicle haulage distances, such vehicle

movements being recognised as potential generators of noise and dust on opencast sites.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads Division has no objection to the proposed development subject to conditions. The applicant must undertake road repairs/road strengthening work over the section of public road (C36) between the site access and Knockshinnoch Coal Disposal Point. The work required was identified in June 1999 for the original application 99/0355/FL but was never carried out and therefore subsequent deterioration of the surface may have increased the areas now requiring repairs. This will be identified in a joint inspection with the applicant. The work requires to be carried out immediately by the applicant as coal haulage on the route commenced on 08 October 2001 and the work should have been completed prior to this taking place. No deep excavation should take place within 25 metres of the edge of any adjacent public roads. All access must be via the previously formed access off the C36 road.

The existing Section 75 Agreement for the Rigghead site contains obligations in respect of extraordinary road maintenance costs associated with transportation of coal along the C36 route. A condition can be attached to any consent granted for the proposed variations to secure the requirements of the Roads Division. The existing planning consent for the Rigghead development contains conditions with respect to excavations in proximity to public roads and in respect of the site access.

3.2 The Coal Authority and Scottish Power have not responded to the consultation letter.

Noted.

3.3 West of Scotland Archaeology Service states that the farmstead of Rigghead is depicted on the first edition 6-inch Ordnance Survey map of the area as a set of individual buildings and enclosures. Although the modern lay out of buildings at Rigghead is larger, it appears that the footprint of the earlier buildings may have survived and may be partially incorporated within later buildings. The farmstead is depicted as roofed and presumably occupied on the first edition map which dates to the latter part of the 19th Century.

Noted.

WOSAS further indicates that no archaeological site is recorded within the area of the second proposed extension to the north east of Hall of Auchincross, but the general area of the Hall was identified as being of archaeological significance, because there are records of earlier buildings at the Hall and a Court Knowe is recorded to the east of the Hall. Both these records imply that the Hall of Auchincross was originally an important high status site later converted to a farmstead. Its relation in date to the nearby farmstead at Rigghead is not known but it is possible that they could have been

contemporary in the past as they are today. Archaeological evaluation in May 2001 to the west of Hall of Auchincross produced negative archaeological results but it was noted by the excavators that there was no access at that time to an area of ground close to the proposed extension, which could not therefore be evaluated.

Noted.

Given the general archaeological sensitivity of the Hall of Auchincross area and the current unknown date of the foundation of the farmstead at Rigghead, WOSAS recommends that if the Council wishes to grant consent for the proposed variation, the usual negative suspensive archaeological conditions be attached.

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

3.4 West of Scotland Water, for its water and sewerage functions, has no adverse comments to make on the proposed development. Consultation will be required in respect of possible impact on water distribution mains and customer's service pipes.

The applicant has previously been advised of the comments of West of Scotland Water.

3.5 East Ayrshire Council's Environmental Health Division states that it has no objections in principle to the proposals, subject to the satisfactory implementation of the restoration/landscaping works to avoid creation of noise and dust nuisance to nearby occupiers.

The proposals represent amendments to an approved scheme for opencast coal extraction on the Rigghead development site. It is considered that the amended proposals will result in improvements to operational aspects of this approved scheme that will have the benefit of reducing the potential for noise and dust nuisance from the operational site. The Environmental Statement submitted as part of the current approved scheme for Rigghead promotes mitigation measures to minimise dust nuisance and it is considered that the development can be carried out in an environmentally acceptable manner. Appropriate dust controls and monitoring have already been secured through the imposition of appropriate conditions in the consent previously granted for the development.

3.6 The Royal Society for the Protection of Birds states that it does not believe the proposed variation will have significant implications for natural heritage interests. RSPB would request that any planning permission be made conditional on the implementation of a detailed restoration and aftercare plan (including a schedule of agreed works) to the satisfaction of interested parties. The purpose of such a condition would be to secure appropriate biodiversity benefits from restoration and aftercare and to ensure the linkages with the restoration of neighbouring sites.

The restoration and aftercare of the Rigghead site and neighbouring opencast coal sites will be the subject of ongoing development through Technical Support Groups established through the Section 75 Agreements for each site. As RSPB will be involved in both groups, it is considered that an appropriate restoration and aftercare plan will be developed and pursued through the existing obligations under the Section 75 Agreement for the Rigghead site.

3.7 New Cumnock Community Council has not responded to the consultation letter.

Noted.

3.8 Scottish Natural Heritage indicates that it raises no objection to this development being carried out strictly in accordance with the submitted plans. SNH should be advised of modifications or amendments that may affect the natural heritage interest of the site.

Noted.

SNH states that the revised plan shows a significantly larger water body being formed just north of the Hall of Auchincross Farm. While this may, upon restoration, prove of benefit to wildlife, such positive value will be maximised by careful design and contouring such that the water is largely shallow particularly towards the periphery.

Noted.

The revised contouring has the land bordering the conserved peat bog at the south of the site sloping more steeply down towards this feature. As the surrounding land is proposed for restoration to improved grassland, SNH recommends that an interceptor ditch may be required (and set back from the peat edge) to prevent nutrient rich run-off adversely affecting the peatland habitat. Also this area should be fenced to exclude livestock which might otherwise bring about trampling damage and nutrient transfer. SNH further states that it strongly advises that the final restoration takes into account the restoration proposals at neighbouring sites. In particular, the Greenburn OCCS abuts this site to the west where the current restoration plan indicates the planting of trees on the east side of the burn within the applicant's ownership. There would be benefit in agreeing with the operator at Greenburn a plan of planting in this area in order to avoid an unsightly planting layout.

The restoration and aftercare of the Rigghead site and the proposed Greenburn opencast coal site will be the subject of ongoing development through Technical Support Groups established through the Section 75 Agreements for each site. As SNH will be involved in both groups, there will be good prospects of agreeing a consistent planting plan with both operators to achieve the stated aims.

3.9 The Scottish Environment Protection Agency states that the opencast coal site is currently authorised by SEPA as a mineral process under the auspices of the Environmental Protection Act, 1990. The removal of the intrusion around Rigghead

Farm will result in a change of the existing site boundary and the applicant will therefore have to advise SEPA of the proposed changes and seek determinations as to whether the proposed change is relevant and possibly also substantial. The applicant should be advised accordingly, otherwise SEPA has no objections to the proposals.

The applicant has been advised of the comments of SEPA.

4. REPRESENTATIONS

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

4.2 I live at present under a cloud of filth especially when the wind is blowing towards my house. I am unable to use my washing line because of the current air pollution and my windows are constantly dirty. The rumble of opencast machinery is annoying when the noise is carried by the wind.

Operations on the Rigghead development have only recently commenced with soil stripping and overburden formation being carried out at surface level. Such operations can give rise to greater potential for noise and dust nuisance but are generally temporary in nature. As operations are undertaken at greater depth, the potential for noise and dust nuisance will decrease. The proposed variations to the Rigghead scheme should in fact reduce further the potential for dust nuisance, as internal vehicle haulage movements will be shorter due to the relocation of the overburden and soil storage mounds.

4.3 The development not only affects the quality of my life, but may also affect the value of my property.

The current application is for minor variations to the existing approved scheme for the Rigghead development and it is considered that these variations will potentially further reduce adverse environmental impacts associated with the development. The effect of the development on property values is not a valid ground of objection to the planning application.

4.4 My home along with three others is directly down wind from this opencast coal site and I am concerned about the volume of dust and other contaminants that the prevailing winds blow upon us.

See response to 4.2.

4.5 The water feature with pretty steep sides is not a good idea with three small children living in close proximity.

The final details of the water feature will be agreed through the Technical Support Group established for the Rigghead site and aspects of public

safety, in addition to aspects of habitat creation, will be given full consideration in establishing these details.

4.6 I am very bitter that I was given planning permission to build a new home only to find that my neighbours are going to be opencast coal sites. This does not do much for the health of my babies, the state of my morale or the value of my property that I worked so hard to build.

Planning permission for the new dwellinghouses in the vicinity of the site was granted during the original opencast operations at Hall of Auchincross and before the submission of the planning application relating to the Rigghead proposals. The effect of the development on property values is not a valid ground of objection to the planning application.

4.7 Objection is made on the basis of insufficient detail on timescale for the overall development, of the progressive restoration of the site, the hydrological impact of excavation on water flowing in the ditch along the boundary of the site and the objector's property, the tree planting schedule, the need for boulders in the area adjacent to Auchincross, proposals for the fencing of the tree planting area and aftercare provision for the tree planting areas.

The proposed variations under this application will not impact on the overall timescale for the Rigghead development, this being controlled through the existing planning consent for the site. This consent is due to expire on 02 May 2004.

The reference to boulders by the objectors is a feature that has been incorporated into the restoration scheme at the request of the Royal Society for the Protection of Birds in order to increase the biodiversity of the restored site. Details of the tree-planting schedule will be established through the Technical Support Group for the site in consultation with interested parties.

The other matters referred to by the objector have already been assessed and established through the Environmental Statement submitted as part of the original application for the Rigghead development and the current application will not result in any change to those provisions of the original consent. The objectors raised no representations to these details as part of the original Rigghead application.

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), the Adopted New Cumnock Local Plan (1993). The Adopted Local Plan was prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 Notwithstanding the age of the Adopted Local Plans, the proposed development site falls within a Preferred Opencast Coal Area. The proposal, in so far as the proposed extensions to the site are concerned, would therefore fall to be considered principally against the relevant mineral policies relating to opencast development as follows:

(i) Policy MIN2: Presumption in favour of opencast coal operations in preferred opencast coal mining areas.

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

(ii) Policy MIN3: 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.

(iii) Policy MIN6: The Council will require private operators to lodge a restoration bond.

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

(iv) Policy MIN7: 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 developed through the Technical Support Group for the site. The restoration and aftercare scheme will be agreed in consultation with SNH and the RSPB to secure enhancement of the site for flora and fauna.

(v) Policy MIN13: The Council will pay particular regard to the proximity of residential properties in the processing of planning applications for opencast operations.

The proposed two small extension areas to the approved Rigghead site will not result in the workings encroaching nearer to existing residential properties in the vicinity of the site. The proposed variations to the approved Rigghead scheme will in fact result in the excavation limit at the north east corner of the site retreating from the closest residential property at Caer-Niven albeit by a modest distance.

5.3 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the Rigghead 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 that 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 Rigghead opencast site lies 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 original application for the Rigghead opencast site (Ref. No. 99/0355/FL) was assessed and determined against the stated criteria. The proposals promoted by the current application represent minor variations only to the approved scheme and the operations will be carried out under the existing planning controls within the existing consent and Section 75 Agreement. The current application is 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) 2001, NPPG 16 – ‘Opencast Coal and Related Minerals’, appropriate Planning Advice Notes, the representations received, the consultation responses 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 that the East Ayrshire Council Opencast Coal Subject Plan (Finalised Version with Modifications) 2001, (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 MIN1: All future opencast coal developments will be directed towards and limited to the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

The Rigghead opencast site lies within a Potential Coal Extraction Area. The working of the two small extension areas would therefore be consistent with the provisions of Policy MIN3.

(ii) Policy MIN3: The Council will generally be supportive of any proposal to extend an existing opencast coal site within the Potential Opencast Coal Areas provided that the following criteria are met:

- (a) that the proposed extraction operations are carried out as a sequential phase of development and not independently or in isolation from the extraction programme of the original approved site
- (b) that the extended operations utilise fully the facilities and existing site infrastructure serving the original opencast site.
- (c) that the scale of operations, rate of extraction and number of vehicle movements generated by the extended development are commensurate with those as existing on the original site.

The proposed development would be consistent with the provisions of Policy MIN3.

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

As indicated in section 3.1 above, the applicant will require to undertake improvement works on the C36 Boig Road that will be secured through the imposition of an appropriate condition in any consent granted for the proposed development.

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

- (a) to ensure the highest possible operational standards for the transportation of extracted minerals;
- (b) to ensure best operational practice regarding road safety and operational matters;
- (c) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes
- (d) to audit and record operational details of the transportation of coal on a regular basis; and
- (e) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

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

The existing Rigghead opencast site is subject to a Section 75 Agreement encompassing the above matters.

(iv) Policy MIN24: In order to ensure that opencast coal operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council may consider opencast developments unacceptable where:-

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

The proposed variations to the Rigghead opencast site will not result in any conflict with the provisions of Policy MIN24.

(v) Policy MIN26: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, local community, group of dwellings or individual

dwellinghouses not in the ownership of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where all of the following criteria are met:

- (i) the proposal would, through restoration of the site, result in the removal of substantial areas of derelict or despoiled land, stabilise previously undermined land to allow for future permanent development, remove hazards such as mine gases and polluted mine drainage, or, if not, would provide other local or community benefits;
- (ii) the Council is satisfied that there are no objections which cannot be overcome through the expeditious use of conditions or planning agreements from residents, owners, tenants or occupiers of properties located within 500 metres of the proposed working face of the site;
- (iii) the total period of extraction and restoration within the 500 metre buffer zone does not exceed a period of 12 months
- (iv) the proposed extraction does not involve any blasting operations within the 500 metre buffer zone; and
- (v) the extraction or operational area does not encroach within 100 metres of the community, group of dwellings, individual dwellinghouse(s) or sensitive establishment concerned.

The nearest property to the Rigghead site at Caer-Niven lies approximately 370 metres from the boundary of Rigghead extension and 420 metres from the excavation limit. However working within the 500 metre limit will not exceed a period of 12 months. The existing planning consent for the Rigghead development contains planning conditions relative to operations within the 500 metres buffer zone which prevents any blasting operations within this zone. The proposed variations will not result in the site workings encroaching any closer towards exiting residential properties in the vicinity of the development site.

- (vi) 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.
- (vii) 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.
- (viii) Policies MIN36 and MIN37: Requirement for operators to lodge restoration bonds and requirement to fund aftercare schemes.

The existing Rigghead opencast site is subject to a Section 75 Agreement encompassing the above matters.

It is therefore considered that the proposed development is consistent with the relevant EAOCSP 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 EAOCSP 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.

6.5 The existing operations at Rigghead have also been designed to comply with the advice contained with Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D. In this regard the working of the two small extension areas will require to be undertaken in line with the existing operational controls imposed on the site.

Consultation Replies

6.6 Subject to the imposition of appropriate conditions on any consent granted for the proposed development, the consultation replies indicate that approval of the application would be appropriate.

Representations

6.7 The terms of three letters of objection are detailed Section 4 above. These highlight concerns with regard to noise and dust nuisance, impact on the quality of life in the locality, potential impact on public safety and the loss of value in property.

The current application is for minor variations to the existing approved scheme for the Rigghead development and it is considered that these variations will potentially further reduce adverse environmental impacts associated with the development. The effect of the development on property values is not a valid ground of objection to the planning application.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Should the Council agree to approve the application, this would necessitate

an amendment to the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 for the Rigghead site to include the two extension areas within the terms of this Agreement.

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 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) which is a prime material consideration in the determination of this application.

8.2 The proposed variations represent modest alterations to the existing approved scheme for the Rigghead development both in relation to the two small extension areas and the revisions to the restoration scheme for the site. The proposal to extend the workings will not result in the proposed operations encroaching any nearer to residential properties than the existing operations. 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. The existing Rigghead opencast site has a current consent for a three-year period and the proposed operations will be undertaken within this timescale.

8.3 With regard to the letters of objection, it should be noted that permission already exists for the Rigghead development. The proposed variations should in some respects assist in further minimising any adverse impacts particularly those associated with internal vehicle haulage movements. While it is considered that issues will arise through noise, dust and visual impacts, the mitigation measures promoted in the original Environmental Statement and the controls incorporated within the existing planning consent for the Rigghead development should ensure that the proposed variations can be implemented in an environmentally acceptable manner without any additional impact on residential properties.

8.4 Should the Committee agree to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 has been duly amended to include the two additional extension areas within this Agreement.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions on the attached sheets and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily amended the existing agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matter described in Section 8.4 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 would not require to be referred to the Development Services Committee as it would not be a significant departure in terms of principle from the East Ayrshire Opencast Coal Subject Plan.

Alan Neish
Head of Planning and Building Control

17 December 2001
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Representation Letters.
4. Consultation Responses.
5. East Ayrshire Opencast Subject Plan (Finalised Version with Modifications)
6. Ayrshire Joint Structure Plan
7. New Cumnock Local Plan
8. NPPG16 : Opencast Coal and Related Minerals
9. PAN50 : Controlling Environmental Effects of Surface Mineral Workings (Annexes A, B, C and D)
10. Approved Strathclyde Structure Plan.

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

Implementation Officer: Dave Morris

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 01/0629/FL

Location	Rigghead Opencast Coal Site, Near New Cumnock
Nature of Proposal:	Proposed variation to approved scheme of working and restoration contours of planning consent 99/0355/FL
Name and Address of Applicant:	Scottish Coal Company Limited Ayrshire Office Chalmerston Site Dalmellington
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 development shall be carried out in complete accordance with the application form and plans received by the Planning Authority on 17 September 2001(Ref. Nos. PRIGG9, PRIGG5EPA-C, PRIGG6EPA-A and PRIGG7EPA-A) as amended by the restoration plan (Ref. No. PRIGG8D) received on 01 November 2001.

REASON: To ensure that the development is carried out in accordance with the approved details.

2. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 99/0355/FL dated 02 May 2001.

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

3. Within two months of the date of this consent, the applicant shall undertake extra-ordinary repair and maintenance work to the C36 Boig Road, such works to be submitted to and approved by the Planning Authority in consultation with the Roads Authority.

REASON: In the interests of road safety

4. Prior to the demolition of the farm steading at Rigghead, the applicant shall undertake a photographic survey of the farmhouse and steading building, a copy of which shall be lodged with the Planning Authority.

REASON: To ensure that a photographic record of the steading is undertaken for historical reference purposes.

5. Any salvageable materials arising from the demolition of the Rigghead steading that could be used in the restoration of the Rigghead site shall be retained and stored in a suitable location within the site pending use within the restored site.

REASON: In the interests of amenity.

6. The developer shall undertake recording of archaeological resources within the development site to the satisfaction of the Planning Authority. No development shall take place within the site extension areas 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.

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

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THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 555320.**

AGENDA