

## **EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 02 NOVEMBER 2001**

**01/0459/FL: PROPOSED MODIFICATION OF CONDITIONS 31 AND 43 OF  
CONSENT 97/0596/FL TO PERMIT COAL EXTRACTION BENEATH TIPS  
AND CONFORM RESTORATION CONDITION WITH NEW GARLAFF  
CONSENT AT SKARES ROAD OPENCAST COAL SITE,  
SKARES, NEAR CUMNOCK.**

### **APPLICATION BY ATH RESOURCES**

#### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 Permission is sought for a variation to conditions 31 and 43 of the existing planning consent for the Skares Road opencast site (Ref. No. 97/0596/FL). Condition 31 states:

*'The operational conduct of the site shall be generally as indicated in the Development Description which forms part of the application.'*

This condition restricts operations within the development site to those identified within the working method statement forming part of the planning application. The applicant is seeking a variation to this condition to allow the winning and working of additional areas of coal within the existing development site boundary. In particular, permission is sought for extensions to coaling areas C and F.

1.2 The applicant has indicated that further geological appraisal of the site identifies two areas of potential coal within the site, Area C south and Area F north. Area F north will release approximately 400,000 tonnes of coal from beneath an area currently occupied by an overburden storage mound and will be worked as an integral part of the current coaling operations in Area F. As operations will take place below ground level or behind the existing overburden mound as it is progressively dismantled, it is considered that there would be no additional environmental impact resulting from this part of the proposal.

1.3 Area C south will release approximately 800,000 tonnes of coal and, with the exception of 3.5 hectares of woodland, this will take place wholly within areas previously mined, used for overburden storage or currently consented for overburden storage. Apart from the loss of woodland, it is considered that there would be no other negative environmental impacts resulting from the development. The areas involved are either currently part of operational land within the Skares Road site or are already consented for operations. The areas are no closer to the village of Skares. The applicant has also indicated that this

proposal will not lead to any increase in the current coal production levels or traffic levels associated with the site.

1.4 With regard to the loss of the woodland at Mine Wood, the applicant has submitted environmental information assessing the impact of the loss and in this respect, the report does not consider this loss to be too significant given its youth, local abundance and the mitigation proposal to provide some 10.5 hectares of replacement woodland.

1.5 The revised planning consent for the Skares Road site (Ref. No. 97/0596/FL) allowed for the extraction of some 5.5 million tonnes of coal over a period of 12 years. However, the existing operations are promoting a scheme to extract approximately 3 million tonnes of coal as the applicant has stated that it was not possible to secure coal sales contracts of sufficient length to underwrite the high restoration costs of mining to the deeper coal seams in Area F to realise full potential tonnage. The proposed Area C south and Area F north operations would increase output from the site to around 4.2 million tonnes, still less than the consented output from the site.

1.6 In addition a number of factors have influenced the anticipated completion date of the Skares Road development. The reduction in tonnage and the introduction of a limited nightshift reduced the life of the site with a probable completion in 2005. The current proposals to work the additional areas within the existing site will result in a projected completion in 2007/8, with coaling operations completed up to 2 years earlier. This would still be significantly within the consented 12-year life of the site.

1.7 Current coaling within Area F is subject to a limited nightshift operation and the applicant intends to work part of Area F north with this nightshift. The nightshift operation is subject to a limited 3-year period (expiring on 08 June 2003) and the extended operations would still be completed within this timescale. The anticipated completion of nightshift operations under the current proposals is around December 2002. However, the applicant proposes to transfer the nightshift operation to work the southernmost part of the proposed Area C south at that time. The nightshift would operate within this part of the site until around Easter 2004 and would undertake the same below ground activities in the void area as does the current nightshift operation. There would be no coal extraction or haulage of coals. The applicant has submitted additional noise assessment information that concludes that there would be no additional adverse impact resulting from noise nuisance and that the proposed nightshift operations would meet the current night time noise limits in force for the Skares Road site.

1.8 In summary, the proposal comprises works within the area of an existing consented open cast site in a manner which is within the overall time scale of that previous consent. Furthermore, due to the fact that the total amount of consented coal will not be fully worked, the coal proposed now for extraction will not increase the amount of total extraction from the site. A limited extension of nightshift activities will take place in a different more southerly part of the site.

1.9 The variation to condition 43 is sought following the recent decision by the Southern Local Planning Committee to approve an extension to the landfill site at Garlaff near Skares, which will utilise the existing void created by operations in Area B of the Skares Road opencast site. The variation sought seeks now to exclude Area B from the obligations contained within the existing Condition 43 as this area will now be subject to separate restoration responsibilities under the consent for the Garlaff landfill extension. Condition 43 states:

'The site shall be progressively restored generally in accordance with the scheme submitted with the planning application. This scheme shall be developed throughout the operational life of the site and shall include provision for the service area to be restored to a suitable condition, the restoration of the remaining part of the site for agriculture or forestry or nature conservancy or natural and man-made heritage interpretations or other appropriate uses as approved by the Planning Authority; that the scheme shall also include the re-instatement of any access roads/ rights of way at present in existence and the procedures for the replacement of overburden, subsoil and topsoil shall generally accord with those indicated in the Development Description and to the satisfaction of the Planning Authority

## **2. RECOMMENDATION**

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

## **3. SUMMARY OF ANALYSIS**

**3.1** As indicated in Section 5 in 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 in 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** As indicated within the report, the proposed operations will take place entirely within the current consented site at Skares Road and additional coaling will take place in areas currently disturbed or to be disturbed by the present operations. The proposed development represents an extension to the existing operations and will be carried out as sequential phases of the approved development in Areas C and F. The operations proposed would still be subject

to the existing conditions relating to the Skares Road site, including limitations on noise levels.

3.3 The proposal to extend the workings of Areas C and F 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 Skares Road opencast site has a current consent for a 12-year period and the proposed operations will be undertaken within this timescale. The proposals will, however, safeguard existing employment associated with the site for up to a further two-year period.

3.4 The environmental information submitted in support of the application indicates that the areas that will be subject to the limited nightshift operation can be operated to acceptable environmental standards and to the current night-time noise restrictions imposed on the current operational site.

3.5 The variation to condition 43 is essentially a technical amendment that seeks now to exclude Area B from the obligations contained within the existing Condition 43 as this area will now be subject to separate restoration responsibilities under the consent for the Garlaff landfill extension.

3.6 There are no objections to the proposed development from statutory and non- statutory consultees or representations made by third parties.

**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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CONSENT 97/0596/FL TO PERMIT COAL EXTRACTION BENEATH TIPS  
AND CONFORM RESTORATION CONDITION WITH NEW GARLAFF  
CONSENT AT SKARES ROAD OPENCAST COAL SITE,  
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 alteration to the method of working on site which is in accordance with the Opencast Coal Subject Plan.

**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 approximately 4 kilometres east to west and by 1.5 kilometres north to south, covering a total area of approximately 608 hectares.

2.2 The application site comprises 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.

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 have commenced on site 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.

2.5 **Proposed Development:** Permission is sought for a variation to conditions 31 and 43 of the existing planning consent for the Skares Road opencast site (Ref. No. 97/0596/FL). Condition 31 states:

*‘The operational conduct of the site shall be generally as indicated in the Development Description which forms part of the application.’*

This condition restricts operations within the development site to those identified within the working method statement forming part of the planning application. The applicant is seeking a variation to this condition to allow the winning and working of additional areas of coal within the existing development site boundary. In particular, permission is sought for extensions to coaling areas C and F.

2.6 The applicant has indicated that further geological appraisal of the site identifies two areas of potential coal within the site, Area C south and Area F north. Area F north will release approximately 400,000 tonnes of coal from beneath an area currently occupied by an overburden storage mound and will be worked as an integral part of the current coaling operations in Area F. As operations will take place below ground level or behind the existing overburden mound as it is progressively dismantled, it is considered that there would be no additional environmental impact resulting from this part of the proposal.

2.7 Area C south will release approximately 800,000 tonnes of coal and, with the exception of 3.5 hectares of woodland, this will take place wholly within areas previously mined, used for overburden storage or currently consented for overburden storage. Apart from the loss of woodland, it is considered that there would be no other negative environmental impacts resulting from the development. The areas involved are either currently part of operational land within the Skares Road site or are already consented for operations. The areas are no closer to the village of Skares. The applicant has also indicated that this proposal will not lead to any increase in the current coal production levels or traffic levels associated with the site.

2.8 With regard to the loss of the woodland at Mine Wood, the applicant has submitted environmental information assessing the impact of the loss and in this respect, the report does not consider this loss to be too significant given its

youth, local abundance and the mitigation proposal to provide some 10.5 hectares of replacement woodland.

2.9 The revised planning consent for the Skares Road site (Ref. No. 97/0596/FL) allowed for the extraction of some 5.5 million tonnes of coal over a period of 12 years. However, the existing operations are promoting a scheme to extract approximately 3 million tonnes of coal as the applicant has stated that it was not possible to secure coal sales contracts of sufficient length to underwrite the high restoration costs of mining to the deeper coal seams in Area F to realise full potential tonnage. The proposed Area C south and Area F north operations would increase output from the site to around 4.2 million tonnes, still less than the consented output from the site.

2.10 In addition a number of factors have influenced the anticipated completion date of the Skares Road development. The reduction in tonnage and the introduction of a limited nightshift reduced the life of the site with a probable completion in 2005. The current proposals to work the additional areas within the existing site will result in a projected completion in 2007/8, with coaling operations completed up to 2 years earlier. This would still be significantly within the consented 12-year life of the site.

2.11 Current coaling within Area F is subject to a limited nightshift operation and the applicant intends to work part of Area F north with this nightshift. The nightshift operation is subject to a limited 3-year period (expiring on 08 June 2003) and the extended operations would still be completed within this timescale. The anticipated completion of nightshift operations under the current proposals is around December 2002. However, the applicant proposes to transfer the nightshift operation to work the southernmost part of the proposed Area C south at that time. The nightshift would operate within this part of the site until around Easter 2004 and would undertake the same below ground activities in the void area as does the current nightshift operation. There would be no coal extraction or haulage of coals. The applicant has submitted additional noise assessment information that concludes that there would be no additional adverse impact resulting from noise nuisance and that the proposed nightshift operations would meet the current night time noise limits in force for the Skares Road site.

2.12 In summary, the proposal comprises works within the area of an existing consented open cast site in a manner which is within the overall time scale of that previous consent. Furthermore, due to the fact that the total amount of consented coal will not be fully worked, the coal proposed now for extraction will not increase the amount of total extraction from the site. A limited extension of nightshift activities will take place in a different more southerly part of the site.

2.13. The variation to condition 43 is sought following the recent decision by the Southern Local Planning Committee to approve an extension to the landfill site at Garlaff near Skares, which will utilise the existing void created by operations in Area B of the Skares Road opencast site. The variation sought seeks now to

exclude Area B from the obligations contained within the existing Condition 43 as this area will now be subject to separate restoration responsibilities under the consent for the Garlaff landfill extension. Condition 43 states:

*'The site shall be progressively restored generally in accordance with the scheme submitted with the planning application. This scheme shall be developed throughout the operational life of the site and shall include provision for the service area to be restored to a suitable condition, the restoration of the remaining part of the site for agriculture or forestry or nature conservancy or natural and man-made heritage interpretations or other appropriate uses as approved by the Planning Authority; that the scheme shall also include the re-instatement of any access roads/ rights of way at present in existence and the procedures for the replacement of overburden, subsoil and topsoil shall generally accord with those indicated in the Development Description and to the satisfaction of the Planning Authority.'*

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Roads Division has no objections subject to conditions. The applicant will require to arrange and carry out deep patching repair work on the U728 road at their expense in agreement with East Ayrshire Roads Division or reimburse the Council for repair work carried out on the applicant's behalf.

***The existing operations at Skares Road opencast site are subject to a Section 75 Agreement with provision for the recovery of extraordinary roads maintenance costs resulting from the haulage of coal from the Skares Road site. A suspensive condition could be attached to any consent granted for the proposed development to ensure that necessary road improvement works are undertaken prior to the commencement of operations proposed under this application.***

3.2 Ochiltree Community Council and Cumnock Landward Community Council have not responded to the further consultation letter.

***Noted.***

3.3 East Ayrshire Council's Environmental Health Division states that the principal interest in the project would be to ensure that the proposals are not detrimental to any residents within the area. In this regard, it is noted that Area C is well removed from any occupied properties and should not raise any significant concerns. It is presumed that the topsoil and subsoil mounds will be retained down the western flank of this area. The remaining main portion of Area C is shown on the plans as overburden mound. If this area is to be worked then there would be a considerable movement of material required. There are a handful of occupied rural properties which are fairly well removed to the south-

east of this area and the intervening contours of Carsgailloch Hill coupled with any mounding or bunding along the southern flanks of Area C should ensure that no noise nuisance arises in this locality.

***The southern portion of Area C lies within the existing commercial forest at Carsgailloch Hill and the retained forestry to the west and east of the site will provide an effective acoustic barrier to operations within that part of the development site. The operations within Area C south will also be the most remote from the village of Skares.***

The proposed workings in Area F are somewhat different in that they are not far from the Muir and to a lesser extent Hindsward and Skares. However it is considered that the site is shielded by substantial overburden mounds. If the applicant can guarantee that the additional coal extraction can be achieved by an extension of the existing cuts, will all take place below ground level and will not result in any significant increase in noise levels to the aforementioned properties, then this Division would have no real opposition to the proposals. It is presumed that existing aspects of the site workings will remain unaltered and that any conditions relative to the avoidance of nuisance will accordingly remain valid.

***The extension of Area F will be worked as part of the existing cuts. The extension area is currently occupied by an existing overburden mound that will be dismantled and backfilled in the existing void within Area F. In this sense the current site operations extend into this area in any case. The operations proposed would still be subject to the existing conditions relating to the Skares Road site, including limitations on noise levels.***

3.4 Scottish Natural Heritage raises no objection to the proposed development subject to it being carried out strictly in accordance with the terms and conditions of the accompanying Environmental Statement. SNH should be advised of any modifications or amendments that may affect the natural heritage.

***Noted.***

SNH further states that the submitted ecological assessment correctly identifies the significant nature conservation issues and discusses the likely impacts and the effectiveness of the proposed mitigation measures. Both spotted flycatchers and tree sparrows are present on the site and are of nature conservation interest. Under the proposed scheme, excavation is due to commence in Spring 2002 for the duration of approximately one year. SNH recommends a condition restricting excavation works to avoid the most sensitive period of the breeding season, that is the months of March, April and May inclusive.

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

SNH indicates that the mitigation measures proposed are generally welcomed provided that they are implemented as a condition of the planning consent. SNH is pleased to see that the plan is to restore predominantly woodland and scrub habitat over the proposed excavation area and agrees that this will provide a suitable habitat for invertebrates and birds as it develops. SNH is concerned that tree felling and soil stripping may remove or damage the area of mature trees in the south-eastern corner of Mine Wood. The additional measures included within the ecological assessment to prevent disturbance to the mature trees should be carried out.

***The implementation in full of the mitigation measures promoted in the ecological assessment can be secured through the imposition of an appropriate condition in any consent granted for the proposed development.***

3.5 East Ayrshire Council's Economic Development Division and the Health and Safety Executive have no comments to make on the proposed development.

***Noted.***

3.6 The Scottish Environment Protection Agency has no objections to the proposed development. The development will be served by the existing site pollution prevention facilities and will be subject to the terms and conditions of SEPA's discharge consents and Part B Authorisation.

***Noted.***

It is further stated that the operation of the existing Garlaff landfill site is regulated by SEPA by means of a waste management licence. The new landfill extension will also be regulated by SEPA and will require a permit under the Pollution Prevention and Control (Scotland) Regulations 2000. SEPA will be discussing the extension with the landfill operators in the near future.

***Noted.***

3.7 West of Scotland Water Authority and the Royal Society for the Protection of Birds have not responded to the consultation letter.

***Noted.***

4. **REPRESENTATIONS** : There are no representations.

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 Cumnock and Auchinleck Local Plan (1992) and the Adopted Mauchline/Drongan/Ochiltree Local Plan (1993). The Adopted Local Plans were 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/ Opencast Coal Priority Area. The proposal would therefore fall to be considered principally against the relevant mineral policies relating to opencast development as follows (corresponding Cumnock and Auchinleck Local Plan policies in brackets):

(i) Policy MIN2 (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.***

(ii) Policy MIN3 (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.

***The proposed development resulting from the modification of Conditions 31 and 43 will take place within the existing Skares Road Opencast site boundary. 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 (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 MIN7 (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. Area B of the opencast coal site will now be used as an extension to the landfill site at Garlaff and approval of this application will result in that area***

***being removed from the restoration scheme for the Skares Road site.***

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

***The proposal to extend the workings of Areas C and F will not result in the proposed operations encroaching any nearer to residential properties than the existing operations.***

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 Skares Road 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 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 within the existing site boundary of the approved site***

***and 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 and relevant planning history.

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, (EAOCSPP), 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 existing Skares Road opencast site does not lie within a Potential Coal Extraction Area and therefore requires to be assessed against Policies MIN2 or MIN3.***

(ii) Policy MIN2: The Council will not generally be supportive of any new opencast coal developments outwith the Potential Coal Extraction Areas with the exception of small scale, short term extraction proposals which meet the following criteria:

- (a) there is clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction.
- (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 is not a small scale, short-term extraction proposal and therefore requires to be assessed against Policy MIN3.***

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

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

***The proposed development represents an extension to the existing operations wholly within the existing site boundary of the Skares Road site and will be carried out as sequential phases of the approved development in Areas C and F.***

(b) 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.***

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

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

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

***There are no significant additional areas of existing dereliction that will be removed as a result of the proposed operations although the existing operations will result in the removal of former mine workings and areas of dereliction.***

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

***The additional coaling within Areas C south and F north will safeguard the jobs of approximately 130 employees, contractors and service providers for up to two additional years over the current scheme being worked.***

(f) 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.***

(g) any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a period substantially in excess of 5 years will not be considered acceptable, unless it can be clearly demonstrated that there are significant local community and local environmental benefits to be secured by the development.

***The exiting Skares Road opencast site has a current consent for a 12-year period. The proposed operations will be undertaken within this timescale.***

(iv) Policy MIN4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against stated criteria.

***It is considered that the proposed development does not conflict with the provisions of Policy MIN4.***

(v) 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 B7046 Skares - Mote Toll road that will be secured through the imposition of an appropriate condition in any consent granted for the proposed development.***

(vi) 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 Skares Road opencast site is subject to a Section 75 Agreement encompassing the above matters.***

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

(a) a development has a working face or operational areas relating to the storage, processing or dispatch of coal which encroach within 500 metres of the community concerned, or

(b) storage mounds, landscaping bunds or settlement lagoons are located within 100 metres of the community concerned, or

(c) the proposal involves a substantial area for extraction over an extended extraction period in excess of ten years, or

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

(viii) 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 proposed development would not conflict with the provisions of Policies MIN24 and MIN26.***

(ix) 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.

(x) 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.

(xi) 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.***

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

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.

6.5 The proposed operations 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.

6.6 **Planning History:** 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.

## 7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council associated with the determination of this application. It is considered that the proposed development will not necessitate any change to the existing Section 75 Agreement relating to the Skares Road site.

## 8. CONCLUSIONS

8.1 As indicated in Section 5 above, 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) which is a prime material consideration in the determination of this application.

8.2 As indicated within the report, the proposed operations will take place entirely within the current consented site at Skares Road and additional coaling will take place in areas currently disturbed or to be disturbed by the present operations. The proposed development represents an extension to the existing operations and will be carried out as sequential phases of the approved development in Areas C and F. The operations proposed would still be subject

to the existing conditions relating to the Skares Road site, including limitations on noise levels.

8.3 The proposal to extend the workings of Areas C and F 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 Skares Road opencast site has a current consent for a 12-year period and the proposed operations will be undertaken within this timescale. The proposals will, however, safeguard existing employment associated with the site for up to a further two-year period.

8.4 The environmental information submitted in support of the application indicates that the areas that will be subject to the limited nightshift operation can be operated to acceptable environmental standards and to the current night-time noise restrictions imposed on the current operational site.

8.5 The variation to condition 43 is essentially a technical amendment that seeks now to exclude Area B from the obligations contained within the existing Condition 43 as this area will now be subject to separate restoration responsibilities under the consent for the Garlaff landfill extension.

8.6 There are no objections to the proposed development from statutory and non- statutory consultees or representations made by third parties.

## **9. RECOMMENDATION**

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

Alan Neish  
Head of Planning and Building Control

23 October 2001  
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. Adopted Mauchline /Drongan/Ochiltree Local Plan.
8. Previous application CD/95/0254/MIN.
9. Previous application 97/0596/FL.
10. Previous application 00/0010/FL.
11. Previous application
12. NPPG 16: Opencast Coal and Related Minerals.
13. PAN 50, Annexes A, B, C and D.
14. The Approved Ayrshire Joint Structure Plan.
15. 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**

Location	Skares Road Opencast Coal Site Skares Near Cumnock
Nature of Proposal:	Proposed modification of conditions 31 and 43 of consent 97/0596/FL to permit coal extraction beneath tips and conform restoration condition with new Garlaff consent
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. Condition 31 of planning consent 97/0596/FL dated 15 May 1998 shall be amended as follows:

'The operational conduct of the site shall be generally as indicated in the Development Description which forms part of the application as amended by drawing nos. 2a(b) and 2a(c) Skares Road OCCS site operations plan dated July 2001.'

REASON: To address amended proposals for the operational conduct of the Skares Road opencast site.

2. Condition 43 of planning consent 97/0596/FL dated 15 May 1998 shall be amended as follows:

'With the exception of Area B as shown on drawing no 2a(b) Skares Road OCCS site operations plan date July 2001, the site shall be progressively restored generally in accordance with the scheme submitted with the planning application. This scheme shall be developed throughout the operational life of the site and shall include provision for the service area to be restored to a suitable condition, the restoration of the remaining part of the site for agriculture or forestry or nature conservancy or natural and man-made heritage interpretations or other appropriate uses as approved by the Planning Authority; that the scheme shall also include the re-instatement of any access roads/ rights of way at present in existence and the procedures for the replacement of overburden, subsoil and topsoil shall generally accord with those indicated in the Development Description and to the satisfaction of the Planning Authority.'

REASON: To address amended proposals for the restoration of the Skares Road opencast site.

3. 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.

4. No operations hereby granted under this consent shall be implemented until the applicant has let a formal contract for extra-ordinary repair and maintenance work to the B7046 Skares - Mote Toll 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

5. The applicant shall implement in full, the mitigation measures contained within the Ecological Assessment of Mine Wood submitted in support of the planning application. In particular, excavation works shall be restricted to avoid the most sensitive period of the bird breeding season, that is the months of March, April and May inclusive.

REASON: In the interests of environmental protection.

**AGENDA**