

EAST AYRSHIRE COUNCIL

COUNCIL - 19 SEPTEMBER 2013

OPENCAST MINING IN EAST AYRSHIRE – STEPS TO RECOVERY

Report by Chief Executive

1. PURPOSE OF REPORT

2. To (a) provide a comprehensive report to Council on (i) matters relating to the current position on the range of opencast coal complexes within East Ayrshire and their restoration status; and (ii) activity which is being taken forward in relation to strengthening the local economy and creating jobs; (b) set out for Council the proposed steps to recovery in respect of both these important matters; and (c) make recommendations to Council in these respects.

3. BACKGROUND

4. A report by the Chief Executive to Cabinet on 8 May 2013 set out the national and local response to the announcement on 19 April 2013 that the Scottish Coal Company Limited (SCCL) had gone into liquidation and that KPMG had been appointed as Interim Liquidators.
5. Subsequently, a detailed report was considered by Cabinet on 24 May 2013, which advised of the liquidation of Aardvark TMC Ltd (Aardvark) on 16 May 2013 and the appointment of KPMG as Interim Liquidators. Cabinet agreed a wide range of actions at that meeting and this further report advises on the work being undertaken in implementing those decisions and importantly, developing and implementing a Recovery Plan. This work is being progressed by the Officer Team (the Coal Team) charged with responding to the implications of the liquidation of SCCL and Aardvark in respect of economic and environmental impacts, and is set out in detail in this report.
6. In addition to the work of the Coal Team led by the Depute Chief Executive, the Local Response Team (LRT), chaired by the Chief Executive, has continued to play a lead role by bringing together Community Planning Partners and other key stakeholders to address the impact of the closures locally and to ensure the best possible outcomes for our communities. The work of the LRT has also complemented and supported the matters being taken forward at a national level by the Scottish Coal Industry Taskforce which is chaired by Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism.
7. In the report to Cabinet on 24 May 2013, there was also provided an update in relation to a number of potentially serious, but not fully quantifiable, employment and environmental implications arising from the collapse of SCCL and of Aardvark, particularly around the Liquidator's petition to the Court of Session to abandon opencast coal sites and to abandon statutory licences and the related to planning, health and safety and environmental responsibilities.

The potential consequences of all of this were, and continue to be, a concern in terms of liabilities and the responsibilities for these sites, and any possible contractual or delictual consequences flowing from the collapse of these companies.

8. In addition, at its meeting of 27 June 2013, Council approved the appointment of the Independent Review Team, led by Jim Mackinnon, former Chief Planner of the Scottish Government, to undertake a review of all processes and procedures around the management, determination, implementation, monitoring and review of the planning processes in relation to opencast coal operations, all within the governance arrangements in place throughout the relevant period.

9. STEPS TO RECOVERY

10. Before addressing the Recovery Plan being taken forward in respect of both employment and business matters and of the environment, it is necessary and appropriate to provide Council with a status report on each element, detailing the progress made since the last substantive report on 24 May 2013. The remainder of this report is, therefore, presented in this way with, where appropriate, associated appendices, each setting out the progress to date/current status and thereafter, the proposed steps to recovery.

11. EMPLOYMENT AND BUSINESS MATTERS: STATUS REPORT

12. For ease of reference, the following recommendations relating to employment and business matters were approved by Cabinet at its meeting on 24 May 2013. Cabinet agreed to:

- note the work being undertaken by the Council and Skills Development Scotland to support those within our communities who have been made redundant as a result of the decisions by SCCL and Aardvark;
- note the work of the Council and of Scottish Enterprise in supporting local companies which form part of the supply chain and which have been affected by the liquidation decisions;
- agree to the engagement of an economic and social research and development company to assist in analysing impacts and in developing approaches to respond to these economic and social matters and authorise the Chief Executive to so do.

13. Employability: Status Report

14. Since the report to Cabinet on 24 May 2013, the work of the Partnership Action for Continuing Employment (PACE) initiative has continued with significant input from the Council's Economic Development and Employability teams and, in particular, our employability officers based in Cumnock and Dalmellington. The most recent figures made available by KPMG indicate that 311 East Ayrshire residents and former SCCL and Aardvark employees have now been made redundant. In addition, support has been provided to former employees not resident in East Ayrshire but for whom Cumnock is more

accessible than other employability support mechanisms within their own local authority area, the majority of whom reside in Dumfries and Galloway.

15. Specifically in terms of East Ayrshire residents, 213 individuals have had careers appointments through PACE and have also registered for support from the Council's employability project. The latter includes assistance with preparing CVs; acquiring IT skills; undertaking job searches; completing application forms, and preparing for interviews. The Council, in addition to the high level of engagement by and with the PACE team, also undertook additional promotional activity at the end of June 2013, including advertising and editorial features in all Ayrshire papers, to raise awareness of the support available to former SCCL and Aardvark employees.
16. At present, 180 requests for additional training, funded by Skills Development Scotland's Employability Fund, have been made and 99 of these have been completed with the remainder currently taking place. Our records, combined with those from the Department of Work and Pensions (DWP) indicate that 88 individuals have secured employment. 20% of this employment has been within the mining sector either with Kier Mining Ltd (Kier Mining) or Hargreaves Surface Mining Ltd (Hargreaves) who, having been the preferred bidder, as reported on 24 May 2013, have now acquired certain former SCCL and Aardvark assets as set out later in this report. Other employment has been in the construction sector; the energy sector at Hunterston and in transport. 15 individuals have been supported through Business Gateway to explore business start-up options and 2 have either started a business or become self-employed.
17. Subsequent to the acquisition of former SCCL/Aardvark sites, Hargreaves indicated that it remains its intention to recruit further employees in the next 12 months. Recruitment is underway and the PACE partnership is working closely with Hargreaves to support a process, which includes ensuring that applicants obtain their red ticket MPQC (Mineral Products Qualifications Council) accreditation irrespective of whether they are ultimately successful in securing employment with Hargreaves. This process is being funded by Skills Development Scotland and is in addition to any support, which has already been provided through its Employability Fund.
18. For completeness, as Members will be aware, Kier Mining have more recently initiated a 30 day consultation period with their existing workforce to reduce staff numbers by 35 within the Greenburn complex through expressions of interest for both early retirement and voluntary redundancy as part of their workforce planning arrangements. The current site workforce consists of 176 Kier Mining personnel of which 154 are operatives. There are also approximately 20 full time subcontractors working onsite. Kier Mining confirmed that this is a planned reduction in the workforce and follows activity levels on site. The Council's Economic Development and Employability teams will continue to work with the PACE team to deliver advice and support to employees affected by these proposals

19. Business Support: Status Report

20. Our business advisers continue to support local companies, with a particular focus on those most adversely affected by the liquidations, and endeavour to ensure that there is a good level of awareness of the available support packages. A recent training event in Cumnock focusing on marketing, social media and e-trading was again oversubscribed.
21. Hargreaves have confirmed that, while they continue to employ local businesses within the supply chain, they require as part of their company's in-house procurement processes, to market test to ensure best value is obtained; this process is underway and officers will seek to support local businesses in this respect. Officers have also sought from Hargreaves confirmation of the outcome of their procurement exercise for haulage and plant equipment.

22. EMPLOYMENT AND BUSINESS MATTERS: STEPS TO RECOVERY

23. As has been stated, the establishment of the LRT in East Ayrshire, reference to which was made in previous reports to Cabinet, has enabled local and national stakeholders to bring their collective efforts to bear in addressing some of the inherent challenges for the area, with the objective of identifying and delivering actions that will help transform the local economy and create jobs in the longer term. Specifically, the Scottish Government, East Ayrshire Council and Scottish Enterprise have agreed to work together on the following priorities:-

(a) Strengthening the Business Base

The private sector is the driving force behind sustainable economic growth; therefore, intensifying the Council's efforts to encourage further enterprise activity and the growth of the East Ayrshire business base is critical to the long term future of the area. This growth will in turn generate new employment opportunities for local residents. Fundamental to this is the need to ensure that business support activities delivered by all partner agencies are fit for purpose and focused on those companies where the greatest opportunity for growth exists. To this end, Scottish Enterprise and the Council are working together to review how business support is currently delivered and to ensure that it supports the growth of businesses in East Ayrshire.

Key actions include:

- (i) Mapping the business base with a particular emphasis on key sectors and supply chain opportunities;
- (ii) Undertaking an analysis of the business base to identify companies for focused support; and
- (iii) Reviewing the existing business support model to ensure it supports a focused approach.

Current Status:

- (i) A preliminary analysis of the East Ayrshire business base has been completed using several database sources and the company information has been mapped using Standard Industry Codes;
- (ii) An agreed segmentation based on turnover and employment levels has been applied to the database;
- (iii) Using the analysis, and in discussion with the Council, a number of potential sectors were identified for focused activity and a more detailed analysis of some of these sectors is now underway to identify the sub-sectors e.g. manufacturing;
- (iv) An engagement mapping exercise has also been completed using information on companies from the preliminary analysis that have engaged with/received support from Scottish Enterprise; and
- (v) This mapping has provided an initial list of potential target sectors/companies which will be finalised following further analysis into sub-sectors.

Next Steps:

- (i) Undertake final analysis and produce a final list of target companies;
 - (ii) Review the appropriateness of existing available support;
 - (iii) Review support requirements of target companies; and
 - (iv) Articulate resulting implications.
- (b) Attracting Investment

Strengthening the business base will involve both working with companies already in the area and attracting new investment, for example, through Scottish Development International (SDI). This inward investment activity will be focussed on the indigenous skills base ready and available across East Ayrshire and building on existing activity across the wider East Ayrshire area. Scottish Enterprise, SDI and the Council are, in furtherance of this, working together to explore the added value that Enterprise Area status might have in attracting investment to the area and, while developing a business case for Enterprise Area Status on that basis, are also examining other options, such as, the benefit which Assisted Area Status might additionally or alternatively bring. Officers will continue to advance all possible options.

By way of clarification, the Assisted Area map defines the areas where, under EU State Aid rules, regional aid can be given to firms to create or protect jobs. The schemes that draw heavily on the Assisted Area map include Regional Selective Assistance (RSA) in Scotland. Assisted area status does not, however, guarantee funding and does not affect the amount of European funds which regions receive from the EU Structural Funds budgets.

Following the finalisation in June of the new State Aid rules on regional aid, all EU member states including the UK are required to draw up a new Assisted Area map due to come into force on 1 July 2014 for the period up to 2020. As a result of diminishing EU resources and geographical redistribution, all UK consultees (Local Economic Partnerships in England and councils in Scotland and Wales) are being asked to reduce their current level of coverage by 20%. The Council is preparing to respond to the current UK-wide consultation exercise.

Key actions include:

- (i) Review baseline information requirements in line with Scottish Government policy priorities for Enterprise Areas;
- (ii) Map key sector assets particularly in relation to the Enterprise Area key sectors to identify realisable opportunities. The key sector opportunity element of the East Ayrshire Social and Economic Impact Assessment currently underway will help inform this;
- (iii) Review of shovel-ready site options that could be delivered within Enterprise Area timescales. A recently completed independent analysis of the land and property supply within East Ayrshire will help inform this process;
- (iv) Review existing partnership arrangements to ensure there is a strong governance mechanism in place;
- (v) Explore the possibility of the Enhanced Capital Allowance incentive being made available as part of any Enterprise Area and consider the added value of this; and
- (vi) Explore additional and/or alternative opportunities such as Assisted Area Status.

Current Status:

- (i) Baseline information requirements review undertaken; and
- (ii) Meeting has taken place between Scottish Enterprise, Scottish Government, and the Council to discuss Enterprise Area Policy and potential site options.

Next Steps:

- (i) Scottish Government, Scottish Enterprise and East Ayrshire Council to identify specific East Ayrshire sites which could be designated as Enterprise Area sites;
 - (ii) Build the case for submission to Ministers;
 - (iii) Develop Assisted Area Status opportunities; and
 - (iv) Explore further alternative economic/enterprise opportunities.
- (c) Promoting East Ayrshire

Linked to both of the priorities above is a requirement to develop a clear statement of the East Ayrshire offer in the context of the wider area.

Location matters both to indigenous businesses and inward investors, and East Ayrshire must have the tools to enable it to influence companies' location behaviour. This work needs to challenge misguided perceptions of the area, for example in respect of location and connectivity, and be designed to raise its profile further. Again, Scottish Enterprise, SDI and the Council are working together to examine what needs to be done to enable a clear articulation of the area's proposition to visitors, businesses and investors.

Key actions include:

- (i) Establish a Promoting East Ayrshire Sub-Group;
- (ii) Undertake an analysis of what already exists in terms of materials, products and offerings and whether it is fit for purpose;
- (iii) Develop a promotion and communications strategy and plan on the basis of the findings;
- (iv) Identify implementation budget; and
- (v) Implement plan.

Current Status:

- (i) Promoting East Ayrshire Sub-Group membership agreed;
- (ii) Invitation to Tender to be issued to potential suppliers at the beginning of September 2013 for the development of a promotion and communications strategy and plan completed and agreed between SE and the Council; and
- (iii) Scottish Enterprise budget approval underway.

Next steps:

- (i) Supplier selection and appointment expected by end September 2013 with analysis of existing assets, products and materials to be completed by December 2013;
- (ii) Promotion and communications strategy and plan development – December 2013 and February 2014; and
- (iii) Implementation plan - March 2014 onwards.

24. ECONOMIC IMPACT ASSESSMENT (EIA): STATUS REPORT AND STEPS TO RECOVERY

25. Following Cabinet approval on 24 May 2013, the procurement of independent support to undertake an Economic Impact Assessment of the liquidation of SCCL and Aardvark has been completed with EKOS Ltd having been appointed following a successful tender process. The Economic Impact Assessment will focus on:

- (a) provision of labour market profiles for all of the communities immediately affected by the closure of open cast mining as well as the East Ayrshire Council area as a whole. This will include analysis of the following:

- labour market supply;
 - labour market demand;
 - major projects in the area;
 - economic trends; and
 - impact of the recession to date.
- (b) collation of comprehensive socio-economic baseline information relating to the local communities affected by the closure of opencast mines;
 - (c) assessment of the direct, indirect and induced impacts on East Ayrshire and its neighbouring authorities in the South West of Scotland, with particular attention to Dumfries and Galloway, South Ayrshire, North Ayrshire and South Lanarkshire;
 - (d) quantitative and qualitative survey work engaging local stakeholders and businesses to analyse the other consequences of site closures, to supplement the desktop assessment detailed above;
 - (e) analysis of the public sector capacity to respond to these closures and their impact on East Ayrshire's communities;
 - (f) analysis of the consequences of these site closures for the wider Community Planning Partnership in East Ayrshire;
 - (g) assessment of the continuing impact on the sector of the proposal from the Office of Rail Regulation to increase rail freight charges;
 - (h) assessment of the cost to the public purse of the loss of opencast coal mining and the consequent demand for public sector support; and
 - (i) preparation of a draft report, on the basis of the analysis and assessments above and through stakeholder consultation, with recommendations which will assist the Council and its partners to respond to the emerging economic and social issues, and ensure long term community sustainability.
26. The first draft report of the Economic Impact Assessment is expected by 20 September 2013.

27. LEGAL CONSIDERATIONS: STATUS REPORT

28. Prior to advising of the work undertaken to date in addressing the current position in respect of the opencast coal complexes and their respective environmental implications, an update on all relevant legal matters is set out for Council's consideration, providing the circumstances against which all other activity is undertaken and measured. For ease of reference, the following recommendations relating to legal matters were approved by Cabinet at its meeting on 24 May 2013. Cabinet agreed to:
- Note the most recent position in relation to SCCL (in liquidation) and Aardvark (in liquidation);
 - Note the most recent position in relation to Hargreaves Services and their status as preferred bidder to acquire various assets of the former SCCL and Aardvark and their subsequent intentions;
 - Note the actions taken by the Council to date to safeguard the position of the Council and its communities, and in response to the announcements

- by Hargreaves Services on their intentions in relation to those open cast sites which they do not deem to be viable and which they wish to abandon;
- Note and approve the engagement of Legal Counsel in the formal opposition to the Directions sought by the Liquidators/Hargreaves Services in respect of their abandonment of certain sites and statutory licences as they apply to former SCCL and Aardvark and related matters;
 - Note that on completion of the Court actions these matters will be reported to Cabinet; and
 - Note that on completion of the assessments of the outstanding restoration of those sites which are not to be operated by Hargreaves Services and the cost thereof not covered by restoration bonds, the ultimate position will be reported to Cabinet.
29. To assist Council, the detailed legal considerations and their current status are set out in Appendix 1 to this report. By way of summary, however, Council is asked to note the following key points:-
- 30. Hargreaves Surface Mining**
- (a) Hargreaves have completed their due diligence in relation to the Aardvark and SCCL sites; Hargreaves have also confirmed which of the former Aardvark and SCCL companies' active mining sites' assets they would be taking forward through the special purpose vehicles known as "Hive Cos"; following the conclusion of the above due diligence process by Hargreaves, KPMG have now presented the remaining SCCL sites to the market place, with a closing date for bids of 6 September 2013 and an update will be provided when the outcome of this process is known.
- (b) Hargreaves' Business Plan has taken the form of a mixed approach which, in addition to that set out at (a) above, includes:-
- the transfer of a number of active opencast sites into "Hive Cos" and the early resumption of mining and restoration activities;
 - bringing additional new sites towards production; and
 - providing their company's services as contractors to carry out Design and Planning Services, mining operations and care and maintenance services to the Hive Cos.
- 31. Court of Session Note for Directions by KPMG for SCCL**
- (c) The joint Liquidators for SCCL lodged a Note for Directions at the Court of Session which sought Directions from the Court on a number of matters including, whether the Liquidators could disclaim land and statutory licences. The Note for Directions was opposed by East Ayrshire Council, South Lanarkshire Council, SEPA, SNH and the Lord Advocate, who appeared on behalf of the Scottish Government.
- (d) On July 2013 the Judge, Lord Hodge, granted the Note for Directions allowing the Liquidators to disclaim land and statutory licences.
- (e) Grounds of Appeal were lodged which opposed both Directions granted by the Court. The Advocate General for the Government of the United

Kingdom subsequently entered the process as a party, supporting the decision of the Court (and, therefore, the Liquidators) to allow land and licences to be disclaimed. The Appeal was heard on 10 September 2013 by three Judges in the Inner House of the Court of Session. Again, an update will be provided when the outcome of the Appeal is known.

- (f) KPMG has not yet disclaimed sites in East Ayrshire owned by SCCL. On 22 August 2013, KPMG sent notices to the Council disclaiming their interest in various areas of land under leases granted to SCCL and responsibilities for these lands will now revert back to the original landowner(s).

32. Disclaimed Land Belonging to Aardvark

- (g) KPMG has already sought to disclaim three areas of land within the former Aardvark sites at Garleffan, Grievehill and Skares Area D. If these Disclaimers are competent then the ownership of the disclaimed sites falls to the Crown.
- (h) The Crown has a period of three years in which to decide if they wish to disclaim the property; it is unclear what the Crown's position will be in relation to these sites which are likely to have significant responsibilities flowing from their ownership of the sites. It is unclear who will "own" and have responsibility for the sites in the event that the Crown subsequently also disclaims the land.

33. Hive Cos

- (i) As set out later in this report for each complex being taken forward by Hargreaves, in the "first phase" the complex is owned and operated by a Hive Co. The Hive Co has been set up as an English company and currently operates under English Law. A number of the sites are now owned by the Hive Cos (see Appendices 2-13 attached, where appropriate).
- (j) The Hive Cos will operate the sites and apply to the Planning Authority for alternative restoration proposals on terms which Hargreaves considers are "commercially acceptable". (The alternative restoration proposals will require to be subject to assessment and scrutiny through the statutory planning process.) If these alternative schemes are approved then, at that time, those sites will be taken into the ownership of the Hargreaves Group. Restoration Schemes which are "commercially acceptable" to Hargreaves will, in effect, deliver an alternative standard.
- (k) Hargreaves have indicated that, in the event that the restoration issues are not resolved on a basis which is "commercially acceptable" to them, then these sites would not be taken into the Hargreaves Group and the Hive Cos would be able to disclaim the sites at that time.
- (l) Opencast Coal Working (OCCW) (Netherton) Limited and Opencast Coal Working (OCCW) (Duncanziemere) Limited have been granted

Letters of Comfort issued by the Head of Planning and Economic Development which allows them to temporarily operate under the terms of the existing planning permissions for those sites and so continue to extract coal at those sites. These Letters of Comfort were granted subject to the Hive Cos seeking a variation to the Planning Permissions to amend the personal consent condition into the name of the Hive Co.

- (m) Section 42 applications have been received in relation to Netherton, Duncanziemere and House of Water sites and are being processed by the Planning Authority. The Planning Authority is also in discussions with the Hive Cos and their agents regarding the terms of alternative restoration proposals. It is intended that discussions with the Hive Cos will be completed by 4 October 2013 in order that Officers can assess if realistic restoration proposals can be progressed by the Planning Authority.
- (n) Whilst longer-term alternative solutions are being discussed to ensure that the Hive Cos current mining operations do not increase the restoration liability, at present, the Hive Cos are operating without the benefit of sufficient financial guarantees being in place for the restoration of the Netherton and Duncanziemere sites.

34. Guarantee Bonds

- (o) In terms of the guarantee bonds which are in place over the Aardvark and SCCL sites, Counsel's advice has been sought on calling up these bonds.
- (p) Independent Mining Engineers have continued to be instructed to provide assessments of restoration costs for the sites and this information is being used to support the bond calls which the Council is progressing.
- (q) The focus has been on calling bonds which have been due to expire or reduce in value with the remaining being reviewed in order that a call on the bond can be made when appropriate. It is uncertain at the current time if all of the bond calls will be honoured. The Council is progressing discussions with the bond companies to try and facilitate the process without recourse to Court. If a bond company repudiates a bond call then the Council would seek Counsel's advice about the merits of raising formal legal proceedings to enforce the terms of that bond. The Council would only resort to raising formal legal proceedings after discussion with the bond providers had been exhausted and without a mutual solution being achieved.
- (r) Discussions with Hargreaves, on behalf of the Hive Cos, and Kier Mining is taking place in relation to assessing what suitable financial guarantees for continued operation on sites should be put in place by operators, for example, traditional restoration bonds or ESCROW accounts. An ESCROW is a pay-as-you-go account providing ring-fenced finance available to the Council to use to effect a restoration and aftercare contract, and which is achieved by levying an amount per tonne when coaling begins on the basis of the restoration cost calculated at that point and the tonnage to be taken from the site.

- (s) Recognising the importance of this matter and its wider relevance across other affected Councils, the Scottish Government under the auspices of Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism and Chair of the National Taskforce is to seek a meeting with the bond providers to discuss current and future bond provision in the opencast mining sector, in particular, and the honouring of such bonds.

35. Office of Fair Trading (OFT) - Hargreaves Takeover of SCCL Assets

- (t) The Office of Fair Trading (OFT) is considering whether the acquisition of certain assets of SCCL by Hargreaves has resulted in the creation of a relevant merger situation.

36. Infraction Proceedings

- (u) A complaint has been made to the European Commission in relation to a potential breach of the Special Protection Area (SPA) Habitat Directive, following the loss of habitat from the Muirkirk and North Lowther Uplands SPA due to the unrestored opencast mining in the area.
- (v) If the EU has evidence that a Member State has failed to transpose a directive properly, or is not enforcing legislation correctly, then it may begin legal proceedings to rectify the situation, known as Infraction Proceedings. It is unclear at this time whether the EU will proceed with an investigation.

37. ENVIRONMENTAL CONSIDERATIONS: STATUS REPORT

38. Against the backdrop of the legal considerations and implications detailed in previous paragraphs and in Appendix 1 to this report, there is now set out, the outcome of work undertaken in respect of each opencast complex and their related environmental considerations. For ease of reference, Cabinet agreed on 24 May 2013 to:-

- Note the outcome of the work undertaken to date to review the status of all opencast coal sites within East Ayrshire;
- Note that in order to determine the full extent and nature of the outstanding restoration required to a number of sites formerly operated by SCCL and Aardvark, the Depute Chief Executive/Executive Director of Neighbourhood Services, has engaged the services of specialist mining engineering companies and authorises the continuation of this work; and
- Note that on completion of the work of the mining engineering companies, these matters will be reported to Cabinet.

39. Site Assessment: Status Report

40. Much work has been undertaken since last reporting to Cabinet on 24 May to consolidate all available information in relation to the status of each site within each of the nine former SCCL and Aardvark opencast complexes. Given the dynamic nature of the situation, the position will remain fluid and Council will continue to receive updates, principally and regularly through the members of the National Taskforce and in addition, Councillor McKay, but also formally to Cabinet or Council as appropriate.
41. The work of the Independent Mining Engineers, as set out above, is now substantially complete. Appendices 2 to 13 attached to this report provide a complex by complex summary of the current position including, where appropriate, reference to the Independent Mining Engineers' valuations of a notional cost of restoration (the cost of restoration if this were to be carried out fully in accordance with the original planning consents) for the former SCCL and Aardvark complexes, recognising also that alternative and viable restoration proposals for each complex and site require to be developed in conjunction with a range of stakeholders; initial thinking on the concept of such schemes has already begun and will, subject to Council's approval, continue apace all with a view to finding viable environmental solutions acceptable to all concerned, in particular, the Council and the Local Community. Further information on this is to be found later in the report.
42. For completeness, Council will note the addition of three further complexes, namely, Greenburn, Darnconner and Tardoes. Furthermore, a review of the opencast coal visual plan has been achieved and it has been updated to reflect the current coal sites' status (Appendix 14). This map has been placed within the Council's website and will be updated to reflect the ongoing review of opencast coal sites and following each compliance monitoring inspection. The range of complexes to which reference is made in the appendices is, as follows:-

Former Aardvark Complexes

- | | |
|------------|----------------------------------|
| Appendix 2 | Skares and Netherton |
| Appendix 3 | Duncanziemere and Laigh Glenmuir |
| Appendix 4 | Garleffan and Grievehill |

Former SCCL Complexes

- | | |
|-------------|-----------------------------|
| Appendix 5 | Chalmerston and Pennyvennie |
| Appendix 6 | Dunstonhill |
| Appendix 7 | Piperhill |
| Appendix 8 | House of Water |
| Appendix 9 | Powharnal and Dalfad |
| Appendix 10 | Ponesk and Spireslack |

Kier Mining

- | | |
|-------------|-------------------|
| Appendix 11 | Greenburn Complex |
|-------------|-------------------|

VWM (Scotland) Ltd

Appendix 12 Darnconner

Former Law Mining

Appendix 13 Tardoes

43. The extent of disturbed and unrestored land has now been fully assessed and across the nine former SCCL and Aardvark complexes the following has been ascertained:-

<u>Former SCCL</u>	
• Disturbed/unrestored land	896.4 hectares
• Voids (16): surface area	417.6 hectares
<u>Former Aardvark:</u>	
• Disturbed/unrestored land	571.6 hectares
• Voids (6): surface area	106.9 hectares
<u>Total</u>	
• Disturbed/unrestored land	1468.0 hectares
• Voids (22): surface area	<u>524.5 hectares</u>
	1992.5 hectares

44. While there are significant unrestored former opencast sites in other Council areas, East Ayrshire is unique in terms of the scale of the challenge; this is due to our area being, prior to the liquidation events, the largest regional producer of opencast coal in the UK, with the consequent additional disturbances of land occurring.
45. The UK Coal Authority publishes periodic statistics that confirm coal production totals for the UK, including regional analysis. The statistics for the period January 2012 to December 2012 (before the collapse of SCCL and Aardvark) give an accurate representation of the volume of coal production for East Ayrshire as compared to the other coal producing areas across Scotland and the UK.
46. The table below details the total coal production output from both opencast and underground mining across the UK for the period January to December 2012. It confirms that opencast coal production in East Ayrshire represented 15% of the total (opencast and underground) coal production for the UK. For opencast mining alone, East Ayrshire produced over 25% of all UK coal and 53% of that produced in Scotland.

Area	Opencast Output (Tonnage)	Underground Output (Tonnage)	Total
Scotland	4,823,356	-	4,823,356 (30%)
East Ayrshire	2,583,673	-	2,583,673
Wales	2,408,313	139,855	2,548,169 (15%)
England	2,956,331	6,013,252	8,969,583 (55%)
UK Total	10,188,000	6,153,107	16,341,108

47. As was set out for Members previously, it has been necessary and appropriate to determine not only the extent of that outstanding restoration as set out above but also the notional cost of restoring and recovering that land to its original state as was intended by the planning consents issued over the years from the mid-1980s, being in excess of 120 in number.
48. The second and equally important reason for establishing the notional cost of restoration is to inform the process of calling up bonds, as described elsewhere within this report, and to ensure that in doing so, the Council is best placed to negotiate with the bond holders with a view to maximising funding for restoration from this source. That said, this report confirms that the total bond value is £28.656m (which is an increase on the position that was contained within the report to Cabinet in May 2013 of £27.724m following completion of the work relating to bond assessments), the details of which are also set out on a site by site and complex by complex basis in Appendices 2 to 13 attached.
49. In addition, the notional cost of restoration also provides a significant marker in terms of the outstanding and incomplete restoration and the equally outstanding obligations when Aardvark and SCCL went into liquidation. It is intended that this information will be used in relation to shaping the future local and national policy position in terms of what financial guarantees should be put in place which can sufficiently ensure that appropriate restoration is made to opencast sites generally.
50. The tables below provide a summary of the total estimated notional costs of restoration reflecting the outcomes of the work of the Independent Mining Engineers and contrasting this against the information that was contained within the report to Cabinet on 24 May 2013.

Former SCCL Sites

Total Bond Coverage	KPMG Total Restoration Estimate (as per 24 May report)	Independent Mining Engineers' Total Restoration Estimate Against Original Planning Consents
£17.131m	£48m - £90m (low) (high)	£127m

Former Aardvark Sites

Total Bond Coverage	KPMG Total Restoration Estimate (as per 24 May report - not provided)	Independent Mining Engineers' Total Restoration Estimate Against Original Planning Consents
£11.525m	£23.4m (provided subsequently by KPMG)	£34m

All Former SCCL and Aardvark Sites

Total Bond Coverage	KPMG Total Restoration Estimate	Independent Mining Engineers' Total Restoration Estimate Against Original Planning Consents
£28.656m	£48m (Low) £113.4m (High)	£161m

As can be seen from the foregoing tables, the total notional costs of restoration of all of the former SCCL and former Aardvark sites is £161m. It is emphasised, however, that costs are, indeed, notional and that it will be necessary to seek alternative restoration options, all of which is addressed in detail below.

51. ENVIRONMENTAL CONSIDERATIONS: STEPS TO RECOVERY

52. In developing proposals for our Steps to Recovery, it has been vital to determine with whom the Council should be engaging; the following paragraphs (and the relevant appendices), therefore, set out the various stakeholder interests in the future of these former SCCL and Aardvark sites and the two currently operational opencast coal sites and wider complexes. Given the unique situation that exists in relation to the demise of SCCL and Aardvark within the Council area, it is essential that stakeholders work together to progress the environmental and economic recovery. The extent of progress will depend upon the extent of the contribution of the stakeholders involved. Considerable engagement has already taken place and, subject to Council approval, will continue.

53. ENGAGING WITH STAKEHOLDERS: STEPS TO RECOVERY

54. In order to take these matters forward to their next stage - the identification of long term and sustainable solutions for each site/complex ensuring recovery from the results of the unfulfilled obligations of the former coal companies, SCCL and Aardvark - the Coal Team have identified and, led by the Chief Executive, have already engaged with a significant number of the stakeholders undernoted.

55. Key Stakeholders

56. There is a diverse set of key stakeholders involved in the work related to opencast coal mining. Each has a particular focus and role to play, either in supporting the Council's work or representing broader interests in the operation of opencast coal mining in East Ayrshire. The following sections provide a summary description of the key stakeholders that the Council is working with in some capacity:

57. Scottish Government

58. The Scottish Government, both at Ministerial and Officer level continues to engage with the Council and provide advice and support as required. The Minister for Energy, Enterprise and Tourism, Fergus Ewing MSP, Chairs the Scottish Coal Industry Taskforce which is focussed on securing the re-employment of former SCCL/Aardvark employees, supporting the restoration of opencast sites and addressing issues threatening the longer-term viability of the coal industry. The Scottish Government's Chief Planner, John McNairney, and other senior officers with responsibility for minerals and energy policy continue to have positive and constructive discussions with the Council. In addition, the Minister for Planning and Local Government, Derek McKay MSP, has been kept advised of matters relating to wider issues emerging from the work in respect of opencast mining including planning regulation, compliance monitoring, restoration solutions and alternative energy proposals such as wind farms

59. UK Government and the Coal Authority

60. The UK Government has also continued to engage with the Council with David Mundell MP, Parliamentary Under-Secretary (Scotland Office), receiving regular updates and seeking to assist. Further, there has been strong engagement with the Department of Energy and Climate Change (DECC) has a reserved interest in opencast mining operations. It sponsors the UK Coal Authority being the Non-Departmental Government Body (NDGB) with responsibilities for:
- licensing coal operations in Britain;
 - administering coal mining subsidence claims;
 - dealing with property and historic liability issues;
 - providing access to information on coal mining, and
 - providing a 24-hour call-out service for public safety hazards.
61. Having regard to the Coal Authority's particular responsibility for granting licences which permit mining operations, when undertaking this function the Authority are obliged to do so in a way that it considers is best calculated to secure, so far as practicable,
- that an economically viable coal mining industry in Great Britain is maintained and developed;

- that such persons carrying out the mining operations are able to finance both the proper carrying on the coal mining operations and discharge the liabilities arising from the carrying on those operations; and
 - those persons to whom obligations are owed in respect of subsidence damage caused at any time do not sustain loss in consequence of any failure by a licensed operator and to make such financial provision for meeting present and future liabilities as might reasonably have been required of that person.
62. The Authority has additional duties in relation to its property functions which include the need to secure the safety of members of the public. Further, in formulating any proposals for works in relation to its land or other property formerly used for coal, the Authority has to consider the effect that the proposals would have on the natural beauty of any area or on any such flora, fauna, features, sites, buildings, structures or objects.
63. The Coal Team have been engaged in constructive and helpful discussions with DECC and with the Coal Authority in relation to understanding their role in opencast coal mining in East Ayrshire and discussing the action that the Coal Authority have been taking in light of the demise of SCCL and Aardvark. It is understood that the Coal Authority have been inspecting sites within East Ayrshire in which they have interests and working with other stakeholders in relation to the existing and proposed mining operations. These discussions are ongoing with future meetings being arranged between the Council, DECC and the Coal Authority. This, notwithstanding, it is proposed that the Leader of the Council write to the Rt Hon Mr Edward Davey MP, UK Minister for Energy and Climate Change seeking the continuing support of his Department for the restoration of these sites where no other feasible options exist.
- 64. Scottish Environmental Protection Agency (SEPA)**
65. SEPA's remit in relation to surface mining is primarily concerned with the regulation of associated activities. In addition, SEPA has duties regarding regulation of waste management that apply to all sites regardless of the nature of the industry.
66. The only emissions to atmosphere that are regulated by SEPA are those arising from coal handling, and they are regulated by means of Pollution Prevention and Control (PPC) permits issued under Part B of the PPC Regulations. The permits prescribe pollution control measures to be employed to minimise emissions arising from coal handling.
67. Potential impacts on the water environment arising from abstractions, discharges or engineering are regulated by means of licences issued under the Controlled Activity Regulations (CARS). These licences are applicable whether or not a site is operational. They authorise specific activities such as discharge of site water to a watercourse, or abstraction of groundwater, and control them by means of conditions included in the licence.

68. Although SEPA's remit is primarily about regulation of activities associated with surface mining, SEPA has an interest in the long term restoration of sites for long term environmental protection when authorised activities have ceased. This objective is shared with other stakeholders and achieved via the planning control system.

69. In relation to the opencast coal sites within East Ayrshire, SEPA have reviewed all SCCL and Aardvark sites and are considering the implications from any potential water pollution and are reviewing the options for mitigation measures necessary for each complex. The Council and SEPA have exchanged relevant information and that provided by SEPA as described has assisted substantially in the Council's understanding of the potential for pollution.

70. Scottish Natural Heritage (SNH)

71. Scottish Natural Heritage (SNH) is funded by the Scottish Government and its purpose is to:

- promote care for and improvement of the natural heritage;
- help people enjoy it responsibly;
- enable greater understanding and awareness of it, and
- promote its sustainable use, now and for future generations.

72. SNH have set key strategies and priorities which include seeking to secure the sustainable management of Scotland's natural assets to deliver the National Outcomes set out in the Scottish Government's National Planning Framework; and also to assemble and present evidence and interpretation to shape the way that these natural assets support investment and secure public benefits.

73. SNH is a statutory consultee on proposals for new and existing opencast operations.

74. SNH is a member of the LRT and, amongst other things, has provided guidance on the potential impact of disclaimed opencast sites on the Muirkirk and North Lowther Uplands Special Protection Area (SPA).

75. Forestry Commission

76. The Forestry Commission is an important stakeholder in two respects. Firstly, it is a major landowner and is responsible for large areas of land in and around opencast sites. Secondly, as the Council works with operators and landowners to develop restoration Masterplans for specific sites, the Forestry Commission will be a significant party in developing deliverable and sustainable restoration proposals. The Forestry Commission has welcomed the Council's lead on these matters and is committed to continuing to work with us to find sustainable solutions.

77. Royal Society for the Protection of Birds (RSPB)

78. The RSPB is the largest wildlife conservation organisation in Europe and its work is focussed on the protection of animal species and habitats that are in the greatest danger. At a local level, the RSPB provides advice and guidance in respect of opencast mine restoration proposals and is a consultee on proposals for new and existing opencast coal operations.

79. Landowners

80. In all of the Council's ongoing discussions in respect of any of the disclaimed former opencast coal mines, current operational sites and non-operational sites that are at different stages of restoration, landowners' interests have been taken into account. Hargreaves, in addition to being the current operator at a number of sites, is also now landowners of large areas of land across the Council area. Other major landowners include Dumfries Estates, farmers who had previously leased land to SCCL or Aardvark, and adjacent landowners. All of these stakeholders have an interest in ensuring effective restoration proposals are formulated and implemented.

81. Liquidators (KPMG)

82. KPMG were appointed as administrators for Aardvark on December 2012 (and as joint Liquidators on 15 May 2013) and as interim liquidators for SCCL on 19 April 2013. KPMG, on their appointment began looking at ways to restructure Aardvark and, in the case of SCCL, in the winding up process to realise the company's assets, which includes, the sale or other disposal of those assets. During the liquidation process, KPMG have been responsible for the ongoing care and maintenance of the SCCL sites (and continue to remain responsible for the remaining sites which Hargreaves did not want to take forward). After the completion of the due diligence process by Hargreaves, KPMG have been re-marketing the sites and looking at any other interested parties in order that SCCL's assets can be maximised for the creditors of SCCL. KPMG continue to meet with other stakeholders to consider potential development proposals and to confirm their continuing responsibilities as Liquidators. Officers of the Coal Team have met with KPMG to discuss their progress with the liquidation and will continue to do so, as necessary, addressing matters of mutual interest to the exclusion of issues relating to the Court of Session action.

83. Coal Operators

84. At present there are coaling operations ongoing in East Ayrshire within three complexes. Kier mining continue to operate in East Ayrshire and have plans to expand their operations in the future. Kier Mining's operations also include sites which have been worked and subsequently restored. Other operators currently working within East Ayrshire are OCCW (Netherton) Ltd and OCCW (Duncanziemere) Ltd, both of these companies are "Hive Cos" from the former Aardvark and have been put in place in order that Hargreaves can progress their plans for future coal operations in East Ayrshire. Further detail on the

operation of Hive Cos and of the issues currently being addressed with Hargreaves in relation to these sites is to be found elsewhere in this report, principally within the legal considerations section and in Appendix 1 hereto.

85. Potential developers/investors

86. The Council has been engaging with a number of different potential investors and developers who are proposing alternative ways to take forward a number of the outstanding sites which were not taken over by Hargreaves. The Council has been engaging with these developers and investors and responding to their enquiries and facilitating discussions with other stakeholders with a view to these proposals being progressed. Investors and developers also require to engage with KPMG as the liquidators in the event that they intend to develop their options.

87. Bonds Companies

88. There a number of bond companies who previously granted bonds in relation to the Aardvark and SCCL. The Council is in the process of calling these bonds and negotiating with the bond companies to seek to secure the bond monies for the benefit of restoration, aftercare and mitigation.

89. Scottish Mines Restoration Trust

90. As previously reported to Cabinet, the Scottish Mines Restoration Trust (SMRT) is a Private Company Limited by guarantee, established to support the restoration of former coal mining sites in Scotland. The SMRT have undertaken a number of site visits to opencast coal operations in East Ayrshire and the Council continues to maintain a positive and productive relationship particularly with a view to the Trust assisting both financially and in kind, in the facilitation of restoration solutions.

91. CPP Partners

92. Community Planning Partners continue to play an active role in the work of the Local Response Team and their collective contribution has been, and will continue to be, of considerable assistance in addressing the impact of the opencast mine closures on our communities.

93. Local MPs and MSPs

94. The Council continues to keep local MPs and MSPs apprised of progress in respect of discussions with other key stakeholders with regular briefings being provided as and when required. Local MPs and MSPs have also been active participants in the National Taskforce and in engaging with Ministers and others in both Governments.

95. Communities

96. Local Community Councils, as statutory representative organisations, play a central role in promoting the interests of local communities affected by opencast mining operations. They are core members of Community Liaison Committees that are established under the conditions of Planning Consents for each mineral development. Moving forward, our wider communities will continue to be supported by the Council's Vibrant Communities Team to ensure that they have the necessary skills, resources and knowledge to maximise their engagement with the Council and, importantly, the coal operators, thus being able to influence their future.

97. Employment and Business Support

98. A range of stakeholders are working with the Council to address employment and business matters related to the re-employment of individuals affected by the liquidation of SCCL and Aardvark, continuing to provide support for local business, strengthening the existing business base, attracting investment and promoting East Ayrshire. Partners from Scottish Enterprise, Scottish Development International, Skills Development Scotland and the Department of Work and Pensions are all working with the Council on this important aspect, details of which are to be found in earlier sections of the report.

99. East Ayrshire Council

100. Given the range of interests among the above stakeholders, some competing, it is appropriate for the Council, in its roles as Community Leader, Planning Authority and in respect of its powers under the Environmental Protection Act 1990, to lead and co-ordinate ongoing discussions and negotiations among the range of stakeholders identified (and including others as may be forthcoming). The purpose of this lead role will be to facilitate and participate in the Masterplanning for each of the nine former SCCL and Aardvark complexes to achieve those necessary and sustainable site solutions.

101. PRINCIPLES OF MASTERPLANNING: STEPS TO RECOVERY

102. Alternative Restoration Proposals: Make New

103. As can be seen from Appendices 2 to 13 attached, the notional cost of restoration of each of the sites/complexes, exceeds significantly the figures provided previously by KPMG in respect of the former SCCL sites (between £48m and £90m which were based on SCCL calculations for the approved restoration scheme at the upper limits, and with revised restoration schemes at the lower limits) and as reported to Cabinet on 24 May 2013 and also of those provided subsequently in respect of the former Aardvark sites. There is no doubt, therefore, that to achieve restoration of these sites/complexes, the scheme may require alternative approaches; it will also be important that, to secure an acceptable scheme, stakeholders will have to work together to shape that outcome.

104. Against this background it is clear, from an objective assessment, that there is unlikely to be sufficient funding available, from any and all potential sources, to deliver the full restoration of all of these sites as envisaged in the original restoration plans. Accordingly, it is also clear that wherever possible a flexible approach will be required, including active consideration and pursuit of alternative proposals which could deliver a reasonable degree of restoration at a substantially reduced cost. However, regard will require to be had at all times to the specific terms of each individual bond to ensure that the overall intended approach does not in any way prejudice the Council's legal position as regards the ability to call in each bond. The Council intends to work with all stakeholders, including bond companies, to try and achieve a satisfactory outcome in compliance with the terms of the bonds.
105. To assist in this process of identifying alternative, restoration schemes for each complex, estimates will be obtained from our Independent Mining Engineers to establish indicative restoration values; this information will be used to assist in and direct discussions and negotiations with the relevant stakeholders referred to above.

106. Hierarchy of Sites/Complexes

107. The complexity and volume of the work to be undertaken in the facilitation and development of the Masterplanning of these complexes cannot be underestimated and it is expected to take a number of years to deliver solutions on the ground, all subject to the co-operation, participation and determination of all stakeholders some of whom have not yet even been identified, for example, future possible developers.
108. Accordingly, the suggested Masterplanning of complexes will be addressed on a proposed hierarchical basis, as follows:-

(a) Operational sites capable of contributing to the restoration of their and adjacent sites;

- The focus here is clearly on the activities of Hargreaves and the Hive Cos. Earlier in this report and in Appendix 1 hereto, the current position in relation to Hargreaves is rehearsed. The Council will require to continue discussions with the company in relation to its current and proposed future activities in respect of Netherton, Duncanzimere, House of Water and Chalmerston to ensure that in terms of the planning consents relative to these sites/complexes and any possible amendment sought by the company, the company achieves suitable, alternative, restoration of the sites and the wider complexes of which they are part, where this is the case.

(b) Neighbouring Sites - Possible Restoration by Current Operators

- Discussions will also be held with Kier Mining who, while being required to operate in accordance with their current consents, have proposals to extend their activities. If the company considered that the incorporation of restoration of sites was viable then this will also be explored.

(c) Remaining sites otherwise not addressed

- KPMG has recently exposed to the market those former SCCL sites not acquired by Hargreaves which in East Ayrshire is Ponesk/Spireslack; Powharnal/Dalfad; and Dunstonhill. The closing date for viable bids was Friday 6 September and the outcome of that process is awaited. The Council will, of course, engage with KPMG and the successful purchaser(s), as appropriate.
- Reference is also made above (Legal Considerations: Status Report Update: Appendix 1) to the land previously owned by Aardvark and which KPMG has already sought to disclaim. Given the uncertainty around the future ownership of this land currently and into the future, particular cognisance has been taken of these sites and reference to this is made below in successive paragraphs.

109. Council Priorities

110. The Council's current priorities in relation to action required on the opencast sites and complexes are set out below and have been assessed against the risks identified and the mitigation of those risks, the responsibilities of others and the limited role of the Council under statute.
111. While intense work on the development and facilitation of Masterplanning and of alternative restoration proposals will be ongoing, it would not, in fact, be of immediate priority in certain circumstances; reference is, therefore, now made to the two important matters to which priority will require to be given, namely, health and safety and environmental pollution.

112. Health and Safety Assessments: Make Safe

113. As stated, the Council has been engaging with KPMG and Hargreaves to seek clarification from them as to the exact current ownership of all sites within East Ayrshire, to allow the Council to assess who has ownership responsibilities in relation to which sites. This information is sought to ensure that the Council can confirm that the implications of health and safety obligations are known to all appropriate persons.
114. KPMG remain responsible, pending determination of the Court action, for the health and safety of all former SCCL sites which have not been purchased by Hargreaves/Hive Cos and/or which do not form part of leasehold land which has now been disclaimed at certain sites.
115. KPMG has already sought to disclaim parts of the former Aardvark sites at Garleffan, Grievehill and Skares Area D. As set out earlier in this report, if these Disclaimers are competent then the ownership of the disclaimed sites falls to the Crown, although the Crown also appears to have a right to disclaim sites. It is unclear what the Crown's position will be given that these sites will bring significant responsibilities with them, including health and safety, and others from various statutes, including the Environmental Protection Act 1990.
116. The Council has statutory responsibilities under the Environmental Protection Act 1990 to address any statutory nuisance identified on any site (i.e. any risk

to public health or safety). While the Council has statutory obligations to carry out certain assessments in relation to statutory nuisance, the Council itself is not the person/authority responsible to put in place specific measures to ensure the health and safety of these sites although it could, in certain circumstances, have the power to do so. The Council as authority of last resort may have responsibilities for contaminated land as set out within Part II A of the Environmental Protection Act 1990.

117. In view of the health and safety hazards that disclaimed sites present and in order that the risks at these are clearly understood by the Council, the Council has undertaken a programme of Health and Safety Risk Assessments at the three disclaimed sites. These assessments are based on information provided by the Independent Mining Engineers together with additional assessments, including site visits undertaken by Officers from the Council's Environmental Health and Health & Safety Sections.
118. As already stated, the Council does not have specific statutory duties and responsibilities in relation to implementing necessary health and safety measures at disclaimed sites; however, the Council may require to step in as the authority of last resort in the event that any necessary measures require be put in place in order to prevent serious threat to life or limb where no one else can be held to be responsible.

119. Environmental Pollution: Make Good

120. In previous sections of this report, reference is made to SEPA's remit in relation to surface coal mining. For the sake of completeness, where SEPA has identified potential pollutions arising, the Council will work with the Agency in order that it may take whatever action is necessary and available to prevent such threatening occurrences, recognising the importance of a clean environment to healthy living and to tourism.

121. Resourcing of Masterplanning and Delivery of Restoration and Development Solutions: Steps to Recovery

122. As stated, it is expected that it will not be possible or, indeed, reasonable to expect that sufficient funding will be available to implement the restoration as envisaged in the original plans for the nine former SCCL and Aardvark complexes. To assist and support potential alternative uses and restoration of operational or future operational sites and complexes among the nine to which reference is made, will require the Council and others to access and maximise funding from all available sources, including:-
- (a) Bond holders, reference to which are made elsewhere in this report, will clearly provide, if the Council is successful in calling up the bonds, a significant contribution towards restoration;
 - (b) Developers of sites, both opencast operators and those proposing alternative uses, will require to contribute towards the ultimate solution(s); this will be a key element of discussions/negotiations in the Masterplanning process;

- (c) The Forestry Commission as a landowner and a government agency has given a commitment to work with the Council in the identification and delivery of sustainable solutions. In this respect, the Commission has welcomed the Council's lead role and has confirmed that, subject to the ultimate solution(s) being acceptable by them, they will contribute to the restoration of sites where they hold and have been able to access bond monies;
- (d) The Coal Authority has equally agreed, in principle, and where their statutory obligations align to the restoration proposals, to contribute bond monies;
- (e) Other agencies may require to take necessary remedial action on and to sites and where this is the case, steps will be taken to ensure that such work is complementary to any long term proposals being considered;
- (f) Landowners will clearly have an interest in ensuring proper and reasonable restoration. Experience elsewhere, albeit limited, suggests that landowners may contribute even in kind to a wider scheme and again the Council will ensure that all such landowners are engaged in the process and encouraged to contribute in whatever way possible;
- (g) Scottish and UK Governments have been proactive and supportive in their discussions with the Coal Team and recognise the extent of the challenge faced by the Council and its communities. While we are advised that direct funding sources may well not be available, there is a firm commitment to provide resources in kind through the identification of expertise within those Governments to support the Council in accessing funding from elsewhere, e.g. the European Commission, and to provide advice, guidance and support on investigating issues of which to date there have been many and varied and where the Council has no or insufficient resources in-house;
- (h) The Minerals Trust has contributed to many community activities and to environmental projects; while recognising that there will be a significant reduction in contributions to the Trust being experienced currently, it is proposed that contact be made with the Trust and that it be explored with the Trust the potential for it to contribute to the facilitation and/or of restoration itself of certain sites,
- (i) Reference is made elsewhere in the report to the important role of the Scottish Mines Restoration Trust in their financial and in kind support towards the restoration of the opencast coalfield area of East Ayrshire;
- (j) The Independent Mining Engineers commissioned to assist and support the work set out in previous sections of this report has proved to be invaluable. It is anticipated that their services will be required in the future in terms of Compliance Monitoring which is addressed below and in assisting in the review of detailed restoration proposals of Masterplans for each of the complexes, also detailed above; and
- (k) Resources are not always financial and our communities are rich in talent; their understanding of the issues to be addressed will be

invaluable as will their commitment and it will be vital to ensure that the Council engages fully with them in this respect.

123. EXTENT OF COUNCIL'S REMIT AND RESPONSIBILITIES: STEPS TO RECOVERY

124. The Council is, as Members are aware, a body of statute, and notwithstanding the flexibility provided by the power of Community Wellbeing which is the basis on which much of the foregoing is founded, the Council requires to act within its powers and not ultra vires. Accordingly, in implementing all of the proposals set out in this report by way of a Recovery Plan, sight must not be lost of the particular role of the Council in relation to the Town and Country Planning (Scotland) Act 1997 and related legislation and of the Environmental Protection Act 1990, in particular.

125. UNDERLYING PRINCIPLES: STEPS TO RECOVERY

126. For completeness, it is restated that, in setting out the proposals for the facilitation and delivery of Masterplans for the complexes to which reference has been made throughout this report, the underlying principles on which this is based is to minimise risk to the Council and its communities and to maximise the opportunity of repairing the damage to our environment sustained following the liquidation of SCCL and of Aardvark.

127. COMPLIANCE MONITORING: STEPS TO RECOVERY

128. Policy Implementation

129. Notwithstanding, and in addition to all of the work already described, given the issues relative to the determination of planning applications and the subsequent monitoring of surface mine developments, the attendant processes and procedures have required immediate clarification and enhancement, while acknowledging that this will require to be a process of continuous improvement and in the future it will take account of matters identified by the Independent Review. The following is clarification of the process of determining such applications (including quarries, landfill and windfarms) and the monitoring of the development by the Planning Authority thereafter.

Stage 1:- Planning Assessment

Sections 25 and 37 of the Town and Country Planning Act require that the determination of any mineral applications, as with all other planning applications, be in accordance with the relevant Development Plan unless material considerations indicate otherwise. The relevant Development Plan in this instance is the East Ayrshire Opencast Coal Subject Plan 2003. In order to ensure that all planning conditions and legal obligations attached to any grant of consent, which are principally derived from the Open Cast Coal Subject Plan 2003, are properly approved, the Planning Authority will call upon expertise from within the mining industry. Therefore, future procedures will ensure that the Planning Authority as part of their assessment of an application enjoys the benefit of having the proposed scheme assessed by an

Independent Mining Engineer, paid for by the applicant, to confirm that the scheme is technically deliverable, environmentally acceptable and financially feasible. This information, in the form of a formal report, would then be utilised by the Planning Authority to inform their assessment of the planning application and the setting of the level of the required restoration guarantee cover.

Stage 2:- Compliance Monitoring

The existing East Ayrshire Opencast Coal Subject Plan contains various policies in relation to compliance monitoring of opencast developments and the majority of current planning consents require operators to provide various updates and progress reports in line with those policies; namely:-.

- The provision of an Independent Mining Engineer's Monitoring Assessment of the compliance of the mining operations and associated restoration costs to verify against the restoration guarantee for the development. (MIN 35-36)
- The provision of monitoring reports on coal haulage arrangements, noise, vibration and dust (MIN38);
- The provision of an Annual Mining Plan to verify compliance with the Planning Consent (MIN39), and
- The provision of an Environmental Audit of the site operations to verify compliance with the environmental conditions (Min40).

130. It is noted that previous enforcement of these matters has not been to the standard expected and thus the monitoring of these matters by the Planning Authority requires to be more robust now and in the future. To support the Planning Authority in the role of compliance monitoring it will call upon the services of Independent Mining Engineers to carry out regular inspection of the sites.
131. The Independent Mining Engineer will be engaged on such matters as assisting in the discharging of planning conditions, monitoring of the sites, attendance at Technical Working Group (TWG) meetings and assessment of the development in relation to restoration provisions, where necessary.
132. In addition to this monitoring, the Planning Authority will also undertake routine announced and unannounced site visits to monitor operational issues. It would also be anticipated that any new consents would require provision of formal regular site visits by an Independent Mining Engineer, with the cost borne by the developer. The frequency of the compliance monitoring will be set by the ongoing frequency of site operations, and in relation to adherence with the approved scheme by the developer, but be no less than on a six monthly basis, in accordance with the Opencast Coal Subject Plan. However, where the nature of the opencast coal operations dictate increased monitoring, the frequency will increase accordingly. Each visit would be supported by a formal report to the Planning Authority by the Independent Mining Engineer.
133. On completion of the final Restoration and Aftercare works, it is proposed that the Independent Mining Engineer will verify the completed development and

financial guarantees against the approved Restoration and Aftercare Scheme within the Planning consent, thus ensuring a formal completion of the development and final termination of bond requirements once all works are completed satisfactorily.

134. In addition to the Independent Mining Engineer Compliance Monitoring, the Planning Service shall co-ordinate any issues in relation to the investigation of specific complaints; suspected breach of planning control or to inspect the site/area/land to which a specific planning application submitted by the operators relates. This may require the use of specialist consultants to assist the Planning Authority. The aforementioned arrangements will along with the ongoing monitoring and feedback from Community Liaison Committees and Technical Working Groups, ensure a robust system to achieve the objectives detailed within the Planning Consent.

135. Technical Working Groups

136. As stated in the report to Cabinet on 24 May 2013, in formulating their detailed restoration proposals, it is recommended that operators constitute formal Technical Working Groups. The Technical Working Group should consist of SEPA, SNH, the Council and such other advisors specific to the project. The aim of a Technical Working Group is to ensure that best practice is introduced in the restoration works for an opencast site, to review operations and aftercare phases of the development ensuring full compliance with restoration, aftercare and monitoring conditions attached to the issued planning consent.
137. As part of the Planning Consent for relevant mineral developments since 2003, there was an obligation within each associated legal agreement that a Technical Working Group be convened and managed by the respective Operator.
138. From the information held by the Planning Authority, the Coal Team has now been able to identify the frequency of meetings of Technical Working Groups relevant to each complex. The outcome of this analysis has been submitted to the Independent Review Team to consider and report upon.
139. In the meantime, however, steps have been taken to ensure that Hargreaves, on behalf of the Hive Cos, and Kier Mining, as the two remaining operators in the area, convene Technical Working Groups as required.

140. Community Liaison Committees

141. Again, as set out in the report to Cabinet on 24 May 2013, part of the Planning Consent for each mineral development, introduces an obligation within each associated legal agreement that a Community Liaison Committee be convened by the Operator. The aim of Community Liaison Committees is to ensure that residents of communities likely to be affected by an opencast development are regularly made aware of the ongoing details of the developments and also of any loss of amenity that they may expect to experience as a result of operations. Any resident considering themselves to be so affected may ask to be a member of the Committee and the relevant operator must accede to the request. There was no identified regularity for the

frequency of such meetings; it was considered that the frequency of the meetings would be for each Liaison Committee to decide. However, the inaugural meeting was required to be held within one month of the development starting. The membership of the committee included the Operator, the Council, a local Councillor, the Local Community Council and local residents affected by the site. It was the role of the Operator to organise the venue and prepare and issue agendas and minutes of meetings.

142. From an assessment by the Coal Team of records held by the Planning Authority, it is clear that the frequency of and attendance at these meetings varied between sites and between operators. While these variations may relate to the size and pace of the development and its location in proximity to communities, it may also reflect the business practices of the various operators. Again, the outcome of this analysis has been submitted to the Independent Review Team to consider and report upon.
143. In the meantime, however, steps have been taken to ensure that Hargreaves, on behalf of the Hive Cos, and Kier Mining, as the two remaining operators in the area, convene Community Liaison Committees as required. Further, now and into the future, an officer from the Planning Service will attend all Community Liaison Committees.

144. Internal Procedures

145. Work is progressing to develop detailed procedures to supplement the overall opencast coal process and outline the specific responsibilities and sign off arrangements at each stage of the planning assessment and compliance monitoring process. Such revised procedures will, of course, be refreshed following the outcome of the Independent Review. While work has been carried out to implement best practice within the revised internal procedures further benchmarking requires to be carried out with other Mineral Planning Authorities to ensure all service improvements are captured and implemented. Furthermore, the new processes shall be subject to both internal and external annual audits through the ISO 9001 2008 Accreditation Standard for Quality Management Systems which was previously introduced within the Building Standards Service in 2009.

146. Reporting

147. More generally, and subject to the outcome of the Independent Review, and in addition to those amendments to the Scheme of Delegation agreed by Council at its meeting on 27 June 2013, it is proposed that reporting mechanisms to the Council's Planning Committee on all matters relating to opencast coal mining operations and the restoration of sites be developed. The Planning Committee report would outline the mine progress and any issues arising from all Community Liaison Committees, Technical Working Groups and Compliance Monitoring arrangements and focus scrutiny in respect of the progress within the site until the completion and aftercare phase when the site is signed off. Further, and notwithstanding the outcome of the Independent Review, immediate steps have been taken to make available through the Council's Online Planning Information System (OPIS), copies of the minutes of

meetings of Technical Working Groups and Community Liaison Committees that are available. Thereafter, all future information will be published on OPIS.

148. In relation to the Scheme of Delegation, it is noted that at the Council meeting on 27 June 2013 (minutes yet to be approved) it was agreed to change the Scheme of Delegation to ensure that:

- Any minor applications for opencast development be determined by the Planning Committee;
- Any applications for variation or discharge of existing conditions relative to restoration or aftercare of sites be determined by the Planning Committee; and
- Any future proposed restoration scheme submitted for approval in fulfilment of a Planning condition be presented to the Planning Committee for determination.

149. In this context members should note that Planning Applications, as detailed in the Appendices to this report, for amendments to Condition 1 (personal consents) of the planning consents relating to, in particular, Netherton and Duncanziemere have not received 10 or more objections and so are being dealt with under delegated powers. The planning application for the 24hr working at Duncanziemere has, however, received more than 10 objections and will be presented to the Planning Committee for determination.

150. SCOTTISH COAL INDUSTRY TASKFORCE

151. Members will recall from the report considered by Cabinet at its meeting on 24 March 2013 that a Scottish Coal Industry Taskforce, Chaired by Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism had been established. The Taskforce has now met on four occasions; the last meeting having been held at Dumfries House on 9 September 2013.
152. The focus of the Taskforce continues to be securing the re-employment of as many of the former SCCL/Aardvark employees as possible, supporting the restoration of opencast sites and addressing the issues threatening the longer term viability of the coal industry.
153. The last meeting of the Taskforce was held at Dumfries House on 9 September 2013. The agenda for the meeting included, amongst other matters, a presentation on the work being advanced to address economic development in East Ayrshire.
154. In addition, on 30 August 2013, the Chair of the Taskforce, Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism and Derek McKay MSP, Minister for Local Government and Planning visited the Spireslack/Ponesk and Powharnal/Dalfad Complexes which have not been purchased by a Hive Co and potentially could be disclaimed by KPMG where no sale has been concluded.

155. LOCAL RESPONSE TEAM

156. The Local Response Team (LRT), which was established in May 2013, has now met on six occasions with the most recent meeting having taken place in Auchinleck Resource Centre on Tuesday 3 September 2013. The LRT continues to provide a forum for Community Planning Partners and other key stakeholders to come together and address the impact of the closures locally to ensure the best possible outcomes for our communities. Importantly, as work has progressed, the LRT has also been able to make a positive contribution to the work of the Scottish Coal Industry Taskforce.
157. The main focus of the work of the LRT has been in respect of both environmental considerations and employability. Specific updates in respect of these areas are provided in the relevant sections of this report and the contribution and commitment of Partners and other agencies has enabled good progress to be made.

158. OFFICE OF RAIL REGULATION

159. As reported to Cabinet at its meeting on 24 May 2013, the Office of Rail Regulation (ORR), the independent safety and economic regulator for Britain's railways, is responsible for determining the framework for track access charges and for establishing caps, set by Network Rail. Charges are designed to recover Network Rail's operating, maintenance and renewals costs that vary with traffic. Each vehicle operating on the rail network is charged a specific rate which reflects the wear and tear it causes to the network.
160. In January 2013, the ORR published the conclusions of its review of the structure and level of track access charges for rail freight for 2014-19. In addition to setting the level of cap on the variable charge, which is paid by all rail freight operators, it introduced a new freight specific charge, which will apply to the movement of Electricity Supply Industry (ESI) Coal, the proposed cap for which was £4.04 per thousand gross tonne miles (kgtm), to be phased in over 5 years.
161. This proposal raised concerns in respect of the potential impact of the new charges on the future operation of the coal industry and, from a Council perspective, their consequent potential to further inhibit the prospects of the opencast industry in the area.
162. However, having considered representations from the Coal Industry, the Scottish Government and others, including the Council in the form of a letter from the Leader, and the need to protect both the interests of freight operators and their customers, and facilitate a strong freight sector, the ORR has outlined in its Draft Determination of Charges, published on 12 June 2013, that it will:
- proceed with the introduction of a freight specific charge for ESI coal but to cap it at £1.04 per thousand gross tonne miles (kgtm), considerably less than the £4.04 originally proposed;

- cap the variable user charge, paid by all rail freight operators, at 10% rather than the proposed 23%, and
- retain the phasing of the new charge as detailed in the table below:

	Freight specific charge 2014/15	Freight specific charge 2015/16	Freight specific charge 2016/17	Freight specific charge 2017/18	Freight specific charge 2018/19
ESI Coal	£0.00	£0.00	£0.21 (20%)	£0.62 (60%)	£1.04 (100%)

163. The ORR's revised proposals have been discussed at meetings of the Scottish Coal Industry Taskforce and the proposed reduction in charges welcomed. Operators have also welcomed the reduction in charges from the original proposals while stating that any increase, even on a reduced basis, will potentially have an adverse impact on their future economic viability.

164. RESTORATION BONDS WORKING GROUP

165. The report to Cabinet on 24 May 2013 advised that, in response to emerging concerns about the position in respect of restoration bonds for opencast coal mines, the Scottish Government had established a Restoration Bonds Working Group. It is understood that the Working Group has contributed to the development of a Scottish Government consultation document to be published before end September 2013 and, notwithstanding that Craig Iles, Team Leader, Development Management, participated in the Group (and not the Head of Planning and Economic Development as previously reported given that he had delegated this task to Mr Iles), there will be an opportunity for the Council to respond formally to the issues raised in the consultation. A meeting of the Group was held on 5 September 2013, to further this work.

166. SCOTTISH MINES RESTORATION TRUST

167. As stated earlier, the Scottish Mines Restoration Trust (SMRT) is a Private Company Limited by guarantee, established to support the restoration of former coal mining sites in Scotland. It will be recalled that, at the meeting of Council on 27 June 2013, it was agreed that the Council would not become a member of the Trust due to the potential of a conflict of interest to arise.
168. The Trust has sought to appoint community representatives and confirmation of these appointments will be forthcoming in due course following the conclusion of the Trust's consideration of the applications received.

169. INDEPENDENT REVIEW

170. At its meeting on 27 June 2013, to address the range and significance of concerns identified regarding planning processes and procedures relating to opencast operations, the Council approved the recommendation that an Independent Review be undertaken of all processes and procedures around the management, determination, implementation, monitoring and review of the planning processes in relation to opencast coal operations, all within the

governance arrangements in place throughout the relevant period. Council also approved the Terms of Reference of the Review.

171. The Independent Review is being led by Jim Mackinnon, former Chief Planner for the Scottish Government, who is being assisted by Chris Norman, Development Management Manager, West Lothian Council and James Fowlie, Director – Integration and Development, COSLA. The Council's internal multi-discipline Coal Team, led by the Depute Chief Executive, continues to provide information at the request of the Independent Review Team.
172. Members of the Independent Review Team have visited all complexes, which has ensured that they have first-hand knowledge of the current conditions at each complex and an overview of the Health and Safety and environmental implications of disclaimed sites. Additionally, the Independent Review Team has commenced the detailed review of the planning processes for the determination of Mineral Planning Applications along with the Compliance Monitoring arrangements in place for each application. Further, interviews with key stakeholders, including elected members, Council Officers and representatives of the local communities, are scheduled for completion by mid-September 2013. In addition, Independent Review Officer is receiving and considering representations from third parties, all within the terms of his remit agreed by Council on 27 June 2013.
173. The Independent Review is expected to be concluded by end November 2013 and the matters set out therein will be fully considered, reported to the Council and action taken as appropriate.

174. FINANCIAL AND RESOURCE IMPLICATIONS

175. Restoration Works

176. As set out within this report, the Council is co-ordinating the Masterplanning of sites and will continue to call the bonds, engage with stakeholders and pursue all available funding streams to seek to secure the optimal restoration solution for each site.
177. Information contained within this report indicates that the current total estimated cost of restoration significantly exceeds the original figures contained in the Cabinet report of 24 May 2013 and it remains the case that it may be some time before it can be established how restoration works will be undertaken and funded. The position for each site will be different and there may be some instances where significant external funding can only be unlocked if the Council agrees to contribute to costs. A site by site assessment is underway and instances where there is a sound case for council financial intervention would be presented to the Cabinet for consideration. Given the range of uncertainties around restoration models, costs, funding and timing, it is not possible at this stage to ascertain the impact on the Council's four year budget in terms of the value or timescale over which funding may need to be set aside or what the source of any funding would be. It would be prudent to assume, however, that there will be a negative impact on the Council's

finances and making provision for that in future years will have a consequential impact on the level of resources available for other Council services. Consideration of this will be included in the budget report to be presented to the Council in December 2013.

178. Safety/Remediation Costs

179. Should the Council be placed in the position of authority of last resort in relation to either contaminated land responsibilities or statutory nuisance under the Environmental Protection Act 1990, the costs would require to be met by the Council where there is no other party who would be required to bear these costs. The extent of cost and liability are presently not known but in the event of a legal liability arising, a report, including funding implications will be presented to the Cabinet.

180. Survey Costs

181. The Cabinet report of 24 May 2013 included an estimate of fees for mining engineering consultancy of £0.100m to be met from Departmental Balances. To date £0.055m has been incurred and work is continuing, as indicated in this report.

182. Legal Costs

183. External Legal costs for work in relation to the Note for Directions Hearing on behalf of affected councils were estimated at £0.030m with East Ayrshire Council meeting 50% of this. In addition, Council should note that the expenses occasioned by the parties in relation to the first hearing will be met as part of the expenses in the liquidation and will therefore be met out of the liquidation assets. The requirement to proceed to appeal hearing means that further costs will be incurred, estimated at up to £0.050m and it is proposed to fund the council's 50% share from the General Fund Balance. Further, Counsel's advice has also been sought on a number of legal issues relating to the demise of SCCL and Aardvark.

184. Economic and Social Impact Study Costs

185. This report confirms that EKOS Ltd have been appointed to undertake an Economic Impact Assessment at a tendered price of £0.020m. This is being met from Departmental Balances.

186. Independent Review Costs

187. The Council on 27 June 2013 agreed that an Independent Review Team to determine the circumstances which led to the current position and to identify lessons for the future. It was estimated that total costs would not exceed £0.050m with these being met from the General Fund Balance. The scope of the review was not restricted and £0.007m of contingency was included in the estimate to reflect this. Total costs incurred up to 21 August 2013 amounted to £0.004m. Following initial scoping by the Team it became clear that the complexity of the review of applications meant that additional work would be required from Mr Norman, who is employed by West Lothian Council and, accordingly, the Depute Chief Executive agreed following discussion with the

Leader of the Council and the Leader of the Opposition to extend Mr Norman's participation by an additional 10 days at a rate of £250 per day. At this point therefore, it is forecast that costs will be contained within the original estimate.

188. Media Relations Costs

189. The report of 24 May 2013, highlighted a wide range of issues, all of which are now being addressed; given the significance of these and related matters to our communities and the wider local government family and public sector, it is considered vital to communicate extensively and cohesively on all of these matters. Further, the 24 May report highlighted the potential adverse impact on the reputation which the Council has earned as an organisation that has delivered strong performance and excellent corporate governance over a sustained period. The consequences of having that reputation tarnished unjustly could have long lasting effects, particularly if potential inward investors and funders begin to form erroneous perceptions of the organisation and its ability to deliver results.
190. This report confirms that the Council has made considerable progress in terms of assessing the opencast position, taking action to protect the interests of local communities and developing plans to move matters forward. Our Vibrant Communities team will play a key role in the interface with our communities in respect of these matters and will provide support to them throughout the Steps to Recovery. In relation to the Council's repute, the principal protection will be the leadership it displays and the decisive action it takes to manage the way forward; however, many issues are at a delicate stage and much of the good work could be undermined or undone by poorly informed adverse media reaction. External media support has, therefore, been procured to assist in our engagement with our communities, linking with our Vibrant Communities team and supporting that all important interaction. Our media support will also assist us in interfacing with the wider public sector community to ensure that they and the media have access to all of the facts and are appropriately informed at all times and that any misconception or error can be immediately corrected by means of a comprehensive and pro-active communications strategy.
191. The Depute Chief Executive and the Executive Director of Finance and Corporate Support met with a number of companies with relevant experience in this kind of work to discuss the level of support needed over the next four months, the resources they have available and the costs of the service. They have appointed Golley Slater, a large, well established independent communications group at very favourable rates at an estimated cost of £0.018m. The actual costs will be dependent upon the level of media interest in the Council over the next few months and the level of support needed to protect its interests. Whilst the cost is unbudgeted it can be met from current year underspends within the department of Finance and Corporate Support and it is considered that the potential costs and consequences for the Council and its communities of unmerited damaging publicity could be much greater.

192. Resourcing the Recovery Plan

193. The work described in this report has been undertaken to date by the Coal Team. It will be necessary now to assess the additional work and, therefore, resources required to facilitate and develop the Masterplanning of the complexes - "Making New", the delivery on the Council's priorities in relation to "Making Safe" and "Making Good" the sites/complexes as required and also in relation to ongoing work in relation to Hargreaves and Kier Mining activity and, in particular, compliance monitoring. The Chief Executive will report further on this matter to Cabinet or Council, as appropriate.

194. RISK IMPLICATIONS

195. The contents of this report and that of the 24 May 2013 detail the significant potential risks for the Council and this report provides further commentary on the risks and the mitigation measures that are being taken to limit the environmental, health and safety, economic and financial risks to the Council and to the communities it serves. Specific work is continuing to fully identify the risks, establish where responsibility rests, and ultimately manage the risk to the Council. The Council's Corporate Risk Register includes reference to matters relating to opencast coal mining and internal financial procedures in relation to financial guarantees have been reviewed and will be implemented shortly.

196. COMMUNICATIONS

197. Reference is made earlier in this report to the engagement of external media support.
198. Given also that there are, arising from these matters, considerations for the wider public sector, the Chief Executive and other Officers have, through relevant professional organisations, CoSLA, and individual Councils, kept appraised those considered to have an interest. These organisations have welcomed our input and we will continue to correspond and brief accordingly.
199. Communication with our employees will also continue through letters from the Chief Executive and by presentations by the Depute Chief Executive which have already been made to all Chief Officers and Senior Managers and which will continue and be rolled out further.
200. At a local level, communication and engagement with Community Councils will be a priority to ensure that they are fully aware of the range of activity being taken forward and the Council's Vibrant Communities Service which will continue to provide targeted support to enable Community Council's to maximise their involvement and contribution.

201. COMMUNITY PLANNING IMPLICATIONS

202. The impact of the situation in relation to the opencast coal mines is significant in relation to Delivering Community Regeneration but also has potential to

impact on all themes of the Community Plan - Improving Community Safety in relation to safety considerations at the abandoned and unrestored sites; Promoting Lifelong Learning in relation to the skills development and employability of the workforce; and Improving Health and Wellbeing in relation to welfare benefit advice and income maximisation for those affected by redundancy.

203. SUMMARY AND CONCLUSION

204. The importance of the coal mining industry to East Ayrshire over many decades can never be underestimated and this report sets out the issues to be addressed to ensure a viable and responsible industry in the future. Importantly, however, this report focuses on the significant and challenging consequences of the demise of two former key operators in our area, reflects on the fact that they did not fulfil their obligations to ensure sustainable developments with the resultant failure in their responsibilities to our communities and, in the main, proposes all important Steps to Recovery.
205. Council will appreciate from this report, the significant work which has, to date, been undertaken to assess the extent of the challenge. The Steps to Recovery also set out above, are designed to provide to our communities confidence that every opportunity will be taken to minimise the risks and negative consequences of the liquidation of SCCL and Aardvark and to maximise the potential for restoration of their former sites and complexes through positive development opportunities as well as well managed and compliant opencast coal mining.
206. Such sustainable solutions will, undoubtedly, take a number of years to develop and deliver; therefore, over the next number of months and years, it will be important for Council to be kept apprised of progress and to have the opportunity to consider proposals and take appropriate decisions in relation to policy and as a Planning Authority.
207. Notwithstanding all of the foregoing, as stated above, there will undoubtedly be matters identified in the report by Jim MacKinnon in his Independent Review which will require to be addressed. These matters will be considered fully and reported to the Council and action taken, as appropriate.

208. RECOMMENDATIONS

209. It is recommended that Council:
1. Notes the work of the Partnership Action for Continuing Employment (PACE) initiative, together with the Council's Economic Development and Employability teams in support of redundant employees and, in particular, notes the most recent figure of 311 East Ayrshire residents and former Scottish Coal Company Ltd and Aardvark TMC Ltd employees who have been made redundant, of whom 88 have secured employment with 17 others proposing or having started a business;

2. Notes the continuing support by Scottish Enterprise and East Ayrshire Council to local companies, particularly those most adversely affected by the Liquidation, particularly given that Hargreaves is undertaking its in house procurement processes for sub-contractors in areas such as Haulage and Plant equipment;
3. Notes the work being undertaken by Scottish Government, East Ayrshire Council and Scottish Enterprise in strengthening the business base; attracting investment and promoting East Ayrshire;
4. Notes the appointment of EKOS Ltd to undertake the economic impact assessment of the liquidation of SCCL and Aardvark, with a first draft being expected by 20 September 2013;
5. Notes the acquisition by Hargreaves Surface Mining Limited and a number of Hive Cos of a range of former SCCL and Aardvark assets, including the operational opencast sites of Netherton and Duncanziemere; of the House of Water complex and of the site at Chalmerston and the creation of special purpose vehicles known as 'Hive Cos' to operate certain of these acquired assets and the effect thereof;
6. Notes the presentation by KPMG of remaining SCCL sites to the marketplace and agrees that a further update be provided on the outcome thereof;
7. Notes the decision by Lord Hodge in granting the Note of Directions sought by KPMG allowing the liquidators to disclaim land and statutory licences all as heard and determined during the Court of Session hearing on 4, 5 and 11 July 2013;
8. Notes that the Appeal against the decision of Lord Hodge was heard from 10-13 September 2013 and the continuing participation of SEPA, South Lanarkshire Council and the Lord Advocate, together with the introduction of the Advocate General, supporting KPMG's case and agrees that a further update be provided on the outcome thereof;
9. Notes the current position and legal implications in respect of land belonging to Aardvark and which KPMG has sought to disclaim and agree that a further report on this matter be provided thereon;
10. Agrees that officers be remitted to report back on the outcome of discussions with Hargreaves on the potential to deliver alternative restoration schemes for Netherton and Duncanziemere following their submission of proposals by 4 October 2013;
11. Notes the receipt of notional restoration costs of the former SSCL and Aardvark opencasts sites provided by the Independent Mining Engineers and the use of these assessments in supporting the calling up of bonds, which the Council is now progressing;
12. Notes that Counsel's advice continues to be sought in respect of the calling up of bonds;
13. Notes the work being undertaken by officers in relation to identifying that suitable financial guarantees are put in place by Hargreaves on behalf of the 'Hive Cos' and by Kier Mining in respect of current operational sites;
14. Notes the consideration by the Office of Fair Trading as to whether the acquisition by Hargreaves of certain SCCL assets has created a relevant merger situation;
15. Notes that the Scottish Government has advised that a complaint has been made to the European Commission and potential for Infraction Proceedings;

16. Notes the completion and outcome of the work to verify the status of each of the former SCCL and Aardvark complexes and the updating of the Opencast Coal Visual Plan;
17. Notes the Independent Mining Engineers' assessments of the cost of restoration of the former SCCL and Aardvark sites in conformance with extant planning consents and that the notional cost of restoration is £161.565m;
18. Notes that the total amount of restoration bonding to be called upon amounts to £28.656m, adjusted from that reported on 24 May 2013 following the completion of the work on bond assessments;
19. Approves the Steps to Recovery as set out in the report, in particular:
 - (1) the range of stakeholders with whom engagement will continue;
 - (2) the principles of Masterplanning as set out in the report, in particular, the hierarchy of sites and complexes to be addressed and the Council's priorities in this respect, taking account of Health and Safety and Environmental Pollution considerations; and
 - (3) the potential resourcing of Masterplanning and delivery of restoration and development of solutions, again as set out in the report;
20. Agrees that the Chief Executive write to the Minerals Trust proposing that the Council explore with the Trust the potential for it to contribute to the facilitation and/or restoration itself of certain sites;
21. Agrees that the Leader of the Council write to the First Minister seeking Scottish Government support for the restoration of these sites where no other feasible proposals exist; and that the Leader of the Council writes in similar terms to UK Government through the offices of the Rt Hon Mr Edward Davey MP, Minister for Energy and Climate Change in recognition of the role of the Coal Authority and that of the Department of Energy and Climate Change;
22. Agrees to authorise the Depute Chief Executive to continue to undertake the facilitation of Masterplanning for each complex, engaging as necessary with relevant parties, including Hargreaves, the bond holders and others who may offer potential solutions and reporting back as required to ensure Members (and where relevant to its remit, the Planning Committee) are fully and appropriately engaged in the decision making processes on an ongoing basis;
23. Agrees to the further engagement of Independent Mining Engineers in terms of compliance monitoring and assisting in the review of detailed restoration proposals or master plans being developed for each complex;
24. Approves the clarification of the processes of determining planning applications and the subsequent monitoring of surface mine developments, quarries, landfill and windfarms and the monitoring of the development by the Planning Authority thereafter in particular that:-
 - (1) the Planning Authority be more rigorous now and in the future in the respect of enforcement of matters relevant to such planning consents;
 - (2) the Planning Authority in the role of compliance monitoring will call upon the service of an Independent Mining Engineer to carry out regular inspections of the sites;
 - (3) the Planning Authority will also undertake routine announced and unannounced visits to monitor operational matters on sites;
 - (4) it is anticipated that new consents would require provision of formal regular site visits by an Independent Mining Engineer with costs being borne by the developer;

- (5) the frequency of compliance monitoring will be determined by operations in any particular site and in relation to adherence to the approved scheme by the Developer and in accordance with the Opencast Coal Subject Plan will be no less often than a six monthly basis;
 - (6) on completion of the final restoration and aftercare works on any opencast coal site, an Independent Mining Engineer will verify the completed development and financial guarantees against the approved restoration aftercare scheme within the planning consent, ensuring a formal completion of the development and final termination of bond requirements once all works are completed satisfactorily;
25. Notes the analysis of the frequency of Technical Working Groups; that this information has been passed to the Independent Review Team for consideration; and, in the meantime, the steps taken to ensure Hargreaves and Kier Mining convene Technical Working Groups as required;
 26. Notes the information verified in respect of the frequency of and an attendance at Community Liaison Committees; that this information has been passed to the Independent Review Team to consider; and, in the meantime, the steps taken to ensure Hargreaves and Kier Mining convene Community Liaison Committees as required;
 27. Notes the further actions taken in respect of revising and improving internal procedures and reporting of relevant matters relation to opencast mining;
 28. Notes the position in relation to KPMG and its responsibilities in respect of Health and Safety for all former SCCL sites which have not been purchased by Hargreaves/Hive Cos and which are not otherwise land which they have sought to disclaim;
 29. Notes the Council's responsibilities under the Environmental Protection Act 1990; and that the Council does not have specific statutory duties and responsibilities in relation to implementing necessary Health and Safety measures at disclaimed sites;
 30. Notes the work of the Scottish Coal Industry Taskforce chaired by Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism; and Mr Ewing and Derek McKay MSP, Minister for Local Government and Planning visited the Spireslack/Ponesk and Powharnal/Dalfad complexes on 30 August 2013;
 31. Notes the continuing work of the Local Response Team chaired by the Chief Executive;
 32. Welcomes the Office of Rail Regulation's revised proposals in respect of its charges as detailed in the Draft Determination of Charges published on 12 June 2013 and further welcomes the proposed reduction in charges;
 33. Notes the continuing work of the Restoration Bonds Working Group, the participation of the Team Leader, Development Management and the pending publication of a consultation document on the outcome of their work;
 34. Welcomes the continued engagement with the Scottish Mines Restoration Trust, recognising its role and remit;
 35. Notes the appointment of Golley Slater Scotland to support the Council in its communications of all of the foregoing and other relevant matters and the activity by the Chief Executive and other officers to keep appraised organisations considered to have an interest in the matters within this and previous reports;
 36. Notes the progress of the Independent Review;

37. Notes the legal, financial and risk implications for the Council as set out in the report and the continuing requirement for the services of legal Counsel,
38. Agrees that consideration of the potential financial implications for the Council as set out in particular in paragraph 177 of this report be included in the budget report to be presented to the Council in December 2013; and
39. Otherwise notes the content of the report.

Fiona Lees
Chief Executive

13 September 2013

LIST OF BACKGROUND PAPERS

1. Agendas and minutes of meetings of the Local Response Team
2. East Ayrshire Council Opencast Coal Subject Plan, 2003

Any person wishing further information should contact Fiona Lees, Chief Executive
(Telephone 01563 576103)

IMPLEMENTATION OFFICER: Fiona Lees, Chief Executive

LEGAL CONSIDERATIONS: STATUS REPORT

Hargreaves Surface Mining - Update

On 16 May 2013, Hargreaves completed their due diligence in relation to Aardvark sites, and on 5 July 2013 they completed the same process in respect of SCCL sites. Hargreaves confirmed after each due diligence process had been concluded, which of that company's assets they would be taking forward through the special purpose vehicles known as "Hive Cos".

Following the conclusion of the above due diligence process by Hargreaves, KPMG have now presented the remaining SCCL sites to the market place.

Hargreaves' Business Plan has taken the form of a mixed approach which includes:

- a. the direct purchase of property and assets of SCCL and Aardvark;
- b. the transfer of a number of active opencast sites into "Hive Cos" and the early resumption of mining and restoration activities. (The "Hive Cos" will continue to be owned by SCCL and Aardvark. The Hive Cos will operate the sites they take over (currently, Netherton and Duncanziemere) and apply to the Planning Authority for alternative restoration proposals. If the alternative restoration proposals are approved through the Planning Authority on terms which are "commercially acceptable" to Hargreaves then, at that time, those sites will be taken into the ownership of the Hargreaves Group);
- c. bringing additional new sites into production; and
- d. providing their company's services as contractors to carry out Design and Planning Services, mining operations and care and maintenance services to the Hive Cos.

Court of Session Note for Directions by KPMG for SCCL

As set out in the report considered by Cabinet on 24 May 2013 KPMG, the joint Liquidators for SCCL lodged a Note for Directions at the Court of Session. The Note sought direction from the court on a number of matters including, whether the Liquidators could disclaim land and statutory licences. East Ayrshire, South Lanarkshire, North Lanarkshire and Midlothian Councils initially instructed Counsel to oppose these directions on a joint basis on behalf of all four Councils. North Lanarkshire and Midlothian Councils subsequently withdrew from the action. It is believed that they took this decision given that they had significantly fewer affected sites situated within their Council areas. The Note for Directions was subsequently opposed by East Ayrshire Council, South Lanarkshire Council, SEPA, SNH and the Lord Advocate, who appeared on behalf of the Scottish Government.

The Hearing took place over three days , and July 2013. On the July 2013 the Judge, Lord Hodge, granted the Note of Directions allowing the Liquidators to disclaim land and statutory licences.

Leave to Appeal was sought and granted by the opposing parties. SEPA, East Ayrshire Council, South Lanarkshire Council and the Lord Advocate (with SNH having withdrawn from the process) all submitted grounds of Appeal which opposed both directions granted by the Court. The Advocate General for the Government of the United Kingdom subsequently entered the process as a party, supporting the decision of the Court (and therefore the Liquidators) to allow land and licences to be disclaimed. The Appeal was heard on 10 September 2013 by three Judges in the Inner House of the Court of Session.

At the present time, KPMG have not disclaimed any sites in East Ayrshire Council owned by the SCCL. On 22 August 2013, KPMG sent notices to the Council disclaiming their interest in various areas of land under leases granted to SCCL and responsibilities for these lands will now revert back to the original landowner(s).

Disclaimed Land belonging to Aardvark

As Members are aware, KPMG has already sought to disclaim three areas of land within the former Aardvark sites at Garleffan, Grievehill and Skares Area D.

It is considered that if these Disclaimers are competent then the ownership of the disclaimed sites falls to the Crown as “ultimate owner”. The Queen’s and Lord Treasurer’s Remembrancer (QLTR) is the Crown’s representative in Scotland who deals with ownerless property. The Crown also has, however, a period of three years in which to decide if they wish to disclaim the property. It is unclear what the Crown’s position will be in relation to taking on these sites given that they are likely to bring with them significant responsibilities including health and safety, and those arising from the Environmental Protection Act 1990. It is unclear who would “own” and have responsibility for the sites in the event that the Crown subsequently disclaimed the land as well.

Hive Cos

For each complex which is being taken forward by Hargreaves, in the “first phase” that complex is owned and operated by Hive Co. At present, a number of the sites are now owned by the Hive Cos, this is illustrated in the appendices attached. Again, as referred to earlier, the Hive Cos will operate the sites and apply to the Planning Authority for alternative restoration proposals on terms which Hargreaves considers are “commercially acceptable”. (The alternative restoration proposals will require to be subject to assessment and scrutiny through the statutory planning process.) If these alternative schemes are approved then, at that time, those sites will be taken into the ownership of the Hargreaves Group.

Hargreaves have indicated that in the event that the restoration issues are not resolved on a basis which is “commercially acceptable” to them, then these sites would not be taken into the Hargreaves Group and the Hive Cos (which have been set up as English Companies), would be able to disclaim the sites at that time.

On 26 April 2013 OCCW (Netherton) Limited and OCCW (Duncanziemere) Limited were granted Letters of Comfort by the Head of Planning and Economic Development which allows them to temporarily operate under the terms of the

existing planning permissions for those sites and so continue to extract coal at those sites. These Letters of Comfort were granted subject to the Hive Cos seeking a variation to their Planning Permissions in terms of Section 42 of the Town and Country Planning (Scotland) Act 1997 seeking to amend the personal consent condition into the name of the Hive Co.

To date, the Planning Authority has received Section 42 applications in relation to Netherton, Duncanziemere and House of Water sites to revise the personal consent condition in the planning permissions. These applications are being processed by the Planning Authority.

The Planning Authority is also in discussions with the Hive Cos and their agents regarding the terms of alternative restoration proposals. The Planning Authority intends to have completed its discussions with the Hive Cos within by 4 October 2013 in order that Officers can assess if realistic restoration proposals can be progressed by the Planning Authority.

It should be noted that, whilst longer-term alternative solutions are being discussed to ensure that the Hive Cos current mining operations do not increase the restoration liability, at present, the Hive Cos are operating without the benefit of sufficient financial guarantees being in place for the restoration of the Netherton and Duncanziemere sites.

Guarantee Bonds

With reference to the Cabinet decision of 24 May 2013 Members noted that the Depute Chief Executive had engaged Independent Mining Engineers. In terms of the guarantee bonds which are in place over the Aardvark and SCCL sites, Counsel's advice has been sought on calling up these bonds. Additionally, and as referred to below, Independent Mining Engineers have been instructed to provide assessments of restoration costs for the sites and this information is being used to support the bond calls which the Council is progressing.

To date, Officers have focussed on calling bonds which have been due to expire or reduce in value. There are a number of bonds still to be called and Officers are reviewing the terms of the bonds in order that a call can be made when appropriate.

As stated, Counsel's advice has been sought in relation to calling up bonds, with specific advice being obtained in relation to each bond which has, to date, been called. At this time, it is uncertain if all of the bond calls will be honoured. The Council is progressing discussions with the bond companies to try and facilitate the process without recourse to court. In the event that a bond company repudiates a bond call then the Council intends to seek Counsel's advice about the merits of raising formal legal proceedings to enforce the terms of that bond. The Council would, however, only resort to raising formal legal proceedings after discussions with the bond companies had been exhausted and without a mutual solution being achieved..

Discussions with Hargreaves, on behalf of the Hive Cos, and Kier Mining is taking place in relation to assessing what suitable financial guarantees for continued

operation on sites should be put in place by operators, for example traditional restoration bonds or ESCROW accounts.

Office of Fair Training (OFT) - Hargreaves takeover of SCCL Assets

On 8 August 2013, the Office of Fair Trading (OFT) confirmed that it is considering whether the acquisition of certain assets of SCCL by Hargreaves has resulted in the creation of a relevant merger situation and whether this may have resulted in a lessening of competition within any market in the UK for goods and services.

Infraction Proceedings

A complaint has been made to the European Commission in relation to a potential breach of Article 6 of the Special Protection Area (SPA) Habitat Directive, following the loss of habitat from the Muirkirk and North Lowther Uplands SPA due to the unrestored opencast mining in the area.

The European Commission's role is to both initiate legislation and ensure that Member States then comply with it. If they have evidence that a Member State has either failed to transpose a directive properly, or is not enforcing legislation correctly, then they may begin legal proceedings to rectify the situation, known as Infraction Proceedings.

In these circumstances, the European Commission can instigate proceedings under Articles 258 and 260 of the Treaty on the Functioning of the European Union (EU) against the United Kingdom Government. Under the Infraction Proceedings, the European Commission has the ability to impose lump sum fines of up to €9.2 million per site and fines of up to approximately €224,000 per day on the offending country if found guilty. It is understood that the Scottish Government would be required to pay a percentage of any UK fine as the infraction relates to a devolved matter.

While it is unclear at this time whether the European Commission will proceed with an investigation into this matter, Cabinet is asked to note that the complaint referred to above has been received by the Commission.

FORMER AARDVARK TMC/ATH RESOURCES COMPLEXES**SKARES AND NETHERTON** (Tables 1 and 2 of the 24 May 2013 Report Refers)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Skares (Table 1)	CD/95/0254/MIN, 97/0596/FL, 98/0407/FL 08/0752/FL*	Y	No	Y	£0.75m	£2.0m	Partially restored; water void and overburden on site	£6.0m
Netherton (Table 2)	09/0891/PP	Y	Y	Y	£4.5m	£10.6m	Coaling	£11.811m
					£5.25m	£12.6m		£17.811m

*Reference alteration 97/0596/PP to 97/0596/FL

Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Skares Area D – void	Disclaimed	Non operational	QLTR (potentially)
Remaining Land	KPMG (ATH liquidators)	Non operational	OCCW (Netherton)
	OCCW (Netherton)	Non-operational	OCCW (Netherton)
	Forestry Commission	Non-operational	OCCW (Netherton)
	Unconfirmed	Non-operational	OCCW (Netherton)
Netherton	OCCW Netherton	Operational	OCCW (Netherton)
	Forestry Commission	Operational	OCCW (Netherton)
	Unconfirmed	Operational	OCCW (Netherton)
	Hargreaves	Operational	OCCW (Netherton)

Current Known Status:

Skares - The Skares site, CD/95/0254/MIN, has finished coaling and the western section of these works have been restored. However the site contains significant areas of uncompleted restoration particularly in Area D which contains a water-filled void and an overburden tip. Discussions are ongoing with OCCW (Netherton) about the possibility of a revised restoration scheme.

Netherton - The Netherton opencast coal site 09/0891/PP is currently being operated by the OCCW (Netherton). These coaling operations in the northern area are expected to continue until May 2015. Coaling in the southern excavation area has finished and overburden from northern workings is being deposited in the southern void. The operations carried out by ATH Resources were not carried out as per the planning consent and it is estimated that the restoration bond will not be of sufficient value to relocate the temporary overburden mound B into the northern working void. In addition, the southern working void is larger than had been consented. Current work is being carried out by OCCW (Netherton) to place the overburden from the southern void to the northern void which does not increase the liability. Discussions are ongoing with OCCW (Netherton) about the possibility of a revised restoration scheme.

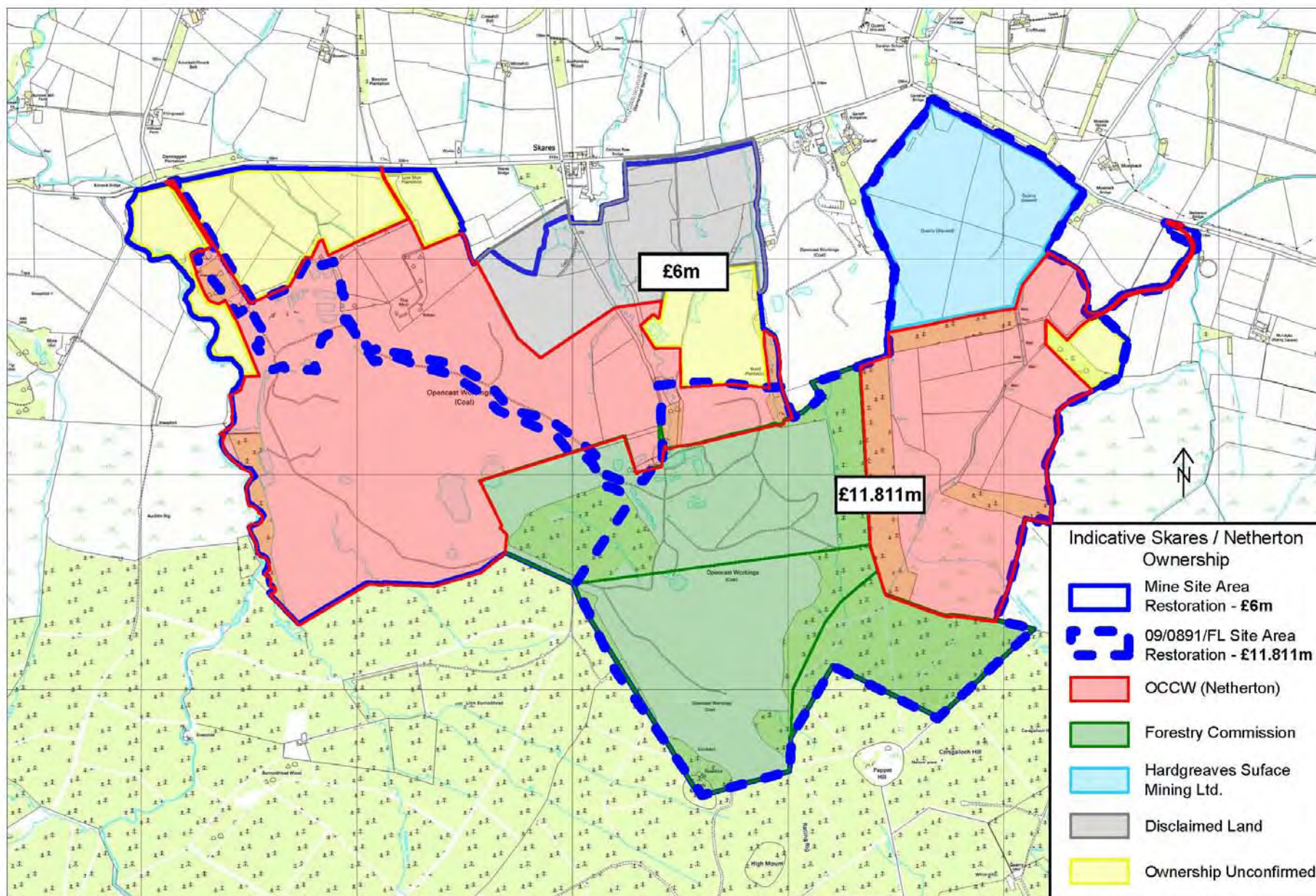
Current Planning Applications:

Skares- There are no outstanding planning applications for this area. However it is noted in the Pre-Application Consultation (120002/PREAPP) that proposals for the development of an opencast site adjacent to the Skares site called Auchlin by ATH Resources on 10 April 2012 which proposes to incorporate the void at Area D and the associated overburden mound. Hargreaves have intimated that they may wish to pursue this site.

Netherton - A Planning application has been received from OCCW (Netherton) Ltd to alter Condition 1 (Personal Consent) and is being progressed under delegated powers. OCCW

Netherton have submitted a Proposal of Application Notice(13/0010/PREAPP) to the Planning Authority relating the proposed amendment to the restoration scheme at Netherton. This Notice provides the Planning Authority the opportunity to comment on the public consultation proposed by the applicant for the revised scheme. No details of the proposed revisions are, or require to be contained within this notice

Risk Assessment: A Health & Safety Risk Assessment of Skares Area D has been completed with a range of safety measures identified to mitigate potential risks.



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FORMER AARDVARK TMC/ATH RESOURCES COMPLEXES

DUNCANZIEMERE/LAIGH GLENMUIR (Tables 3 and 4 of the 24 May 2013 Report Refers)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Duncanziemere (Table 3)	09/0511/PP	Y	Y	Y	£2.6m	£4.4m	Coaling	£6.593m
Laigh Glenmuir (part of above site) (Table 4)	05/0232/FL	Y	No	Y			Partial restoration with overburden	

Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Duncanziemere	OCCW (Duncanziemere)	Operational	OCCW (Duncanziemere)
Laigh Glenmuir	OCCW (Duncanziemere)	Operational	OCCW (Duncanziemere)
	Unconfirmed	Operational	OCCW (Duncanziemere)

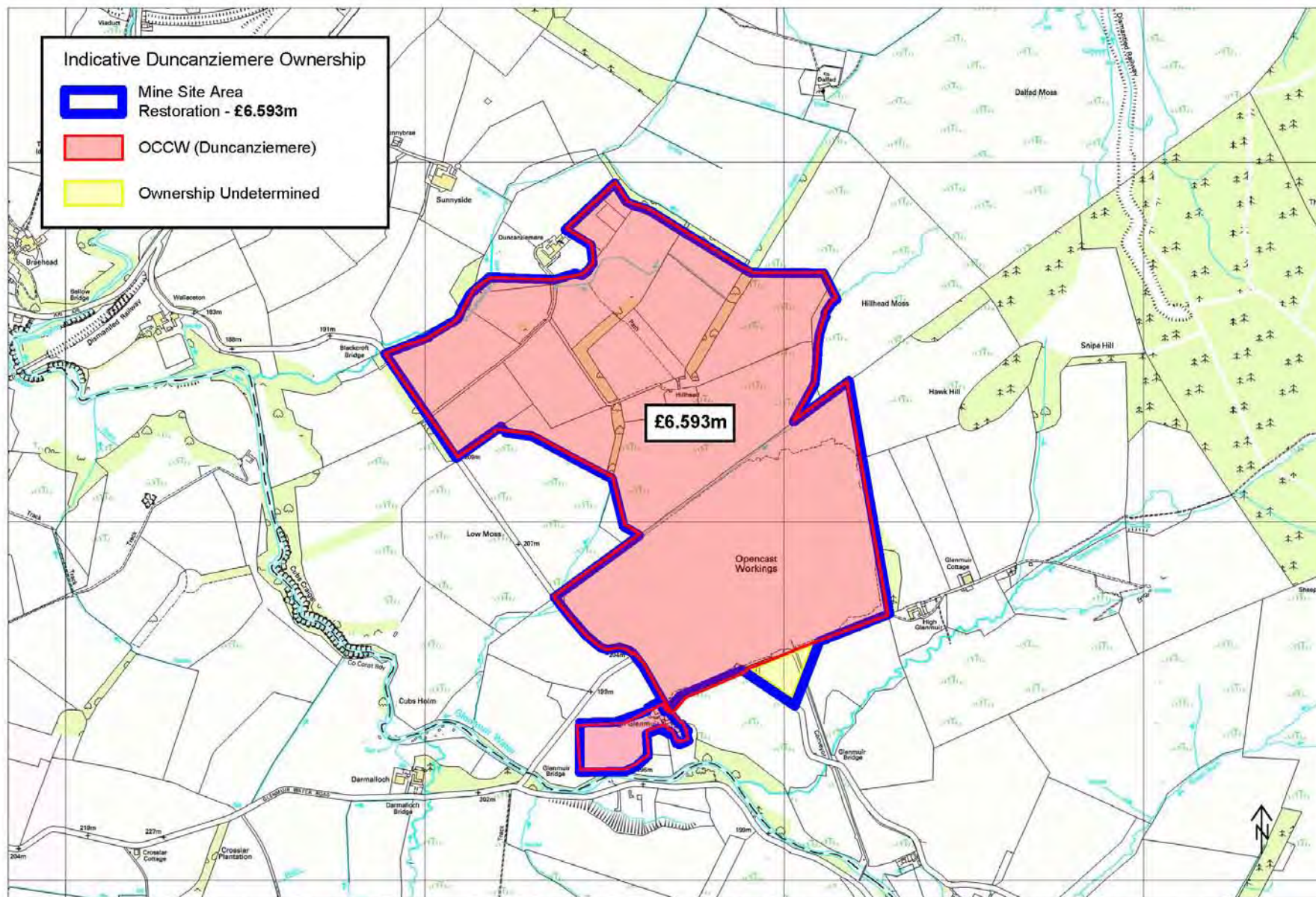
Current Known Status:

Laigh Glenmuir - 05/0232/FL has finished coaling. This site is not restored due principally to the overburden from the Duncanziemere operations.

Duncanziemere - 09/0511/PP, is currently operational. The operations, under Aardvark TMC, were not carried out as per the planning consent. Discussions are ongoing with OCCW (Duncanziemere) about revised restoration proposals. The Restoration Bond for the site was not renewed by ATH Resources Plc at its expiry on 14 August 2012. A claim on the bond is being made.

Current Planning Applications:

A Section 42 planning application has been received in relation to alteration to condition 1 (personal consent) of planning permission 09/0511/PP and is being progressed under delegated powers. A Section 42 planning application has been received to vary the hours of operation of the surface mine to allow 24 hour working. The mine has been operating on a 24hrs working pattern since June 2012 on the basis that the Head of Planning and Economic Development has issued a Letter of Comfort regarding this matter. This was granted for a period of three months but remains in place and has not been revoked. The Head of Planning and Economic Development, in accordance with the relevant delegated authority, deemed that this is an acceptable breach of the condition until such time as the application is determined. The application will now be submitted to a future Planning Committee. OCCW (Duncanziemere) has also submitted applications for Non-Material Variations (NMVs) relating to operational areas within the complex, these are currently under consideration by the Planning Authority.



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FORMER AARDVARK TMC/ATH RESOURCES COMPLEXES
Appendix 4
GARLEFFAN AND GRIEVEHILL (Tables 5 to 8 of the 24 May 2013 Report Refers)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Glenmuckloch Conveyor (Table 5)	05/1309/FL	Y	N/A	Y	£0.075	Information not provided by ATH	Operational	£0.49m
Grievehill (Table 6)	98/0452/FL	Y	No	Y	£2.5m	£5.9m	Partially restored	£7.696m
Garleffan II* (Table 7)	00/0526/FL 04/0873/FL 04/0150/FL	Y	No	Y	£1.1m	£0.5m	Partially restored	£1.134m
Overland Conveyor between Laigh Glenmuir and Garleffan (Table 8)	06/0291/FL & 09/0770/PP	Y	N/A	No	£0	Information not provided by ATH	Operational	£0.237m
					£3.675m	£6.4m		£9.557m

*Additional consents added - 00/0526/FL and 04/0873/FL

Ownership Table

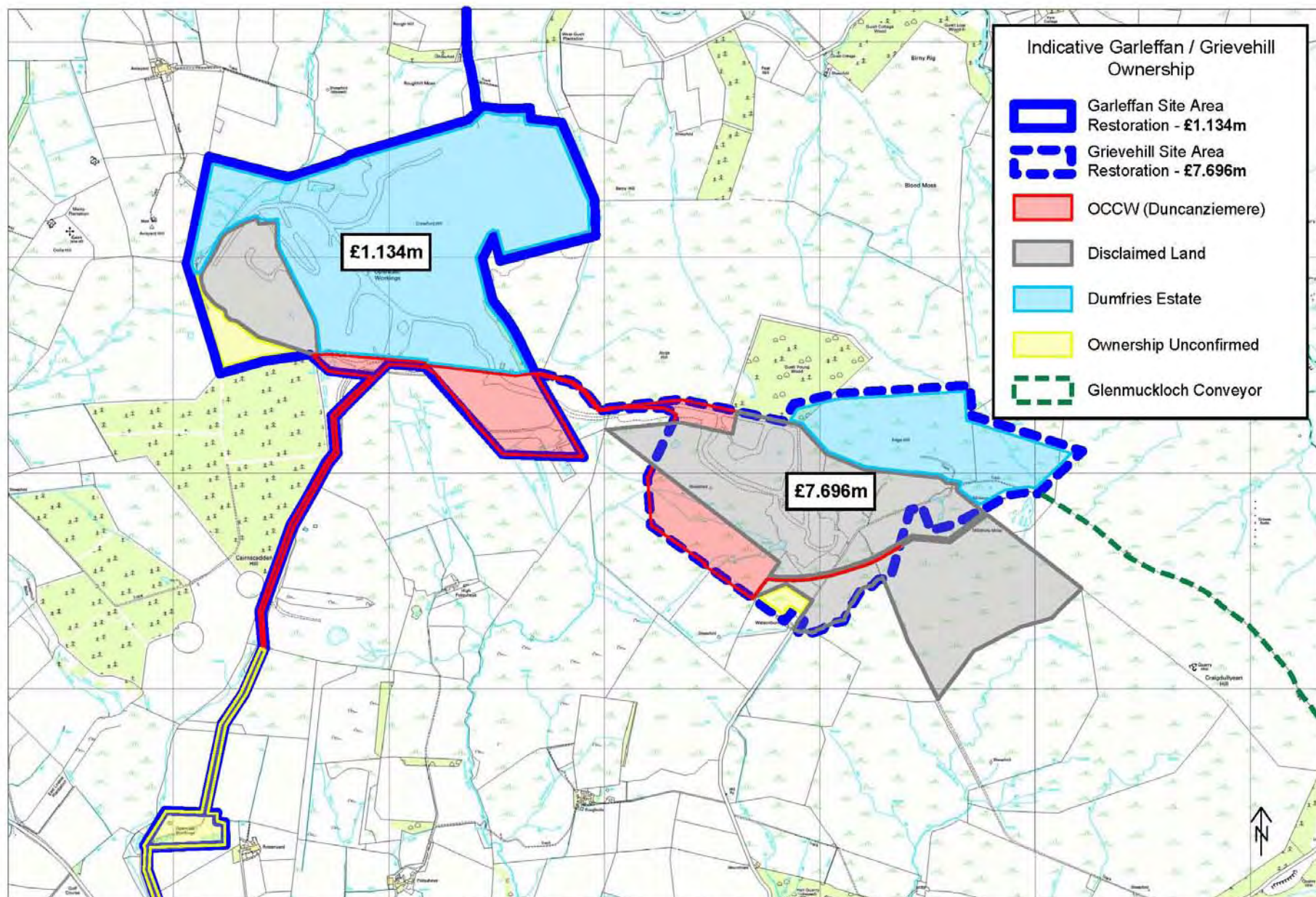
Site	Ownership	Operational status	Health and Safety Responsibility
Glenmuckloch Conveyor	OCCW (Duncanziemere)	Operational	OCCW (Duncanziemere)
Grievehill	Dumfries Estates	Non-coaling	Dumfries Estates
	OCCW (Duncanziemere)	Non-coaling	OCCW (Duncanziemere)
	Unconfirmed	Non-coaling	Unconfirmed
Grievehill - Remaining Land (Disclaimed)	QLTR (potentially)	Non-coaling	QLTR (potentially)
Garleffan	Dumfries Estates	Non-coaling	Dumfries Estates
	OCCW (Duncanziemere)	Non-coaling	OCCW (Duncanziemere)
	Unconfirmed	Non-coaling	Unconfirmed
Garleffan - Remaining Land (Disclaimed)	QLTR (potentially)	Non-coaling	QLTR (potentially)
Conveyor between Laigh Glenmuir and Garleffan	OCCW (Duncanziemere)	Operational	OCCW (Duncanziemere)

Current Known Status:

Grievehill - This site has finished coaling and this site has not been fully restored. The Restoration Bond for the site was not renewed by ATH Resources Plc at its expiry on 31 October 2012. A claim on the bond is being made.

Garleffan – This site has finished coaling. Large areas of the site are restored with the exception of existing infrastructure and the coal processing area.

Risk Assessment: A Health & Safety Risk Assessment disclaimed land within the Garleffan and Grievehill sites has been completed with a range of safety measures identified to mitigate potential risks.



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FORMER SCOTTISH COAL COMPANY LIMITED COMPLEXES**CHALMERSTON AND PENNYVENIE** (Tables 9 and 14 of the 24 May 2013 Report Refers)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:- High Low		Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Chalmerston* (Table 9)	87/92/Q	N/A	No	No	N/A	N/A		Partial restoration	£23.374m (Valuation covers entire Chalmerston and Pennyvenie complex except Chalmerston North Extension)
Chalmerston North Phase 1 and Pennyvenie area A (Table 10)	96/0076/FL	Y	No	Y	£0.370m	£1.55m	£1.4m	Partial restoration	
Chalmerston North/ Pennyvenie (Table 11)	97/0582/FL	Y	No	No	N/A	N/A		Partial Restoration	
Benbain Remainder (Table 12)	12/0093/PP	N/A	N/A	N/A	N/A	N/A		Application not approved	
Chalmerston Area P (Table 13)	07/0448/FL	N	No	No	N/A	N/A		Partial Restoration	
Chalmerston North Extension (Table 14)	06/0685/FL	Y	No	Y	£2.6m (plus aftercare of £0.017m)	£11m	£8m	Partial Restoration	£12.045m
					£2.987m	£12.55m	£9.4m		£35.419m

*Reference change from 87/99/Q to 87/92/Q

Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Original Chalmerston - Western section of Chalmerston	OCCW (Chalmerston)	Coaled and partially restored	OCCW (Chalmerston)
	Unconfirmed	Coaled and partially restored	OCCW (Chalmerston)
Benbain - Eastern section of Chalmerston	Forestry Commission	Coaled and unrestored	Forestry Commission
	Unconfirmed	Coaled and restored	Forestry Commission
Chalmerston North Extension	Forestry Commission	Coaled and unrestored	Forestry Commission

Current Known Status:

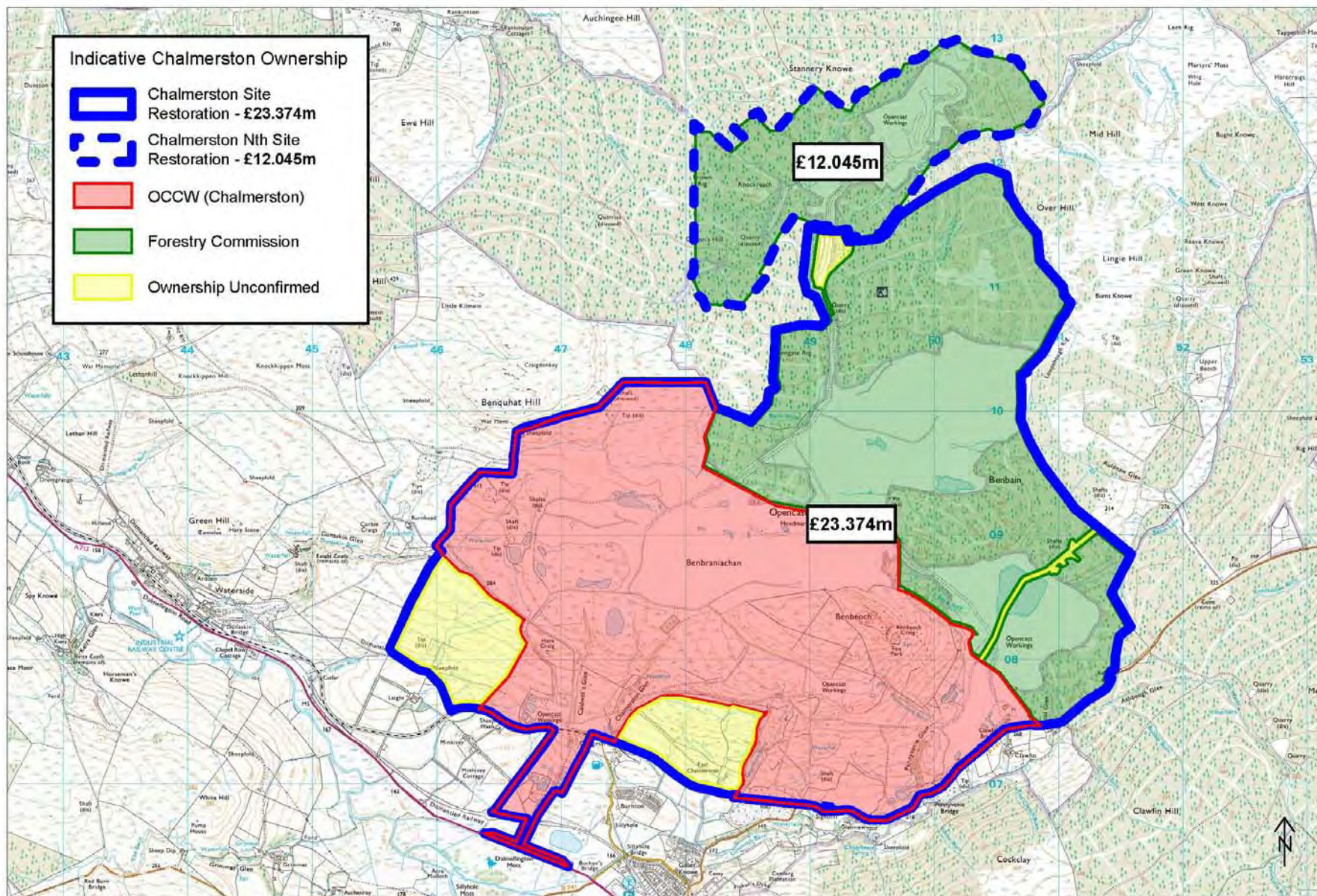
Original Chalmerston and Benbain - This complex has finished coaling. The site is substantially unrestored. Four voids remain. An area of potential future coaling exists within the Benbain Remainder area.

Current Planning Applications:

The Planning Application 12/0093/PP for Benbain Remainder will not be progressed. A future application may be made by OCCW (Chalmerston) for the Benbain Remainder site which would promote an alternative restoration scheme for the Chalmerston complex.

A Section 42 application will require to be made for the change in relation to the personal consent conditions of the existing consents.

Chalmerston North Extension: This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out. The restoration bond has been claimed and is currently being pursued.



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FORMER SCOTTISH COAL COMPANY LIMITED COMPLEXES**DUNSTONHILL** (Table 15 of the 24 May 2013 Report Refers)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status	Mining Engineer's Estimate Against Restoration Plan
						High	Low		
Dunstonhill (Table 15)	08/0783/FL	Y	Y	Y	£4.2m	£9.4m	£9.4m	Initial restoration	£10.241m
					(plus aftercare of £0.377m)				
					£4.577m	£9.4m	£9.4m		£10.241m

Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Dunstonhill	Forestry Commission Poll Estate SCCL (in Liquidation)	Coaled and unrestored	Forestry Commission Poll Estate SCCL (in Liquidation)

Current Known Status: The site is substantially unrestored. A claim was made on 13 May 2013 against the Restoration Bond due to the pending reduction in the bond value from £4.2m to £2.2m. The opencast mine boundary limits public access to the War memorial. Discussions have been carried out with SMRT, KPMG and Hargreaves in relation to a solution to the restricted access. As a result, Hargreaves propose to carry out limited restoration to the Southern section of the mine at their cost to reinstate public access to the war memorial prior to Remembrance Day.

FORMER SCOTTISH COAL COMPANY LIMITED COMPLEXES

PIPERHILL (Tables 16 of the 24 May 2013 Report Refers)

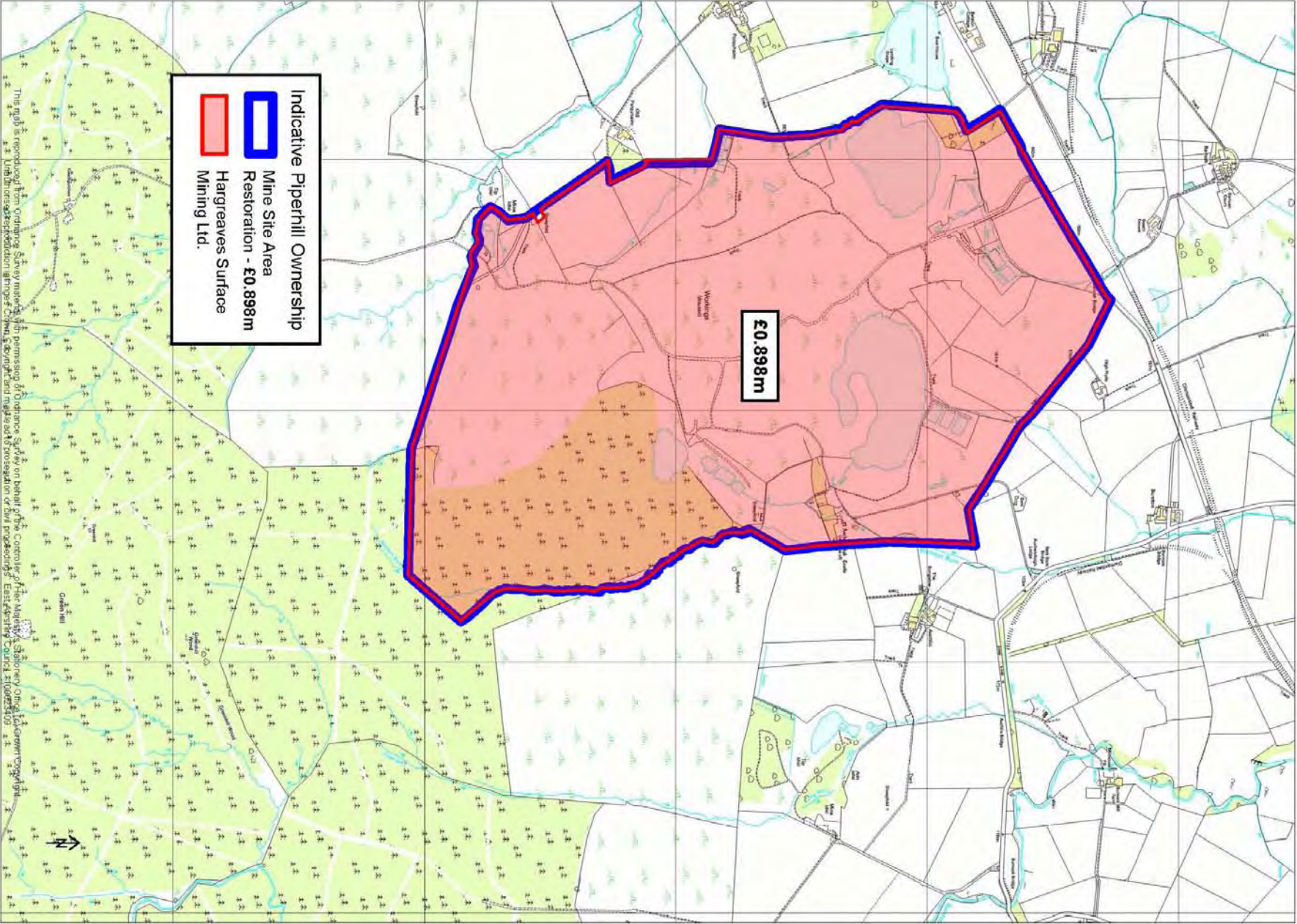
Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-	Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Piperhill* (Table 16)	CD/90/0343/Q	Y	No	N/A	N/A	N/A	Partially restored with the retention of the Haul Road	£0.898m

*Reference alteration from 90/0343/FL to CD/90/0343/Q

Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Piperhill	Hargreaves	Finished coaling	Hargreaves

Current Known Status: This site has finished coaling and has been fully restored to contour level however it requires finalized forestry landscaping. Kyle Forrest road runs through this area of restored workings. For details of the bond arrangements for the Kyle Forest Haul Road refer to Appendix 8.



FORMER SCOTTISH COAL COMPANY LIMITED COMPLEXES

HOUSE OF WATER (Tables 17 to 25 of the 24 May 2013 Report Refers)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status	Mining Engineer's Estimate Against Restoration Plan
						High	Low		
House of Water* (Table 17)	CD/94/0072/ MIN	Y	No	No	N/A	N/A		Partial Restoration	£26.399m
Ext. to House of Water and River Nith Diversion (Table 18)	96/0400/FL	Y	No	No	N/A	N/A		Partial Restoration	
Area B Variation (Table 19)	03/0506/FL	Y	No	No	N/A	N/A		Partial Restoration	
Ext. and River Nith Diversion (Table 20)	04/0397/FL	Y	No	Y	£0.07m	£1.9m	£1.3m	Partial Restoration	
Burnston Fields Extension ** (Table 21)	09/0371/FL	Y	No	Y	£0.097m (plus aftercare of £0.097m)	£8.79m	£6.17m	Partial Restoration	
Lanehead (Table 22)	09/178/FL	Y	Y	N/A	N/A	N/A		Coaling not commenced	
Tappet Hill (Table 23)	09/0286/FL	Y	No	Y	£0.076m	N/A		Unrestored	
Craigman South (Table 24)	09/364/FL	No	No	No	No	N/A		Unrestored	
Kyle Forest Haul Road Burnston Remainder (Table 25)	98/0844/FL 12/0022/FL	Y Y	N/A Y	Y No	£0.1m N/A	N/A N/A		Operational Coaling not commenced	N/A
					£0.44m	£10.69m	£7.47m		£26.399m

*Reference alteration 94/0072/MIN to CD/94/0072/MIN

**Aftercare bond added to Burnston Fields Extension.

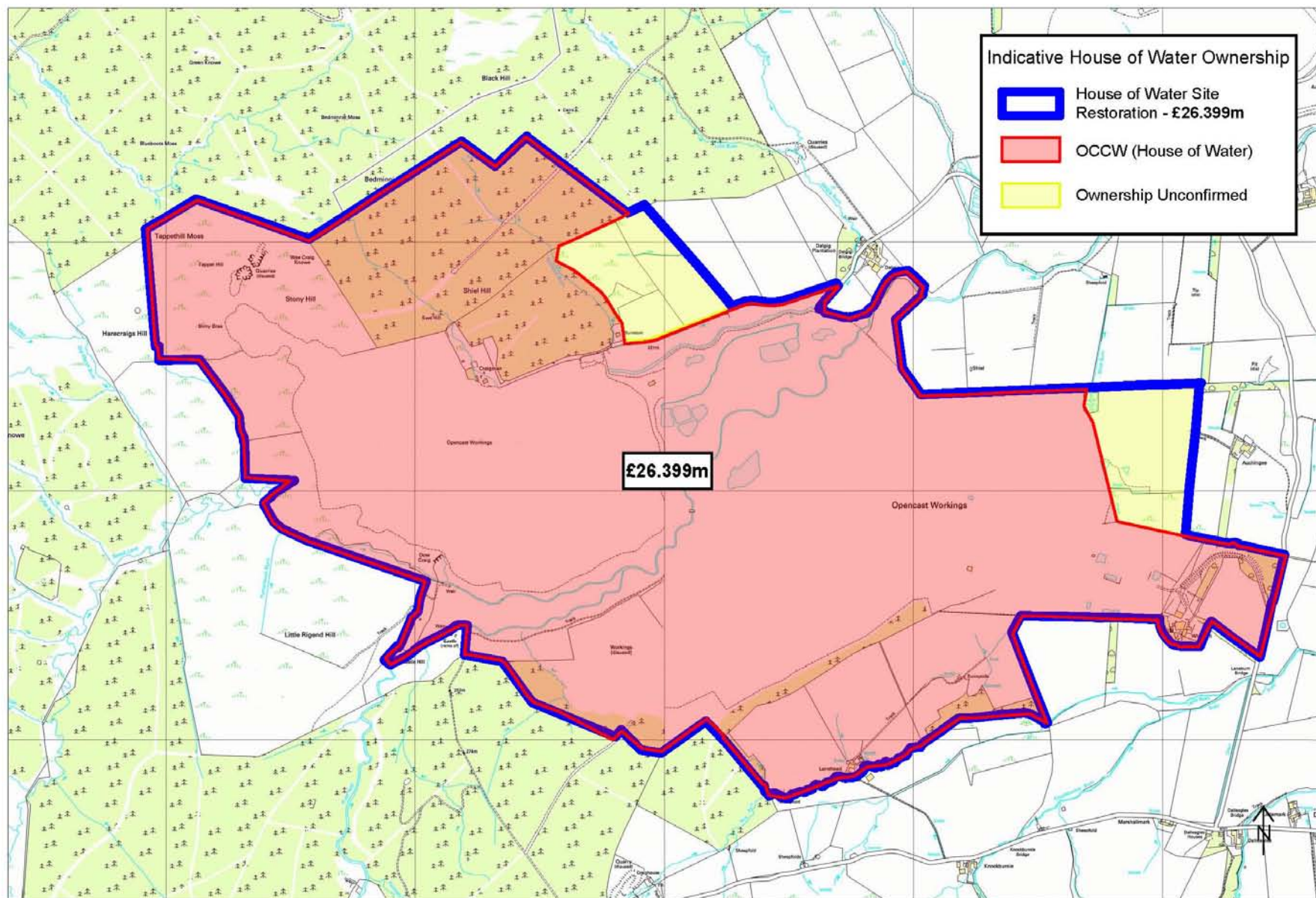
Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
House of Water	OCCW (House of Water)	Unrestored - potential future coaling	OCCW (House of Water)
	Unconfirmed	Unrestored	Unconfirmed

Current Known Status:

This site has finished coaling and has been partially restored however significant areas of restoration require to be carried out. The site contains a number of large overburden mounds and three unrestored voids.

Current Planning Applications: Lanehead has not commenced coaling and has expired. Section 42 applications have been received for this complex in relation to change of personal consent and duration of the applications. Burnston Remainder has not commenced coaling as the Planning Consent has not been implemented. OCCW (House of Water) has indicated that they intend to coal the Burnston Remainder consent and are considering a complex-wide restoration scheme to address the issue of unrestored land. Applications to discharge the planning conditions for this site have been received.



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FORMER SCOTTISH COAL COMPANY LIMITED COMPLEXES

POWHARNAL AND DALFAD (Tables 26 to 28 of the 24 May 2013 Report Refers)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:- High Low		Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Gasswater* (Table 26)	96/0496/FL	Y	No	N/A	N/A	N/A		Partial restoration (central site contained within Dalfad)	N/A
Powharnal (Table 27)	99/0761/FL and 05/1242/FL	Y	No	Y	Restoration £0.775m	£17m	£4.8m	Partial restoration	£18.227m
					Mitigation £0.278m	£6.1m	£1.7m		
Dalfad** (Table 28)	10/842/PP	Y	Y	Y	Restoration £3.34m	£5.7m	£5.7m	Partial restoration	£8.562m
					Mitigation £0.219m				
					£4.612m	£28.8m	£12.2m		£26.789m

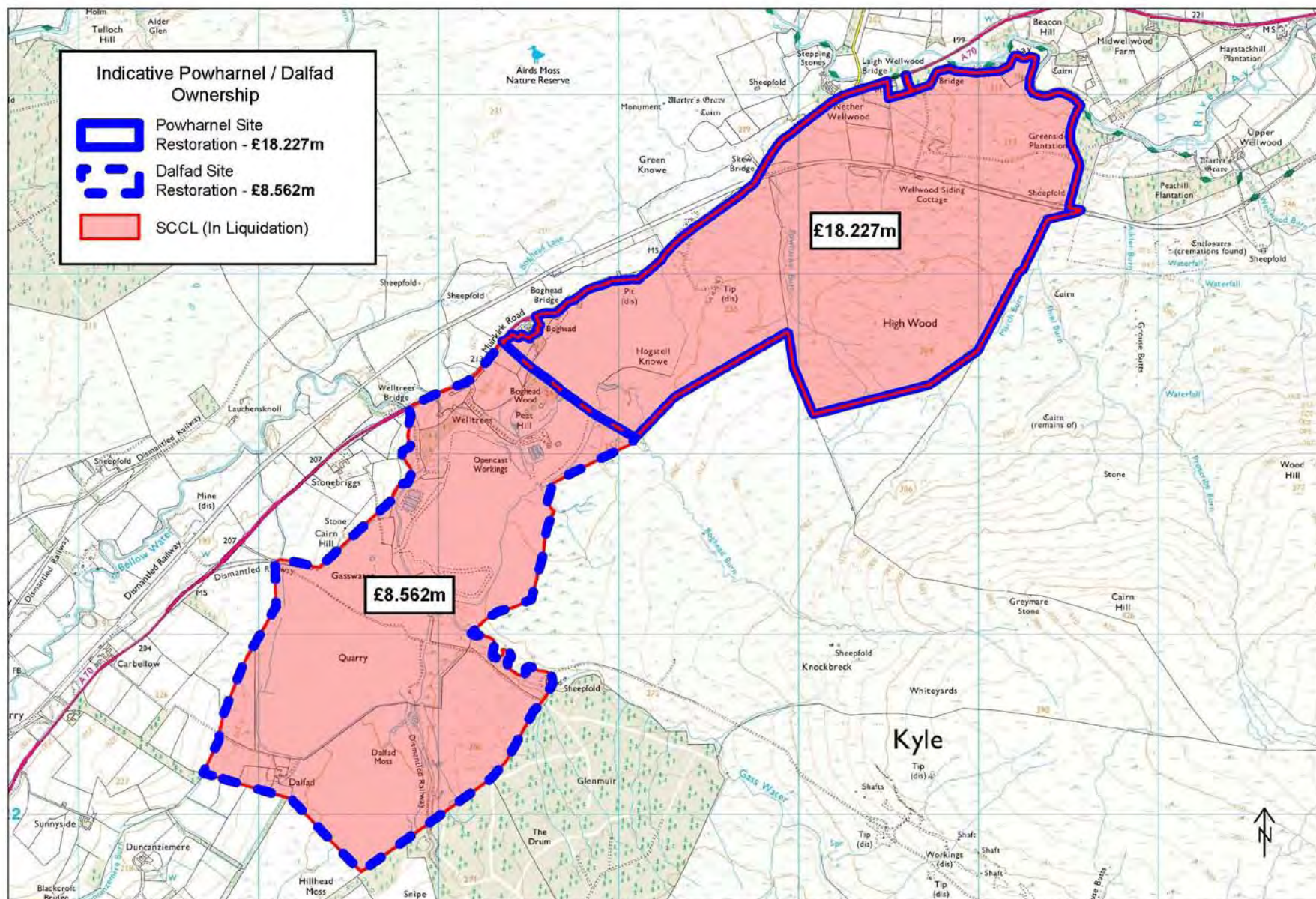
*Reference change - 99/0761/FL to 96/0496/FL

**Reference alteration - 10/842/FL to 10/0842/PP

Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Gasswater	SCCL (in liquidation)	Restored	SCCL (in Liquidation)
Powharnal	SCCL (in Liquidation)	Coaled and unrestored	SCCL (in Liquidation)
Dalfad	SCCL (in Liquidation)	Coal remaining and unrestored	SCCL (in Liquidation)

Current Known Status:**Gasswater** - The Gasswater site has been superseded by the Powharnal and Dalfad applications with restoration to the areas of land outwith these applications.**Powharnal** - The Powharnal site has finished coaling and a large unauthorized water filled void remains. The overburden mound is larger than consented. There are no outstanding planning applications for this site. Claims have been made against the restoration and mitigation bonds.**Dalfad** - The Dalfad site has approximately 40,000 tonnes of coal remaining. The site has been partially restored with significant areas of restoration required to be carried out and a large void remains on site. Claims have been made against the restoration and mitigation bonds.



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FORMER SCOTTISH COAL COMPANY LIMITED COMPLEXES

PONESK AND SPIRESLACK (Tables 29 to 33 of the 24 May 2013 Report Refers)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status	Mining Engineer's Estimate Against Restoration Plan
						High	Low		
Spireslack Viaduct Mine* (Table 29)	96/0014/FL	Y	No	Y	£0.525m	£6.7m	£2.3m	Partial restoration	£14.132m
Spireslack (Table 30)	96/0670/FL	Y	No	Y	£0.5m	£7.9m	£2.7m	Partial restoration	
Grasshill (Table 31)	07/0444/FL 01/0807/FL	No	No	No	N/A	£7.2m	N/A	Partial Restoration	£13.726m
Ponesk** (Table 32)	09/0344/FL	Y	No	Y	£3.13m (plus aftercare of £0.377m)	£7m	£6.3m	Partial restoration	
Galawhistle extension (Table 33)	12/0657/PP	No	N/A	No	N/A	N/A	N/A	Application not approved	N/A
					£4.515m	£28.8	£11.3m		£27.858m

*Bond value amended from £0.55m to £0.525m

**Bond value amended from £3.1m to £3.13m

Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Spireslack Viaduct Mine	SCCL (in Liquidation)	Coaled and unrestored	SCCL (in Liquidation)
Spireslack	SCCL (in Liquidation)	Coaled and Unrestored	SCCL (in Liquidation)
	Unconfirmed	Coaled and Unrestored	Unconfirmed
Grasshill	SCCL (in Liquidation)	Coaled and Unrestored	SCCL (in Liquidation)
Ponesk	SCCL (in Liquidation)	Coaled and Unrestored	SCCL (in Liquidation)

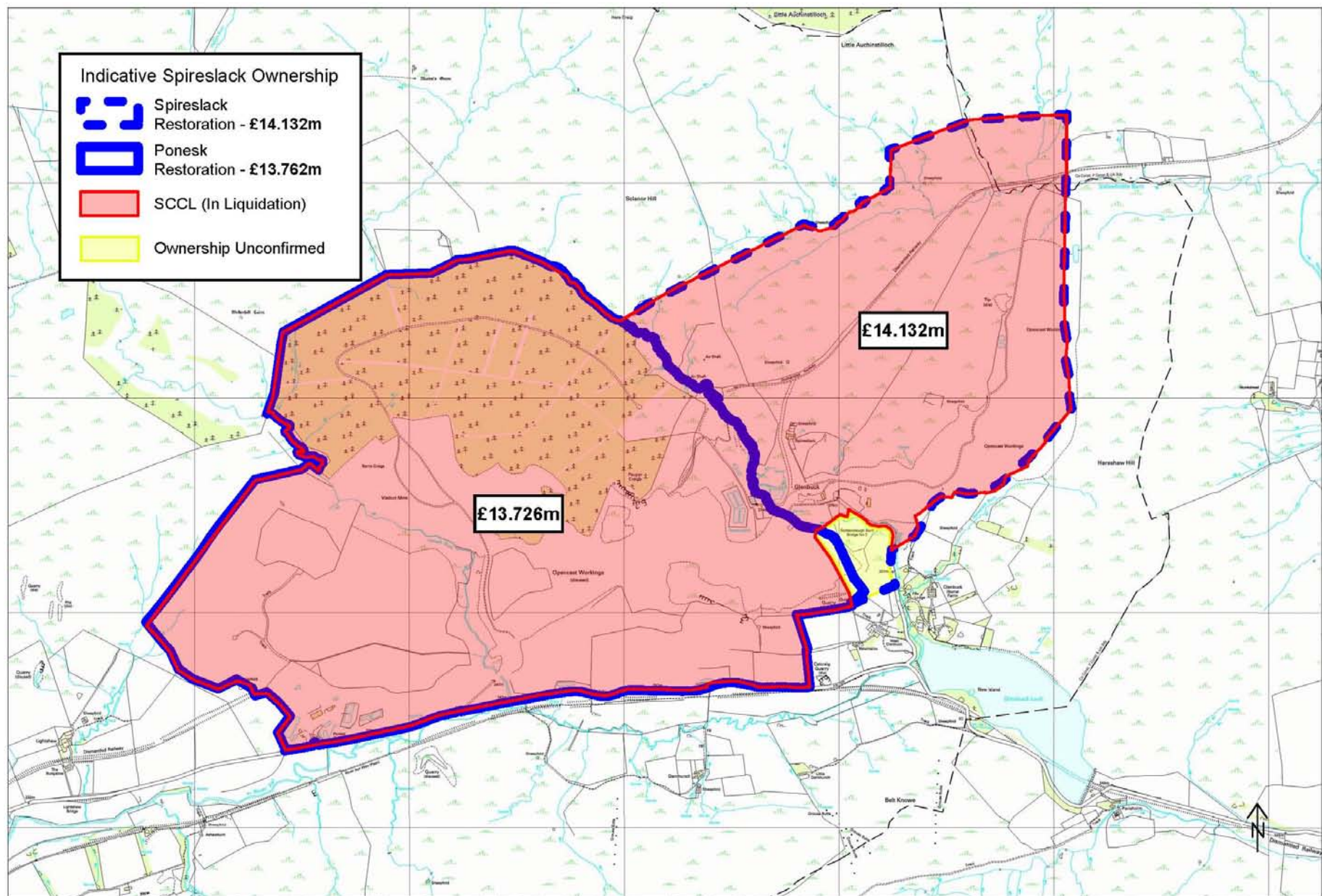
Current Known Status:

Spireslack - Coaling has ceased on the site. The site has been partially restored with significant areas of restoration required to be carried out. Following the submission of the Independent Mining Engineer's report, a claim against the restoration bond is being progressed.

Grasshill/Ponesk - Coaling has ceased on the site. The site has been partially restored with significant areas of restoration required to be carried out. Following the submission of the Independent Mining Engineer's report, a claim against the restoration bond was made on 13 May 2013 and is currently being pursued.

Current Planning Applications:

Galawhistle – Planning Application 12/0657/PP submitted by SCCL to carry out surface coal mining within the Spireslack site and proposed a restoration masterplan for the complex. However, it has been informally indicated by Hargreaves that given the depth of the coal and its quality within this area its extraction may prove uneconomical. This site is not to be taken forward by Hargreaves or any of the Hive Cos.



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KIER MINING

Appendix 11

GREENBURN COMPLEX (This site was not included in the 24 May 2013 Report)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	Restoration Value	Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Construction of Afton Railhead	99/0693/OL	N/A	N/A	N/A	N/A	N/A	Operational	Refer to Current Known Status in table below.
Original Site including railhead	00/0793/FL	Y	All coal extracted	Y	£2.5m	Currently being reviewed	Majority of site in aftercare	
Rail track siding	02/0177/RM	N/A	N/A	N/A	N/A	N/A	operational	
Vehicle underpass	03/0746/FL	N/A	N/A	N/A	N/A	N/A	Operational	
Extend haulage hours	04/0263/FL	N/A	N/A	N/A	N/A	N/A	Operational	
Extension to excavation area	04/0717/FL	No	All coal Extracted	No	N/A	N/A	Reinstated and in aftercare	
Extension & realignment of road	05/0452/FL	No	No	No	N/A	N/A	Reinstated and in aftercare	
Recovery of other minerals	05/0583/FL	Y	N/A	Y	N/A	N/A	N/A	
Original Dalgig Extension	06/0538/FL	Not issued	N/A	N/A	N/A	N/A	N/A	
Greenburn North	07/0211/FL	Y	All coal extracted	Y	Covered by 00/0793/FL	Currently being reviewed	Landform reinstated	

Cont over/

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	Restoration Value	Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Greenburn North-East	07/0745/FL	Y	All coal extracted	Y	Covered by 00/0793/FL	Currently being reviewed	Reinstated and in aftercare	Refer to Current Known Status in table below.
Dalgig Farm	07/0908/FL	Y	Coaling ongoing	Y	Covered by 00/0793/FL	Currently being reviewed	Works ongoing	
Greenburn South	09/0906/PP	Not approved	N/A	N/A	N/A	N/A	N/A	
Braehead Farm	10/0491/PP	Y	Coaling ongoing	Parent Company Guarantee	£9.3m	Currently being reviewed	Works ongoing	
Road Crossing	11/0429/PP	N/A	N/A	N/A	N/A	N/A	Operational	
Carsgailoch	11/0980/PP	Not concluded	Not Started	N/A	N/A	N/A	N/A	
Wellhill Farm	12/0066/PP	Y	Coaling ongoing	Y	£3.1m	Currently being reviewed	Works ongoing	
					£14.9m			

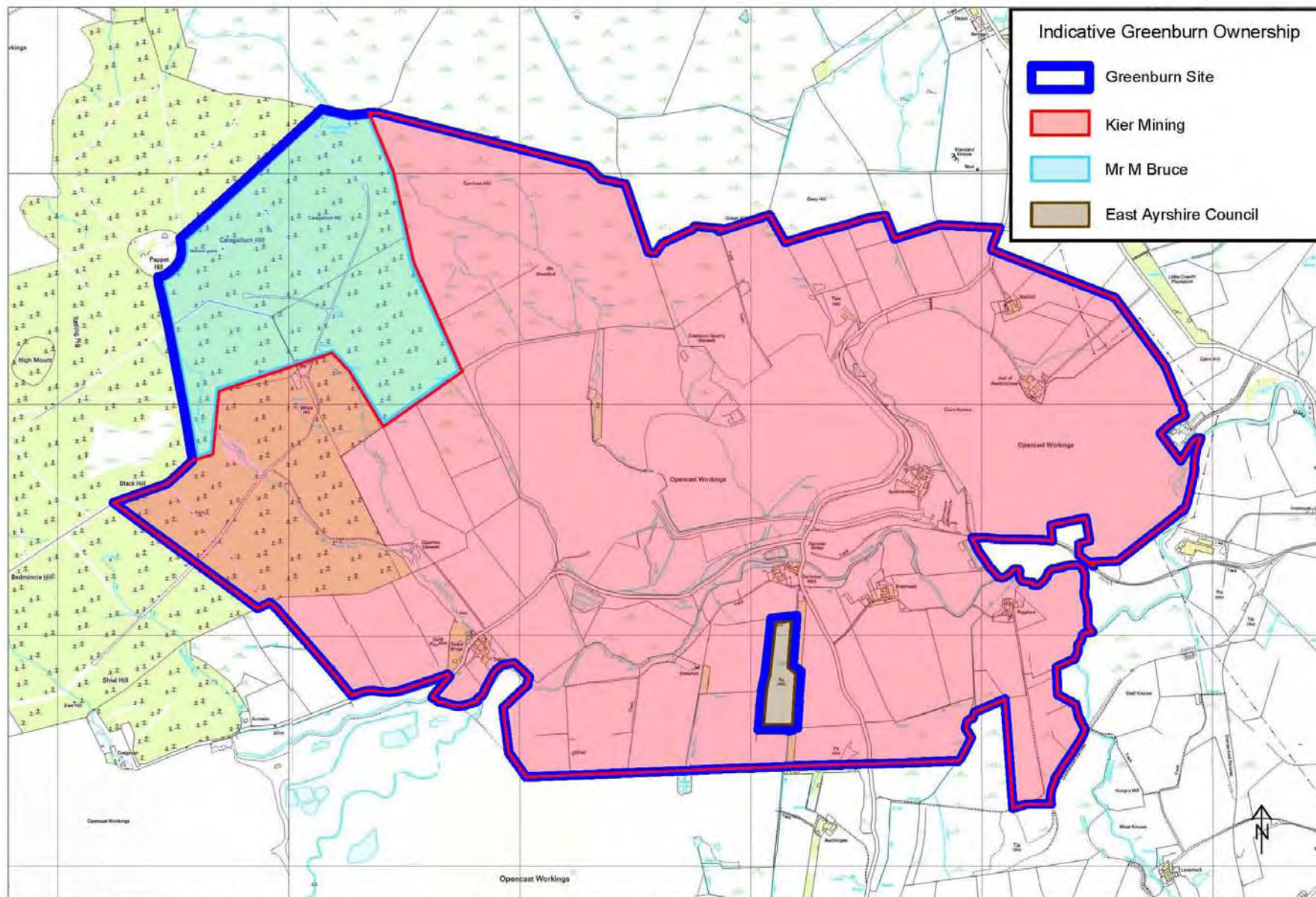
Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Greenburn Complex	Kier Mining	Operational	Kier Mining
	Mr Bruce	Non-operational	Kier Mining

Current Known Status:

The Greenburn Complex has been operational since late 2001 with various planning permissions being granted for extensions to the coal extraction area. The complex currently contains three areas of coal extraction Wellhill Farm, Braehead Farm and Dalgig Farm. Other elements of the complex are in stages of restoration and aftercare. From recent inspections of the complex it is considered that the operations are progressing in an appropriate manner. In line with the requirements of the legal obligations of the planning permission, a review by Independent Mining Engineers of the current restoration valuations for the complex has been instigated.

Note: Dalricket Mill Landfill, which is owned and operated by East Ayrshire Council as a landfill site which is encompassed by the Greenburn Complex.



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VWM (SCOTLAND) LTD**DARNCONNER** (This Site Was Not Included In 24 May 2013 Report)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	Restoration Value:-	Restoration Status	Mining Engineer's Estimate Against Approved Restoration Plan
Darnconner	CD/84/0081/Q CD/85/0148/Q CD/87/0153/Q CD/89/0241/Q CD/91/169/Q	N/A	Nil	No	N/A	N/A	Subject to review as part of 11/293/PP	Subject to review as part of 11/293/PP
Darnconner	CD/95/0058/MIN	N/A	N/A	N/A	N/A	N/A		
Darnconner	CD/95/0230/DPP	N/A	N/A	N/A	N/A	N/A		
Darnconner	00/0228/FL	Y	Nil	Y	£0.875m	To be verified		
Darnconner	06/0480/FL	Refused	N/A					
Darnconner	08/0932/FL	Refused	N/A					
Darnconner	11/0293/PP	Pending	N/A	N/A	N/A	N/A	Subject to review as part of 11/293/PP	Subject to review as part of 11/293/PP
					£0.875m			

Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Darnconner	Viridor Waste Management (Scotland) Ltd.	Restoration works required	Landowner
	Unconfirmed	Restoration works required	Unconfirmed

Current Known Status:

A large majority of the original open cast mine has been restored however the remainder of the site contains a water filled void and two overburden mounds.

Current Planning Applications:

Planning application 11/0293/PP relates to the alteration to the restoration scheme of the original planning consent. The determination of this application was continued by Southern Local Planning Committee in August 2011 pending the submission of further restoration information. This application will be reconsidered by the Planning Committee for determination.

FORMER LAW MINING**TARDOES** (This Site Was Not Included In 24 May 2013 Report)

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-	Restoration Status	Mining Engineer's Estimate Against Restoration Plan
Tardoes Farm	CD/96/0097/MIN	Y	Nil	Y	£23,109	N/A	Aftercare works only	N/A

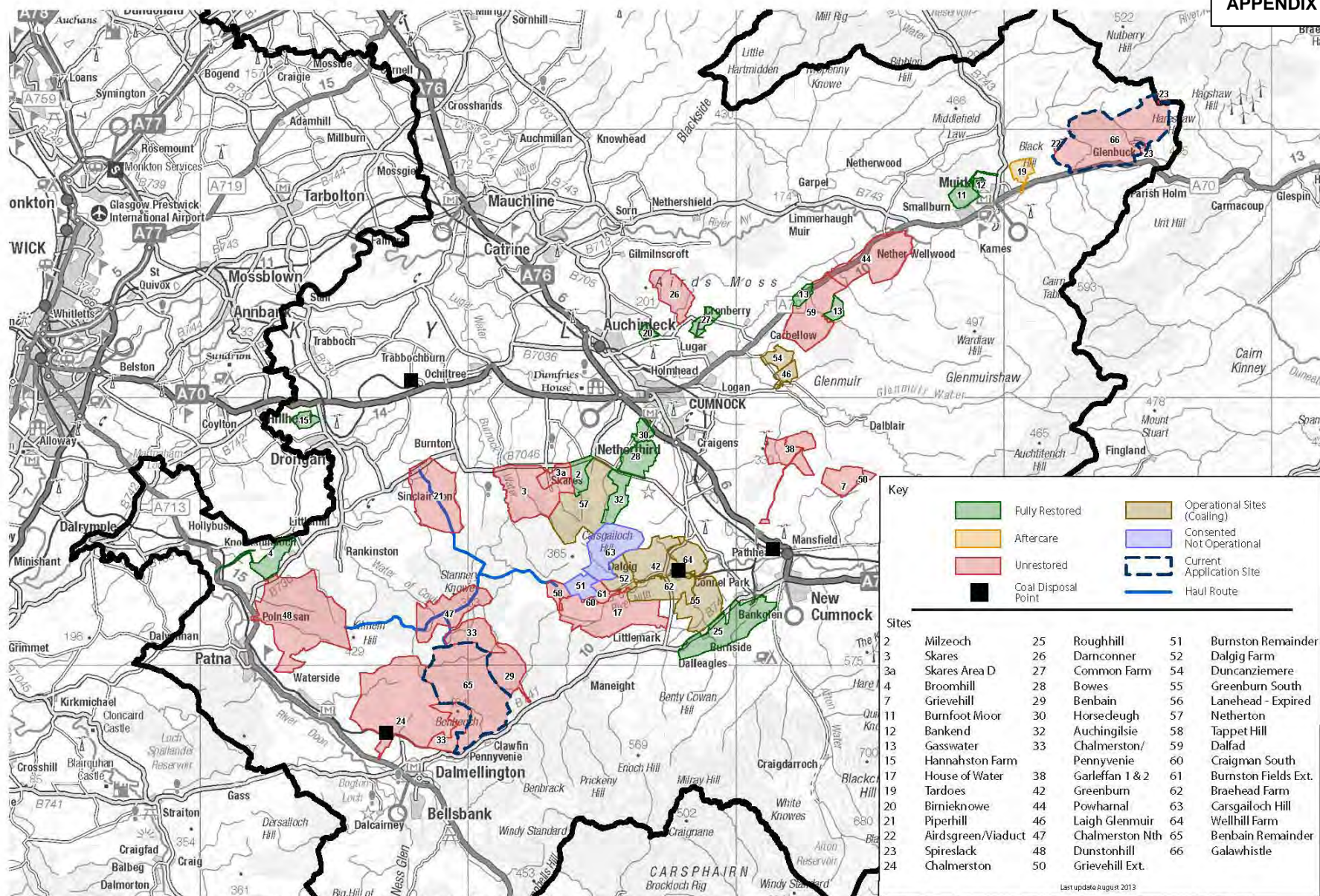
Ownership Table

Site	Ownership	Operational status	Health and Safety Responsibility
Tardoes Farm	Mr David Cooper	3 rd Year of aftercare	Landowner

Current Known Status:

The restoration bond was called-in by the Council after the operator could not fulfill their restoration obligations. The site has been fully restored and is now in its third year of a five year aftercare which is carried out by the landowner.

APPENDIX 14



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