



APPLICATION FOR PLANNING PERMISSION 13/00105/DPP, FOR THE EXTRACTION OF COAL AND FIRECLAY BY SURFACE MINING METHODS AND RESTORATION OF SITE AT CAULDHALL MOOR, PENICUIK.

THIS APPLICATION IS ACCOMPANIED BY AN ENVIRONMENTAL STATEMENT SUBMITTED UNDER THE TERMS OF THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT (SCOTLAND) REGULATIONS 2011.

Report by Head of Planning and Development

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

1.1 The application is for the extraction of coal by opencast mining methods. There have been 296 letters of representation and a petition of 508 names, and consultation responses have been received from Scottish Natural Heritage, Scottish Environment Protection Agency, Historic Scotland, Scottish Water, Forestry Commission for Scotland, Transport Scotland, Royal Society for the Protection of Birds, East Lothian Archaeological Service, Scottish Wildlife Trust, and from the Council's Environmental Health Manager. The relevant development plan policies are RP1, RP4, RP5, RP6, RP7, RP8, RP13, RP14, RP18, RP19, RP32, RP33, MIN1 and DP3 of the Midlothian Local Plan, and Policy 4 (Minerals) of the South East Scotland Strategic Development Plan.

1.2 The recommendation is to grant planning permission for the following reasons.

The assessment of this application in relation to the statutory development plan shows that only a part of the site lies within an area of search as defined in the adopted local plan, the remainder being within an area defined as countryside. Accordingly, the application does not accord with the adopted Local Plan 2008. The other part of the statutory development plan is the more recently approved South East Scotland Strategic Development Plan 2013, which identifies the importance of an adequate and steady supply of minerals to support sustainable economic growth. The degree of departure of this application from the development plan needs to be considered in the context of other material considerations.

Prime amongst these other material considerations are the provisions of national planning policy which, whilst recognising the importance of environmental considerations, states that Scottish Coal output is likely to continue to play a significant role in ensuring diverse and sustainable supplies of energy at competitive prices, and that extraction is necessary and important in the national interest. The emerging Midlothian Local Development Plan has identified in its Main Issues Report (2013) the site at Cauldhall Moor as a proposed area of search, it being in effect a major southern extension of the Shewington/Newbigging site which is largely restored following completion of operations in 2011.

Balancing all of those policy considerations, it is reasonable to conclude that there is a sufficiently sound basis for the variance of the application from the adopted Local Plan to be accepted in principle. However, in such circumstances, the environmental and economic aspects of the proposals become particularly significant. There is strong evidence that the development will provide substantial direct and indirect employment as well as wider benefit to the Midlothian economy. There is also confidence in the market for the extracted coal over the projected lifetime of the operation at Cauldhall Moor. Environmental matters and potential impacts have been extensively and systematically considered through the preparation of a formal Environmental Statement, the results of which highlight a number of impacts requiring attention. The conclusion of the Council's assessment of that evidence is that all of these impacts can be adequately mitigated and controlled. Indeed, all such environmental matters together with the key requirements in respect of the proper working, restoration and aftercare of the site can be addressed and secured, as appropriate, by planning conditions and legal planning agreement.

1.3 Accordingly, the recommendation to grant planning permission shall be subject to:

1. The prior agreement (with the local planning authority) of full restoration details, to be submitted by the applicant. The details shall include plans of finished levels, planting, reinstatement of roads and stone walling, phasing of completion and breakdown of the costs of restoration;
2. Securing of an appropriate bond, or equivalent funding mechanism, to guarantee the restoration and after care of the site;
3. The establishment of a Technical Working Group to oversee the restoration programme and associated monitoring;
4. The completion of a legal planning agreement to i) secure Community Benefit contributions ii) establish a 'Trust' to manage and distribute the fund and iii) secure developer contributions

- towards, inter alia, the maintenance and repair of the local road infrastructure; and
5. Conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is approximately 495 hectares of which 27 hectares are within the existing Newbigging/Shewington Surface Mine site boundary.
- 2.2 The site lies 2 km south of Rosewell, 1.5 km to the north east of Howgate, 2.5 kilometres to the east of Temple and 2.5 km to the west of Penicuik.
- 2.3 The site is bounded to the north by agricultural land including the largely restored areas of the Newbigging/Shewington surface mine; to the west by the A6094, and to the south and east by the Lily Burn valley and adjoining farmland. Adjoining uses are predominately agricultural, but include the Drummond Moor land fill site and Rosslynlee Fishery to the north west. Linear woodland plantations encircle the northern area of the site, comprising Ladies Walk Plantation, Cowie's Bank Strip and Edgelaw Moor Strip. A distinctive 'Z shaped' plantation lies to the north west of King's Seat adjoining the A6094, with a small plantation around Ankrielaw Farm and one at Edgelaw Moor.
- 2.4 The nearest dwellings, other than Ankrielaw which sits within the development zone, are Gamekeepers Cottage, Reservoir Cottage, Upper Firth Farm, and Lilyburn Farm on the A6094 to the west. Mayfield, Mount Lothian Cottage, Mount Lothian Farm, Fullarton Farm and Fullarton Farm Cottage are to the south on the B6372. Cauldhall Farm, Edgelaw Farm and Edgelaw Farm Cottages (2) are to the east on an unclassified road. Shewington Farm, Shewington farmhouse, and Shewington Cottages (3) are to the north on the unclassified road.
- 2.5 The nearest 'community' is Howgate, at a distance of approximately 1375 metres. However, it should be noted that the Rosslynlee Hospital site which has potential for redevelopment is 900 metres from the site boundary.
- 2.6 The majority of the land within the Cauldhall site boundary falls within the (Gladhouse / Auchencorth Moorlands) Upland Fringes character area.
- 2.7 The central area of the application site comprises a plateau with levels of between 260 and 270m AOD, rising to the west to a high point of 294m AOD at King's Seat. In general, the bulk of the site slopes to the east and north east with a low point of 215m AOD at the extreme north eastern corner.

- 2.8 The site is gently undulating farmland predominantly used for grazing with some woodland and scrub. Higher quality grazing is to the north, with some arable farming evident. Many of the fields and roads are lined with dry stone dykes. There is some mature ancient woodland around Ankrielaw.
- 2.9 The site contains a dwellinghouse (Ankrielaw) and an unclassified road (U72).
- 2.10 There are no statutory protective landscape or wildlife designations within the site; however the site contains two areas of ancient woodland. One is to the south of Ankrielaw Farm, an area of around 2.5 hectares, and a larger more linear area to the north which incorporates four lengths of the Ladies Walk Plantation, which itself forms the northern boundary to the site.

3 PROPOSAL

- 3.1 The applicants are seeking to extract approximately 10 million tonnes of coal suitable for use in electricity generating power stations, which will be won from around 19 seams within the excavation area. They state that the seams to be worked at the Cauldhall Surface Mine have been confirmed by exploratory drilling. This will be operated as an opencast surface mine. There will also be approximately 100,000 tonnes of fireclay extracted. The coal identified for extraction within the site is all suitable for bulk power station fuel. Much of the coal to be extracted is from the same seams worked at the Newbigging and Shewington Surface Mine which, in the view of the applicant, confirms its marketability. Although some seams on site are of a lesser quality they can be blended with seams from different horizons on site to ensure that power station specifications are met. The working method for the site has been designed to ensure that there is always a power station blend of coals available at each stage of operations.
- 3.2 It is proposed that the site will be operational from 7am on Mondays to 1pm on Saturdays inclusive i.e. 24 hours per day, with no operations on Sundays or public holidays with the exception of essential site maintenance.
- 3.3 Coaling activities will be limited to conventional 'daytime' hours of 0700-1900 Monday to Friday and 0700-1300 on Saturdays and no excavation, cleaning, transport or processing of coal will take place outside these hours.
- 3.4 Operations between 1900 and 0700 will be confined to moving overburden material, this activity will be below ground or behind baffles and is essential to prepare the next coal seam for recovery for the following morning. This will reduce the operational life of the site and is in line with standard hours of operation for opencast sites elsewhere in

the country. The above shift pattern increases mining efficiency and creates a greater number of jobs on site.

- 3.5 Blasting operations will be confined to 10am - 12pm and 2pm - 4pm Mondays to Fridays.
- 3.6 It is proposed that the site would be worked in a series of phases over a total period of 12.5 years. This timeframe equates to a 6 month start up phase; 10 years coal recovery; and 2 years of final site restoration. Following the initial phase, and creation of an initial overburden mound, each subsequent phase would be progressively backfilled as operations progress. This will follow conventional practice, as was implemented at the Newbigging/Shewington Surface Mine, and would ensure that only the minimum amount of land will form part of the operational area at any one time.
- 3.7 Development would commence in the south west corner, nearest to Howgate, and would work anti-clockwise with progressive excavation and backfilling. The development will include temporary storage areas for topsoil and subsoil for restoration purposes and also for peat storage. There will be a water treatment works required for the phased development. There will be a coal preparation area and ancillary workshops located in the centre of the site towards the reservoir/fishery. The site will utilise the existing site office area and road access point in existence for the Newbigging/Shewington operation.
- 3.8 The development will also include the comprehensive restoration of the site to a mixture of land uses including agricultural grassland; rough grassland for grazing; wet heath habitat; native broadleaved woodland; replacement coniferous plantation; and the creation of a new watercourse corridor as a gentle valley feature with adjacent wet grassland and native broadleaved woodland.
- 3.9 The development will require the loss of the farm house and associated buildings at Ankrielaw; the loss, for a specified agreed period, of the unclassified road crossing the moor from Reservoir Cottage on the A6094 to Mount Lothian; and the removal of the ancient woodland plantation south of Ankrielaw.
- 3.10 The applicants have committed to replacing the unclassified road at the conclusion of operations, although they have also noted that they may wish to seek a review of this requirement at that time.
- 3.11 All minerals would be dispatched from the site via the existing Newbigging / Shewington site entrance onto the A6094. Traffic would be routed northwards along the A6094 via the Rosewell and Bonnyrigg bypasses and the A7, to the A720 Edinburgh city bypass, and then on to the market destinations.

- 3.12 The applicant has submitted a planning statement which provides background information on the site, coal mining in Midlothian and the continued need for coal. It also outlines the impacts and benefits of the proposal and looks at the pre-application consultation (also summarised in the submitted Proposal of Application Notice report). The document summarises the main issues and looks at the development in a planning policy context. This report concludes as follows:
- 3.13 *“The Environmental Statement (ES) has reached the underlying conclusion that through the implementation of the detailed mitigation measures proposed the development is environmentally acceptable and can proceed without giving rise to unacceptable adverse impacts on the environment, local communities or the closest residential receptors. The ES also concludes that there would be no material adverse cumulative impacts associated with the concurrent operation of the development and other similar operations in the wider locality.*
- 3.14 *The conclusion of the ES is corroborated by the parallel exercise of this Statement in reviewing the development against planning policy and other policy objectives and requirements for environmental protection and energy supply. This Statement contends that the development can proceed in general accordance with the defined planning policies, and thus in accordance with both national policy and the Development Plan.*
- 3.15 *In these circumstances, (the applicant) considers that there should be a firm presumption in favour of planning permission being granted for the proposed development.”*

The Applicant

- 3.16 When the application was submitted, the applicant was Scottish Coal, a subsidiary of the Scottish Resource Group. Both Scottish Coal and Scottish Resource Group went into administration, and KPMG were appointed as liquidators of the company in April 2013. Subsequently the liquidators completed the sale of some of the company's assets to Hargreaves Surface Mining Limited in July 2013. Under the terms of the Sale and Purchase Agreement, Hargreaves has acquired various assets, including the Company's Intellectual Property. The Intellectual Property acquired included the Company's interest in the planning application for the proposed Cauldhall Surface Mine.
- 3.17 Hargreaves specialises in the supply of solid fuels and bulk material logistics to the power generation and industrial sectors in the UK and overseas. Hargreaves directly employs around 3,000 people across the UK with a significant number of others indirectly employed in the supply of an extensive range of goods, services and contractual work to the company.

- 3.18 Hargreaves has recently acquired a substantial land portfolio in Scotland following the liquidation of Scottish Coal and Aardvark TMC which includes extensive mining, renewable energy and property development assets. Hargreaves has become a significant landowner in Scotland and a major part of Scotland's surface coal mining industry. As operations resume at the various acquired mines Hargreaves will become a significant employer in Scotland. In this context, Hargreaves is committed to the proposed Cauldhall Surface Mine in Midlothian and view the site as a key part of Hargreaves' future operations and investment in Scotland.
- 3.19 In their submission on this application Hargreaves state that recent acquisitions allow the company to combine its existing experience in coal mining and the supply of bulk fuels to the power generation industry with considerable surface mining expertise in Scotland which has been obtained through the transfer of specialist technical staff (geologists, mining engineers, geotechnical specialists, hydrologists, etc) from Scottish Coal and Aardvark TMC. The applicants consider that this puts them in a good position to deliver a successful mining project at Cauldhall which can provide economic benefit to Midlothian.
- 3.20 In a statement to the Planning Authority, Hargreaves has confirmed its commitment to the development proposal in line with the environmental statement and associated supporting documents. Hargreaves also remains committed to the establishment of a new Community Trust Fund.

4 BACKGROUND

- 4.1 There is no history for the application site itself other than the applications submitted for (i) a scoping opinion under the EIA Regulations (12/00633/SCO), concluded on 19 December 2012, and (ii) the proposal of application notice required for major planning applications (12/00591/PAC) agreed on 21 September 2012.
- 4.2 There is an extensive history for the adjoining site to the north (Shewington and Newbigging).
- 4.3 10/00515/DPP - South eastern expansion of existing Shewington Open Cast Coal and clay extraction facility. Consent granted with conditions on 30 March 2011.
- 4.4 09/00131/FUL - Eastern expansion of existing Shewington Opencast coal and clay extraction facility. Consent granted with conditions on 27 October 2009.
- 4.5 05/00840/FUL – Extraction of coal and clay by opencast methods, at Shewington. Consent granted with conditions on 01 June 2007.

- 4.6 05/00725/FUL – Extension to existing opencast coal site and amendment to planning permission no. 02/00614/FUL to change method of working at Newbigging . Consent granted with conditions on 19 April 2006.
- 4.7 05/00162/FUL - Variation of conditions 1 and 2 of planning permission no. 02/00614/FUL to allow extraction of fireclay and transportation off site at Newbigging . Consent granted with conditions on 15 July 2005.
- 4.8 02/00614/FUL - Opencast extraction of coal, at Newbigging Farm. Consent granted with conditions on 31 March 2004.
- 4.9 Coal extraction ceased on the Shewington site in October 2011.

5 CONSULTATIONS

- 5.1 Scottish Natural Heritage (SNH) is a statutory consultee. Its principal remit is regarding those matters of national or international significance. Other local or regional issues will be commented upon separately.
- 5.2 SNH does not raise any objection to the proposals, but makes the following comment.
- 5.3 With regards to landscape and visual impacts, SNH advises that the proposed development as submitted could lead to long-term and negative impacts on the local landscape character of the area. The main concerns are the oversimplification of the restored landform within working areas; and the loss of all the stone walling within the working areas.
- 5.4 In relation to other impacts on the natural heritage, SNH considers that these can be adequately addressed through the use of conditions and/or legal agreements attached to any planning permission granted.
- 5.5 The Scottish Environment Protection Agency (SEPA) is the statutory consultee responsible for environmental matters including ground, air and water pollution. SEPA initially objected to the proposal on the grounds of a lack of information in relation to the re-use and disposal of excavated peat. This objection was removed on the production of further information by the applicant. SEPA is satisfied that all of the material to be excavated, temporarily stored and/or used for restoration shall be dealt with under the Management of Extractive Waste (Scotland) Regulations 2010. Furthermore, SEPA considers it appropriate to minimise the above ground storage of peat by re-instating it quickly.
- 5.6 In terms of pollution prevention and environmental management, SEPA requests that a condition is attached to any approved consent to ensure that a full site specific environmental management plan (EMP)

is submitted at least two months prior to the proposed commencement of development. The EMP should incorporate detailed pollution prevention and mitigation measures for all construction elements potentially capable of giving rise to pollution during all phases of construction, operation and re-instatement.

- 5.7 With regards to the progressive removal of minor watercourses across the site, SEPA request that detailed drainage designs for the restored landform will be submitted to it for approval prior to the commencement of restoration works. It is also advised that additional details regarding the outline design for watercourse restoration will be required under Water Environment (Controlled Activities) (Scotland) Regulations 2011(CAR). SEPA recommends that as much information as possible is submitted as early as possible in the CAR application process.
- 5.8 SEPA notes that some groundwater dependent terrestrial ecosystems (GWDTEs), will be lost during mining activities, however the mitigation measure of re-watering the Lily Burn and its surrounding GWDTEs is, in principal, acceptable, providing that the water used is of sufficient quality and quantity. Particular focus must be given to ensuring that the quality of the discharge is sufficient, even during times of drought.
- 5.9 SEPA notes that following restoration, groundwater is likely to discharge to a small wetland formed due to the nature of the backfill. Presumably groundwater flow will be restricted as the artificial re-watering will stop following restoration of the site. The preferential flow of groundwater will then be away from the Lily Burn. SEPA requests that further information is included in the Environmental Management Plan or Restoration Plan to demonstrate that the overall flow will not be 'significantly altered' from its natural state following backfilling.
- 5.10 SEPA advises that tree planting alongside the Lily Burn included in the restoration proposals should be deleted due to the extensive cover of GWDTEs along the side of the burn and pressures already coming from the proposed extraction working, as this is likely to cause further water level issues.
- 5.11 In terms of the flood risk assessment, SEPA is satisfied and has no objection.
- 5.12 With regards to private water supplies an alternative has been found for Cauldhall Farm which is directly affected. There are five other private abstractions within 1km of the site and due to the complex hydrogeology of the area, it is recommended that the consistency of these supplies is monitored along with the water quality before and during the operation of the site. The detail of this baseline monitoring (quality and quantity) should be provided within the Monitoring Plan.
- 5.13 Historic Scotland (HS) is a statutory consultee with a remit for issues affecting scheduled monuments and their setting, category A and B

listed buildings and their setting, and also those Gardens & Designed Landscapes (GDL) and Battlefields appearing in their respective Inventories.

- 5.14 HS does not object to the proposed development, and offers the following comment.
- 5.15 The nearest asset to the development is the scheduled monument known as St Mary's Chapel. This is immediately to the south of the site.
- 5.16 The development has the potential to affect the setting of St Mary's Chapel through noise, vibration and visual impacts. Affects such as noise, vibration and dust are likely to be sporadic and will be limited to the working period of the coal extraction. The final restoration scheme for the development will have a lasting visual impact, changing the profile of the hill to the north of the monument. By maintaining the same approximate height and vegetation cover as currently exists, the final restoration scheme would minimise the impact of this change.
- 5.17 Any potential impact upon the designed landscapes at Penicuik House, Dalhousie Castle, Arniston House and Roslin Glen and Hawthornden were considered, but it was concluded that there would be no impact.
- 5.18 The Royal Society for the Protection of Birds Scotland (RSPBS) has objected to the development, unless it can be demonstrated that robust conditions and legal agreements can be put in place to ensure restoration of the site to a specification and standard agreed with the planning authority and statutory consultees, regardless of the financial situation of the applicant.
- 5.19 If the authority is minded to grant permission, then RSPBS considers the following measures should be secured through appropriate planning conditions/ legal agreement
 - 1. The final Peat Management Plan (PMP) will be agreed with the Council, SEPA and SNH and will include detailed method statements for the extraction, handling, storage and restoration of peat. Long-term hydrological monitoring will be included as part of the PMP.
 - 2. A Restoration Plan will be produced to the satisfaction of SNH and RSPB prior to commencement of operations. This will specify the target habitats for restoration and identify the benefits of the restoration proposals in relation to key habitats and species.
 - 3. A Habitat Management Group will be established to oversee production and implementation of the Restoration Plan.
 - 4. An appropriately qualified Ecological Clerk of Works will be employed to finalise the PMP and produce the restoration plan and, throughout the lifetime of the mine and post-operation, to oversee the implementation of the PMP and Restoration Plan.

5. Appropriate bonds will be secured to cover the costs of restoration of the site to the specification agreed in the Restoration Plan and PMP.
- 5.20 Scottish Water has no objection to the development. There are no public sewers in the vicinity of the proposed development, and there are no public water mains in the vicinity of the proposed development site.
- 5.21 Following a desk-based appraisal, East Lothian's Archaeological Service (ELAS) has no objection, subject to the implementation of a programme of works including evaluation and a monitored strip to be undertaken. The area of the proposed development contains a number of archaeological remains and the nature of the development is such that any remains present will be removed.
- 5.22 The aim should be to preserve archaeological deposits and historical features in situ as a first option, but alternatively where this is not possible, the recording of upstanding historical features and buried archaeological remains may be an acceptable alternative.
- 5.23 The area to be investigated should be no less than 8% of the total site area. Including areas of topsoil/ subsoil storage and water treatment areas. Areas that have been previously quarried should be excluded from evaluation as any archaeological remains once present will have been removed.
- 5.24 The Council's Policy & Road Safety Manager has no objection in principle to the application but has concerns over the impact of the HGV activity that the open cast operation would generate on the existing road network, and recommends that the following conditions be applied:
 1. Details of the proposed improvements to the existing site access from the A6094 should be submitted to the Council for approval.
 2. The existing A6094 / Gourlaw crossroads has a poor accident record with 4 injury accidents recorded in the current 3-year period. Proposals to amend the junction and improve driver visibility are under preparation and the open cast operation should not proceed until these road safety improvements have been implemented.
 3. The existing A6094 has a section of very poor horizontal alignment at the Shewington Farm junction with larger vehicles requiring to cross onto the other carriageway to negotiate the bend. Proposals to widen the road and reduce the severity of the bend are under preparation and the open cast operation should not proceed until these road safety improvements have been implemented.
 4. The developer should enter into a legal agreement with the Council to cover the additional road maintenance costs which would arise due to the additional volumes of HGV traffic on the proposed haul route.

5. Although not on the proposed HGV haul route, additional site traffic may enter Rosewell to access local facilities. This will increase traffic levels on Carnethie Street and it is proposed that two raised zebra crossings be constructed on Carnethie Street, one at Rosewell Primary School and one at St Matthews RC Primary School. These pedestrian crossings would improve the road safety of children attending each school. Details of the locations and designs of the two crossings should be submitted for approval with both crossings being operational prior to the opencast site being brought into use.
 6. Details of the proposed closure of the Cauldhall Moor Road (U72) should be submitted for approval. Plans should include the physical closure of the road at each end and the removal of existing road / direction signs.
 7. The Council has a road safety improvement scheme to construct a public footway/cycleway on both sides of the A7 between Hardengreen roundabout and Sheriffhall roundabout. This would provide a safer walking and cycling environment, allow a review and possible reduction in the current 60mph speed limit and provide the opportunity to form bus stops for the existing bus services using the A7. As this development would increase the volume of HGV's using this route the developer should be required to enter into a S75 legal agreement with the Council to contribute to the overall cost of this scheme.
- 5.25 The Scottish Wildlife Trust (SWT) has some concerns over the very deep peat in some parts of the extraction area, and the peatland habitat on site includes blanket bog and wet heath. It is of the opinion that damage to this heath and blanket bog will have a negative impact on habitat and wildlife and would be contrary to the Midlothian Local Biodiversity Action Plan. The Trust refers to the Scottish Government's commitment to protect and restore peatlands and the fact that blanket bog and wet heath are 'Annex 1' habitats of the European Habitats Directive.
- 5.26 The SWT is also concerned as to whether or not the proposed action to restore habitat will take place given the current financial situation of the applicant and the amount of funding that is necessary for the restoration to take place. The Trust objects to this application until it is properly established that legal conditions have been put in place to make sure that restoration will take place to a standard agreed by the Council and other consultees.
- 5.27 The term consultants to Transport Scotland, JMP Consultants Limited, note the proposed use of the trunk road network, in particular the A720, however it considers that the increase in traffic is not significant. Detailed information should be provided regarding overall trip generation from the site and an indication of the distribution of these on the trunk road network.

- 5.28 The Forestry Commission for Scotland (FCS) advises that from the baseline woodland cover information, it is unclear about how much woodland falls within the application area, and a clear figure should be provided. Also a clear indication of the area of woodland that is to be cleared. This should include those areas that have already been felled. Two existing felling licenses which have been carried out are presently still awaiting replanting of trees, mainly as a result of ongoing restoration at Shewington/Newbigging.
- 5.29 There should be a clear requirement that the developer restores woodland cover to at least the levels found currently as part of a condition of any planning permission, and accounting for already felled areas
- 5.30 More details are required for the details of reinstated woodland and a maintenance regime.
- 5.31 There is no clear indication for the replacement of the 1.5 ha of trees south of Ankrielaw and this must be accounted for.
- 5.32 The FCS wish to be included in any technical working group for at least the 5 year aftercare period.
- 5.33 Rosewell & District Community Council (RDCC) has commented on the application. It is of the view that better safety measures should be put in place at the entrance roundabout to the Fairmeadows housing estate, off the A6094. Also better signage should be in place at the Gourlaw crossroads, and better awareness of the increase in traffic should be publicised. It needs also to be taken into account that another 300 homes are being proposed at Gorton Loan at Rosewell as this will significantly increase the traffic joining the A6094.
- 5.34 Howgate Community Council identifies that the area, whilst being referred to in the Structure Plan, is not in the more specific site allocation designated by the 2008 Local Plan. It is therefore a departure from the local plan. The Community Council also reflects the views of its members, raising concerns about potential health issues; impacts of noise vibration and blasting; the destruction of ancient woodland; destruction of habitats; the risk of unfulfilled restoration obligations; and the impacts upon roads and road safety.
- 5.35 The Council's Environmental Health Manager has no objection in principal, but has raised some concerns and requested a number of conditions.
- 5.36 Preference is made to the advice contained in Scottish Government's Planning Advice Note (PAN) 50, Controlling the Environmental Effects of Surface Mineral Workings (1996), and Annex A to that advice note; and to the World Health Organisations "WHO Night noise Guidelines for Europe (2009)", it being a significantly more recent document.

- 5.37 It is noted that the daytime background noise levels were at or below 35dB for some sites, indicating that these were within an “exceptionally quiet rural area”. Accordingly noise limits should be set at 45dB rather than 55dB.

6 REPRESENTATIONS

- 6.1 296 representations have been received in connection with this application. Of these, 3 were in support of the proposals. There is also a petition of 508 names objecting to the proposals. The issues raised are as follows:
- Unacceptable impacts upon local communities (from noise, dust, blasting, haulage and impacts on health);
 - Risk of restoration being left incomplete;
 - Loss of wildlife, including otters, owls, badgers;
 - No signs that any environmental assessment was ever carried out on site;
 - Only Scottish Coal applicants and the landowner benefit from this development;
 - The new applicant has no previous planning history or experience of operating a site in Scotland, nor of restoring a site;
 - The impact will be long term (12 – 15 years);
 - Part of the site is within the Area of Great landscape Value;
 - Impacts on private water supply;
 - Pollution from excavation dust and fumes;
 - Operations and transporting will be 24 hour;
 - Damage to health of nearby residents/communities;
 - Damage to amenity;
 - Loss of dwellinghouse, home, and employment;
 - It will destroy the natural beauty of the landscape;
 - Job creation is a false promise as opencast jobs are poorly paid, precarious and dangerous, and new sites rarely mean new jobs as workers are moved from site to site;
 - the mine will be responsible for some 8 million tonnes of CO₂ per year, around 18% of Scotland’s stated annual emissions;
 - The removal and subsequent drying of peat bog on this site would also result in a massive loss of a vital carbon sink;
 - Possible future use of large voids for landfill operations;
 - Adverse impact on fishery business;
 - Restoration and renewal of water supplies still not happened from previous workings at Newbigging;
 - The entire catchment for Rosslynlee reservoir is within the application site;
 - The volume of water supply and its quality will be adversely affected;
 - As well as being a fishery, the reservoir is an important local wildlife site;

- The site is not presently an area of search in the local plan;
- Road safety issues on A6094;
- Noise and vibration from blasting, and
- Major uncertainties regarding the future of the coal market.

6.2 An objection was submitted by “*Stop Cauldhall Opencast*”. The document advises that this is a group of Midlothian residents formed to oppose the plans for an opencast coal mine at Cauldhall Moor. The objection document has been compiled in consultation with the most immediately affected residents. It is an extensive submission which highlights the following issues:

- The development is contrary to local and national planning policy;
- There is major uncertainty about the market for the extracted coal and therefore a high risk that the project will be abandoned before completion;
- The project would involve destruction of a family farm and eviction of the occupants, and major impacts on other residential properties next to the site;
- The claimed employment benefits cannot be relied on in the wake of the collapse of the opencast industry in Scotland;
- The risk of the site being left unrestored after coal extraction is very high, and
- The project would result in an increase in CO₂ emissions in Midlothian at a time when the Council is striving to contribute to national emissions reduction targets.

6.3 It concludes that *“If consented, the Cauldhall opencast mine would be the largest such project in Scotland for decades. Its impacts would be massive and would extend over a period of at least 12.5 years. There is major uncertainty about the prospects for site restoration. Under local and national planning policy there is a presumption against this development. It should be rejected.”*

7 PLANNING POLICY

7.1 The development plan is comprised of the South East Scotland Strategic Development Plan, approved in June 2013 and the Midlothian Local Plan, adopted in December 2008. Also relevant are the provisions of the Midlothian Local Development Plan Main Issues Report (2013), as well as current and emerging Scottish Government Planning Policy. The following policies are relevant to the proposal:

South East Scotland Strategic Development Plan 2013

7.2 This fully up to date approved Plan states that ‘An adequate and steady supply of minerals is essential to support sustainable economic growth’. Policy 4 of the Plan states that local development plans will identify areas of search for aggregate minerals and coal or, where

appropriate, specific sites, having regard to national guidance and other environmental objections of the strategic development plan.

- 7.3 The extensive Minerals Technical Note document that supports the Plan notes that in accordance with Scottish Planning Policy, local development plans should consider the appropriateness of existing areas of search, identify areas of search and set out criteria for assessing individual proposals, and to safeguard areas of coal capable of being extracted.

The Midlothian Local Plan 2008

- 7.4 Policy RP1 Protection of the Countryside advises that development in the countryside will only be permitted if it is essential for the furtherance of agriculture, or other uses appropriate to the countryside. Development complying with the terms of Policy DP1 will also be permitted;
- 7.5 Policy RP4 Prime Agricultural Land does not permit development that would lead to the permanent loss of prime agricultural land;
- 7.6 Policy RP5 Woodland Trees and Hedges does not permit development that would lead to the direct or indirect loss of woodland which has a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter;
- 7.7 Policy RP6 Areas of Great Landscape Value which advises that development will not be permitted where it may adversely affect the special scenic qualities and integrity of the Areas of Great Landscape Value;
- 7.8 Policy RP7 Landscape Character which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required;
- 7.9 Policy RP8 Water Environment aims to prevent damage to water environment, including groundwater and requires compliance with SEPA's guidance on SUDs;
- 7.10 Policy RP13 Species Protection requires that any development that would affect a species protected by law will require an appropriate level of environmental and biodiversity assessment. Where development is permitted, proposals will require: A. measures for mitigation; and B. measures for enhancement or sustainable habitat replacement, where appropriate;
- 7.11 Policy RP14 Habitat Protection Outwith Formally Designated Areas advises that, effects on the habitat, including the expected results of mitigation measures, will be taken into account, and where appropriate,

planning conditions will be used and legal agreements sought to ensure protection of habitat during development and in the long term;

- 7.12 Policy RP15 Biodiversity Action Plan requires that development proposals shall demonstrate compatibility with the aims and objectives of the Midlothian Local Biodiversity Action Plan and related plans, by identifying appropriate measures to protect, enhance and promote existing habitats and/or the creation of new habitats, and provide for the effective management of these habitats;
- 7.13 Policy RP18 Protecting Areas from Surface Mineral Extraction lists a set of six criteria under which extraction of mineral resources will not be permitted. These are:
- A. Where it conflicts with policies RP10/RP11/RP12
 - B. Where it may affect cultural/historic/natural environment designations, unless there is no materially damaging impact, or where there are overriding community benefits from the mining;
 - C. where it is within 500m of any local settlement or other sensitive property;
 - D. where it would damage the local economy;
 - E. where local roads are unsuitable; or
 - F. where cumulative impacts of existing nearby workings would result in adverse impacts on the environment or local communities.

Where the Council is minded to permit development that affects any designated site of nature or other conservation value, appropriate mitigating measures will be sought to enhance and safeguard the remaining interest.

- 7.14 Policy RP19 Peat Extraction advises that both peat extraction, and other development likely to have a deleterious effect on peatland, will not be permitted where it is within or adjacent to the ecologically significant areas listed in policies RP10, RP11 and RP12. Elsewhere in the Local Plan area, peat extraction and development likely to result in a deleterious effect on peatland will not be permitted except where local environmental impacts are shown to be minimal or where there are overriding environmental benefits in the public interest;
- 7.15 Policy RP28 Site Assessment, Evaluation and Recording, protects any potential archaeological resources by ensuring the site is assessed;
- 7.16 Policy RP32 Public Rights Of Way and Other Access Routes protects established routes against development which could lead to the loss of a right of way, cycle path, bridleway, or other access route;
- 7.17 Policy MIN1 Areas of Search for Surface Mineral Extraction. Policy MIN1 identifies existing areas of working, and areas of search where future surface mineral extraction may be acceptable in principle. Within these areas, the protection of the identified surface mineral resource from sterilisation as a result of other built development proposals shall

be a material factor in considering planning applications for any such development proposal. All proposals should satisfy the following set of criteria;

- A. the proposal does not conflict with policy RP18; and
- B. the site has good transport links to, and is within reasonable travelling distance of, the proposed destination of the specified mineral resource; and
- C. the proposal will not result in adverse effects which, when combined with the effects of other operational, consented and currently proposed surface mineral extraction and landfill sites, will have an unacceptable cumulative impact on the environment or local communities. Proposals shall be accompanied by an assessment of the likely cumulative effects of additional workings on local communities and the environment which will also set out mitigation measures.

A set of operational criteria are also provided covering issues such as blasting, vibration, noise, dust, traffic, operating hours, extraction, and visual impact.

- 7.18 Policy DP3 Protection of the Water Environment, which makes provisions for developments that adjoin or straddle a watercourse. It also covers matters of surface drainage, the water framework directive and the groundwater directive.

Midlothian Local Development Plan Main Issues (MIR) Report 2013

- 7.19 The Plan is at its first formal stage, having been the subject of formal public consultation from May to August 2013. It is therefore relevant, although its degree of materiality in the assessment of this application is limited due to it having not completed its remaining statutory stages to formal adoption.
- 7.20 The MIR relates to the Scottish Planning Policy's position of coal extraction being in the national interest having regard to the ongoing importance of baseload power stations. In accordance with this the MIR incorporates the established Ankriellaw area of search into a proposed larger Cauldhall Moor area of search. The extent of that proposed area of search is very similar in extent to that of the current application site. The MIR also states: *'The upland location of Cauldhall Moor potential area of search for opencast coal is expected to reduce its impact on communities. The road-based haul route avoids passing through settlements. There are peat soils at this location and, in recognition of the valuable carbon store resource that these provide, and potential habitat opportunities, any working would be required to support retention of deeper peat storage and restoration of any areas removed. Restoration could aim to create an environment that encourages the propagation of peat over the longer term.'*

Scottish Planning Policy (SPP) 2010

- 7.21 The SPP at paragraphs 125 to 148 covers issues relating to landscape and natural heritage. It looks at the hierarchy of landscape designations from international sites (such as Special Protection Areas) through national sites (such as Sites of Special Scientific Interest and National Nature Reserves), to local designations (local nature reserves and Areas of Great Landscape Value). It recognises the international renown and importance of Scotland's landscape and natural heritage, which supports significant industries such as food and drink and tourism. They are a key component of the high environmental quality which makes Scotland an attractive place in which to live, do business and invest. At paragraph 131 the policy recognises that landscapes and the natural heritage are sensitive to inappropriate development, and the effects need to be assessed by planning authorities in determining planning applications. It is clear that designation of a site does not necessarily imply a prohibition on development.
- 7.22 Paragraphs 239 to 247 specifically address surface coal mining. It recognises that Scottish coal output is likely to continue to play a significant role in ensuring diverse and sustainable supplies of energy at competitive prices. Although development can raise significant environmental issues, extraction is necessary and important in the national interest. However, extraction should only be permitted where impacts on local communities and the environment can be adequately controlled or mitigated.
- 7.23 The SPP advises that surface coal extraction is unlikely to be environmentally acceptable if:
- Proposed site boundaries are within 500m of the edge of a community;
 - It would have unacceptable impacts on individual dwellinghouses or sensitive establishments outwith communities and effects cannot be mitigated satisfactorily;
 - The proposal is for an extension to an existing site where the intention was known but not made explicit when the original application was approved;
 - It will result in a period of disturbance to communities for more than 10 years;
 - It is in an area already subject to other developments that also have negative environmental effects and the simultaneous or sequential working will result in an unacceptable cumulative impact on a local community;
 - Haulage will be solely on roads which pass directly through communities, particularly if rail based transport is a viable option, or
 - It will adversely affect any natural heritage or historic environment designation or site.
- 7.24 Although site boundaries within 500m of the edge of a community are unlikely to be acceptable, this should not prevent non-engineering

works such as tree planting or other mitigation measures such as visual screening mounds and noise attenuation barriers to reduce the landscape and visual impact of the development. Site boundaries within 500m of the edge of a community may be acceptable where it would result in improvement of local amenity or future development opportunities by clearing a substantial area of derelict or despoiled land, the stabilisation of a previously undermined site or other similar benefit.

- 7.25 In this context, a community is a city, town or village, but can also include small clusters of housing. Planning authorities should decide what constitutes a community when applying this policy.

Draft Scottish Planning Policy (DSPP) 2013

- 7.26 The draft SPP advises that proposals for extraction should be permitted if significant impacts on the amenity of local communities, the natural heritage, historic environment and other economic sectors important to the local economy can be adequately controlled or mitigated.
- 7.27 Proposals should take account of cumulative impacts in combination with other mineral and landfill sites in the local area. They should also provide an adequate buffer zone between sites and settlements, taking account of the specific circumstances of individual proposals, including size, duration, location, method of working, topography, the characteristics of the various environmental effects likely to arise and the mitigation that can be provided.
- 7.28 Consent should only be granted for surface coal extraction proposals which are either environmentally acceptable (or can be made so by planning conditions) or provide local or community benefits which clearly outweigh the likely impacts of extraction. Surface coal extraction within 500 metres of the edge of settlements will only be environmentally acceptable where local circumstances, such as the removal of dereliction, justify a lesser distance.
- 7.29 Proposals should ensure that restoration and aftercare will be to a high standard and undertaken at the earliest opportunity. Consents should be associated with an independent guarantee through a vehicle such as an escrow account (*a bond kept in the custody of a third party and taking effect only when a specified condition has been fulfilled usually a deposit or fund held in trust or as a security*) to manage the operator's exposure to costs; recognise landowner liability; ensure obligations transfer to successors in title; and ensure that site restoration and aftercare is fully funded. In some cases an operator may satisfactorily demonstrate their programme of restoration is sufficient, including the necessary refinancing, phasing and aftercare of sites.

Scottish Government Planning Advice Note PAN 50: Controlling the Environmental Effects of Surface Mineral Workings.

- 7.30 The aim of this Planning Advice Note is to provide advice on the more significant environmental effects arising from mineral working operations. It advises that in considering planning applications, attention should be given to defining the scope of Environmental Assessments, and the acceptability and purpose of any conditions that may require to be attached to any consents. Thereafter, monitoring compliance with any imposed conditions should be a priority so as to determine whether enforcement action is necessary.
- 7.31 The PAN deals generally with the environmental effects of surface mineral working and provides the framework for detailed advice in a series of annexes on particular aspects, which are: The control of noise at surface mineral workings; the control of dust at surface mineral workings; the control of traffic at surface mineral workings; and the control of blasting at surface mineral workings. It also provides a summary of good practice for these and other issues such as visual intrusion.

Scottish Government Planning Advice Note PAN 64 Reclamation of Surface Mineral Workings

- 7.32 PAN 64 is relevant to coal in respect of the restoration of opencast sites. It gives advice on how mineral operators and planning authorities can ensure that mineral workings are reclaimed to a high standard as soon as possible after working has ceased.
- 7.33 Financial guarantees are an appropriate means of reassuring local communities of operators' commitment and ability to meet their restoration and aftercare obligations. These can be provided by mutual funding schemes. However, in Scotland it is common practice for operators to provide a restoration and aftercare bond as a financial guarantee.
- 7.34 Financial guarantees need to reflect the scale and type of mineral extraction proposed and avoid imposing costs on operators beyond what is necessary. Calculation of the bond by an independent specialist, perhaps paid for by the operator, will ensure that the sum calculated takes account of the full cost of restoration and aftercare, including professional fees. The bond can be reviewed at regular intervals during reclamation to ensure that it is in line with the cost of restoration and aftercare. Funding can be released as various stages are completed and the extent of disturbance is reduced. Letters releasing the funds will provide operators with confirmation that various stages have been reached.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Policy Assessment

- 8.2 The development plan for the area is comprised of the South East Scotland Strategic Development Plan 2013 (SESplan), and the Midlothian Local Plan 2008 (MLP). In addition Scottish Planning Policy and the SPP review contain guidance on opencast coal extraction.
- 8.3 The SPP states that development plans should identify broad areas of search where working may be acceptable. The SPP also states that there will be a general presumption against extraction outwith those areas of search identified in the development plan.
- 8.4 The consultation draft SPP (2013) sets overarching policy principles, and it recognises the continuing role of indigenous coal in maintaining diverse energy supplies. The consultation draft SPP requires that all Local Development Plan's (LDP's) identify areas of search where the extraction of coal is most likely to be acceptable during the plan period and set out the preferred programme for the development of other safeguarded areas beyond the plan period, with particular emphasis on protecting communities from significant cumulative impacts. The draft SPP advises on the matters to be addressed when assessing specific proposals: these are little changed from established national policy guidance.
- 8.5 The SESplan advises that an adequate and steady supply of minerals is essential to support sustainable economic growth. SESplan has set up monitoring arrangements and will continue to carry out surveys of mineral extraction activity to assist in determining whether an adequate landbank of permitted reserves is being maintained. The accompanying technical note (November 2011) states that development plans should consider the appropriateness of existing areas of search; identify areas of search and set out the criteria to be addressed when assessing individual proposals and safeguard areas of coal capable of being extracted.
- 8.6 MLP Policy RP1 Protection of the Countryside applies to most of the application site. The MLP contains a policy related to protecting areas of search from surface mineral extraction specifically Policy RP18. Policy MIN1 identifies the 'Areas of Search' for surface mineral extraction as well as operational criteria. While policy RP19 considers matters relevant to extraction of peat, it also covers development which

would have an adverse impact on existing peat land which this proposal has the potential to do.

- 8.7 Policy RP1 Protection of the Countryside states that in certain locations, the winning of mineral resources may be appropriate and that in these instances policy MIN1 takes precedence. In that part of the application site (being the greater part) which is outwith the established area of search, opencast working would be contrary to policy.
- 8.8 Policy RP4 refers to prime agricultural land, and applies only to a part of the site, and the applicant does not propose to work in this area and therefore little weight needs to be applied to this factor.
- 8.9 Policy RP6 relates to the Area of Great Landscape Value. The northern part of the site (approximately 106 hectares out of the 495 hectares) is within the AGLV.
- 8.10 The impact upon the AGLV is also considered within policies MIN1 and RP18. A landscape opinion from the Council and from SNH has been presented below. In relation to establishing new areas of search for mineral extraction in the forthcoming Local Development Plan, the landscape impact of prospective opencast working in this area has been considered. The extent of the existing area of search, south of the Lilyburn water course, while not in the AGLV, is thought to be the more sensitive landscape and to be unsuitable for opencast extraction. The application has taken account of this and avoids this more sensitive area.
- 8.11 The River Basin Management Plan (RBMP), referred to in Policy RP8 (Water Environment) and produced by SEPA, classifies water bodies, and the objective is to prevent any deterioration in water body status and to seek to move over time to good status. There are a number of small watercourses around the application site. In respect of consultation for the main Issues report (MIR), SEPA has indicated that the Lilyburn may pose an element of flood risk. The waters in the area form part of the Esk river system. Scotland's first River Basin Management Plan (RBMP) 2009-2015 records the status of water bodies in Midlothian and aims to achieve 'good' status ultimately, and prevent any deterioration in the interim. For example, the Fullarton Water's status was poor in 2008, with the objective of reaching good status in 2027. Within the overall classification, ecological status was poor but the chemical status was acceptable. The downstream water bodies are similarly recorded as being of poor status. Underlying the potential area of search is the groundwater body, identified by SEPA as the Dalkeith bedrock (ID code 150226). The chemical status of this is recorded as poor, a result of mining and quarrying of coal. The point source pollution is projected to be remedied by 31 March 2014 by the Coal Authority. Diffuse source pollution is expected to remain a problem by the end of the first RBMP cycle (2015).

- 8.12 In conclusion, the water environment in the locality of the site is subject to a variety of pressures, and any project must demonstrate that there will be no worsening of its status. With regard to the evidence submitted in the EIA and the appropriateness of Scottish Coal's approach in respect of these matters, the advice provided by SEPA is accepted in this regard (see below).
- 8.13 Of particular relevance to the proposal is policy RP18 (see above), which relates to protecting areas from the environmental impacts of surface mineral extraction.
- 8.14 In relation to criterion A of that policy the MLP proposals map does not indicate any areas of designated nature conservation significance within or adjacent to the proposed site. Investigation of the proposed area of search for the MLDP indicated that there are small areas of land listed in the SNH Ancient Woodland Inventory (AWI) at Ankriellaw and Ladies Walk Plantation, and larger areas on the edge of the area (refer to policy RP5, Woodland Trees and Hedges). Integrated Habitat Network areas of broadleaf woodland, wetland and neutral grassland were noted in the MLDP assessment process. These areas are of moderate value, and may form the basis for further work to create a 'green network'. The MLDP process was focussed on identifying an area of search, and identification of such an area is not the same as agreeing that all parts of that area are developable for opencast mining. This criterion will be determined with reference to advice from SNH, SWT, RSPB and the Council's biodiversity advisor at the Wildlife Information Centre (TWIC).
- 8.15 In relation to criterion B, a scheduled ancient monument is indicated some way to the south of the proposed site (St Marys Chapel), but there are also four locations within the Sites and Monuments Record (SMR) in the locality of the site, and the archaeological impact is assessed below.
- 8.16 The Local Plan site proposals map indicates an area of prime agricultural land (RP4) around Lilyburn Cottage to the western edge of site, but as stated above no work is proposed here.
- 8.17 Just over 20% of the site, to the north, is within the Area of Great Landscape Value. The Council has undertaken a review of the Midlothian AGLV in line with the 2005 Guidance on Local Landscape Designations produced by Historic Scotland and Scottish Natural Heritage. The MIR contains proposals on new local landscape designation areas, informed by this review, and the application area avoids these proposed designations. The candidate area of search for coal in the MIR, is set back from the A6094 and to the east of the intervening ridgeline so as to minimize landscape impact. Whilst the application site includes this area, no extraction is proposed there. In general policy terms, the proposal is adequate with respect to its effect

on the landscape, although this is looked at in more detail in the landscape section below.

- 8.18 Extensive parts of the site are peatland – it is important to protect this resource as a store of carbon. The site contains extensive peat deposits, as identified in the ES, and in compliance with RP18 mitigating measures will be sought to safeguard this resource. SNH and SEPA have provided comment on the appropriateness of the applicant's proposals for the overall hydrology of the site, and for avoiding or, where appropriate, removing, storing and reinstating the peat. In view of the presence of this important material, it will be particularly important to ensure robust arrangements for site restoration.
- 8.19 Edgelaw Reservoir is a compensation reservoir and does not directly contribute to the public water supply. The 'mains' water supply ends at Rosewell, so the properties around the site utilise private water supplies. Depending upon circumstances, to ensure the continuation of safe water supplies of properties continuing in occupation in the locality of the development, there may be a requirement that the public water supply be extended at the cost of the applicant. Environmental Health has advised on these matters, and this is summarised below.
- 8.20 In relation to criterion C, the edge of the proposal site is more than 500m from the nearest settlement (Howgate) and with the prevailing winds there is no case for a larger buffer in this instance. The proposal is in part in an existing area of locally important landscape character (viz. AGLV), as described above in relation to B, and will also be within 500m of the proposed new local landscape areas. The impact of the development in the existing AGLV and adjacent to the future local landscape area is considered in the landscape section below.
- 8.21 It should also be noted that to the north west of the site lies Rosslynlee Hospital site. This is proposed in the Local Development Plan (MIR), and has a projected capacity of 120 units. This would result in a new community, however whilst being closer than Howgate, this would still be just over 900 metres at its closest point to the site.
- 8.22 In relation to criterion D, the site adjoins three core paths (3-26, 3-15, and 3-17), and one of these (3-26 Edgelaw reservoir to Mount Lothian) could be disrupted or rendered less attractive for countryside pursuits for the duration of operations. The Council will have to come to a judgement on this, but it is unlikely that disruption to paths in this locality would damage the local economy to an unacceptable extent. Through phasing and mitigation, and restoration of the path network as soon as is practicable, disruption will be minimised. It would be useful to consider future enhancement of public access, and linkages to the Tyne-Esk trail network. The fishery by Reservoir Cottage has continued through previous opencast operations at Shewington, but the

application is potentially more disruptive, and therefore necessary mitigation measures will be required.

- 8.23 With regard to criterion E; in putting forward Cauldhall Moor as an Area of Search in the MIR, it is considered that the A6094 haul road option has worked acceptably in relation to Shewington, and this route benefits from new road building which minimizes impacts on local communities. This proposal has a significantly higher trip rate than the previous operations along this corridor. The impacts would be regarding road safety, traffic congestion and amenity (of sensitive properties adjoining the route). The geometry and sightlines of the A6094 south of the Rosewell bypass would raise some concerns as to safety at the proposed intensity of operations. This is assessed more fully in the transport section below. In terms of congestion, the proposal will add to heavy vehicle movements on the A6094, the Bonnyrigg Distributor Road, and at junctions on the A7 – and again this is assessed in the transport section. In relation to the amenity of properties fronting the A6094, this is likely to be worsened by the proposal. These may however be mitigated through restrictions in the times vehicles are released from the site.
- 8.24 In relation to criterion F, there is potential for the Auchencorth Moss (Scottish Borders) opencast site to be operated cumulatively. To avoid unacceptable traffic impacts through Penicuik the Auchencorth site would likely use the same haul road (A6094) as the Shewington proposal. The original applicant (SRG) in discussions with the Council has indicated that the Auchencorth site would not be operated concurrently. Landfill at Drummond Moor is to resume, and permission is presently being sought to continue infilling the void with inert material rather than household waste. At the scoping stage it was requested that the traffic impact of these operations be modelled in combination, together with an allowance for the continuing growth of the Hopefield (Bonnyrigg), predominantly residential development. The operational impacts and suggested mitigating measures are outlined below.
- 8.25 Policy RP18 also seeks enhancement of conservation value, and a restoration scheme which provides a hydrology conducive to future peat formation is desirable.
- 8.26 MLP Policy MIN1 (Areas of Search for Surface Mineral Extraction) defines the broad areas of search and sets operational criteria to be met by proposals (at the time of MLP 2008 preparation, Structure Plans were to identify broad areas and local plans were to define these areas in greater detail). An area of search was established at Ankrielaw, the boundaries of which are set out on the proposals map, and this application extends outwith the boundaries. The areas of search within the local plan were selected after consideration of landscape, impact on features of value, and impact on settlements.

- 8.27 Outwith areas of current working and areas of search there is a presumption against mineral working. The policy allows for specific mineral proposals to extend beyond the boundaries of areas of search for operational purposes. This part of the policy arose from the Midlothian Local Plan Reporter's recommendations; Paragraphs 51.40 and 51.41 of the Reporter's Report into the Finalised Midlothian Local Plan 2007 make clear that these 'operational purposes' relate to operational, but non-extraction areas (taken to mean land for storage of overburden, bunding or plant areas but not working faces). It is considered that the scale of the current application beyond the allocated area of search is not compliant with this provision of the Reporter.
- 8.28 Policy MIN1 contains general and operational criteria - In respect of criterion A, matters relating to policy RP18 have been considered above, and in consultees' responses. The impact of the development on peatlands, transport, archaeology and private water supplies will be particularly important in this case.
- 8.29 In respect of criterion B, the primary user is indicated as Longannet Power Station, on the north bank of the Firth of Forth near Kincardine. This is in the same strategic planning area as Midlothian. With a generating capacity of 2400 mw it is the third largest coal-fired power station in Europe. It is advantageous to use Scottish sourced rather than imported coal to reduce energy expenditure in haulage and for more local economic and energy security reasons. The Council's transport consultant has advised on the suitability of the local road links as far as the A720, beyond which the views of Transport Scotland have been sought. The haul routes into Longannet will be controlled by Fife Council under consent for that site.
- 8.30 In respect of criterion C, the consented Auchencorth site in Scottish Borders (in this case in terms of traffic using the approved A6094 haul road) and the operational Drummond Moor landfill site may contribute to cumulative impact. The cumulative effect of noise, vibration and dust may be problematic at 'sensitive receptors' situated between the landfill and the opencast site and the view of Environmental Health is relevant in this respect, and from transport policy in respect of the impact of the cumulative working of Auchencorth OCCS (unless a legal agreement can be entered into to guarantee this site does not operate concurrently with Cauldhall Moor).
- 8.31 In respect of the MIN1 operational criteria, the views of Environmental Health and the transport and road safety manager have been sought and are summarised in this report.
- 8.32 The operating hours are similar to those at previous opencast coal sites in Midlothian, and these arrangements appear to have worked acceptably in the past, but with the addition of 24 hour operation for certain activities.

- 8.33 The extraction and transportation of materials from the site in a single operation is supported.
- 8.34 Duration of Extraction - The SPP states that opencast extraction is unlikely to be acceptable if it will result in a period of disturbance to communities of more than 10 years (para 244, pt 4). The Council would have to come to a judgement as to whether a community extends beyond a settlement, and also could encompass a more scattered rural area. In this case the entire operation including start up and restoration is 12.5 years and the period of extraction is 10 years. It is recognised that this follows on from earlier Newbigging/ Shewington operations in same locality. There is a case for looking carefully at the effect on individual properties to ensure prolonged deleterious impacts on any one property or group of properties are avoided (the proposed method of working with the site broken into sections may assist in avoiding such prolonged impacts).
- 8.35 Visual Impact - The proposal sits in part within the current AGLV which may soon be revised, however, it must still be demonstrated that the proposals minimise visual impact (both in the course of development and in final restoration), and do not detract from the character of the area.
- 8.36 Restoration and Aftercare - The financial difficulties of the original applicant, and the wider problems of the industry have raised concerns over the ability of any future operator to restore the site. The quantity of electricity generated by coal is projected to fall under central projections prepared by the Department of Energy and Climate Change, in the context of committed energy policies. In the context of a declining market over the life of the proposal, Midlothian Council would need to be assured that at no stage in the project is there an uncovered liability that would fall on public authorities. As well as considering the final restoration, it is necessary to ensure that at no time is the supervision of the site interrupted, in terms of (for example) the storage of the peat. The establishment and funding of an environmental clerk of works responsible for the overseeing the site at all times until completion of restoration would be essential. The emerging proposals in respect of the Scottish Mines Restoration Trust may assist in these respects. There is presently a joint planning authority/Scottish Government working group, with representation from Midlothian Council, which will recommend an approach to be adopted in respect of restoration conditions and guarantees.
- 8.37 As the development lies in an area where there is a presumption against opencast development, the planning authority would wish to assure itself that the restoration is the best that is achievable, and contributes to wider improvements, including the long term maintenance of the peat resource.

- 8.38 The Strategic Development Plan for South East Scotland (SDP) sets the requirements for Local Development Plans to identify areas of search for aggregate minerals and coal, or, where appropriate, specific sites, having regard to national guidance and other environmental objectives of the Strategic Development Plan.
- 8.39 The Midlothian Local Development Plan (MLDP) Main Issues Report (MIR) contains a Preferred Strategy, which includes minerals. The Preferred Strategy puts forward Cauldhall Moor as an area of search for opencast coal. The area of search differs from the application site along its western edge. Midlothian Council considered that an area of search which drew back from the ridgeline and the A6094 was preferable in amenity and landscape terms. The Minerals and Waste Technical Note contains further background to site assessment, and the selection of Cauldhall Moor as an area of search. The MIR consultation concluded on 31 August 2013.
- 8.40 The majority of the application site is outwith the area of search identified in the 2008 Midlothian local plan and is therefore contrary to adopted local plan policy.
- 8.41 The emerging local development plan policy for the area (which has limited status, as it is only at consultation stage) proposes to support opencast coal extraction in the area. The preferred area in the MIR differs slightly from the application site, although the applicant does not propose to extract coal in this area (along the western side of the ridgeline, by the A6094).
- 8.42 The inclusion of Cauldhall Moor in the MIR Preferred Strategy has followed an assessment of environmental factors which is not as detailed as that carried out at EIA stage, and was not informed by an actual proposal (where the method of operation and the location of critical elements such as working faces are known).
- 8.43 From work carried out in association with the MIR, the following emerge as key sensitive environmental factors: transport, preservation and restoration of peat, cumulative impact on sensitive receptors between Drummond Moor landfill and the operational areas of the proposal, and maintenance of private water supplies.
- 8.44 Robust restoration and aftercare arrangements are required: the joint planning authority/Scottish Government working group has still to conclude advice on this matter, but the Scottish Mines Restoration Trust will likely provide some assistance in this regard.
- 8.45 Although, the majority of the application site is out with the area of search identified in the 2008 Local Plan, it is positioned between the area of search and the previous coal workings at Newbigging and Shewington. This factor, taken together with all of the other considerations assessed in this report, lead to the conclusion that this

application does not undermine the overall aims and objectives of the development plan and therefore it does not constitute a significant departure from the development plan. As such, determination of the application can be made by this Committee.

Need for Coal Extraction and Climate Change

- 8.46 In 2011, demand for coal in the UK was 52 million tonnes. In 2012, the UK consumed 64 million tonnes. Although low by historical standards, this has increased by 1.1% since 2010. Coal consumption in the UK has seen a general decline over the last 30 years as the UK's energy mix has become more diverse.
- 8.47 In 2010, the UK was the third largest consumer of coal in the EU for the tenth year running behind Poland and Germany. The UK accounted for 17% of total coal consumption in the EU.
- 8.48 Coal production in the UK has been in general decline since 1952, where levels peaked at 228 million tonnes. In 2011 UK coal production was 19 million tonnes (37% of total coal demand). Imports of coal have increased by 23% since 2010. In 2012, production was 16.8 million tonnes, and imported coal amounted to 44.8 million tonnes.
- 8.49 Scotland is responsible for almost one third of the UK's coal production.
- 8.50 Coal remains an important source of energy, particularly for electricity production. In 2011, coal accounted for almost a third of electricity generated in the UK and over the past 10 years, over 80% of demand for coal has been from major power producers for electricity generation.
- 8.51 Overall, the UK currently has a net energy dependency level of 36%, i.e. 36% more energy supply is imported than is produced domestically. This is the highest level of dependency since the mid-1970s.
- 8.52 It is clear from the SPP that there is a continued need to extract coal and this will be supported in the right areas. The SPP advises at paragraph 239 that *"Scottish coal output is likely to continue to play a significant role in ensuring diverse and sustainable supplies of energy at competitive prices. Although development can raise significant environmental issues, extraction is necessary and important in the national interest."*
- 8.53 The draft SPP (June 2013) advises that 'Planning' should support a broad mix of energy generation installations and supply infrastructure at appropriate locations. Development should be prioritised in accordance with the following hierarchy; energy efficiency; electricity and heat recovery; and electricity and heat from renewable and non-renewable fuel sources where greenhouse gas emissions can be significantly reduced.

- 8.54 The draft SPP advises at paragraph 167 that the planning system should:
- recognise the continuing role of indigenous coal, oil and gas in maintaining a diverse energy mix and improving energy security;
 - safeguard workable resources and ensure that an adequate and steady supply is available to meet the needs of the construction, energy and other sectors;
 - minimise the impacts of extraction on local communities, built and natural heritage, and the water environment; and
 - secure the sustainable restoration of mineral sites to a relevant use after working has ceased.
- 8.55 Despite the policy objectives of the Scottish Government to increase energy generation from renewable resources, demand for coal is still strong. Coal is required for 30% of Scotland's energy requirements, which increases to 50% over the winter period. The level of energy produced from coal can be checked at any time on the BMRS website which provides near real time and historic data about the Balancing Mechanism which is used by the National Grid (System Operator) as a means of balancing power flows on to and off the electricity Transmission System in Great Britain. For example on 04 November 2013 the previous 24 hours saw 39.7% of energy provided by coal. This is almost double that of the second biggest contributor, Combined Cycle Gas Turbines (22.0%), and third, Nuclear (20.1%).
- 8.56 Coal fired power stations in the UK are supplied by coal from surface and deep mines within the UK and from coal imported from overseas. There are clear benefits of sourcing coal locally to reduce the carbon footprint of the energy supply; it provides socio-economic benefits to Scotland and to the areas in which the mines are located; and it helps to control the costs of the UK energy supply. 'Home-grown' coal has an important role to play in meeting the nation's energy needs and balancing the country's energy payments.
- 8.57 The Cauldhall site contains a significant reserve of around 10 million tonnes of coal suitable for use in power stations. The coal will be worked over a total period of 12.5 years. Over this period the development would generate around £475 million for the Scottish economy, a substantial proportion of which is expected to accrue to Midlothian.
- 8.58 Concerns were expressed in some representations regarding the suitability of the coal to be extracted at Cauldhall, with claims made that it could not be used at Longannet Power Station. It is the case that on average sulphur content of coal across the Cauldhall Site is relatively high at 1.5% with some seams higher and some lower. It is also the case that Longannet Power Station has a sulphur limit of 1%, therefore,

not all seams may be usable as they are, those higher sulphur seams need blended with other coals to meet the power station spec. This is not unusual and the applicant (Hargreaves) specialise in importing and blending coal to meet customer requirement.

- 8.59 Concern has been expressed regarding the intention for Cauldhall Moor to supply Longannet Power Station. There is an issue regarding the longevity of the power station which may close if it has not invested significantly in sulphur dioxide (SO₂) and nitrogen oxide/dioxide (NOX) reduction technology by 2020. It is these emissions that lead to what is often termed “acid rain”.
- 8.60 The Industrial Emissions Directive (IED), EU Directive 2010/75/EU, which comes into force from January 1st 2016 and will require coal-fired power stations to install further abatement technologies. The directive focuses on limiting air pollutants such as SO₂, NOX and dust and will significantly tighten emission limit values for large combustion plants.
- 8.61 Flue Gas Desulphurisation is presently operational on two units and undergoing final construction on a third unit at Longannet and will ensure the station can comply with SO₂ emission limits set by the forthcoming IED. The station must invest in additional abatement technology to reduce its emissions of NOX to comply with the future limits. As a general rule, installations such as Longannet have until 2016 to comply with the stricter emission limits or opt-out of the IED. Operators must decide by December 2013 if they wish to opt out of IED and commit to limited hours of operation, within the emission limits set by the Large Combustion Plant Directive, and closure by the end of 2023. Longannet has opted into a transitional National Plan from 2016 to 2020. This allows operators time to comply with the stricter IED limits although they would have to operate within emissions limits set by the Transitional National Plan (TNP). It is anticipated the TNP would operate in a similar way to the current National Emission Reduction Plan, with tradable emission allowances being set for SO₂, NOX and dust.
- 8.62 The emissions from coal fired power stations are significant contributors to CO₂ emissions as well as other pollutants. The low price of coal in recent years has lead to increases in coal based power generation leading to some European countries having increasing CO₂ emissions at a time when they should be decreasing. Likewise sulphur emissions have also increased by 3.9% between 2011 and 2012. The Longannet Power Station has made significant investments and improvements since 1994 to reduce emissions and, based upon this information, it is anticipated that emissions will reduce, and the power station will operate beyond the life of Cauldhall Moor.
- 8.63 The applicants state that the proposed development will create some 230 direct jobs in Midlothian. In addition, there will be significant indirect and induced employment created through the supplies and

services required to operate the mine, equivalent to approximately 114 full time jobs. In total this amounts to an estimated 344 additional jobs in the Midlothian economy, which represents almost 70% of Midlothian's annual employment creation target (Midlothian Council's Economic Development Strategy).

- 8.64 In respect of community benefit the applicant proposes the standard community benefit payment of 27.5 p per tonne which would amount to potentially £2.75 million being made available to local community projects over the lifetime of the site. The precise details of the community levy would need to be established through formal legal agreement. A further £1.7 million would be available via the Coal Authority levy. The standard royalty payment to the Coal Authority is 17p per tonne of coal extracted and sold from the site. These royalties are used to operate services that could potentially benefit the local community. These services may include mine water remediation schemes to address problems with poor quality water discharges from old underground coal mines and an emergency response service to deal with public safety incidents associated with former coal mining operations.

Landscape and Visual Impact

- 8.65 The Local Plan designation for the application site is as Countryside with the northern part of the site being within an Area of Great Landscape Value (although this area is proposed to be removed from the Special Landscape Areas in the recent AGLV review). The proposed development site is located within an area characterised as part of the Gladhouse/ Auchencorth Moorlands and Rosewell/ Carrington Spur in The Lothians Landscape Assessment (LLA). The assessment summarises this area's positive attributes as being a simple, large-scale visual character; small scale topographic diversity; extensive semi-natural land cover types; and having a characteristic pattern of small woodlands and shelterbelts.
- 8.66 The site itself is dominated by a highly variable and complex micro-topography, supporting extensive areas and large enclosed fields of improved grassland, arable land, and plantation woodland. Plantation woodland strips/shelterbelts form the northern boundary of the site and dry stone dykes are frequently seen as a locally characteristic and important field boundary feature. The site is located in an area of relatively open landscape with few manmade structures. The open character of the landscape also leaves it open to extensive views in and out of the site. The openness of the landscape belies the more intricate nature of the landform with hillocks and glacial formed corridors especially along the south west and south east edges of the application site (in parts following the Lily Burn corridor). This part of the site is a more intricate, glacial landscape with many undulations – a mini Moorfoot/Pentland Hills landscape. The woodland immediately to the south of Ankrielow is categorised as an Ancient Woodland according to the Ancient Woodland Inventory compiled by the Forestry

Commission. There are a number of stone dykes traversing the site adding to the local landscape character.

- 8.67 A number of unnamed watercourses cross the site and the southern boundary of the application encompasses sections of the Lily Burn. The existing land use across the site is predominantly rough grazing. Ankrielaw Farm, its associated buildings, and woodland are located in the southwest of the application boundary and will be removed as part of the proposals. An unclassified public road (U72) bisects the site from north to south and will require temporary stoppage and removal for part or all of the duration of the development, followed by its reinstatement on completion of mining activities. Overall the expansive and open nature of area and the complex, undulating topography combines with the existing boundary woodlands, hedgerows and stone walls to create a landscape with a strongly rural character. The north section of the application site falls within the South Esk and Moorfoots Area of Great Landscape Value (AGLV), as defined in the Midlothian Local Plan
- 8.68 The line of the excavation limit on the proposals maps indicates that the majority of this intricate landscape will be left untouched. However, it is evident that excavation will encroach into the Lily Burn corridor and this part of the application site will also be used to store subsoil, topsoil and water treatment areas thereby including this area as an operations area and leading to permanent impacts upon this intricate landscape: appropriate careful mitigation and restoration measures will be required.
- 8.69 The proposed restoration differ notably from the existing contours and the broad landform will not only alter the landscape to a potentially detrimental effect but will block out some of the existing views in and out of the site. For the proposals to be acceptable the restored landscape should reflect the existing landscape in as much detail as possible. This would comprise the restored landform mirroring the existing and that all stone dykes are dismantled, the stone stored during the works and re-instated as part of the restoration of the site. The working of the site should furthermore be retained within the excavation limit marked on the submitted plans. All excavations should furthermore be offset from any woodland being retained by at least ten metres to ensure that overhanging branches are protected from machinery and there is sufficient ground for water to reach the roots of the trees and to prevent them drying out (this includes along the edges of Ladies Walk Plantation and Edgelaw Moor Strip).
- 8.70 The response from SNH reflects these concerns and recognises that there could be long term and significant negative impacts upon local landscape character. This generally related to the over simplified landform and the loss of stone walls. The guidelines in the Landscape Character Assessment are that there is a need to protect core open moorland habitats; to seek opportunities to enhance integration of characteristic isolated small woodland features; that opportunities exist

for further woodland expansion in harmony with scale of landscape; to recognise visual sensitivity of open terrain visible from both Pentlands and Moorfoots; and to uphold high standards of visual integration in any new mineral extraction operations. The key strategic aim is to “Conserve small-scale topographic and habitat diversity within a predominantly large-scale context”, and this is considered to be particularly pertinent to this site.

- 8.71 One of the shortfalls of the restoration scheme is that the details of the restored landscape demonstrate a very rounded off and featureless landscape devoid of stone walls and micro-topographies.
- 8.72 The applicant has responded to this and acknowledges that the restoration plan is a masterplan and that for a site of this scale it would be difficult to show such fine detailed topographical details.
- 8.73 The main difference between the existing landform and the proposed final restoration levels is the creation of a fairly regular area of high ground centred towards the south east of the site. This includes the area of upland wet heath habitat (peat). The ES advises that due to the large volumes of material to be removed to extract the large deposits of coal, it is necessary to elevate the landform, resulting in the more prominent “hill” in the south east. This is caused by what is termed the “baulkage” of material. Basically when the solid bedrock is disturbed and broken up, it subsequently occupies a much greater volume due to gaps between individual rocks and boulders, and hence the landform is initially noticeably higher, despite the removal of the coal. Advanced restoration can be undertaken by using the overburden (material that sits above the coal) to create a permanent landform. This then allows for the translocation of peat to a final location at the earliest possible stage.
- 8.74 The restored site will contain nine main components, namely: upland rough grazing land in the centre of the site; agricultural grassland in the northern area; wet heath habitat in the south central and south eastern areas; retained swamp/bog habitat; retained wet/marshy grassland; a valley feature running west to east through the site; a 3 hectare wetland; replacement coniferous woodland in the western part of the site; and an enhanced 50 metre wide Lily Burn corridor around the southern and eastern edges of the site.
- 8.75 The U72 minor road which crosses the site is to be temporarily stopped up as part of the proposed mining operations. The restoration proposals provide for the reinstatement of this road upon the completion of coaling, with the precise alignment and specification of the route to be agreed with Midlothian Council. It would however not be able to follow its original route due to the area of high ground in the south east, meaning that the route would be significantly longer than previous. It is likely that the applicant will seek for this requirement to be reviewed at a later date.

- 8.76 The applicant has noted SNH's concerns regarding the proposed final landform. The applicant states that for a site of this scale more detailed plans for the restoration of the various phases of the site will be required to show the fine grain of the topography to be achieved and further details on the habitats to be created. It is proposed that a Technical Working Group will be established as part of any planning permission granted to help guide and refine, amongst other matters, the detailed design of the final restoration scheme for the site. Localised alterations can be made to the final restoration topography through this process and the submission of detailed plans for each phase of restoration can be secured by condition.
- 8.77 However, given the volume of material to be moved on site as part of the surface mining operations it is not possible to significantly alter the final landform proposed without a complete redesign of the working scheme for the site. This is because altering the final landform has a consequential impact on peat mitigation measures; proposals for early restoration of the outer flanks of the site; the overall balance of materials on site; the reinstatement of the catchment of Edgelaw Reservoir; and the overall economic viability of the site.
- 8.78 In respect of the loss of dry stone walls on site, the applicant has advised that it is willing to safely recover and store the stone from all walls within the operational parts of the application site and reuse the stone for replacement field boundaries upon the completion of site restoration. Details of the reinstatement, location and form of the walls can be secured by a planning condition and agreed with the Technical Working Group.
- 8.79 With regards to trees, the main impact to be assessed is the complete loss of an area of semi-ancient woodland to the immediate south of Ankrielaw Farm.

Wildlife Impacts

- 8.80 The excavation of such a large area of ground over a 12 year period will involve the destruction of the habitat within the areas of working and the areas used to store materials over the course of the operation of the site.
- 8.81 This will however be progressively restored and on final restoration it will be possible to regain some of those habitats.
- 8.82 The habitats and species present within the site and the surrounding area have been identified through the Environmental Impact Assessment (EIA) process, which has included a scoping exercise. The assessment follows the Guidelines for Ecological Impact Assessment (EIA) of the Institute of Ecology and Ecological Management (IEEM, 2006). The importance of the habitats and species identified is evaluated against standard criteria (i.e. international, national, regional, local and less than local).

- 8.83 As part of the EIA process, full scoping and consultation exercises were carried out to gather views from statutory (SNH) and non-statutory conservation bodies and other interested parties.
- 8.84 Baseline data was collected through a desk study, including a literature search, and through targeted field surveys. A range of sources were consulted for existing data about the development site, including TWIC, SNH, the National Biodiversity Network and Scottish Badgers.
- 8.85 The species studied included otters, water voles, bats, badgers, red squirrels, great crested newts and general fish and bird species. Field surveys of these habitats and protected species were carried out within the site boundary and appropriate surrounding buffer zones in 2012 by ecological specialists.
- 8.86 There are no sites of international importance within or directly adjacent to the Cauldhall site. The nearest is Gladhouse Reservoir at approximately 3.7km to the south east. It is the largest freshwater body in the Lothians and together with the alternate roost of Fala Flow (also an SPA), Gladhouse Reservoir is the most important Pink-footed Goose roost in Midlothian. It was designated as a SSSI in 1968 for being of international importance for Pink-footed Geese. It was upgraded to a SPA in 1988 under article 4.2 of the EEC Birds Directive (79/409/EEC). It was designated as a Ramsar site in 1998 due to it supporting an internationally important winter roost of Pink-footed Geese.
- 8.87 Large numbers of Greylag Geese are also present and the reservoir also supports breeding Mallard, Tufted Duck, Teal, Coot, Moorhen, Great Crested Grebe and Little Grebe. Being a public water supply reservoir, it has limited aquatic and emergent vegetation but small areas of marginal fen have developed in places.
- 8.88 Being at a distance of at least 3.7km the ES concludes that it is highly unlikely that there will be any direct disturbance from the development site. Also as the site drains to the north east, it will have no impact upon the reservoir catchment. Therefore, given the likely absence of direct and indirect effects of the proposed surface mine on the qualifying features of Gladhouse Reservoir it has been scoped out and not further considered in the ES.
- 8.89 There is no opposition to this view in any of the responses from SNH, RSPB, SWT, or TWIC. The Council is satisfied that there will be no adverse impacts upon the Gladhouse Reservoir SPA.
- 8.90 Peeswit Moss, designated as a Site of Special Scientific Interest (SSSI) and a Special Area of Conservation (SAC) is located approximately 2.2km to the south of the development site. It was designated as a SSSI in 2002 for being one of the best examples of active raised bog in

Midlothian, and was designated as an SAC in 2005 for being one of the best raised bogs in the UK.

- 8.91 Similar conclusions have been drawn in the ES as for Gladhouse, and again there is no objection to this view.
- 8.92 The Black Burn SSSI is sited 1.9km to the west of the development site. It was designated as a SSSI in 1990 for supporting lowland acid grassland and fen meadow habitats.
- 8.93 Being upwind and at a distance of around 2km there are no effects of dust deposition predicted by the ES. As the Cauldhall site drains to a point upstream of the Black Burn's confluence with the North Esk, no hydrological effects are therefore expected on the latter. Furthermore, it is not proposed to discharge water from the operational site in this direction. Again this SSSI is scoped out of the ES and there is no objection to this.
- 8.94 Roslin Glen SSSI, is around 2.3km to the north of the development site, and was designated as a SSSI in 1952 for its upland mixed Ash woodland. Roslin Glen is located downwind of the development site, however, given that most dust is deposited at about 100m from its source, and with the implementation of standard dust prevention measures, it is extremely unlikely that at the distance involved there will be any effect of dust deposition. Also there is no hydrological connectivity between the sites. Again it is scoped out and not further considered in this ES.
- 8.95 In terms of non-statutory nature conservation sites, the Mount Lothian Quarry Ponds Local Biodiversity Site (LBS) is significant due to the known presence of great crested newts. There is no hydrological connectivity between the Mount Lothian Quarry Ponds and the development site and for reasons mentioned above in connection with statutory sites it is highly unlikely that there will be any dust deposition from the Cauldhall site. The Quarry ponds are therefore scoped out and not further considered in this ES.
- 8.96 The Edgelaw Reservoir LBS is located at its closest at a distance of 0.5km to the east of the Cauldhall site. As most of the watercourses on the Cauldhall site (e.g. The Lily Burn) drain eastwards into the Edgelaw Reservoir via the Fullarton Water then potential effects, such as pollution and sedimentation could occur on the standing water habitat. The Lily Burn will be unaffected by direct impacts from the surface mine and protected from the latter by a 50m fenced corridor, as appropriate. The other three burns will cease to flow during operations, and flow diverted to the Lily Burn after treatment. The drainage from the site makes up only a small percentage of the total volume of water flowing into Edgelaw Reservoir. The magnitude of this effect on Edgelaw Reservoir is therefore likely to be low. This together with the regional value of this environmental receptor will produce a minor effect in the absence of mitigation.

- 8.97 Carrington Mill Wood LBS is located 1.3 km to the east of the site. The development has a hydrological link with the Redside Burn. The LBS species and habitats are considered to be suitably robust and unlikely to be affected by development. It is however noted that otters and badgers are present.
- 8.98 There has been no objection to any of the conclusions relating to impacts upon Local Biodiversity sites.
- 8.99 It is noted that the site does contain woodlands that are listed on the Ancient Woodland Inventory (AWI). Those that form the northern and eastern boundaries of the site are not to be affected by the development. There is however an area to the south of Ankrielaw Farm which covers around 1.5 hectares, and this entire woodland will be felled as part of the operations of the site. The habitat survey describes the woodland as being dominated in the southern section by mature Scots Pine with occasional mature Sessile Oak, Sycamore, Beech and, rarely, Rowan. The northern section is dominated by Sycamore with frequent Scots Pine, occasional Ash and Hawthorn and, rarely, Wych Elm.
- 8.100 The ES summarises this area of AWI as rather small (1.5 ha), isolated, overgrazed and subject to other adverse farm activities. Its main interest therefore lies in its ancient seed bank. It is deemed to be of only local value.
- 8.101 In terms of protected species, three European Protected Species were assessed. These were otters, water vole and bats.
- 8.102 There have been signs of otter recorded on and around the site over the past 50 years. There have been several surveys carried out over the past few years. The evidence suggests that use of the majority of the site by otters is very low/absent and restricted at best to commuting, with the possible exception of the Lily Burn.
- 8.103 It is concluded that otters use the River North Esk and its tributaries between Leadburn and Howgate. Otters also use the Fullarton Water, the Redside Burn and Edgelaw Reservoir as well as the Rosslynlee Reservoir and adjacent water bodies to the west and north. Use of the Cauldhall site is very restricted, except for movements in the north-western corner to and from Rosslynlee Reservoir. The Lily Burn appears to be used occasionally but use appears to be intermittent and low.
- 8.104 SNH is satisfied with the level and results of survey work undertaken in respect of otter. It welcomes the proposals to install a culvert (incorporating an otter ledge) under the haul road at this location in order to maintain otter movement/reduce road mortality risk. There can be speed restrictions at this crossing point. The details of the proposed culvert, including design features to accommodate otter movement, are

to be submitted to and agreed to the satisfaction of SEPA and SNH. It is also recommended that further walkover surveys for otter are carried out prior to works commencing, in order to inform potential future mitigation and/or licensing requirements.

- 8.105 With regards to water voles, there is only one record from 1967, and the TWIC database does not hold any records of Water Voles for the site and 5km surrounding buffer zone. There are no known recent records of Water Voles for the site, with the nearest record well outside the dispersal distance of Water Voles and with no hydrological connection.
- 8.106 SNH raised no objections or comments regarding water voles.
- 8.107 With regards to bats, no roosts were found within the site, but there were some within the coinciding 10km grid square. The Lothians Bat Group was approached for records within 5km of the Cauldhall site; no records were available. The TWIC database returned a single unspecified record of bats from the Carnethie Street area in Rosewell.
- 8.108 The field survey found no evidence of roosting bats within the area surveyed but considered that Ankrielaw Farm and the woodland to its south had roost potential. Fairly small numbers of Soprano, Common Pipistrelles and Noctule bat were found commuting and foraging, primarily along roads and tree lines, with a particular association noted with the woodland edge along the northern site boundary.
- 8.109 SNH has accepted the findings, and it supports proposals aimed at offsetting any adverse impacts on the local bat population, as outlined in the ES, including the use of 'bat friendly' lighting at the compound, proposals for riparian planting along the Shiel Burn, and screen planting around the office compound. The proposals also include new/replacement planting in the western section of the Cauldhall site and south of Roslynlee Reservoir which will further benefit bats in the long-term. It is for the planning authority to determine, within the context of its own policies, whether conditions are necessary to secure this mitigation.
- 8.110 With regards to Ankrielaw, SNH recommends that further habitat suitability and activity surveys are carried out here prior to felling and demolition work, in order to identify any roost(s) and inform potential future mitigation and/or licence requirements. Any other areas of woodland earmarked for removal should be assessed for bat roost potential by a suitably qualified ecologist prior to felling.
- 8.111 With regards to Great Crested Newt, no newts were found on site during the surveys undertaken, therefore the effect of the development of the development on this species will be nil.
- 8.112 Due to the lack of suitable wetland habitat within the site only the pond to the southeast of Cauldhall Farm had potential to hold Great Crested

Newts and so a Habitat Suitability Index (HSI) assessment was carried out at this site in September 2012. No great crested newts were found in any of the ponds. Small newt larvae (i.e. palmate or smooth newt larvae) were present in Ponds 5 and 8.

- 8.113 As a precaution, it is however recommended that a further check of standing water on site is undertaken before any work commences given the timing of the targeted Great Crested Newt survey.
- 8.114 SNH notes the negative findings of great crested newt surveys across the application site. However, pond surveys were undertaken outwith the optimal survey time and SNH recommends that further surveys of pond habitats deemed suitable for great crested newts are undertaken at a suitable time of year, prior to works commencing on site.

Cultural Heritage Impacts

- 8.115 There are no listed buildings or inventory sites within or adjacent to the site. The closest asset is identified as St Mary's Chapel, a schedule ancient monument to the south of the site.
- 8.116 The development has the potential to affect the setting of St Mary's Chapel through noise, vibration and visual impacts. Affects such as noise, vibration and dust are likely to be sporadic and will be limited to the working period of the quarry. The final restoration scheme for the development will have a lasting visual impact, changing the profile of the hill to the north of the monument. However, Historic Scotland note that by maintaining the same approximate height and vegetation cover as currently exists, the final restoration scheme will minimise the impact of this change.
- 8.117 The ES predicts an indirect effect of low magnitude resulting in a minor significance of adverse impact, and HS is content to agree with the findings of the assessment.
- 8.118 Historic Scotland agrees that there is no impact on any of the four inventory listed gardens and designed landscapes of Arniston, Dalhousie, Penicuik, and Roslin Glen.
- 8.119 In terms of archaeology, the area of the proposed development contains a number of archaeological remains and the nature of the development is such that any remains present will be removed. Accordingly the area is regarded as having a good potential for archaeological remains to be present.
- 8.120 Therefore, a programme of works (evaluation) will be required to determine whether the development will disturb any buried archaeological deposits. If deposits are identified there may be a requirement for further work or mitigation.
- 8.121 The area to be investigated should be no less than 8% of the total site area. Including areas of topsoil/subsoil storage and water treatment

areas. Areas that have been previously quarried should be excluded from evaluation as any archaeological remains once present will have been removed. No development shall take place on the proposed site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority

Traffic Impacts

- 8.122 The traffic impact of the development has to be assessed by both the Council and also by Transport Scotland. There is no objection in principle from either of those roads authorities.
- 8.123 In the preparation of the application, the applicant looked into the possibility of utilising both road and rail transport. The road option would continue to use the existing haul route and site access for the Shewington/ Newbigging Site. The rail option would be via the construction of an overland conveyor linking the site with the new Borders Railway Line to the south of Newtongrange.
- 8.124 The assessment of the rail option concluded that it is not feasible at this time for the reasons set out in the ES (the Rail Transport Feasibility Study). It was clear that, whilst the transportation of coal from the Cauldhall Surface Mine to market via the new Borders rail line is a good option in theory, it could not be delivered in practice. There are a number of barriers to the delivery of each of the three key components of a rail transport scheme: the overland conveyor system; the coal loading depot; and access to the new rail line.
- 8.125 The spare capacity on the rail network would only permit 11,000 tonnes of coal to be transported weekly, and Cauldhall is based upon a weekly output of 20,000 tonnes. This could extend the duration of the operation by 82% (from 10 to 18 years). It was therefore concluded that to transport coal from the Cauldhall Surface Mine to market via the new Borders rail line was not a feasible option.
- 8.126 The ES therefore focused on the assessment of the traffic and transportation impacts associated with the dispatch of minerals from the site by road.
- 8.127 With regards to number of vehicle movements, this has been predicted based upon a total mineral extraction tonnage (coal and fireclay) of 10.1 million tonnes over a period of 10 years; being despatch over 5.5 days per week; with a vehicle payload of 29 tonnes; and a 264 day working year. This gives a figure of an average of 264 lorry movements each day, around 22 movements per hour (i.e. 11 empty lorries arriving and 11 loaded lorries departing).

- 8.128 The Newbigging proposal (02/00614/FUL) advised that with an average payload of 25 tonnes, working was expected to generate 6 vehicle movements per hour (3 in and 3 out).
- 8.129 The capacity of the A6094 has been assessed by the applicant, and it was concluded that it has substantial additional capacity to accommodate the daily development traffic pattern.
- 8.130 A number of different access options were considered, these were:
- (i) Continued use of the existing Newbigging/ Shewington access;
 - (ii) Use of the unclassified road U72 which joins the A6094 south of the Newbigging/ Shewington access;
 - (iii) Direct access from the A6094 between the Newbigging/ Shewington access and the B6372 junction to the south; and
 - (iv) Access from the B6372 to the south of the site.
- 8.131 The assessment of these options led to the conclusion that the continued use of the existing Newbigging/ Shewington access was the best solution to providing access to the proposed Cauldhall Surface Mine. This option is known to work well, having operated from 2004 to 2011. It is concluded by the Council's transport officers to be the best of four options.
- 8.132 Coal haulage vehicles servicing the site will travel to and from the north on the A6094 to the roundabout with the B6392 (Bonnyrigg bypass) then continue along the B6392 to the A7 and then northwards to the A720 Edinburgh City Bypass and beyond. This route reflects the approved haulage route for the former Newbigging/Shewington site.
- 8.133 This is agreed in principle, and will be subject to certain improvements being sought to road geometry and sight lines along the A6094 including improvements at the Gourlaw crossroads, and details of an improved site access layout. It had been requested that the developer be required to install two raised zebra crossings outside St. Matthews Primary School. On further assessment it was deemed that it would not be appropriate to seek that particular contribution as it was considered it went beyond the tests set out for conditions in Scottish Government Circular 4/1998.
- 8.134 With regards to the closure during operations of the unclassified U72 road, linking the A6094 at Rosslynlee Fishery to the B6372 at Mount Lothian, this is acceptable in principle. There is a proposal being made by the developer to remove this road completely, and there will be an opportunity to consider this fully over the duration of operations. It will however be required for this application that this road is to be restored. A further application may be made to amend any condition in order to delete the need to restore this road. If the road is to be reintroduced then it will not be able to follow its original alignment. This is due to the high landform that would be created south of the Ankielaw area. This landform also includes upland peat habitats which must be avoided.

The road will therefore be lengthier and will not be as beneficial in providing easier access to Mount Lothian. A further potential option is for it to become a no through road providing farm access.

- 8.135 The developer shall be required to enter into a legal agreement with the Council to cover any additional road maintenance costs which would arise as a result of the additional volumes of HGV traffic on the proposed haul route.
- 8.136 The proposed coal haulage route has sufficient capacity to accommodate the traffic from the proposed development. Background traffic flows are light and once in busier parts of the network, the coal traffic will form a small percentage of background traffic within the limits of daily variation. Subject to the improvements to the access and to some local road geometry issues, there are no objections on traffic matters.

Noise, Dust, Vibration and Residential Amenity

- 8.137 The principal impacts upon neighbouring residential occupants will be vehicle noise, plant noise, blasting, and air quality. Also an important issue to consider is 24 hour working and the associated potential noise and light pollution.
- 8.138 The applicant has proposed to operate the site around the clock. Daytime operating limits would apply to 0700 to 1900. The more sensitive periods would be sensitive and would have individual operational noise limits. These sensitive time periods are split into dawn (0600-0700, evening (1900-2200), and night-time (2200-0600).
- 8.139 Coaling activities will be limited to the daytime and no coal excavation, cleaning, transport or processing of coal or fireclay will take place in the dawn, evening or at night.
- 8.140 Blasting of rock strata that overlay coal seams will not take place during the dawn or evening periods or at night.
- 8.141 Dawn, evening, and night-time operations will be restricted to overburden removal and placement, either below ground or behind the outer face of the main overburden storage area. Moving overburden which overlies the coal seams during the dawn, evening and night-time periods significantly improves the efficiency of the mining operation, reduces the total working life of the site, and results in greater employment numbers. During these periods, overburden extraction will be kept at lower levels within the void wherever possible, and behind working faces of at least 7m in height in order to maximise the barrier attenuation provided by the working face. Therefore there will be no direct line of sight from principal moving equipment to any nearby noise receptors during the dawn, evening or night-time periods.
- 8.142 Blasting is required to fragment the rock in advance of excavation to provide economic working conditions. Blasting causes stress waves

through the ground. Knowledge of the factors influencing ground vibration (blast type and design, site geology and receiving structures), the magnitude and significance of these waves can be accurately predicted at any location. Ground vibration is calculated in terms of 'peak particle velocity' (PPV), and is measured in millimetres per second (mms). Detailed research has determined that vibration levels well in excess of 50 mms are necessary to cause structural damage to residential type properties. For human perception, government advice is that levels should be set in the range of 6-12 mms.

- 8.143 Pressure waves are also created in the air over the site, and this is termed 'air overpressure'. Air overpressure levels may be significantly influenced by atmospheric conditions.
- 8.144 The Environmental Statement states the blast vibration will have a maximum PPV for daytime blasting of 6mm/sec at a 95% confidence limit, with no individual blast exceeding 12 mm/s. This is consistent with advice contained in PAN 50 Annex D. A programme of monitoring is proposed.
- 8.145 A condition would be appropriate requiring a PPV of no more than 6mm/sec in 95% of instances with no individual blast exceeding 12 mm/s (these figures being measured at the nearest sensitive property). The applicants would need to adjust the maximum instantaneous charge weights used for blasting to meet this limit in accordance with the distance to the nearest properties.
- 8.146 With regard to air overpressure levels in order to minimise alarm and complaint, it is recommended that the developer adopts good practice and submits proposals for controlling air overpressure.
- 8.147 The noise assessment included baseline noise monitoring at eight noise sensitive locations around the site, at locations agreed with the Council at the scoping stage.
- 8.148 Appointed acoustic consultants undertook background noise measurements at the identified noise-sensitive receptor assessment locations. These measurements were unsupervised and certain data was excluded on the basis of meteorological records of adverse weather conditions.
- 8.149 Computerised noise modelling software was then used to calculate noise levels generated by the development, taking into account mitigation measures incorporated into the site design in order to minimise noise. The noise levels have then been compared with noise limits and standards set out in relevant planning policies and British Standards, notably Planning Advice Note (PAN) 50 Annex A: The Control of Noise at Surface Mineral Workings'.

- 8.150 The outcome of the 'magnitude and significance' of impact assessment undertaken by Hepworth Acoustics is that the impact of the worst case noise predictions is 'not significant'.
- 8.151 Para 24 of PAN 50 Annex A states 'this annex recommends a procedure for the setting of limits, but recognises that each case should be treated on its merits, having regard to the particular circumstances of the potential site and its surrounding area.'
- 8.152 For "exceptionally quiet rural areas" a daytime limit of 45dB or $L_{90} + 10$ dB(A) is recommended, whichever is higher. When considering "night-time working", Planning Authorities and operators are directed to "have particular regard to the needs of local people and discussion with local Environmental Health Officers (EHOs) as to whether the levels set in PAN50 (para 33) are reasonable." It emphasises again that "this may be a particular issue in quieter rural areas.
- 8.153 Examples of noise levels are as follows: Boeing 737 or DC-9 aircraft at one nautical mile (90db); Passenger car at 65 mph at 7.5 metres (77 dB); busy highway at 50 ft from pavement edge at 10 a.m. (76 dB); Living room music (76 dB); radio or TV-audio, vacuum cleaner (70 dB); office (60 dB); Quiet suburb or conversation at home (50 dB); bird calls (44 dB); Quiet rural area (30 dB); rustling leaves or whispering (20 dB). If the quiet rural area was indexed as being level 1, then a vacuum cleaner would be 16 times as loud, and bird calls would be around 3 times as loud.
- 8.154 The "World Health Organisation (WHO) Night Noise Guidelines for Europe, 2009" gives more recent guidance regarding noise and sleep disturbance, than the PAN, which dates from 1996. The WHO guidance is relevant to decisions in relation to the protection of length of sleep periods and night noise levels. Regarding length of sleep period - it advises that 8 hours is necessary to protect 50% and 10 hours to protect 80%, of the population. The recommended night noise guideline level is 40 dB LAeq (external freefield).
- 8.155 The daytime LA₉₀'s presented in the noise assessment are at or below 35 dB for four of the sites (Mount Lothian, Fullarton, Cauldhall Farm and Edgelaw Farm), which is in accordance with PAN 50, this is classed as an 'exceptionally quiet rural area'. Accordingly, it is considered that the daytime noise limits at these sites should be 45 rather than the 55 dB LAeq (1 hr) proposed. The averaged neighbouring noise-sensitive night-time LA₉₀'s range from 22-30 dB, which is again significantly lower than the national average of 35 dB(A). Within the background noise data there are nights when the background noise appears to under-range at 19/20 dB(A) for most of the night. The night-time operation noise limit of 42 dB(A) measured at the receptor (equivalent to the noise level experienced within a library) recommended in the assessment is therefore up to 23 dB(A) above the existing background noise levels, and is considered to be too high.

- 8.156 In addition to this there are some concerns relating to some of the measurement data, in particular at Upper Firth. There are significant variations in recorded results for adjacent 15 min time periods, some LA₉₀ data appears to arise from under-range measurements, and a significant number of periods have been excluded from the calculation/assessment process due to unsuitable weather conditions. The consultants for the applicant were contacted by Environmental Health to discuss this and comment, however, as the survey was entirely unsupervised they could not comment further. However, the consultants subsequently provided their measurement raw data in order to allow a more detailed scrutiny prior to the final submission of this report. Concerns remain about some of these measurements which are not considered to be typical or representative. This is particularly the case in relation to decisions aimed at protecting the most noise-sensitive periods. For this reason concerns remain about the proposed night time operations and conditions are recommended to protect neighbouring noise sensitive premises.
- 8.157 An issue that has been raised by objectors is that the SPP at para 244 advises; *“Surface coal extraction is unlikely to be environmentally acceptable if... it will result in a period of disturbance to communities for more than 10 years,”* Clearly there have already been coal extractions at Newbigging and Shewington since 2004. Coal extraction has ceased for around 24 months at the time of this application being presented to the Committee, and Cauldhall would not likely commence until well into 2014 if permission is granted. Therefore there will have been a break in activities of around 3 years. Furthermore, the statement above talks about “disturbance to communities”. It is considered that the Shewington and Newbigging sites generally operated without disturbance, not only to communities, but also to more immediate individual properties. The distances to the nearest communities are well over the 500 metres suggested in the SPP. The historic provision of the Rosewell bypass and the more recent South Bonnyrigg bypass has ensured that traffic on haul routes avoids the main communities between the site and the national road network.
- 8.158 In conclusion, whilst some concerns remain regarding certain noise data within the assessment, there is sufficient evidence to support the development’s ability to be operated within acceptable limits subject to the application of conditions on the night time operation of the site. The applicant has had sight of these conditions and is of the opinion that it can work within these restrictions, and is prepared to accept them.

Air Quality and Health Issues

- 8.159 The main potential air quality issue is the generation of dust. This is an issue that has been raised by objectors, concerned about the possible adverse impact of the operation on the health of local residents.

- 8.160 The method of operation involves large scale excavation and handling of potentially dry, friable materials susceptible to dust generation. The dust generation potential is primarily associated with the transportation of overburden which involves the trafficking along unsurfaced haul roads. Further dust generation potential arises from wind blowing across bare ground or soil and overburden mounds which do not yet have vegetation cover, particularly during dry weather conditions. The extent of dust dispersal depends on a range of factors including particle size, wind speed, and dryness of weather conditions. The greatest proportion of dust, comprising large dust particles, greater than 30µm (thousandths of a millimetre) will largely be deposited within 100 metres of the source. Larger sized mineral particles in excess of 75µm are not readily transported in the air and, if disturbed normally fall under gravity within several metres of the source. Smaller dust particles in the range of 10 to 30 µm are likely to travel further afield although, as a result of dilution effects, the extent of dust deposition at distances beyond 250 metres from the source is likely to be low. Smaller particles (less than 10µm) make up a small proportion of the dust emitted from most mineral workings, and are only deposited slowly, but may travel in excess of 1 kilometre or more. These particles are referred to as PM 10 and PM 2.5.
- 8.161 At Cauldhall the potential for dust effects is low due to the small number of residential properties and businesses close to the operational area. There are less than 10 receptive groups within 500 metres of the site boundary, and the effect on each receptor group has been considered in the environmental assessment.
- 8.162 There are no agreed standards or guidelines for the nuisance impact of dust. (A criterion of 200 milligrams per square metre per day has been used as a threshold for nuisance, but it is not an accepted UK standard). As a result, Annex B of PAN50 places emphasis on the control of dust via the adoption and promotion of best practices.
- 8.163 Two main types of dust mitigation measures have been incorporated into the proposals. The first are avoidance measures where site operations are located in positions that are either beyond the predicted zone of dust influence or where they are protected from the factors that would lead to dust becoming airborne. The second consists of reduction measures which include systems to reduce the amount of dust generated at source (for example watering of haul roads).
- 8.164 Air Quality Technical Guidance LAQM.TG(09) requires local authorities to consider the level of PM 10 particulates near to quarry activities. For the estimated background PM10 levels at this location, the relevant exposure of any property within 200m of the quarry requires to be assessed. PAN 50 Annex B advises that intermediate sized particles are likely to travel up to 250 to 500m while smaller particles, which make up a small proportion of the dust emitted from most workings, can travel up to 1km from sources. From information available and

taking into account proposals to demolish Ankrielaw Farmhouse the closest property is approximately 230 to 240m to the site boundary.

- 8.165 The EIA has however predicted 'slight adverse' impact during various phases of the development - both in terms of PM10 and PM2.5 levels. At Cauldhall, the potential for dust effects is low due to the small number of potential sensitive locations in proximity to the site, and their distance from the operational area. There are fewer than 10 receptive groups within 500 metres of the site boundary, and the effect on each receptor group has been considered in the assessment.
- 8.166 It is recommended that appropriate conditions be attached to control emissions to the atmosphere and to demonstrate to the satisfaction of the Planning Authority that relevant air quality objectives are not being compromised. Routine monitoring of PM10 and PM2.5 concentrations will be undertaken to ensure compliance with the air quality objectives.

Soil and Geology

- 8.167 There are no significant soil issues on site. None of the land to be excavated is prime agricultural land and none of the soils are sensitive peatland habitats. There are however significant peat deposits on site and a Peat Management Plan has been prepared and submitted.
- 8.168 Three main areas of peat exceeding 0.5 metres depth occurred on the site. Peat probing was carried out on a grid basis using a Van Walt Extendable Utility Probe which when fully extended was capable of measuring depths of up to 8.0m. Peat samples were also taken on 17th September 2012 from varying depths in Peat Area 3 (the deepest of the peat areas) in the eastern part of the site. Peat depths ranged from nil to 7.3m across the site.
- 8.169 Peat Area 1 (located in the centre of the site to the east of the unclassified road running through the site) covers a total area of 16.1ha, with approximately 12.8ha being classed as peat which is deeper than 0.5m but generally less than 1m deep, except in its south-western corner and the central area where peat depths increase locally up to 4.1m and 3.2m respectively. The whole of Area 1 lies within the site excavation limit.
- 8.170 Area 2 (north of Cauldhall Farm) covers a total area of 9.1ha which includes a peat area of approximately 3.3 ha in the central section which ranges from 0.5m depth to 1.5m deep. The whole of Area 2 lies within the site excavation limit.
- 8.171 Area 3 (west of Edgelaw Farm) comprises an area of peat approximately 20.2ha in total within the site boundary and includes the main basin peat which is commonly over 2m deep, and up to 7.3m in depth. It extends eastwards to include the woodland area peat ; and southwards to include the continuation of the burn valley, with peat up to 5.4m deep, eventually becoming less than 1m deep some 50m

beyond the site boundary. The laboratory analysis of the peat at a range of depths confirmed very high organic contents of between 64% to 78%.

- 8.172 A total of 13 ha of Area 3 lies within the site excavation limit and will be stripped during the site operations, and will be recovered for use in restoration. Of the 13ha, 11.5ha is classed as peat, with the remainder being organo-mineral soil. The southern 7.2ha of Area 3 is classed as peat, which will be protected during working.
- 8.173 The restoration works propose two large peatland areas of 15.4ha and 10.9ha. Both areas will be wet heath areas formed from the translocated peat turves over a deep peat substrate. They have been specifically designed with a topography that will ensure they maintain a high water table, and including a series of small wetlands. This will be of benefit not just as a habitat but for a wide range of species.
- 8.174 After initially raising concerns about the ability to reuse such large amounts of peat in the restoration of the site, SEPA is in agreement that in this case, on balance, it is more appropriate to minimise the above ground storage of peat and re-instate it quickly, albeit to a slightly deeper depth than it would generally recommend. The disposal of peat at depths of greater than 2 metres is normally considered to be excessive and SEPA's original concerns were regarding the proposals to deposit at 2.5 metre depth during restoration. All of the material to be excavated, temporarily stored and/or used for restoration shall be dealt with under the Management of Extractive Waste (Scotland) Regulations 2010 and will therefore be administered by the Council. The applicant and Planning Authority will have to take into account advice provided in SEPA's "*Guidance on the assessment of peat volumes, reuse of excavated peat and minimisation of waste*". SEPA can provide further technical advice regarding the management of peat should this be required.
- 8.175 SNH advises that blanket bog/degraded blanket bog and wet heath are present over the application site. Both wet heath and active blanket bog appear on Annex 1 of the Habitats Directive and, although not formally designated, are of European nature conservation importance. SNH broadly supports the measures for peat protection outlined in the Peat Management Plan. SNH advises that it is important to ensure that proposals for restoration fully support its reinstatement, recovery, and future management. The final Peat Management Plan should be agreed with Midlothian Council prior to the commencement of development, and in consultation with SNH and SEPA and it must include detailed method statements covering the extraction, handling, storage and restoration of peat. The long term hydrological monitoring of the restored peatland will be a key requirement.
- 8.176 The views of both SEPA and SNH are accepted and subject to the management restoration and monitoring of the peat as per the

recommendations of both statutory consultees, no objection is raised with regards to peat and other soils and geology.

Hydrology Impacts and Water Supplies

8.177 The Environmental Statement covered the following issues regarding hydrology;

- Effects on groundwater levels and flow;
- Effects on groundwater quality;
- Effects on surface water quality;
- Effects on groundwater dependent terrestrial ecosystems;
- Effects on geological features; and
- Pollution risk.

8.178 The approach followed during the assessment considered the degree (or the "significance") of the potential impacts upon the geological and hydro-geological characteristics of the site. The significance has been defined taking into account the sensitivity of the receiving environment and the potential magnitude of the impact, based on SNH guidance.

8.179 The aquifers in the area are classified by SEPA in the context of the Water Framework Directive as being at Poor status for both chemistry and groundwater quality.

8.180 Water supply boreholes generally have not been widespread because yields are generally low and water quality poor.

8.181 A network of shallow and deep groundwater monitoring boreholes have been installed across and around the perimeter of the Cauldhall site which have provided baseline data for the impact assessment, and provide opportunities for ongoing groundwater monitoring.

8.182 The assessment has concluded that the groundwater flow direction is predominantly towards the east and north east across the majority of the site. In keeping with the sites topography, the hydraulic gradient of the groundwater level in the bedrock is steepest in the western part of the site, towards King's Seat. The groundwater level in the bedrock aquifer is below the water level in the Rosslynlee Reservoir.

8.183 With regards to water abstraction licences in the area, SEPA holds no records of licenced groundwater abstractions within 3 kilometres of the site. However, Midlothian Council hold records of five private water supplies within 5 kilometres of the centre of the excavation area. The closest of these is Cauldhall Farm which rises within the excavation boundary (south east).

8.184 With regards to drainage of the void, which will naturally fill up with groundwater and run off, this would be pumped from a sump located at a low point, up to settlement lagoons. The estimated zone of influence of 'dewatering' does not extend beyond major faults to the north and

west of the site. In addition, the predicted zone of influence does not extend beneath Drummond Moor Landfill site to the north west of the site. Thus groundwater beneath Drummond Moor Landfill is expected to continue to flow to the north /north west and not towards the Cauldhall site.

- 8.185 Groundwater discharge into the Lily Burn may be reduced in the western part of the watercourse, where the zone of influence extends very close to the watercourse.
- 8.186 Rosslynlee Reservoir does not appear to be in continuity with the bedrock aquifer, and therefore groundwater dewatering impacts on this feature are not anticipated.
- 8.187 With regards to groundwater quality, potential issues arise with the replacement of the overburden, which can lead to pollutants entering the system, especially where sulphur content exceeds 1%. At Cauldhall, detailed geological investigations confirm that the seams to be worked at the site have sulphur content of between 0.6 and 2.4%, and so some backfill at the site has the potential to generate poor quality discharge. Elsewhere, the majority of backfill presents a low risk of generating poor quality groundwater.
- 8.188 In order to protect groundwater from fuels and oils, these tanks will be located in the north west of the site within the coal preparation area. Measures will be put in place in relation to the storage of fuels and oils and for general management and handling procedures.
- 8.189 SEPA has accepted the findings of the ES. It acknowledges that mineral extraction can have significant impacts on the water environment through the dewatering of excavations and pollution. Some of proposed measures relate to works which may be regulated by SEPA, however many of the works will not be regulated and therefore should be covered by condition. In particular the requirement for a full site specific environmental management plan to be submitted.
- 8.190 SEPA also highlights the need for detailed drainage designs for the restored landform to be submitted for approval prior to the commencement of restoration works.
- 8.191 A number of households in the vicinity of Cauldhall Moor are supplied by private water supplies, and express concern regarding the impact of the coal extraction works on these supplies. Details of known private water supplies in the immediate area were provided to Scottish Coal at scoping. The Environmental Statement states local private water supplies may be vulnerable to changes in groundwater levels during the operational period of the development and that an alternative water supply would be provided. Given the proposed time scale of extraction, it is recommended that, should permission be granted, a scheme for protecting private water supplies both in terms of sufficiency and quality shall be submitted to and approved by the Planning Authority.

- 8.192 Consideration should be given to providing a water mains connection to properties which would be adversely affected by coal stripping operations, including Cauldhall Farm to protect the quality and sufficiency of the drinking supply.
- 8.193 With regards to flood risk, it has been adequately demonstrated that there will be no flood risk. There are some minor watercourses within the site, identified in the Flood Risk Assessment. The direct flood risk from these is retained within the burn corridors and is a minor risk. Other sources of flooding have been assessed, including overland flow, groundwater flooding and flooding from artificial drainage systems. None of these risks were significant. The development is assessed as having no detrimental impact on flood levels upstream or downstream of the development. SEPA has accepted the conclusions.

Restoration and After Care

- 8.194 The site will be subject to progressive restoration, and as is common to other surface mine developments, more detailed plans for the restoration of individual phases will be submitted to the Planning Authority for approval as operations progress.
- 8.195 The applicant proposes to establish a Technical Working Group (TWG) to oversee the delivery of the agreed restoration plan and subsequent monitoring and management phase during the statutory 5 year aftercare period. It is envisaged that the TWG will be made up of representatives of the coal company, landowners, Planning Authority, SNH and SEPA. The TWG would seek advice from specialist consultants where necessary, at the cost to the applicant.
- 8.196 The proposals for the restored site incorporate nine principal components.
- (i) Upland rough grazing in the centre;
 - (ii) Agricultural grassland to the north as well as the east and west flanks, and reintroducing the existing field pattern with a new hedgerow field pattern;
 - (iii) A wet heath habitat to the south central and south eastern areas with shallow water features;
 - (iv) Retained bog habitat;
 - (v) Retained marshy grassland;
 - (vi) A valley feature running west to east with native broadleaved woodland blocks;
 - (vii) A wetland with species rich fen;
 - (viii) Replacement woodland to the west using Scots pine and native broadleaved trees; and
 - (ix) An enhanced 50 metre wide Lily Burn corridor to the south and eastern edges, incorporating ponds, scrapes and broadleaved woodland planting.

- 8.197 As detailed earlier in this report, both SNH and the Council will be seeking more detailed restoration plans, to incorporate a more naturalised landscape where possible, and these details will be incorporated into the final restoration plans to be agreed by condition. The applicant has agreed to amend the details so that a more intricately detailed landform is carried out, (including dry stone walling), than as demonstrated on the current restoration masterplan. This has to be assessed and quantified prior to any restoration guarantee being finalised as the cost of this more intricate landform will potentially have significant cost implications.
- 8.198 Aftercare will be in force for a period of at least 5 years from the completion of the final restoration.
- 8.199 The liquidation of Scottish Resources Group (incorporating Scottish Coal) and ATH Resources (incorporating Aardvark TMC) has exposed all opencast coal sites, to widespread scrutiny concerning the ability of financial bonds to secure site restoration.
- 8.200 The draft Scottish Government SPP (July 2013) reflects the importance of this matter at paragraph 177, where it states;
- 8.201 *“Proposals should ensure that restoration and aftercare will be to a high standard and undertaken at the earliest opportunity. Consents should be associated with an independent guarantee through a vehicle such as an escrow account to manage the operator’s exposure to costs; recognise landowner liability; ensure obligations transfer to successors in title; and ensure that site restoration and aftercare is fully funded. In some cases an operator may satisfactorily demonstrate their programme of restoration is sufficient, including the necessary refinancing, phasing and aftercare of sites”.*
- 8.202 It is essential that planning authorities have in place a means of assurance to ensure the proper restoration and aftercare of a site. Coal companies are likely to find it difficult to obtain bonds (assuming they are available) so alternatives have to be examined. It is also clear that there is no one single answer or vehicle that can be used to provide the assurance needed so a ‘menu’ of preferred options may be the best way forward.
- 8.203 A restoration bonds working group (RBWG) chaired by a Scottish Government representative as part of its Coal Task Force, has been in place since October 2012 working to recommend changes to restoration and aftercare assurances and more effective regulation of planning issues.
- 8.204 This working group has been looking at factors ranging from different financial models to streamlining consents that would present decision-takers in the planning system with options to ensure “appropriate” or “acceptable” restoration and provide the opencast coal industry (as supplier to an electricity market reliant on an energy source mix) with a

future as set out in the Coal Industry Action Plan. Sites that may be disclaimed will also have restoration funding concerns where the situation is less clear but which may be handled within the context of the Scottish Mines Restoration Trust. The RBWG remains focused on the fundamental commitment in land use planning that sustainable financial models to ensure restoration is fully funded should be secured.

8.205 The following commitments have been undertaken by the working group:

- Operate more collectively on opencast coal to share best practice and where possible agree common standards;
- Move to a menu of potential assurance options with the knowledge that obtaining bonds will be a challenge so alternatives will need to be put in place. These will include the Parent Company Guarantee (PCG); a pay-as-you-go scheme (escrow account);
- The use of a more standardised form of Section 75 legal agreement for opencast in terms of the main clauses;
- Work with Scottish Government to ensure that the finalised Scottish Planning Policy will reflect these matters; and
- Move to a national way of providing and governing community benefit for opencast.

8.206 The first step in securing a successful guarantee system for the restoration of the site is to understand accurately what the restoration costs will be. This requires the final detailed restoration plans to be agreed and quantified. In the case of Cauldhall, as more detailed restoration levels and features are to be required, this has to be fully quantified before the legal agreements and restoration guarantees are concluded.

8.207 Once the cost has been established and agreed, the mechanism has to be agreed for securing the restoration. A site could terminate for any number of reasons. Such events cannot be forecast and are a possibility at any stage of the development. If such an event were to occur then it is vital that the site is subsequently restored as soon as possible, and in order for this to happen there requires to be funds in place to carry out the necessary works to restore the site from whichever stage it has reached.

8.208 The applicant (Hargreaves) acknowledges that prior to implementing the Planning Permission it will require to enter into a planning agreement in terms of Section 75 of the Act containing detailed provisions and mechanisms to ensure that the site is properly restored. This Restoration Guarantee Obligation will ensure that there is adequate Restoration Provision at all times.

8.209 The means that are presently proposed by the developer are still open for further consideration, and these may have to be altered to take

account of the recommendations of the ongoing work by the Scottish Government Restoration Working Group. The means of providing the restoration guarantee will have to be concluded prior to the release of any planning permission.

- 8.210 A likely option would incorporate an initial single monetary payment to cover the start up phase of the development, and thereafter either an ongoing financial guarantee or an 'ESCROW' account which will accrue from money generated by sale of coal from the site. [An ESCROW is a bond or fund held in trust in the control of a third party (i.e. the Council) as security and taking effect only when a specified condition has been fulfilled (i.e. restoration)]. If the financial bank guarantee option is taken, this will not be in the form of the traditional bond guarantee. These were often laden with conditions that made any claim against them a difficult task. The proposed financial guarantee would be unconditional and could be claimed in the event of a company failure in respect of the site operator in order to cover full cost of restoration.
- 8.211 It will be critical to ensure that there are accurate assessments of the cost of restoration at each stage of the development, and that these assessments are regularly updated and the payments adjusted as necessary.
- 8.212 As a result of the liquidation of Scottish Coal there remains an outstanding restoration task at the adjacent Shewington Surface Mine which comprises a small amount of overburden replacement, soils replacement, cultivation and seeding, fencing, drainage and formation of a new access road to the Shewington Farm and Cottages.
- 8.213 The applicant recognises the importance of ensuring the satisfactory completion of restoration works at the Shewington site and has given our understanding to complete these works within 12 months of commencing work at Cauldhall Moor. Notwithstanding that commitment, the applicant has instructed a local farm contractor (in consultation with the landowners) to commence the cultivation and seeding of 9ha of land which will see further areas of the site restored before the end of this autumn, bring the restoration programme there to around 85% completed..
- 8.214 As the landowners are common between the two sites, there is an additional obligation to resolve restoration issues at Shewington prior to working Cauldhall. Landowners must be aware that ultimate liability may rest with them if enforcement action ever becomes necessary in the case of incomplete or inadequate restoration.
- 8.215 The proposed form of restoration guarantee at the time of this report is for initial security bonds, in the form of an advanced payment to cover the opening period of the development, to be supplemented and eventually replaced by an ESCROW account fund. This will operate as soon as coal extraction commences, and a fixed amount, to be determined through legal agreement, would be paid into the account.

This would continue until coal extraction was complete. It is necessary to know the cost of restoration at each point during the working of the scheme. As the applicant proposes progressive restoration, the level of funds required to complete restoration should reach a point where it remains relatively level rather than continuing to increase, however this requires regular monitoring to assess the restoration cost at any one time from start to finish.

- 8.216 Hargreaves, in its statement to the planning authority dated 28 August 2013 advised that it will work closely with Midlothian Council and other stakeholders to ensure that a satisfactory restoration guarantee mechanism is put in place prior to any work commencing at the site. This will take account of wider work being undertaken by the Restoration Bond Working Group, on behalf of the Scottish Government, and can be secured through a S75 Legal Agreement should planning permission be granted. Hargreaves would accept a restriction in the S75 Agreement that prevents the commencement of development until a satisfactory restoration guarantee mechanism has been agreed and implemented.

Local Community Funds

- 8.217 A further commitment of the Scottish Government's Coal Task Force, is to move to a national way of providing and governing community benefit for opencast. This work is due to be concluded by Spring 2014.
- 8.218 In line with Circular 3/2012 (Planning Obligations and Good Neighbour Agreements) the offer of community payments should play no part in the determination of the planning application unless it meets the tests in the Circular.
- 8.219 The community benefit levy, as agreed, would need to be placed into a new trust fund with appropriate independent governance and accountability, the details of which would be established by the applicants and the Council, in consultation with local communities, and secured through legal agreement.

Direct impact upon Ankrielaw Farm

- 8.220 The proposed open cast coal site requires the demolition of a dwellinghouse and associated farm buildings at Ankrielaw farm in the southern area of the site. The present occupiers are tenants of the farm which is owned by the landowner (Dalmeny Estates) and which is leased to the operator of Fullarton Farm for use by a farm worker. The occupier has resided in this property for over 12 years and has been a worker on the land here for over 23 years.
- 8.221 This loss of the farm property is regrettable, although it is a matter which is for the landowner to resolve. Whilst it is an emotive issue, it is not an unusual one, as many forms of site redevelopment often require the relocation of both businesses and homes. It is often expected that a

satisfactory resolution can be achieved between the tenant and the landowner. Although the Council cannot give assurances on the granting of any planning permission, the policy position of the Authority in respect of replacement farm dwellings should give the landowners and tenants confidence in such proposals as they may pursue.

- 8.222 Concerns have been raised regarding the impact of the development on the adjoining field, adjacent to Rosslynlee Fishery, which is used to stable and breed Shetland ponies. This site is run principally for leisure by the current owners, but with aspirations to run it as a business. Concerns have been expressed about the impact of the development both on the health and well being of the ponies and also on the impacts upon the business and the potential for further enhancement and development of the business. The site was not designated as one of the sensitive receptors for the purpose of the assessment of environmental impacts. The site neither contains a dwellinghouse, nor was it recognised as a business premises. It is not usual for fields of livestock to be deemed as sensitive receptors for these purposes. Had the business been registered as a livery business then it would have been assessed as a sensitive receptor. The applicant has been in discussion with the current site owners to look into solutions to this matter which may result in an alternative site for their business being proposed, or for other agreeable compensatory measures to be carried out on site. This process is ongoing.

Note on Proposed Planning Conditions

- 8.223 For applications of this size and complexity there is invariably a large number of planning conditions required. A draft inventory of these is attached to this report, with a recommendation that they be finalised by the Head of Planning and Development in consultation with the Chair of this Committee.

9 RECOMMENDATION

- 9.1 That planning permission be granted for the reasons set out in paragraph 1.2 of this report, and subject to:
1. The prior agreement (with the local planning authority) of full restoration details, to be submitted by the applicant. The details shall include plans of finished levels, planting, reinstatement of roads and stone walling, phasing of completion and breakdown of the costs of restoration;
 2. Securing of an appropriate bond, or equivalent funding mechanism, to guarantee the restoration and after care of the site;
 3. The establishment of a Technical Working Group to oversee the restoration programme and associated monitoring;
 4. The completion of a legal planning agreement to i) secure Community Benefit contributions; ii) establish a 'Trust' to

distribute the fund and iii) secure developer contributions inter alia towards the maintenance and repair of the local road infrastructure; and

5. The conditions as annexed to this report, subject to finalisation by the Head of Planning and Development in consultation with the Chair of the Committee.

Ian Johnson
Head of Planning and Development

Date: 12 November 2013

Application No:	13/00105/DPP (Available online)
Applicant:	Hargreaves Surface Mining Limited
Agent:	Hargreaves Surface Mining Limited
Validation Date:	07 February 2013
Contact Person:	Kingsley Drinkwater, Senior Planning Officer

Tel No:	0131 271 3315
Background Papers:	Online files of the Midlothian Council website for references 12/00633/SCO, 12/00591/PAC, 13/00105/DPP

SCHEDULE OF CONDITIONS:

INFORMATIVE

All references made to Scottish Coal or to the Scottish Resource Group in the environmental statement, supporting documents and plans shall be deemed to also refer to Hargreaves Surface Mining except in those cases where the reference is historic.

Reason: *In order to take account of the change in the name of the applicant following the liquidation of the original applicant subsequent to the submission of this planning application.*

GENERAL

1. Unless specified otherwise in this schedule of conditions, or in the event that a variation is required by a condition of the permission, or a non-material change has been agreed in writing by the Planning Authority, the operation of the Cauldhall Moor Open Cast Coal Site from start up to completion of restoration shall be implemented in strict accordance with all plans and documents stamped as forming part of this permission, and shall adhere to the methods and recommendations proposed in the Environmental Statement submitted with this planning application.

Reason: *To ensure that the development is carried out in accordance with the approved plans unless otherwise agreed.*

2. There shall be no ground breaking works carried out within the application site until such time as the means by which the funding of the future restoration of the site has been agreed with the Planning Authority, and is guaranteed for the duration of the operation of the site, including any extensions to this planning permission, and is provided at a level of funding which at any time during the operation of the site will enable full restoration and planting to be carried out at that time in accordance with approved restoration and landscaping plans. The means of guarantee shall be legally binding on the applicant and any subsequent operator of the site.

Reason: *In order to ensure that there is a fully guaranteed system of funding the restoration programme in the event that the operator of the site for any reason is unable to complete its restoration obligations for the site.*

3. From the commencement of development until completion of restoration, a copy of this permission, including all documents hereby approved or cited in the following conditions and any other document subsequently approved in accordance with any condition of this

permission shall be kept available for inspection at the developer's Cauldhall Moor site offices during the prescribed working hours.

Reason: *To ensure clarity and certainty for workers and contractors on the conditions and obligations of the consent.*

4. No material other than coal and fireclay shall be exported from the site and no materials shall be imported into the site unless otherwise approved in writing by the Planning Authority and subject to any licensing provisions required by SEPA.

Reason: *To ensure the site is worked in a satisfactory manner and to afford the Planning Authority adequate control over extraction, processes and restoration on the site..*

OPERATIONAL RESTRICTIONS

5. Planning permission is hereby granted for a period of twelve years and six months commencing with the first ground breaking operations on site. Coal extraction shall take place for no longer than ten years, and it shall be a single continuous operation. Coal extraction shall commence no later than six months after development has commenced. Coal extraction shall cease no later than 126 months after the development has commenced, On completion of coal extraction there shall be a further 24 months permitted to complete final site restoration.

Reason: *In order to ensure that the operation is carried out within the approved timescales and in accordance with the details proposed by the applicant and assessed by the Planning Authority.*

6. Phasing shall be carried out in the order and to the timescales presented on figures 3.1 to 3.9 of the Environmental Statement and any significant deviation from the proposed timing of any one stage by greater than one month shall be notified to the Planning Authority in advance of the time limit being breached and the overall coal extraction shall be completed within 120 months of commencement, unless otherwise agreed in writing by the Planning Authority. Any extension of time of greater than 3 months shall require the submission of a further planning application to increase the period permitted for excavation.

Reason: *In order to ensure that the operation is carried out within the approved timescales and to permit any changes to this to be assessed by the Planning Authority.*

7. With the exception of pumping, essential site maintenance and the maintenance of plant and machinery, there shall be no operations carried out nor any movement of vehicles within the site between 13:00 hrs on any Saturday until 07:00 hrs on the following Monday.

Reason: *To ensure that the Planning Authority retains effective control of the development and in the interests of protecting local amenity.*

8. Unless otherwise agreed in writing by the Planning Authority, no coal extraction, coal transporting or coal preparation operations shall take place outwith the following hours of operation:
 - a. 07:00 hrs to 19:00 hrs Mondays to Fridays;
 - b. 07:00 hrs to 13:00 hrs on Saturdays; and
 - c. At no time on Sundays and Bank Holidays.

Reason: *To ensure that the Planning Authority retains effective control of the development and in the interests of protecting local amenity.*

9. Unless otherwise agreed in writing by the Planning Authority, operations between 19:00 and 07:00 hrs Mondays to Saturdays, will be confined to a reduced plant complement moving overburden below ground level or behind baffle mounds to prepare the next coal seam for recovery the following morning, and the noise levels within this time period shall not exceed those limits set out in condition 19.

Reason: *To ensure that the Planning Authority retains effective control of the development and in the interests of protecting local amenity.*

TRAFFIC AND ACCESS

10. Notwithstanding the details in Figure 15.2 of the Environmental Statement, the proposed alterations to the site access shall be submitted to the Planning Authority for approval in writing prior to any work commencing on site, and the access improvements shall be implemented subject to approved Road Construction Consent drawings prior to the export of any coal or fireclay from the site.

Reason: *In order that the Planning Authority may consider the access arrangements in detail.*

11. Prior to commencement of development, detailed plans shall be submitted for the carriageway and visibility improvements required to the A6094 between the site access and the Rosewell bypass section of the road, including specifically the visibility splays at the Gourlaw crossroads and the alignment of the A6094 at the corner near to the existing Shewington Farm access. These improvements shall be implemented subject to approved Road Construction Consent drawings prior to the export of any coal or fireclay from the site.

Reason: *In order that the Planning Authority may consider the proposed road improvements in detail.*

12. The site shall be accessed by the upgraded existing access only and there shall be no other access to the site for operational vehicles or staff vehicles associated with the open cast coal site.

Reason: *To ensure that the impact of traffic to the site remains as proposed by the applicant and as assessed by the Planning Authority.*

13. All vehicles taking materials from the site shall arrive and depart the approved site access via the haul route shown on figure 15.3 of the Environmental Statement, to and from a point on the A7/A720 junction at Sheriffhall only and via no other route.

Reason: *To ensure that the impact of traffic to the site remains as proposed by the applicant and as assessed by the Planning Authority.*

14. The site operator shall maintain a log of heavy goods vehicle trips into and out of the site and this shall be made available to the Planning Authority on a three monthly basis.

Reason: *To enable the Planning Authority to monitor the frequency of vehicle movements to and from the site.*

15. Effective wheel cleaning equipment shall be maintained at the site access and shall be used by all road going heavy goods vehicles leaving the site.

Reason: *In the interests of road safety and protection of local amenity.*

16. The operator shall at all times be responsible for the removal of mud or other materials deposited on the public road by vehicles entering or leaving the site and road cleaning shall be carried out regularly to ensure that any residual site material that may be deposited on the A6094 is removed as quickly as possible.

Reason: *In the interests of road safety and protection of local amenity.*

17. In order to prevent spillage and windblown dust all laden lorries leaving the site shall be sheeted before entering the public roads.

Reason: *In the interests of road safety and protection of local amenity.*

NOISE LEVELS

18. Development shall not begin until a scheme for protecting neighbouring noise-sensitive receptors (identified in Planning Statement figure 1.6) from noise from all operations has been submitted to and approved in writing by Midlothian Council Planning Authority. Details to be submitted shall include:

- i. Noise mitigation measures;

- ii. Noise monitoring, record keeping and reporting;
- iii. Noise management processes and planning; and
- iv. Neighbourhood communication and information arrangements.

Reason: *To minimise noise nuisance resulting from the operations and to enable the Council as Planning Authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.*

19. At all times, and unless otherwise agreed in writing by the Planning Authority, the contribution to the level of noise at any noise-sensitive receptor, attributable to the Cauldhall Surface Mine operations, shall not exceed the limits given below:

- i. Routine operational works
- ii. Daytime - 07:00 - 19:00 hrs: Sites 3,4,5 & 6 - 45 dB; Sites 1,2, 7 & 8) - 55 dB & investigation level of 50 dB.
- iii. Night-time operations (19:00 – 07:00 hrs) shall only take place with the prior written permission of the Planning Authority. Such a request will be approved where it can be demonstrated to the satisfaction of the Planning Authority that operations within a particular phase can comply with noise limits of both 40 dB LAeq(1hr) and 42 dB LAm_{ax}.
- iv. Temporary works (soil stripping and bund formation):
- v. No soil stripping, bund formation and temporary surface works eg lagoon construction shall be carried out between 19:00 and 08:00 hours.
- vi. Daytime (07:00-19:00 hrs) temporary work shall not exceed 70 dB LAeq(1hr).

[All noise limits relate to dB re 20 microPascals, using the LAeq(1hr) measurement parameter]

Reason: *To minimise noise nuisance resulting from the operations and to enable the Council as Planning Authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.*

20. All vehicles, plant and machinery operating on site shall;

- i. Be fitted with effective silencers to be used and maintained in accordance with manufacturers' instructions, and save for the purpose of maintenance, no machinery shall be operated with covers open or removed; and
- ii. Be fitted with non-audible vehicle reversing devices where feasible, and the use of audible devices shall only be permitted where agreed with the Council, and only where the device is designed to minimise disturbance at noise sensitive premises in the vicinity.

All to the satisfaction of the Council as Planning Authority.

Reason: *In the interests of protecting local amenity.*

BLASTING/VIBRATION

21. The levels of ground vibration for daytime blasting shall not exceed a peak particle velocity of 6mm/sec at a 95% confidence limit, with no individual blast exceeding 12 mm/s as measured at nearby sensitive buildings. The measurement to be the maximum of 3 mutually perpendicular directions taken at the ground surface at any vibration sensitive building.

Reason: *In the interests of protecting local amenity.*

22. Good practice shall be adopted in relation to controlling air overpressure in order to minimise alarm and complaint.

Reason: *In the interests of protecting local amenity.*

23. Blasting operations will only take place between 10:00 – 12:00 hrs and 14:00 – 16:00 hrs Mondays to Fridays only, or other hours agreed in writing with the Planning Authority, and will be carried out in accordance with the best possible practice at the time.

Reason: *In the interests of protecting local amenity.*

24. Prior to commencing blasting, a programme for vibration and air overpressure monitoring and mitigation shall be agreed with the Planning Authority, and thereafter shall abide by the terms of the approved programme, and copies of monitoring results shall be provided to the Planning Authority on request.

Reason: *In order that the Planning Authority may monitor blasting activities and take further mitigating action if necessary.*

AIR QUALITY/POLLUTION

25. Prior to the commencement of the development hereby approved a detailed scheme of monitoring of particulate matter to be undertaken by the applicant, at a frequency and at locations agreed by the Planning Authority, to demonstrate that relevant air quality objectives are being complied with.

Reason: *To minimise dust nuisance resulting from the operations and to enable the Council as Planning Authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.*

26. Suitable measures, to the satisfaction of the Planning Authority, shall be put in place to prevent wind blown particulates from operational phases affecting any nearby sensitive premises and the overall dust emissions from the site shall be so controlled as to ensure that no dust nuisance is caused.

Reason: *To minimise dust nuisance resulting from the operations and to enable the Council as Planning Authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.*

27. At least two months prior to the commencement of any works on site a detailed Environmental Management Plan (EMP) is to be submitted to and approved in writing by the Planning Authority in consultation with SEPA. The EMP shall incorporate detailed pollution prevention and mitigation measures for all construction elements potentially capable of giving rise to pollution during all phases of construction, operation and re-instatement.

Reason: *To prevent pollution of the local environment and to minimize and prevent waste on site.*

HYDROLOGY/WATER QUALITY

28. A scheme for protecting private water supply both in terms of sufficiency and quality to be submitted to and approved in writing by the Planning Authority before any work commences on site.

Reason: *To provide the Planning Authority with assurance that measures are in place to ensure the continuity of a satisfactory supply of potable water to local residents and businesses.*

29. In the event that any property in the area suffers from an interruption to its water supply or there are qualitative or quantitative problems with the supply attributable to operations at the Cauldhall Moor surface Mine then the applicant or site operator shall make good that water supply by whatever means are agreeable to Council's Environmental Health officer, and those details shall be agreed in writing with the Planning Authority.

Reason: *In order to ensure the continuity of a satisfactory supply of potable water to local residents and businesses.*

30. The regular monitoring of water quality and flow rates shall be carried out during operations to ensure that there will be no detrimental impact upon groundwater and surface water quality in the long-term.

Reason: *To protect the quality of the water environment.*

31. That all contaminated surface and ground water arising either directly or indirectly from the development hereby approved shall be treated to the satisfaction of the Planning Authority, in consultation with SEPA, prior to discharge to any watercourse. No foul or contaminated surface water shall be discharged from the site into either the ground water or surface water drainage systems. The operator shall be responsible for the immediate treatment of any contamination of water which does arise as a result of any such occurrences.

Reason: *To ensure that any run-off from the site is properly treated to prevent contamination of any nearby watercourse or groundwater system.*

32. All containers being used to store liquids within the application site shall be labelled clearly to show their contents, and shall be located in a enclosure contained by bunds and which shall conform to the following standards:

- i. The walls and base of the bund shall be impermeable;
- ii. The base shall drain to a sump;
- iii. All valves, taps, pipes and every part of each container shall be located within the area served by the bund when not in use;
- iv. Vent pipes shall be directed down into the bund;
- v. No part of the bund shall be within 10 metres of a watercourse; and
- vi. Any accumulation of any matter within the bund shall be removed as necessary to maintain its effectiveness.

Reason: *To ensure that any liquids kept on site are properly contained to prevent leakage into any nearby watercourse or groundwater system.*

HABITATS AND WILDLIFE

33. Prior to the commencement of development, further survey work shall be carried out to further investigate the presence of the following species on site:

- i. Bats
- ii. Otter
- iii. Great Crested Newt; and
- iv. Badger

as per the response from Scottish Natural Heritage dated 09 April 2013, and the resultant survey report shall set out appropriate mitigation measures, if required, and an implementation programme, as required, which shall be submitted to and approved in writing by the Planning Authority in consultation with SNH. Any required mitigation shall thereafter be implemented and monitored as necessary in accordance with the recommendations of the survey report.

Reason: *As further work is required to fully establish the potential impact of the development on these species.*

34. Prior to the commencement of development, a Habitat Management Plan (HMP), for those areas not covered by the Peat Management Plan, will be submitted to and agreed in writing by the Planning Authority in consultation with SNH and will include aftercare commitments as presented in the ES including details on woodland / hedgerow management, and the protection and management of the Lily Burn corridor, including the regionally important area of globeflower located in the south-east corner of the application site.

Reason: *The HMP is critical for the successful restoration and enhancement of associated habitats.*

35. A Habitat Management Group will be established by the applicant to oversee production and implementation of the Restoration Plan and to review and assess the results from ongoing monitoring. The representatives on this group shall be agreed by the Planning Authority prior to work commencing on site.

Reason: *to ensure that the objectives of the HMP are managed effectively.*

36. The HMP will operate for the term of the permission including restoration. The mitigation identified in the HMP will be fully implemented in accordance with approved details. Survey and monitoring of species and habitat will be carried out to assess the effectiveness of mitigation and will be specified in the HMP..

Reason: *to ensure that the objectives of the HMP are managed effectively.*

PEAT

37. Prior to the commencement of development the final Peat Management Plan (PMP) will be submitted to and agreed in writing by the Planning Authority, SEPA and SNH and will include detailed method statements for the extraction, handling, temporary storage and restoration of peat and proposals for the long-term hydrological monitoring of the restored peatland areas. Peat management will follow SEPA guidance and in particular the Guidance on the assessment of peat volumes, reuse of excavated peat and minimisation of waste.

Reason: *In order that the Planning Authority in consultation with statutory consultees might assess the proposals for handling and restoring peat on site.*

38. A Peat Specialist will be appointed to oversee the peat handling, site restoration and monitoring activities at the site for the duration of these activities, and the appointed person will report any issues arising to SEPA and the Planning Authority on a regular basis to be agreed with the Planning Authority.

Reason: *To ensure that the handling and restoration of peat is carried out in accordance with the PMP.*

RESTORATION & AFTERCARE/LANDSCAPING

39. Prior to the commencement of the development, a guarantee to cover all site restoration and aftercare liabilities imposed by this consent will be submitted for the written approval of the Council as Planning Authority. Such guarantee must, unless otherwise agreed in writing by the Council as Planning Authority;
- i. be granted in favour of Midlothian Council as Planning Authority;
 - ii. be granted by a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee at all times, or take the form of a cash ESCROW fund to be held jointly by the Planning Authority and the Applicant for the purpose of site restoration;
 - iii. be for a specified amount which covers the value of all site restoration and aftercare liabilities as agreed between the operator and the Planning Authority at the commencement of development, at any time during the operation and decommissioning of the site;
 - iv. contains a means by which the value of the financial guarantee is regularly monitored and updated if required, at a rate of no longer than every 3 months, to ensure that it does not fall below the cost of restoration at any time to take account of inflation; costs of restoration; and changes to the operational phasing of the site or for any other reason;
 - v. come into effect on or before the date of commencement of development, and expire no earlier than 12 months after the end of the aftercare period.

Reason: *To ensure beyond any reasonable doubt that at any time during the operation of the site, and for any reason whatsoever that results in the open cast coal site hereby approved ceasing to operate, there are sufficient finances available to restore the site fully to the level that has been agreed in the final approved restoration plan, including all aftercare and monitoring necessary to ensure the restoration is established in the long term.*

40. Prior to the commencement of development, and notwithstanding the details on the restoration masterplan proposals submitted with this planning application, an amended detailed restoration plan for the entire site shall be submitted for the written approval of the Council as Planning Authority in consultation with SNH, SWT, RSPB, SEPA and FCS. The existing plan will be revised to incorporate the following additional details;

- i. the replacement of dry stone walls,
- ii. the enhancement to the intricacy of detail in the restored landform such that it ties-in with the character, shape and complexity of neighbouring areas;
- iii. the proposed realignment of the unclassified road across the moor;
- iv. a detailed timescale for completion of the works; and
- v. a detailed schedule and specification for all proposed planting within the restoration masterplan area.

There shall be no deviation from the approved restoration plan, including the timescales stated therein, unless otherwise approved in writing by the Council as Planning Authority. All restorative works shall be undertaken in accordance with the details and timescales stipulated within the approved restoration plan.

Reason: *To ensure that those aspects of the restoration that were considered to be lacking from the original submitted plan are incorporated and to Allow the Planning Authority to fully assess these additional requirements, and to ensure that the restored landscape is as best a fit into the surrounding landscape, and retains as many of the original landscape features as is reasonably possible. .*

41. Each individual phase of mineral extraction, as illustrated on figures 3.2 to 3.9, or such other phasing plan as may be subsequently approved in writing by the Planning Authority, shall be substantially restored in a phased manner in accordance with the provisions of the restoration details laid out in section 3.4 Phasing of Operations of the ES. Thereafter, the aftercare scheme submitted as a requirement of condition 44 shall be implemented in a phased manner in the first planting season following completion of each individual phase wherever practicable taking into account proposed working arrangements.

Reason: *To ensure satisfactory reclamation of the site and timeous completion of the work.*

42. An aftercare scheme shall be submitted for the written approval of the Council as Planning Authority within 6 months of the date of commencement of development. The aftercare scheme shall specify the steps to be taken, the period during which they are to be taken, and who will be responsible for taking those steps to bring the land to the

required standard. The aftercare scheme shall include long-term hydrological monitoring of restored peatland habitats for a period of no less than ten years. The aftercare of the site shall be undertaken in accordance to the approved aftercare scheme, unless otherwise approved in writing by the Council as Planning Authority.

Reason: *To ensure that the restoration works are properly established.*

OTHER

43. In the event that the landowner should wish to replace Ankrielaw Farm and the ancillary buildings for use only by a person employed in the operation or management of the farmland associated with the Roseberry Estate, then details for the replacement of in a location no greater than 1 km from the existing farmhouse location shall be submitted to and agreed in writing by the Planning Authority, and this replacement shall be in accordance with policy DP1 of the 2008 Midlothian Local Plan in respect of the materials, design, landscape fit and dimensions of the replacement house. Such details must be submitted and agreed in writing prior to the cessation of coal extraction and should be completed within 3 years of the cessation of coal extraction.

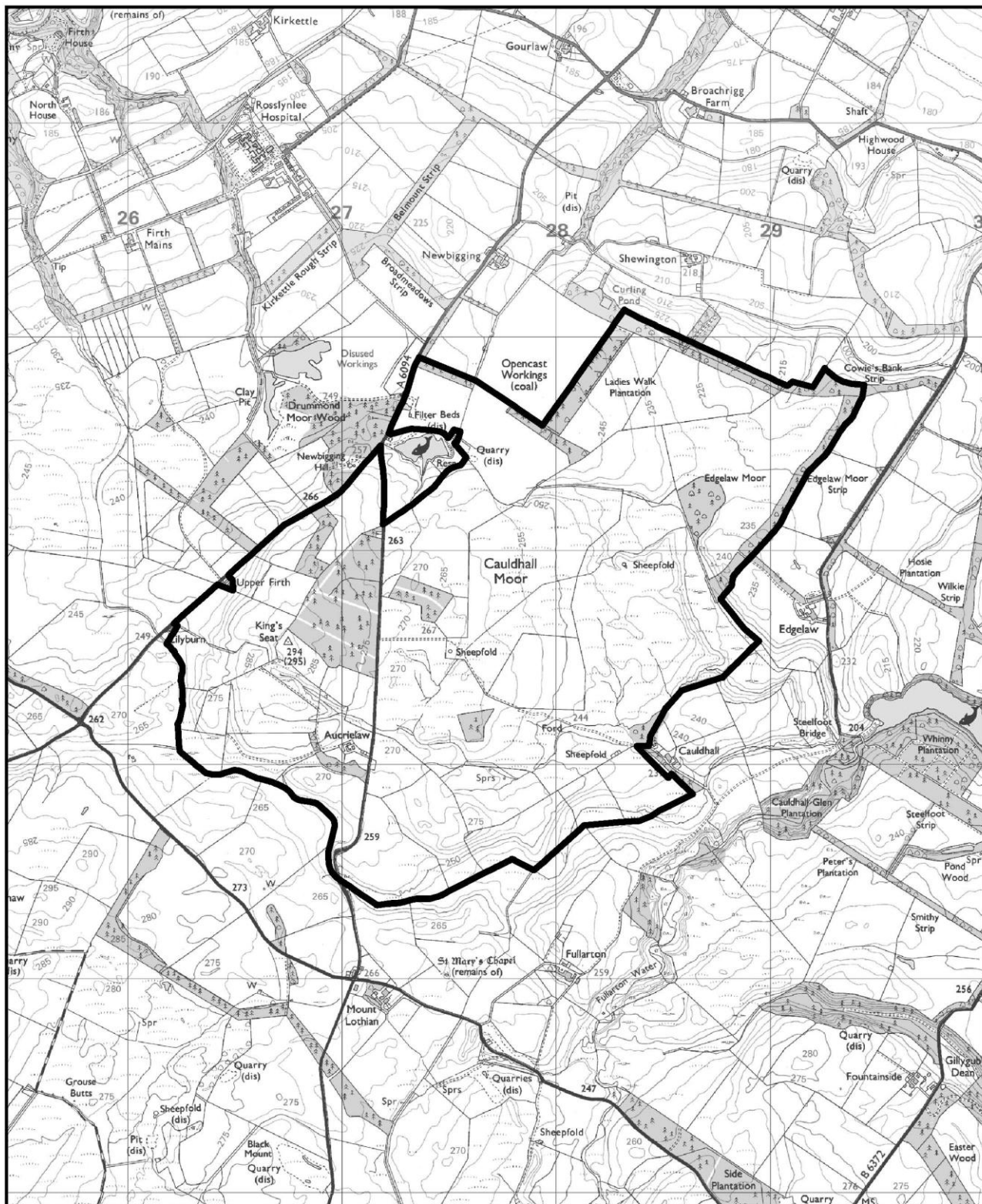
Reason: *To enable the Planning Authority to consider this matter in detail and to provide the opportunity for alternative accommodation on or close to the farm to be provided to the present or future farm workers.*

44. No development shall take place on the proposed site until the applicant has secured the implementation of a programme of archaeological work (Evaluation) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority. This evaluation shall be carried out at the site by professional archaeologists, to define the extent, quality and character of any archaeological remains on the site, as well as seeking to address site specific aims, sufficient to allow a detailed assessment to be carried out by the Planning Authority of the significance of the remains, and for any appropriate protection measures and the formulation of a mitigation strategy to be implemented if required. The area to be investigated shall be no less than 8% of the development area unless otherwise agreed in writing by the Planning Authority. Areas that have been previously quarried may be excluded from evaluation as any archaeological remains once present will have been removed.

Reason: *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with Policy RP28 of the Adopted Midlothian Local Plan.*

45. An appropriately qualified Ecological Clerk of Works will be employed throughout the lifetime of the mine and post-operation, to oversee the operation, and to finalise the details of and to supervise the implementation of the PMP, HMP, the restoration plan, and the subsequent aftercare arrangements.

Reason: *To ensure that all environmental/ecological issues arising on site are monitored, reported to the appropriate authorities and mitigation works are prescribed as quickly and efficiently as possible.*



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Extraction of coal and fireclay by surface mining methods and restoration of site at Cauldhall Moor, Penicuik

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