

MINUTES of MEETING of the MIDLOTHIAN COUNCIL PLANNING COMMITTEE held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 19 November 2013 at 2.15 pm.

Present:- Councillors Thompson (Chair), Baxter, Beattie, Bennett, Boyes, Bryant, Constable, Coventry, de Vink, Imrie, Johnstone, Milligan, Muirhead, Pottinger, Rosie, Russell and Wallace.

Apology for Absence: - Councillor Montgomery.

1. Declarations of Interest

Councillor Muirhead declared a non pecuniary interest in agenda item 7 - Application for Planning Permission (13/00105/DPP) for Extraction of Coal and Fireclay by Surface Mining Methods and Restoration of Site at Cauldhall Moor, Penicuik

2. Minutes

The Minutes of Meeting of 8 October 2013 were submitted and approved as a correct record.

3 Midlothian Local Development Plan Update

With reference to paragraph 6 of the Minutes of the Cabinet of 8 October 2013, there was submitted report dated 12 November 2013, by the Director, Resources appending a report, dated 9 September 2013, by the Director, Education, Communities and Economy, which provided an update on progress on the preparation of the Midlothian Local Development Plan (MLDP), principally early feedback on the consultation undertaken on the Main Issues Report.

The report advised that the consultation period on the Main Issues Report and the Environmental Report (and its Non-Technical Summary), had ended on 31 August 2013. The consultation had received around 2100 responses, which were currently be assessed and would be the subject of a further report to Cabinet.

The Head of Planning and Development confirmed that in addition, a Seminar of the Cabinet to which all elected Members would be invited would be held in the New Year.

Decision

- (a) To note that the consultation stage for the Midlothian Local Development Plan Main Issues Report and Environmental Report had been completed;
- (b) To note that a further report providing an analysis of the issues arising from the consultation would be brought forward to a future meeting of the Cabinet; and

- (c) To note that a Seminar of the Cabinet to which all elected Members would be invited would be held in the New Year.

(Action: Director, Education Communities and Economy)

4. Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage

With reference to paragraph 3 of the Minutes of 8 October 2013, there was submitted report, dated 12 November 2013 by the Head of Planning and Development, updating the Committee on 'major' planning applications, formal pre-application consultations by prospective applicants and the expected programme of applications due for reporting.

Decision

- (a) To note the current position in relation to major planning application proposals which were likely to be considered by the Committee in 2014; and
- (b) To agreed to receive further updated information on the procedural progress of major applications on a regular basis.

(Action: Head of Planning and Development)

Sederunt

With reference to paragraph 1 above Councillor Muirhead, explained that he was friends with a member of the team promoting the scheme, and whilst he felt confident that he could come to an objective decision he was conscious that public perceptions were likely to be otherwise and for that reason he had decided to declared a non-pecuniary interest in the following item of business. Councillor Muirhead left the meeting at 2.19pm, taking no part in the discussion thereof.

5. Application for Planning Permission (13/00105/DPP) for Extraction of Coal and Fireclay by Surface Mining Methods and Restoration of Site at Cauldhall Moor, Penicuik

(a) Note of Pre-Determination Hearing

There was submitted and noted the Note of the Pre-Determination Hearing held in Penicuik Town Hall on Thursday 7 November 2013, as shown in **Appendix I** hereto.

(b) Report by the Head of Planning and Development

With reference to paragraph 6 of the Minutes of 8 October 2013, there was submitted report, dated 12 November 2013 by the Head of Planning and Development, regarding the Planning Application (13/00105/DPP) for the Extraction of Coal and Fireclay by Surface Mining Methods and Restoration of Site at Cauldhall Moor, Penicuik.

The Committee, having heard in detail from the Development Management Manger, who responded to Members questions, discussed the proposed application at some length.

Amongst the issues considered by the Committee were: – the quality of the coal; the market for the extracted coal; the likely impact of traffic movements to and from the proposed site; the haulage route it was proposed to use; potential employment opportunities and the likely number of local jobs that would be created; the planning policy position; plans for the restoration of the proposed site and how this could be guaranteed; and climate change issues.

Thereafter, Councillor Bennett, seconded by Councillor Thompson, moved that planning permission be granted subject to the recommendations detailed in the Head of Planning and Development's report.

As an amendment, Councillor Baxter, seconded by Councillor Beattie, moved that planning permission be refused in view of the likely detrimental impacts that the proposed development would have and the principle that the extraction of coal was contrary to the Council's climate change commitments.

As a second amendment, Councillor de Vink, seconded by Councillor Bryant, moved that consideration of the application be continued; to commission and instruct expert advice; to appoint a small Sub-Committee to deal with the flow of information; and to reconsider the matter at a future meeting.

In terms of Standing Order 11.3 (vii), the Chair directed that a first vote be taken for and against the second amendment to continue consideration of the matter and if this was carried that would be the end of the matter. If however it fell then a second vote be taken between the motion to approve and the first amendment to refuse the application.

Thereafter, on a first vote being taken, two Members voted for the second amendment and 12 against, which meant that the second amendment therefore fell.

On a second vote being taken, five Members voted for the amendment and nine for the motion which accordingly became the decision of the meeting.

The Committee thereby agreed that planning permission be granted for the following reason:-

The assessment of the 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 was reasonable to conclude that there was 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 was strong evidence that the development will provide substantial direct and indirect employment as well as wider benefit to the Midlothian economy. There was also confidence in the market for the extracted coal over the projected lifetime of the operation at Cauldhall Moor. Environmental matters and potential impacts had 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.

subject to:

- (i). 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;
- (ii). Securing of an appropriate bond, or equivalent funding mechanism, to guarantee the restoration and after care of the site;
- (iii). The establishment of a Technical Working Group to oversee the restoration programme and associated monitoring;
- (iv). 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
- (v). The conditions as shown in **Appendix II** hereto, subject to finalisation by the Head of Planning and Development in consultation with the Chair of the Committee, which would include consideration of the additional conditions suggested by the Stop Cauldhall Moor Campaign Group in their recent letter to elected Members.

(Action: Head of Planning and Development)

The meeting terminated at 3.20pm.

APPENDIX I

(relative to paragraph 5(a))

NOTE of PRE-DETERMINATION HEARING held in Penicuik Town Hall, 33 High Street, Penicuik on Thursday, 7 November 2013 at 10.00 am.

Present:- Councillors Thompson (Chair), Baxter, Boyes, Bryant, Constable, Coventry, Imrie, Johnstone, Muirhead, Rosie and Wallace.

Apologies for Absence:- Councillors Beattie, Bennett, de Vink, Milligan, Montgomery, Pottinger and Russell.

1 Welcome by Chair

The Chair, Councillor Owen Thompson, welcomed everyone to the pre-determination hearing. He emphasised that this was not a public meeting but rather an opportunity for Members of the Council's Planning Committee to hear presentations on behalf of both the applicant, Hargreaves Surface Mining Limited and those who had made representations, including Stop Cauldhall Opencast.

He explained that following the presentations, there would be an opportunity for elected Members to ask questions of those undertaking the presentations. He explained that Hargreaves and Stop Cauldhall Opencast had been allocated slightly longer in which to make their respective presentations. He also explained that Hargreaves had chosen to provide an introductory presentation followed by a concluding statement after all other speakers had been heard. With the exception of Hargreaves and Stop Cauldhall Opencast, all other speakers had been allocated five minutes each.

He encouraged all speakers to concentrate their presentations on the application for the extraction of coal by surface mining method at Cauldhall Moor, Penicuik and to remain within the time allotted to them.

Following the pre-determination hearing, a report on the application would be submitted to a meeting of the Planning Committee to be held on Tuesday, 19 November 2013 for consideration.

2 Application for Planning Permission (13/00105/DPP) for Extraction of Coal and Fireclay by Surface Mining Methods and Restoration of Site at Cauldhall Moor, Penicuik.

(a) Report by Head of Planning and Development

With reference to paragraph 6 of the Minutes of the Planning Committee of 8 October 2013, there was submitted report, dated 1 October 2013 by the Head of Planning and Development, concerning proposals for the procedural arrangements for the Pre-Determination Hearing and Site Visit in respect of Planning Application (13/00105/DPP) for Extraction of Coal and Fireclay by Surface Mining Methods and Restoration of Site at Cauldhall Moor, Penicuik. It summarised the proposal and served as background information for the Committee with regard to the pre-determination hearing. There was no assessment of the proposal within the briefing note.

The report advised that on 7 February 2013 Scottish Coal Limited had submitted an application for an opencast coal extraction operation, to extract 10 million tonnes of coal, at Cauldhall Moor, Penicuik. This application was accompanied by an Environmental Statement. On 9 August 2013, KPMG, acting as Liquidators for the Scottish Coal Company Limited, had written advising that Hargreaves Surface Mining Limited had acquired the interests of Scottish Coal at Cauldhall Moor and was now the applicant for this development.

The application had been subject to the statutory notification and consultation process and a significant number of representations had been received from interested parties, together with consultation responses from third party agencies regarding the application. Following the conclusion of the consultation period it was intended to report the planning application to the Planning Committee on 19 November 2013. However, before the application was determined by the Committee, the Council had agreed to hold a pre-determination hearing to allow those with an interest in the application an opportunity to make oral representation to the Committee.

(b) Presentation by Hargreaves Surface Mining Limited

Steve MacQuarrie, Planning Director opened the presentation by providing elected Members with background on Hargreaves and the Scottish coal industry.

He highlighted, in particular, that Hargreaves operated a different business model to Scottish Coal and that they had been active in Scotland for many years at Longannet Power Station. Their involvement in surface mining in Scotland had however only begun in earnest following the collapse of Scottish Coal earlier this year. Since then, Hargreaves had worked hard to safeguard jobs and create a platform for future investment in the Scottish mining industry. They had recently raised £40m of new funds from shareholders to ensure that its expansion into surface mining in Scotland is being done from a strong financial platform.

Hargreaves were committed to the responsible restoration of surface mines. The sudden collapse of Scottish Coal has left a restoration legacy that should never be allowed happen again, but equally it should not be allowed to tarnish a whole industry as there were many good examples of positive surface mine restoration, including numerous in Midlothian.

Coal continued to play a key role in the UK's energy mix - 40% of the electricity supply on average. There was currently a shortage of indigenous coal - only 17m tonnes of 62m tonnes total burn in 2012. If approved Cauldhall would provide a strategic supply of power station coal for the next 10 years.

Theo Philip, Planning Manager then proceeded to give elected Members an overview of the proposed Cauldhall Surface Mine, during which he highlighted the following points:

- the application proposed an opencast mining operation which would see the extraction of some 10 million tonnes of power station coal

- and 100,000 tonnes of fireclay over an estimated period of ten years and that the total period of working on site including site preparation and final restoration was in the region of twelve and a half years;
- it was forecast that if the application was successful it would lead to 230 full time jobs, and also a youth apprenticeship programme in partnership with Edinburgh College;
- there would be benefits to the community through the establishment of a Community Benefit Fund; local employment agreement; and support for the National Mining Museum;
- the working scheme would adopt a rolling phased approach with only a small part of the overall site being mined at any given time. A similarly approach would be adopted to restoration which would be carried out once each working phase was completed;
- a detailed restoration plan had been prepared and works on site would only commence once this had been agreed in full with the Council. In addition, a commitment had been given to completing restoration of the adjoining Shewington site previously operated by Scottish Coal;
- although in 24 hour operation from 7am Mondays to 1pm Saturday, operations at night would be restricted to mainly preparatory works for the following day, in order to minimise any disruption;
- no objections had been received from any statutory consultees - Scottish National Heritage, Transport Scotland, Historic Scotland or NHS Lothian – other than Howgate Community Council; and
- that whilst concerns were understandable a comprehensive Environmental Impact Assessment (EIA) had been undertaken and every effort would be made to ensure that any disruption was kept to a minimum.

Having then heard from Graeme Blackett, BiGGAR Economics on the socio-economic impacts of the proposed development, Steve MacQuarrie concluded the presentation by the applicants by emphasising that: there was a market and a need for the deposit of coal identified at Cauldhall: that mining was a temporary land use and the restoration of the site would be secured; and that the proposal complied with local and national planning policy and would bring significant socio-economic benefits to Midlothian.

(c) Presentations by other Interested Parties

(i) Dr Jon Steele

Dr Steele advised that he was opposed to the proposed development for the reasons that would be highlighted by the Stop Cauldhall Opencast Campaign in their presentation which followed. His principle concern however was the issue of restoration. Although the applicants had given a commitment to restore the site there was currently no cast iron guaranteed way to ensure that this would happen. The adjoining Shewington site which had been only partially restored prior to the collapse of Scottish Coal graphically highlighted the issues involved. Cauldhall Moor and the surrounding area was an area of great natural beauty that was enjoyed by many people.

(ii) Stop Cauldhall Opencast

Jane Tallents and Malcolm Spaven on behalf of the Stop Cauldhall Opencast Campaign provided a presentation to elected Members on their objections to the application during which they highlighted the following points:

- Cauldhall Moor was not included in the current Midlothian Local Plan as an area of search and therefore in policy terms there should be a presumption against approval of the current application;
- if, as appeared likely from the Major Issues Report, it was included in the new Local Development Plan, then once the LDP had been through the due process and adopted, the proposed development of the site should be revisited assuming that it had been successfully included as an area of search;
- the coal industry was in crisis as demonstrated by the collapse of Scottish Coal earlier in the year and there were concerns regarding whether there was in fact a market for the coal it was proposed to extract from the Cauldhall site;
- the contention was that the number of local jobs that would be created was a “red herring” as most, if not all of those employed at Cauldhall, if it was approved, would simply come from other areas of Scotland affected by the collapse of Scottish Coal and in fact the proposals could impact negatively on local employment and therefore cause harm rather than benefit to the local economy;
- the issue of restoration of the site had already been touched on but areas in Ayrshire and Fife had been very badly affected by this. Also the applicants had no track record in this regard having only recently moved into this particular field of operation. They also appeared to be actively seeking to reduce restoration plans for the former Scottish Coal site they had acquired;
- the Scottish Government had recently acknowledged that there was poor regulation of opencast and was about to consult on changes, it would therefore be prudent to wait until the consultation was complete before considering the current proposals; and
- there were also issues of natural justice in relation to the Wylie family at Ancrielaw Farm who would be made homeless as a result of the proposals and also Mrs Stewart’s ponies: her fields would be immediately next to the mine workings

Mr Spaven concluded the presentation by summarising that the detrimental impacts of the proposals would be similar to those which had led Members to unanimously reject the Airfield Farm application in October 2010 and he requesting that the Council similarly reject the current planning application for Cauldhall.

(iii) Howgate Community Council

Adrian Fitzgerald on behalf of Howgate Community Council, expressed support for the views put forward by the Stop Cauldhall Opencast Campaign, which covered many of the concerns that had been raised with the Community Council.

In terms of the policy position, the application was wholly premature as Cauldhall was not an identified area of search in the current Midlothian Local Plan and as the new Local Development Plan was some considerable way from adoption it was difficult to see how any weight could be given to it. Also given the fact that the coal industry appeared to be in long term decline there were genuine concerns regarding the financial viability of the site and associated with that the ability of the applicants to guarantee that restoration would take place; it was considered imperative that with regards restoration the mistakes of elsewhere were not repeated.

Mr Fitzgerald concluded by urging Members to refuse the application.

(iv) Mrs Deborah Stewart

Mrs Stewart explained that she owned land immediately adjoining the proposed development site on which she breeds ponies, and that she was gravely concerned about the potentially negative impact that the proposed development might have. Although she had initially been approached by Scottish Coal some time ago there had been no subsequent contact and she was worried how she could continue her business if the development was to proceed as she relied heavily on the unclassified Moor Road for access and support from the local farmer.

(iv) Mr and Mrs Wylie

Mr Wylie advised that his family lived at Ancrielaw Farm which would, if the proposals went ahead, be demolished leaving his family homeless and him facing the prospect of being made redundant.

(v) Daya Feldwick

Daya Feldwick spoke of the potential negative environmental impact that would be caused by such a development if approved, making particular reference to issues of noise and vibration, and also the potential damage to infrastructure caused by traffic movements to and from the site. She made reference to climate change targets and suggested that greater focus was needed on renewable energy sources. She talked of the potential impacts on local communities and that the promise of local employment often failed to materialise leaving communities feeling powerless. She emphasised that this was not just a local issue, hence the interest from further afield.

(vi) Dr Gari Donn

Dr Gari Donn expressed her support for the views of earlier speakers regarding the potentially negative impact of the proposed development. She was particularly critical of the EIA which in her view was inadequate as it failed to take account of the impact of the emissions from vehicles operating within the site. She also contended that the coal from the site would not be able to be used at Longannet or indeed any of the Power Stations in the UK due to its high methane/sulphur content.

(vii) Grant Ritchie

Grant Ritchie advised that he was a farmer in the Gorebridge area and that Onyx Coal had operated an opencast site on his land with few problems. He confirmed that in fact there had been considerable benefit to the local community and that following restoration he had benefited from the restored land being of a high quality agriculturally.

(vii) John Sime

John Sime indicated that he lived next to the Shewington site and prior to it becoming operational he had shared a lot of the concerns that had been expressed today, however the reality had been very different and a vast number of his fears had been unfounded.

(d) Concluding Comments from Hargreaves Surface Mining Limited

Thereafter, in line with the opening remarks of the Chair, Steve MacQuarrie, Planning Director, Hargreaves was given a further five minutes to sum up, during which he highlighted the following:

- that there was still a key role for coal in the UK's energy mix and without the development of sites like Cauldhall the current shortage of indigenous coal would lead to more imports;
- that Hargreaves were committed to the restoration of the site and that development would not proceed until such time as there was a legally binding agreement in place to the satisfaction of the Council, as Planning Authority to ensure that it happened;
- they were prepared to enter into dialogue with both the Wylie family and Mrs Stewart; and
- that there would be benefits to the community both through the community fund that would be put in place and also employment opportunities.

Mr MacQuarrie concluded by thanking the Council for giving them the opportunity to present the case on behalf of Hargreaves.

3 Question and Answer Session

The Chair, Councillor Thompson, thanked everyone for their presentations and thereafter invited any questions from the elected Members.

In response to a question from Councillor Baxter regarding the suggestion that Hargreaves appeared to be actively seeking to reduce restoration plans for the former Scottish Coal sites they had recently acquired, Mr MacQuarrie explained that the collapse of Scottish Coal had left a series of very complex issues and that as a company Hargreaves were attempting to work with Councils to try and address some of the restoration issues. However they had to be realistic in what could and could not be achieved. In terms of Cauldhall appropriate safeguards would be put in place to ensure that restoration would take place before development started.

Mr MacQuarrie then went on to briefly explain, in response to a question from Councillor Constable, the Community Fund.

In reply to a further question from Councillor Baxter regarding employment opportunities for local people, particularly the apprenticeships, Mr Philip commented on the importance of a local workforce and also bringing new blood into the industry.

4 Closing Remarks from the Chair

The Chair, Councillor Thompson, again thanked everyone for their participation in the pre-determination hearing and reiterated that all points raised would be considered by the Planning Committee when it met on 19 November 2013 to consider the application.

The meeting terminated at 11.32 am.

APPENDIX II

(relative to paragraph 5(b))

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 Goullaw 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.*