

**EAST AYRSHIRE COUNCIL**  
**PLANNING COMMITTEE 24 JUNE 2016**  
**PLANNING ENFORCEMENT NOTICE**  
**PONESK SITE OPENCAST COAL MINE, EAST of MUIRKIRK**

**Report by Head of Planning and Economic Development,**  
**Economy and Skills**

**Purpose**

1. The Purpose of this report is to present for consideration of the Planning Committee the Planning Enforcement Notice detailing the proposed restoration scheme for the Ponesk opencast coal site to be served on the new land owners of the abandoned Ponesk opencast coal surface mine near Muirkirk and to seek authority for the proposed course of action.

**Background**

2. Planning Permission was granted for the Ponesk site on 26<sup>th</sup> March 2010 under planning reference 09/0344/FL. A Section 75 Agreement was also entered into between the Council, and Scottish Coal Company Ltd (SCCL), relation to the Ponesk site. The site commenced operations following said approval
3. On 19 April 2013, the Scottish Coal Company Limited (SCCL) went into liquidation with KPMG being appointed as their liquidators. At the time of its liquidation, SCCL operated a number of opencast sites within East Ayrshire, including the Ponesk Opencast Coal Site at Muirkirk (Ponesk).
4. In implementation of the restoration and aftercare bond obligations contained within the Section 75 Agreement a Restoration Bond 17 May 2010 and 10 May 2013 was granted by Euler Hermes Guarantee Plc and an Aftercare Bond was granted by Zurich dated 4 and 17 May 2010.
5. The Ponesk Restoration Bond required that Euler Hermes Guarantee Plc (the Bond Provider) guarantee the restoration obligations of SCCL as set out in the Section 75 Agreement and Planning Permission for Ponesk. In the event of SCCL failing to perform the restoration obligations and conditions, it would be competent for the Council to enter onto the Ponesk site and carry out works to ensure compliance, with the costs being recovered under the Bond.
6. However, as has been well documented in previous Council Reports, due to various factors the bond value does not meet the restoration costs of the site. Independent Engineers have assessed the topographical data and considered that to restore the site to the approved planning permission would cost approximately £13million as Reported to Cabinet dated 19 September 2013.

7. Subsequently a public tender exercise was carried out which resulted in HJ Banks Mining being the preferred bidder. Given the value of the contract was fixed at maximum of £3million, the tender process required companies to present their proposals for the redesign of the site within the fixed price to meet the terms of the design specification agreed with the landowner and subject to Cabinet approval on 22 June 2016.

### **Tender Process**

8. To ensure that all issues and concerns are being addressed, as best as possible, the Tender Assessment Panel consisted of a wide range of interests. The panel included representatives from the Planning Authority including an engineer from Dalgleish Associated Ltd (DAL), the land owners: Mines Restoration Limited and SEPA, with SNH providing separate advice.

### **Restoration Proposals**

9. The proposed restoration works to be carried out under the enforcement notice will result in the two water voids being retained due to the funding available. Overall, the site will be re-contoured to reduce the uneven and dangerous slopes and depressions within the site, where ever practically possible. The two overburdens on the west of the site will be re-contoured to reduce their impact and provide a natural landscape skyline particularly along the A76. Where voids have exposed vertical drops, these areas have been risk assessed and treated with will 1.8m high deer fencing and hedge row of thorny bushes to dissuade public access. As indicted on the enforcement notice plans areas of the site will be treated with topsoil or soil making materials to allow a growing medium for grasses and landscaping. Following the conclusion of the re-contouring, top soiling and planting works, the site will require to be placed into five years aftercare.

The final land use for the Ponesk site will be agricultural grazing similar to that prior to the Open Cast Coal mining operations on the site.

10. The proposals are detailed in the plans accompanying the draft enforcement notice attached to this Committee Report (Appendix 2).

### **Enforcement Notice**

#### **Assessment of the current site conditions**

11. As is required, by the legislation detailed below, prior to the service of an enforcement notice the Planning Authority must consider the current position of the enforcement site against the Development Plan and any other material considerations. This process is required to ensure that the enforcement action proposed is justified and that the unauthorised development, as it stands, is unacceptable.
12. The Ponesk site remains predominately in the condition it was when SCCL went into liquidation with Mines Restoration Limited undertaking essential water management and site security. The site measures approximately 510 hectares in area and contains two large water filled voids at Grasshill and Area C. These voids are estimated to be in excess of 50m deep metres deep. The majority of the site is exposed overburden with no top soils or vegetation and limited soil stores.

13. The following is an assessment of the current site conditions of the Ponesk open cast site against the Policies of the East Ayrshire Opencast Coal subject Plan:-
14. Policy MIN 4 - The current unrestored site fails to accord with this policy as the site conditions have a detrimental impact on the landscape character, visual amenity of the area, natural environment, dust levels, water courses and the water table. – Non Compliant.
15. Policy MIN 15 - As the enforcement notice site has not been restored to a reasonable condition the abandoned site is considered to be unacceptable. – Non Compliant.
16. Policy MIN16 – While the River Ayr Walk is immediately south of the site, there are no public footpaths or rights of way across the site.
17. Policy MIN 17 - The abandoned mine workings fail to assimilate into the landscape, fail to provide adequate methods of dealing with ground water and fails to provide an appropriate aftercare arrangement. – Non Compliant.
18. Policy MIN 22 - The abandoned mine workings fail to protect the amenity of the nearby communities and residents from the negative impacts of the unrestored site in relation to such issues as visual amenity, residential amenity and landscape impacts. – Non Compliant.
19. Policy MIN 27 - The abandoned mine working will have a detrimental impact on the quality and quantity of water catchment areas – Non Compliant.
20. Policy MIN 28 - The abandoned mine working will have a detrimental impact on the provision of woodlands , hedgerows , burns and other such landscape features – Non Compliant.
21. Policy MIN 29 - The visual impact of the abandoned mine workings will have a detrimental impact on the tourism within the locality – Non Compliant.
22. Policy MIN 30 - The visual impact of the abandoned mine workings will have a detrimental impact on the visual amenity of the area – Non Compliant.
23. Policy MIN 31 - The abandoned mine workings have a detrimental impact on the provision and protection of the water courses in the locality – Non Compliant.

### **Material considerations**

24. It is considered that there are no material considerations which are supportive of the enforcement site being retained as an abandoned opencast coal mine.

### **Issuing of an Enforcement Notice**

25. Prior to the service of an enforcement notice the Planning Authority must satisfy its self that there is a need to serve an enforcement notice. Section 127 of the Town and Country Planning (Scotland) Act 1997 indicates that the Planning Authority may issue an enforcement notice where it appears to them-

*“ (a)that there has been a breach of planning control, and*

*“(b)that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.”*

### **Breach of Planning Control**

26. In relation to part (a) of Section 127 detailed above the Planning Authority considers that as the opencast coal operator is in liquidation and unable to continue operations and the previous operations, to date, on site do not accord with the phasing plans set out in the approved planning permission, therefore the development can be considered to be in breach of planning control.
27. In relation to part (b) of Section 127, with regards to the expediency of issuing an enforcement notice, the current site has been assessed against the East Ayrshire Open Cast Coal Subject Plan,(the Development Plan) as detailed above and it has been determined that the current abandoned site is not in accordance with various policies of the Development Plan. It has also been determined that there are no material considerations which would merit the retention of the site in its current form.
28. Therefore the service of an enforcement notice to address this planning breach is considered to be appropriate and necessary on this occasion. To re-instate the site to a safe condition which removes all threats of contamination and reinstates the landform back to a natural state for public access.

### **Enforcement Notice**

29. It is intended that the Enforcement Notice will be served on;
  - Mine Restoration Limited (as current landowner) who have taken ownership of the complex.

### **Assessment of the Proposal against the Development Plan**

30. In order to justify that the proposed restoration scheme is acceptable the following is an assessment of the proposed scheme against the policies of the East Ayrshire Opencast Coal Subject Plan
31. The proposed restoration works to be carried out under the enforcement notice will result in the two water voids being retained. Where voids have exposed vertical drops, these areas treated with will 1.8m high deer fencing and hedge row of thorny bushes to dissuade public access. Overall, the site will be re-contoured to reduce the uneven and dangerous slopes and depressions within the site, where ever possible. As indicted on the enforcement notice plans, areas of the site will be treated with topsoil or soil making materials to allow a growing medium for grasses and landscaping. The two overburdens on the west of the site will be re-contoured to reduce their impact and provide a more natural landscape skyline. Following the conclusion of the re-contouring and shaping of the overburden tips, the top soiling and planting works will be carried out within the site.

32. Given the level of improvement within the abandoned site it is considered that the proposals in the enforcement notice will provide a significant level of betterment and are generally compliant with Policies MIN 4,9,11,15,16,17,22,27,28,29,30 and 31 of the East Ayrshire Open Cast coal Subject Plan.

### **Compliance Monitoring**

33. As indicated above, Dalgleish Associates Ltd (DAL) assessed all the tender submissions for this project and they have indicated that this scheme is deliverable within the limitations of the bond value and the site constraints.
34. It is also proposed that the restoration works and the contract are the subject of compliance monitoring by DAL of the Schedule of Works and drawings set out in the enforcement notice. The compliance monitoring arrangements will be carried out monthly.
35. It is proposed the Planning Authority would organise and Chair the Community Liaison Group and Technical Working Group for the site throughout the lifetime of the contract.

### **Financial and Legal Implications**

36. The service of the enforcement notice provides the Council with the formal legislative powers to enter the Planning application site and carry out remedial works. It is the intention that the required restoration works be carried out to a maximum of the £3 million value of the restoration bond which has been secured.
37. Following the service of the enforcement notice all parties who have been served with the notice have the right of appeal to the Department of Planning Environmental and Appeals (DEPA) within 28 days of the enforcement notice being served.
38. The Council have agreed to fund the Compliance Monitoring carried out by DAL of the restoration contract and works and therefore all secured bond monies will be directed towards the restoration of the site.

### **Community Planning Implications**

39. Restoration of the Ponesk site is compliant with the Community Plan Local outcome to protect, conserve and enhance the natural environment.

### **Recommendations**

40. It is recommended that the Planning Committee endorse the restoration scheme promoted by the enforcement notice, as detailed in Appendix 3, and agree to the service of the enforcement notice to facilitate the delivery of the site being restored.

**Michael Keane**  
**Head of Planning and Economic Development**

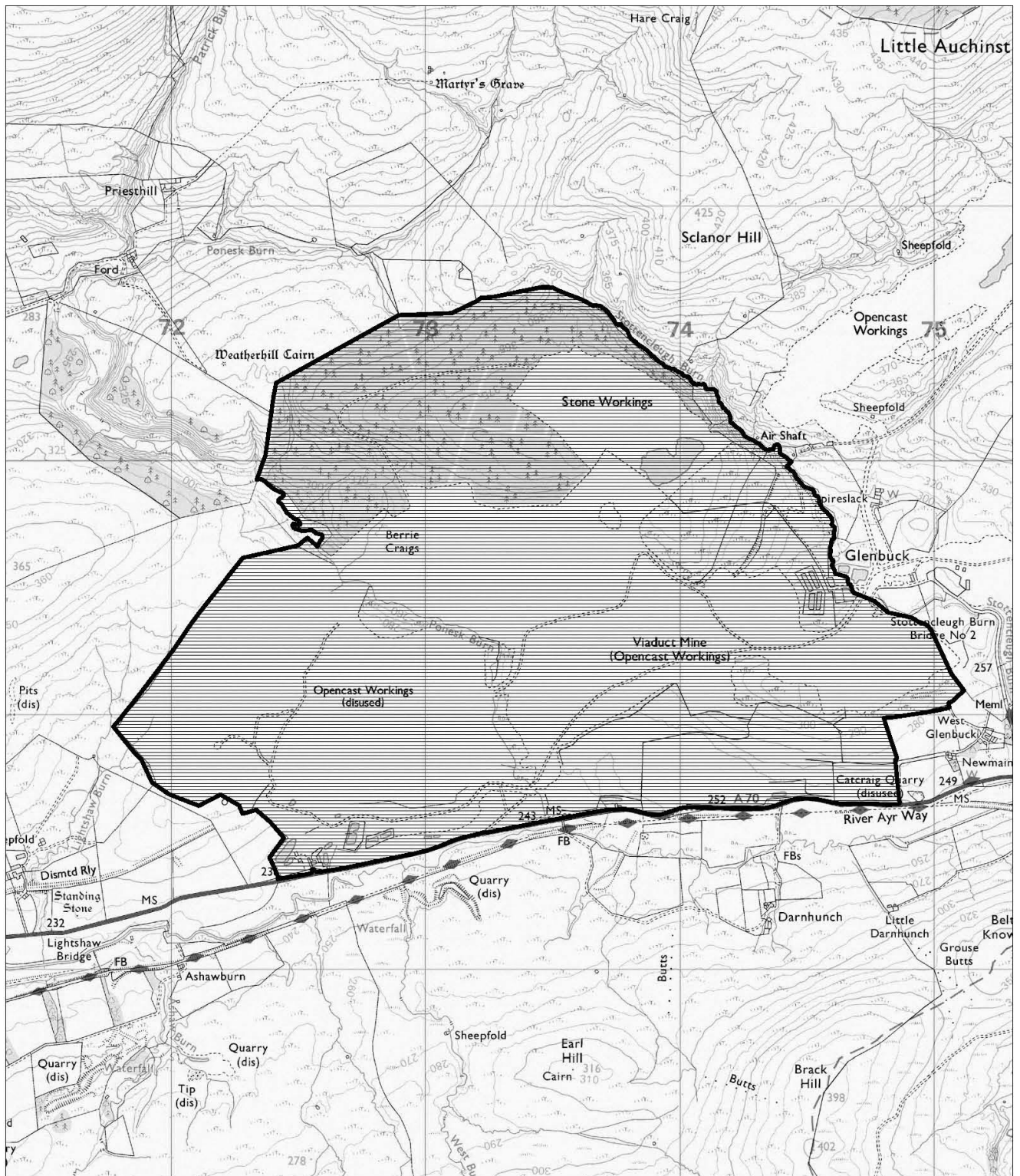
**FV/DMCD**  
**15 June 2016**

**LIST OF BACKGROUND PAPERS**

1. East Ayrshire Open Cast Coal Subject Plan(2003)
2. Planning Application 09/0344/FL
3. Cabinet Report re Bond position for Ponesk

Anyone wishing to inspect the above papers please contact Craig Iles, Planning Team Leader, on 01563 576749.

**Implementation Officer:** David McDowall, Operations Manager, Building Standards and Development Management



<p>Title/Location</p> <p><b>Ponesk</b></p> <p><b>Muirkirk</b></p> <p><b>Application No. EN/16/0146/BPC</b></p>	<p><b>East Ayrshire Council</b></p> <p>Department of Neighbourhood Services</p> <p>Planning &amp; Economic Development Service</p> <p>The Johnnie Walker Bond</p> <p>15 Strand Street</p> <p>Kilmarnock KA1 1HU</p> <p>Tel: (01563) 576790 Fax: (01563) 554592</p> <p>E-Mail : <a href="mailto:Planning@east-ayrshire.gov.uk">Planning@east-ayrshire.gov.uk</a></p> <p>Com Date: 24/06/2016</p>
<p>Key</p> <div data-bbox="263 1915 414 1971"> </div> <p><b>Application Site</b></p>	<div data-bbox="1308 1769 1388 1948"> </div>

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Reference No : **EN/16/0146/BPC**

## **IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY**

### **DRAFT ENFORCEMENT NOTICE**

Town and Country Planning (Scotland) Act 1997  
as amended by the Planning etc. (Scotland) Act 2006

### **ENFORCEMENT NOTICE (NON-COMPLIANCE WITH CONDITION(S))**

#### **SERVED BY: EAST AYRSHIRE COUNCIL**

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to them that there has been a breach of planning control, under Section 123(1)(b) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations.

2. **THE LAND AFFECTED BY THE NOTICE** (edged red on the attached plan)

Ponesk, Spireslack Opencast Site, C38 Glenbuck Off A70, Glenbuck, Cumnock, East Ayrshire, KA18 3NL

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

On 29 March 2010 Planning Permission 09/0344/PP was granted for the proposed open cast coal site at Ponesk, within the Spireslack Complex, Muirkirk, East Ayrshire, subject to conditions. These conditions include the following:-

1. The development hereby permitted shall enure for the benefit of the applicant only, and

the approved operations shall be completed within 5 years of the date of commencement of operations on the Ponesk Remainder site, or by such other time as may be formally agreed in writing with the Planning Authority.

50. The site shall be progressively restored in accordance with the scheme submitted with the planning application. The procedures for replacement of overburden, sub-soil and topsoil shall accord with those indicated in the Project Description / Written Statement and to the satisfaction of the Planning Authority.

It appears to the Council that the restoration of the Land in accordance with the approved restoration plan is not being affected which is contrary to the methodology and phasing of working detailed in the approved Environmental Statement.

A copy of the approved restoration plan titled "Restoration Masterplan" Figure 7.10 being annexed to this notice.

For the avoidance of doubt all other operations, conditions and obligations relating to planning permission 09/0344/PP remain in force.

#### **4. REASONS FOR ISSUING THIS NOTICE**

4.1 It appears to the Council that the above breach of planning control has occurred within the last 10 years.

4.2 The Land has been abandoned and left partially unrestored with unsafe, exposed and unstable faces together with partially flooded excavation areas, following the liquidation of the previous operator, The Scottish Coal Company Limited. This is considered detrimental to public safety, and harmful to the local environment and amenity.

4.3 The Council considers it necessary and in the public interest to take enforcement action to remedy the harm caused by the alleged breach of planning control.

The following conditions attached to consent 09/0344/FL have not been complied with and are now considered to be a breach of planning control.

1. The development hereby permitted shall enure for the benefit of the applicant only, and the approved operations shall be completed within 5 years of the date of commencement of operations on the Ponesk Remainder site, or by such other time as may be formally agreed in writing with the Planning Authority.

50. The site shall be progressively restored in accordance with the scheme submitted with the planning application. The procedures for replacement of overburden, sub-soil and topsoil shall accord with those indicated in the Project Description / Written Statement and to the satisfaction of the Planning Authority.

## **5. WHAT YOU ARE REQUIRED TO DO**

Within ?? months from the date this notice takes effect, or such timescale as may be agreed in writing with the Council, you are required to restore the land by implementing the

undernoted **XXX** Steps within the specified time scales, in accordance with the following drawings and documents annexed to this notice and in compliance with the conditions below:

### **Documents**

Morton Fraser Restoration Services and Site Access Agreement dated XXXXX

Method Statement A/B ref: PS-15-64 Ponesk Open Cast Mining Land Restoration

Programme of Works ref: HJB/BA3901/06 dated February 2016

Ponesk Tender Additional Questions – Banks Mining Response

### **Plans**

Landform Phasing Plan ref: HJB/BA3901/03 dated February 2016

Indicative Site Drainage Plan ref: HJB/BA3901/04 dated February 2016

Fencing Plan ref: HJB/BA3901/05 dated February 2016

Restoration Strategy (Contract) ref: HJB/BA3901/08 Rev A dated February 2016

Cross Sections ref: HJB/BA3901/09 dated February 2016

## **Conditions**

- 1. Except in the case of emergency and with the prior agreement of the Planning Authority, the hours of operation for the Ponesk Remainder site shall be confined between 0600 and 2200 hours Mondays through Friday and 0600 to 1600 on Saturdays. No works shall take place on Sundays or recognised Public Holidays with the exception of essential site maintenance works.*
- 2. Appropriate measures shall be taken to prevent mud, dirt, dust, slurry, coal or stones being carried onto the highway and such steps shall include the provision and use of hardstanding areas and a full wheel and body vehicle wash facility for the cleaning of all lorries, dump trucks, other heavy vehicles and plant leaving the site. The vehicle wheel and body wash shall be installed for operational use prior to the stripping of soils within the excavation area and shall be maintained in effective operation during construction and operation of the site.*
- 3. The access road and public road adjacent to the site shall be kept clear of mud or other deposited materials at all times by means of mechanical brushing as appropriate.*
- 4. The conduct of the site and method of operation shall comply with British Standards 5228 and Part 3 of the 1984 Code of Practice for Noise Control Application to Surface Coal Extraction by Opencast Methods. Except during the formation and removal of baffle mounds and the stripping and replacement of soils, the noise limit during daytime (0700 to 1900 hours) shall not exceed 55dB Laeq,1h and 48dB Laeq,1h during night-time (0600 to 0700 hours and 1900 to 2200) at noise sensitive properties.*
- 5. An appropriate noise monitoring programme shall be undertaken during the operational life of the site, using appropriate equipment and recording devices, the details of which shall be agreed with the Planning Authority and the results of which shall be submitted to the Planning Authority on a monthly basis during the operational life of the site. The noise monitoring programme shall be agreed and in place prior to the commencement of works on site.*
- 6. A dust monitoring programme shall be agreed with the Planning Authority in consultation with the Environmental Health Authority and undertaken using appropriate equipment and recording devices. The results and records shall be made available to the Planning Authority on a monthly basis during the operational life of the site. The dust monitoring programme shall be agreed and in place prior to the commencement of operations on site.*
- 7. Blasting operations shall be carried out in such a manner that no component of the peak particle velocity attributable to any blast, measured at any point immediately adjacent to any building outside the boundaries of the site, exceeds a vibration criterion of 6 mm/second at a 95% confidence level.*

8. *No blasting operations shall take place within 500 metres of any occupied residential property, unless the developer is able to demonstrate a controlling interest in this property or has secured an appropriate legal agreement with respective property owners consenting to such operations.*

9. *An appropriate blast monitoring scheme shall be undertaken during the operational life of the site the details of which shall be agreed with the Planning Authority in consultation with the Environmental Health Authority. The scheme shall allow for the use of appropriate equipment and recording devices, the results from which shall be submitted to the Planning Authority on a monthly basis. The blast monitoring scheme shall be agreed and in place prior to any blast operations being undertaken on site.*

10 *All opencast machinery not in use shall be parked, as far as practicable, in an inconspicuous position and shall not be astride soil or overburden mounds.*

11. *Any plant or machinery which becomes redundant from use during the operational life of the site shall be permanently removed from the site.*

12. *Any rubbish and scrap materials generated on the site shall, as far as is practicable, be kept in a screened position until disposed of in an approved manner to the satisfaction of the Planning Authority.*

13. *No materials for filling shall be introduced to the site from sources external to it without the formal approval of the Planning Authority.*

14. *Except in cases of emergency or as otherwise may be agreed with the Planning Authority, blasting operations shall be carried out between 1000 to 1600 hours Mondays to Fridays (and between 1000 to 1300 hours on Saturdays). No blasting operations shall take place on Sundays, or on recognised East Ayrshire Public Holidays, during the hours of darkness or during periods of adverse visibility.*

15. *Prior to the commencement of works on site, the site owner shall submit to, and have approved by the Planning Authority in writing, in consultation with SEPA, a Construction and Environmental Management Plan (CEMP).*

## **6. TIME FOR COMPLIANCE**

**XXXXXX**

## **7. WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on XXXXXX, unless an appeal is made against it beforehand.

## **8. YOUR RIGHT OF APPEAL**

You can appeal against this Notice, but any appeal must be received, or posted in time to be received, by the Scottish Ministers before XXXXXX. Schedule 1 to this Notice gives information on your rights of appeal. Read it carefully.

## **9. WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this enforcement notice, it will take effect on XXXXXX and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in the Notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution, the service of a Fixed Penalty Notice and/or remedial action by the Council.

Date:

Signed:

On behalf of: **EAST AYRSHIRE COUNCIL, COUNCIL HEADQUARTERS,  
LONDON ROAD, KILMARNOCK, KA3 7DG**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**  
**as amended by the Planning etc. (Scotland) Act 2006**

**Part VI, S.123-124, 127-130 & 136A**

**Development Requiring Planning Permission**

**Power to Serve Enforcement Notice**

**123.** (1) For the purposes of this Act:-

- (a) carrying out development without the required planning permission, or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

(2) For the purposes of this Act:-

- (a) the issue of an enforcement notice, or
  - (b) the service of a breach of condition notice, under this Part constitutes taking enforcement action.
- (3) In this part under "planning permission" includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.

**124.**(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.

(4) Sub-sections (1) to (3) do not prevent:-

- (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect, or
- (b) taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.

**127. (1)** The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them:-

- (a) that there has been a breach of planning control, and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served:-

- (a) on the owner and on the occupier of the land to which it relates, and
- (b) on any other person having interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

(3) The service of the notice shall take place:-

- (a) not more than 28 days after its date of issue, and
- (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

**128.(1)** An enforcement notice shall state:-

- (a) the matters which appear to the planning authority to constitute the breach of planning control, and
- (b) the paragraph of Section 123(1) within which, in the opinion of the authority, the breach falls.



- (2) A notice complies with sub-section (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are:-
  - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
  - (b) remedying any injury to amenity which has been caused by the breach.
- (5) An enforcement notice may, for example, require:-
  - (a) the alteration or removal of any buildings or works,
  - (b) the carrying out of any building or other operations,
  - (c) any activity on the land not to be carried on except to the extent specified in the notice, or
  - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
- (6) An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a "replacement building") which, subject to sub-section (7), is as similar as possible to the demolished building.
- (7) A replacement building:-
  - (a) must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,
  - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and

- (c) must comply with any regulations made for the purposes of this sub-section (including regulations modifying paragraphs (a) and (b) of this sub-section).
- (8) An enforcement notice shall specify the date on which it is take effect and, subject to Section 131 (3), shall take effect on that date.
- (9) An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities.
- (10) Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
- (11) An enforcement notice shall specify such additional matters as may be prescribed.
- (12) Regulations may require every copy of an enforcement notice served under Section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under Section 130.
- (13) Where:-
  - (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and
  - (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted under Section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
- (14) Where:-
  - (a) an enforcement notice requires the construction of a replacement building, and
  - (b) all the requirements of the notice with respect to that construction have been complied with, planning permission shall be treated as having been granted under Section 33 in respect of development consisting of that construction.

**129.(1)** The planning authority may:-

- (a) withdraw an enforcement notice issued by them, or
  - (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with Section 128(9).
- (2) The powers conferred by sub-section (1) may be exercised whether or not the notice has taken effect.
- (3) The planning authority shall, immediately after exercising the powers conferred by sub-section (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.

**130.(1)** A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Scottish Ministers against the notice on any of the following grounds:-

- (b) that those matters have not occurred;
  - (c) that those matters (if they occurred) do not constitute a breach of planning control;
  - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
  - (e) that copies of the enforcement notice were not served as required by Section 127;
  - (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach; and
  - (g) that any period specified in the notice in accordance with Section 128(9) falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made either:-

- (a) by giving written notice of the appeal to the Scottish Ministers before the date specified in the enforcement notice as the date on which it is to take effect, or
  - (b) by sending such notice to them in a properly addressed and prepaid letter posted to them at such time that, in the ordinary course of post, it would be delivered to them before that date.
- (3) A person who gives notice under sub-section (2) shall submit to the Scottish Ministers, either when giving the notice or within the prescribed time, a statement in writing:-
- (a) specifying the grounds on which he is appealing against the enforcement notice, and
  - (b) giving such further information as may be prescribed.

### **136A Fixed penalty notice where enforcement notice not complied with**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify—
  - (a) the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
  - (b) the activity so specified which has not ceased.
- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.

- (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (7) The conditions are that the fixed penalty notice—
  - (a) is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
  - (b) is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice.
- (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
- (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.

## SCHEDULE 1

### Explanatory Note to Those in Receipt of an Enforcement Notice

#### ***Relevant Legislation***

A copy of Sections 123-130 and 136 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006) is attached. You will wish to note in particular the points referred to below.

#### ***Right of Appeal***

If you wish to appeal against this notice, you should write to The Scottish Ministers, Department of Planning and Environmental Appeals, Unit, 4 The Courtyard, Callendar Business Park, Callender Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received by them, before XXXXXX The Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in Section 130 of the 1997 Act and should state the facts on which you propose to rely in support of each of the grounds of the appeal. The ground of appeal and the statement of facts must be submitted with your appeal or within 14 days of your being required to do so by the Scottish Ministers.

If you lodge an appeal, the enforcement notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

#### ***Penalties for Non-Compliance with an Enforcement Notice***

Where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or carrying out of operations, with any conditions or limitations, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000, or on conviction on indictment to an unlimited fine. Furthermore, if the use is continued after conviction, the person may be convicted of a second or subsequent offence.

#### **Fixed Penalty Notices**

The Council may, after the compliance period for any relevant enforcement notice has expired, serve a fixed penalty notice on the owner, occupier, tenant, any other responsible person or any person who has an interest in the site, requiring the payment of a fixed penalty should the matters requiring to be addressed remain outstanding. This fixed penalty will have the effect of preventing the criminal offence created by this non-compliance from being reported to the Procurator Fiscal for consideration of prosecution. Fixed

penalties for non-compliance will be in the sum of £300 for a breach of condition notice and £2000 for an enforcement notice.

***Direct Action for Non-Compliance with an Enforcement Notice***

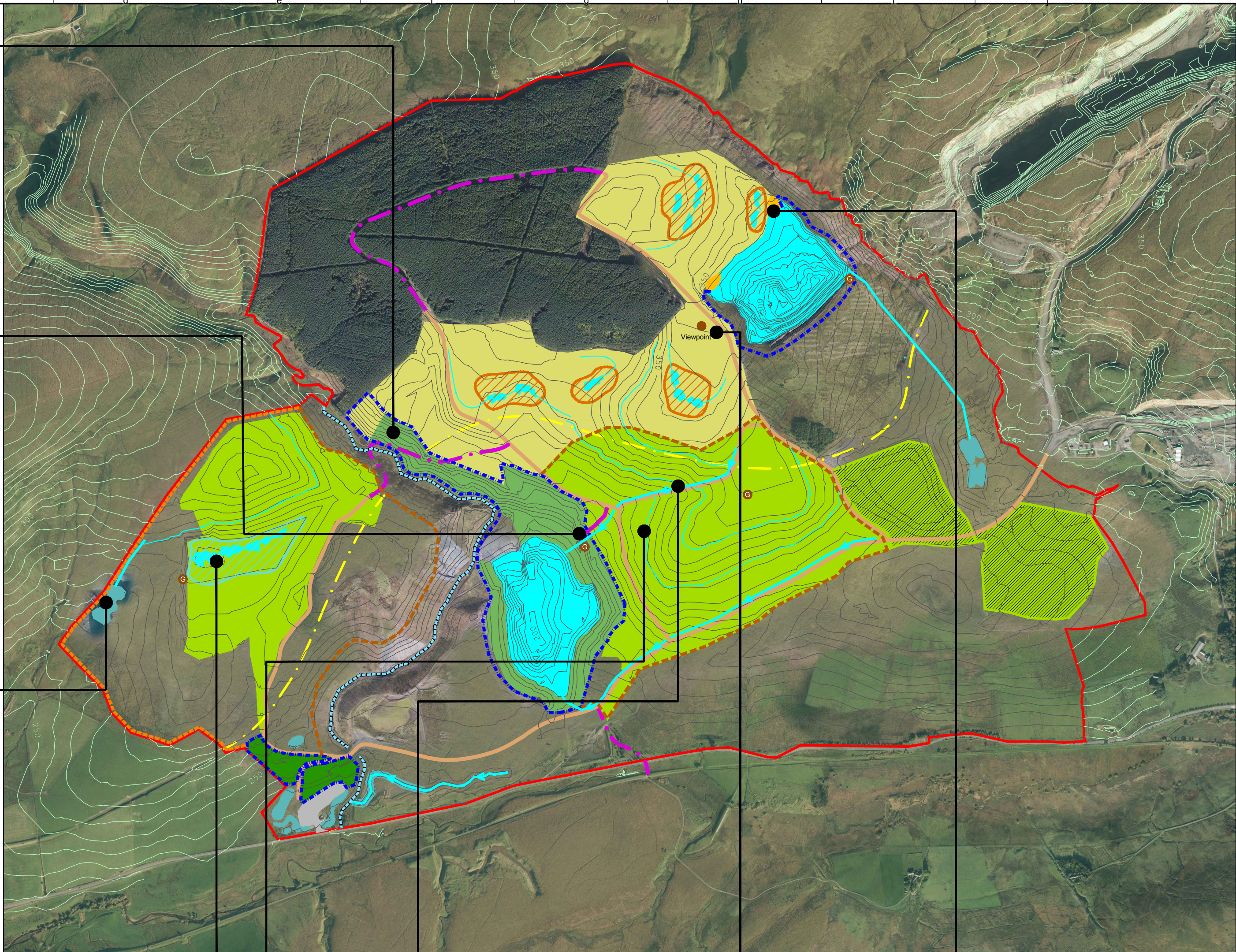
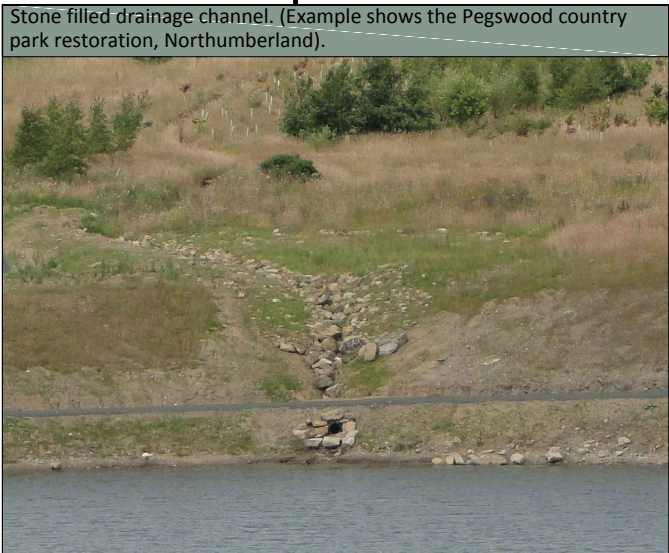
If the steps required by an enforcement notice are not taken within the specified period(s), the Council may enter on the land, take those steps and recover the cost from the owner or lessee of the land.

***Further Offences***

Compliance with the terms of an enforcement notice does not discharge the notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.







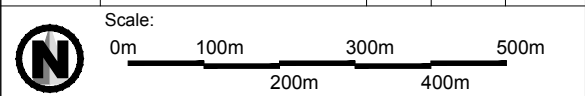
## Key

- Area Subject To Tender (269 hectares)
- Proposed contours inside the site @ 5m intervals
- Existing contours outside of the site @ 5m intervals
- Areas of agriculture
- Areas of assisted natural regeneration
- Areas of block tipping and compost incorporation for future woodland planting \*\*
- Broadleaved amenity woodland / commercial forestry
- Hydro-seeded scrub and grass mix to retained steeper slopes
- Areas for breeding wader habitat
- Area of wet grassland
- Boulders to waters edge to discourage access to steeper slopes from the water
- Wetland seasonal scrapes (any clay found on site will be targeted at sealing the ponds and scrapes)
- Shallow margined ponds / reedbeds
- Cut-off drainage channel to prevent scouring of steep slopes prior to establishment of vegetation
- Ponesk Burn
- Main drainage channels (stone filled on steeper slopes to prevent erosion of the channel)
- Tracks / footpath routes
- Footpath links
- Line of historic mineral line marked by a line of large boulders
- Concrete hardstanding retained for car parking and forestry
- Stock Proof Fencing
- Deer Proof Fencing
- Existing Fence
- Geographical Feature\*

Notes:  
\* Based on BGS Report CR116 / 029  
\*\* Work amended to take account of work undertaken by MRL

A	Amends to detail	CM	SP	14.06.16
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Revision:	Description:	Dm:	Chkd:	Date:
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Source information:  
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Drawn:CM	Orig:SP	Checked: Team	App:24.02.16
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Ponesk Tender Submission  
February 2016

Project: Ponesk

Title: Restoration Strategy (Contract)

Scale: 1:10000@A2 Ref: HJB / BA3901 / 08A Sheet: 1/1

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