



PLANNING APPLICATION (REF 09/00349/FUL)

BY SCOTTISH COAL CO LTD.

**EXTRACTION OF COAL BY SURFACE MINING METHODS, FORMATION OF NEW ACCESS
TO A6093 AND RESTORATION TO AGRICULTURE**



at
AIRFIELD FARM, COUSLAND

**OBJECTION BY
COMMUNITIES AGAINST AIRFIELD OPEN CAST
(CAAOC)**

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KEY ISSUES

AIRFIELD IS NOT IN AN AREA OF SEARCH

The Local Plan para 3.9.14 provides no legitimacy for substitution of an Area of Search by Airfield through consideration of a planning application without prior formal review of planning policy.

Accordingly the proposal is contrary to the principles of the development plan and the “*presumption against development*” stated in both policies, reinforced by SPP (para 240), must apply.

DETRIMENTAL ECONOMIC IMPACT

“..the jobs impact is too limited and doubtful to pass the test of having to outweigh the environmental impact”

David Crichton, advisor to the US and UK Governments on international development and former Chief Executive of Scottish Enterprise Edinburgh & Lothian, and Director of the Economist Intelligence Unit in London

87% of local business owners who responded to the CAAOC survey of local businesses stated there would be a negative impact, 5% neutral and 0% positive. During the operational phase of Airfield, the purported 31 jobs would only represent 15.5 full time equivalent jobs. To date 34 local business owners state the mine will have a negative impact on their business. One employer alone predicting a very significant negative impact on its business currently employs 8 full time permanent staff.

DUTY OF CARE

“There are serious omissions from Scottish Coal’s analysis and more detailed information about the rock that will be blasted and its mineral composition is required. There is recent evidence of spontaneous collapse in the area surrounding the village of Cousland, and the full extent of the historic workings is not surveyed. Unstable mine workings beneath the area will most certainly be affected in unpredictable ways by blasting. Blasting near to unstable ground can only make it more unstable and the possibility of large parts of the village being directly affected by ground collapse would, in my opinion, not be an unexpected outcome should this proposal be approved.”

Professor Godfrey Fitton, Edinburgh University’s School of Geosciences

In general terms, although a planning authority cannot be liable for negligence in respect of the exercise of their statutory functions, this is not an absolute position, and planning authorities are subject to ordinary laws of delict. If an individual suffers harm as a result of the unlawful actions or omissions of a public official an action for damages may be available.

This document clearly sets out our justification for concerns regarding the stability of properties and risk to safety of individuals in relation to ground stability around Cousland, and draw this to the attention of planning officers and members of the planning committee.



Limeworkings under Cousland Village
Source: British Geological Survey

FOREWORD

CAAOC has already made a full objection to Scottish Coal's proposals following submission of the planning application in July 2009 and the content of that objection still stands. We now wish to respond on certain aspects arising from Scottish Coal's subsequent submission in July 2010, which we consider have not been properly addressed. We also refer to the new Scottish Planning Policy (SPP) document which has been introduced by Scottish Govt since our initial objection, replacing SPP16 Opencast Mining.

Our detailed comments respond to five key issues in Scottish Coal's latest submission, and our objection is summarised in an Executive Summary, as follows:

Executive Summary	
Section 1	Planning policy principles
Section 2	Economic impacts
Section 3	Viability of Mountskip/Stobs
Section 4	Environmental impacts
Section 5	Implementation issues

The Implementation section responds to the suggestions by Scottish Coal of planning constraints that may be required should planning consent be granted. CAAOC is clearly opposed to any planning consent and our comments are therefore provided without prejudice to this position. This is explained fully in that section.

We also include an appendix:

Appendix 1	Maps, images and plans
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There are also various general issues we wish to raise at the outset.

Level of local community opposition - Our initial submission emphasised the high levels of opposition to this development. This opposition is now, if anything, even greater, as details of impacts on our communities have emerged. In two independently audited polls in both Cousland and Ormiston over 90% have objected. Over 1000 letters of objection have been submitted to the Council, a number heightened by the latest consultation. Both Tynewater and Ormiston Community Councils have formally objected. Some objections are from outside the community, mainly from tourists and visitors who have spent time in our attractive, rural environment, but the clear majority are from local people.

We accept that Midlothian Council must consider this case on its merits rather than the volume of objections. However recent changes in the planning process emphasise the importance of engaging with the local community and we trust that Councillors will take appropriate note of the considered responses submitted by members of their electorate and residents in the neighbouring county. This contrasts with the vast majority of letters of support from the west of Scotland, all from existing mining communities with no local interests, the product, we believe, of an orchestrated campaign by Scottish Coal.

Detrimental impact on local business - We consider Scottish Coal has exaggerated the number of jobs at the mine and the economic benefits they would bring. They have also ignored the harm to local businesses and ignored their views. Scottish Coal's business analysis in Section 14 of their initial Environmental Statement identified 38 local companies and concluded they would either not be affected, or would benefit. However it turned out this was based on a simple desk top exercise by

their consultants which proved to be inaccurate and misleading. CAAOC has since contacted the 38 businesses direct to get a true impression of likely impact.

We also objected to Scottish Coal having omitted a large number of other existing businesses from their analysis and requested review by an independent economics advisor. However this was ignored in Scottish Coal's latest submission and the Council's Economic Development team also remains to provide an adequate response. We have therefore extended our study and approached over 60 additional firms within 2km of the site, all of which Scottish Coal failed to identify. Due to the constrained time available, the survey results are still being received and we will be submitting our full survey findings as a separate paper to the Council as soon as possible.

Not a brownfield site - Airfield Farm is a corruption of the Scots "Aistfield" meaning Eastfield and has never at any time been connected with aviation. The land within the proposed opencast site has only ever been in agricultural use such that in planning terms it should be regarded as a greenfield site.

Comparative site area - The Airfield coal mine will cover 380 acres (154 ha). It is difficult to understand just how big this will be, but we provide plans at Appendix 1 to put this into context. It is actually equivalent to digging up most of Holyrood Park, or much of the Old and New Towns of Edinburgh combined. Dalkeith would fit into the mine with room to spare. Scottish Coal may rely on the size of the site being lost in the rural landscape, but the true size of the destruction to the landscape needs to be understood.

Scottish Parliament Petition on Circular 3/2009 - The Council will be aware of Petition 1320 presently under consideration by the Scottish Parliament. If upheld this would amend Planning Circular 3/2009 so that an objection by a neighbouring planning authority to a major development which is a departure from the development plan, such as at Airfield, would merit notification to Ministers if planning consent was intended. Given the support for this petition from national politicians and the Royal Town Planning Institute and the fact that East Lothian Council have lodged an objection to this development, CAAOC feels that the objection from the neighbouring authority merits serious consideration by the Planning Committee in reaching its decision.

Community dialogue - the capability of the local community to understand and respond to the vast amount of information submitted is limited by comparison to the professional resources of Scottish Coal. Dialogue with the community is therefore vital, but we have been extremely disappointed by the process. There were public exhibitions by Scottish Coal at the outset but it has always seemed the proposal was a *fait accompli* and the effects of consultation limited to minor implementation issues rather than whether the mine should proceed at all.

The planning application was submitted only days before the introduction on 1st August 2009 of new procedural regulations which would have included a 12 week pre-application consultation process and a Processing Agreement with the Council by which a clear schedule for submission timescales and ongoing consultation would have been set.

The recent submission had been awaited since before New Year. It appears some of the information was prepared at around that time but was only released in July. The consultation period has consequently spanned the summer and increased the difficulty of local people to respond due to absence on holidays. This was either an accident of timing or a deliberate ploy.

It is difficult to comprehend the enormity of the opencast proposal and we had asked to visit a working mine. We were therefore surprised by Scottish Coal's assertion in its Addendum to the Environmental and Planning Application statements (p31) that "*the invitation to community representatives to view mining operations and restorations at Newbigging has never been taken up*".

In fact we contacted Scottish Coal by email on two occasions, 8th and 29th August 2009, to arrange a visit. Scottish Coal responded to the second email with an undertaking to make verbal contact in order to set up a visit but never did so.

Despite this, we have endeavoured to investigate the submissions made from which we believe there are issues of principal which this proposal will contravene as well as numerous detailed concerns which remain unanswered. Scottish Coal is required to demonstrate the proposal is acceptable and if there is any doubt, there is a duty of care on the Council to refuse planning permission. The precautionary principle must apply.

We would like to remind councillors once again that as our elected representatives they are the custodians both of our environment and the health and wellbeing of the citizens they have been chosen to represent. We look to them to safeguard our interests, not the financial interests of wealthy individuals or big business. The effects of this proposal will also extend well beyond the Midlothian border and the residents of East Lothian will expect Midlothian Council to deliver a fair decision which takes full account of their justified concerns. The case against this proposed development is, as the following sections illustrate, overwhelming. Any approval of this unpopular application would discredit both the local planning process and local democracy.

Yours Truly



Douglas Mckenzie
Chair – Communities Against Airfield Open Cast

EXECUTIVE SUMMARY

CAAOC objects to the planning application for opencast coal mining at Airfield Farm and considers that planning permission should be refused on the following grounds:

1. Not in an Area of Search (see Section 1)

The site is outwith the Broad Areas of Search identified for opencast coal mining in the Edinburgh and Lothians Structure Plan (Policy ENV10) and outwith the specific areas for opencasting identified in the Midlothian Local Plan (Policy MIN1). Furthermore Local Plan para 3.9.14 provides no legitimacy for substitution of an Area of Search by Airfield through consideration of a planning application without prior formal review of planning policy.

Accordingly the proposal is contrary to the principles of the development plan and the “*presumption against development*” stated in both policies, reinforced by SPP (para 240), must apply.

2. Local Plan site specific criteria not satisfied (see Section 1)

Notwithstanding 1 above, the proposal also fails various tests relating to Airfield referred to in para 3.9.14 of the Local Plan in that:

- i) the proposed site area has not been reduced in size, as required to protect areas considered “sensitive in landscape terms”. The proposed area is more than twice as big, and Scottish Coal has failed to justify why this protection should be ignored
- ii) it has not been proven that the Stobs/Mountskip Area of Search identified within Policy MIN1 has a coal resource which is uneconomic to recover. The recent assessment of Stobs conducted by Johnson, Poole and Bloomer leaves significant questions unanswered (see Section 3).

3. National/Strategic “need” for coal (see Section 2)

Refusal of planning permission at Airfield will not affect national energy production objectives as confirmed by Scottish Coal in referring to the findings of the Scottish Energy Review that “there are vast proven reserves of coal remaining in Scotland”. Location close to Cockerzie, initially suggested as a prime benefit of Airfield, is of little relevance as it will be decommissioned within the lifetime of the proposed extraction.

4. Exaggerated claims of economic benefit (see Section 2)

The benefits suggested by Scottish Coal are disputed:

- i) direct employment at the mine is likely to be far less than the 50 jobs indicated
- ii) these jobs will be temporary, and will be transferred from existing opencast sites rather than new jobs
- iii) there will be negligible job opportunities for local people
- iv) the significant “indirect and induced” benefits to the local economy calculated by Biggar Economics equate to only a handful of jobs locally available. Errors in their calculation of GVA suggest even this should be questioned.
- v) several other economic benefits asserted by Scottish Coal are erroneous and irrelevant to the planning determination

5. Detrimental impact on local and community interests (see Section 2)

Around 100 businesses are located within 2km of Airfield Farm, most of which depend for their livelihood on the high quality of the area's natural environment. Scottish Coal has ignored the contribution of these businesses to the local economy and failed to consult with them. The business survey by CAAOC reveals grave concerns on the impact of the coal mine and a perception it will cause harm to their trade.

The opencast will also cause harm to tourism in Midlothian and East Lothian

In our view these local business losses set against the derisory benefits of the small number of transferred coalmine jobs are likely to produce an overall net detrimental impact to local business and tourism.

Scottish Coal has not demonstrated that the proposal will provide benefits which **clearly** (emphasis from SPP para 243 and ELSP Policy ENV8) outweigh the likely impacts of the extraction. Approval would also be contrary to the objectives in Midlothian Council's Economic Development Framework and Tourism Action Plan.

6. Risk of detrimental environmental impact (see Section 4) - Scottish Coal has failed to demonstrate that the proposal is environmentally acceptable. There is a risk of unacceptable environmental impact relating to noise intrusion, air quality, ground stability, visual and landscape impact.

The proposal thereby fails Structure Plan Policies ENV1B, 1C, 1D, 1F, ENV3, ENV4, ENV8 and ENV10; Midlothian Local Plan Policies RP4, RP5, RP6, RP7, RP18 and MIN1; and Scottish Planning Policy (paras 239-247).

SECTION 1 PLANNING POLICY PRINCIPLES

Further to our comments submitted in October 2009, we now wish to reply to the “Response to Representations on Policy Matters” by RPS Consultants. In doing so we also address Scottish Govt’s revised national planning policies entitled “Scottish Planning Policy” (SPP - February 2010) and Midlothian Council’s “Planning Policy Response”(PPR) to the initial planning application (11th December 2009).

This section addresses the overriding question of whether Airfield Farm should be regarded as an Area of Search for Opencast within the development plan. We also address certain other matters of principle in the SPP. Planning policy relating to particular matters of environmental impact or control are addressed in Section 4.

CONFORMITY WITH THE DEVELOPMENT PLAN

The structure plan and local plan have both been through lengthy adoption processes and the importance of abiding by the development plan has been reinforced by statute.

RPS state “Although it is acknowledged that the application site does not lie within the current broad areas of search for extraction of coal and other minerals identified in the adopted Midlothian Local Plan (MLP), it is considered that the terms of para 3.9.14 of the MLP override this position in so far as the Airfield will substitute for the Stobs site.”

We consider this conclusion is unjustified and fails to properly address the terms of the SPP and the development plan, which comprises the Edinburgh and Lothians Structure Plan 2015 (ELSP) (approved June 2004) and the Midlothian Local Plan (MLP) (adopted December 2008), for the following reasons.

Structure Plan Policy ENV10

“Broad Areas of Search” for opencast were identified by the ELSP, not the MLP as suggested by RPS. In this context Policy ENV10 of the ELSP included the area “East of Dalkeith”. The role of the MLP was to specify the detailed areas for extraction (the Areas of Search”) but Policy MIN1 excludes Airfield, which is correctly acknowledged by RPS.

The area East of Dalkeith was first introduced by an Alteration to the previous 1994 Lothian Structure Plan (approved 2001). The previous Midlothian Local Plan (adopted 2003) identified land at Oxenfoord West and this site has subsequently been worked out.

When the current ELSP was drafted, no further strategic review was carried out of opencast areas in the Lothians and the exact same Broad Areas of Search were included. CAAOC therefore considers the Broad Area of Search to the East of Dalkeith has already been satisfied by Oxenfoord West and that no other sites were intended in the context of ENV10. This position is not disputed by RPS and has been specifically agreed by the Council’s PPR (p2 para 2).

In any event, whilst it may be technically correct to describe Airfield as lying to the east of Dalkeith, its distance of separation from the town logically suggests it would exceed the parameters of the broad search area anticipated, particularly when compared with the description of other broad search areas in the 2001 Alteration.

We therefore consider that Airfield opencast must be contrary to the Structure Plan. Furthermore, this should be regarded as a “significant departure” given the absence of policy allowance, the scale of the development proposed, and its scope for economic and environmental impact.

The Council's policy response also states *"I consider ENV10 to be a policy of instruction to local plans rather than a policy of relevance to the assessment of development management, so I would not consider the proposal to be contrary to ENV10"*. We do not understand the logic of this statement, and its conclusion is not accepted, for two reasons.

- i) The ELSP forms part of the "development plan", as defined by statute and, as such, must be relevant, and taken into account in determining the planning application, as required by Section 25 of the Planning Act.
- ii) ENV10 as a "policy of instruction" is not a recognised planning concept. Even if it was, for the Council to conclude that Airfield is in conformity with ENV10, must mean the Council did not follow this "instruction", as the area east of Dalkeith had already been satisfied by Oxenfoord West. The consequence of this would be serious for the Council as any positive allowance for Airfield in the MLP would mean the MLP had not been adopted in conformity with the ELSP, and the Council would have failed in its responsibility to do so.

The policy team's conclusion would conveniently bypass any concern over the relationship between local and structure plans. We challenge this and require the correct policy position of Airfield Farm in the context of the Structure Plan to be reported to Planning Committee.

The proposed extraction of coal at Airfield Farm is outwith the areas provided in Structure Plan ENV10. It must therefore be subject to the policy's stated general presumption against opencast development.

Midlothian Local Plan - Policy MIN1

This identifies four locations as "Areas of Search" for opencast coal in Midlothian but Airfield is not included. Scottish Coal accepts this in its original Planning Statement (2nd para p27) and again in the RPS response (confusingly by reference to the Structure Plan).

The policy states *"Outwith the areas of current working and Areas of Search, there is a presumption against surface mineral extraction."* This is confirmed in the Council PPR which adds (p8) that *"the (Airfield) site should be treated as a departure from Policy MIN1 of the Local Plan."*

It is not disputed that the site falls outwith the policy. It should be regarded as contrary to the development plan on this basis.

Midlothian Local Plan - Paragraph 3.9.14

"Scottish Coal has requested that an additional area of search for opencast coal be identified at Airfield, Cousland. The Council considers that this area may have potential for opencast coal working in the longer term, albeit with the boundary reduced to remove sensitive areas (in landscape terms), and linked to enhanced road access (in respect of the A68 Dalkeith Bypass). The next review of the Local Plan will provide the opportunity to revisit this issue although earlier consideration may be given to this location (on the basis of the reduced boundary) if one or more of the identified areas of search are proven to have a coal resource which is not economically recoverable. In this case support for the uneconomical area(s) of search will be withdrawn."

CAAOC accepts that the text sets criteria which may trigger the possible consideration of opencasting at Airfield at some time in the future. However we do not accept that it enables Airfield to assume status as an Area of Search in the context of a planning application (as agreed by Council PPR, p3) for the following reasons:

- i) The text of the local plan must be taken literally for what it says, not for what Scottish Coal wish it to say.
- ii) The purpose of the paragraph is to require a review of the local plan to be carried out to confirm *“the potential for opencast working”* at Airfield by allocation as an Area of Search. The next scheduled review will be the Midlothian Local Development Plan for which the Council is to consult on a Main Issues Report during 2011. The *“earlier consideration”* of Airfield provided for in 3.9.14 **must** therefore relate to an alternative local plan review process in advance of the LDP.
- iii) 3.9.14 does not provide for the potential development of Airfield to be revisited by a planning application in advance of a local plan review. If this had been intended, the words *“by submitting a planning application”* could have been added after *“earlier consideration”*. This was not included by the Council.
- iv) RPS confirm (p4 para2) that if the Council considers it necessary to bring forward a new area of search (such as Airfield) during the lifetime of the current Local Plan it would be legally proficient to do so by promoting an Alteration to the Local Plan, or alternatively through Supplementary Planning Guidance, the latter being *“a method promoted by Scottish Govt to ensure development plans are kept up to date and relevant to changed circumstances”*. RPS makes this point more forcefully than any other in its statement (it *“strongly disputes”* any contrary suggestion). We agree.
- v) As RPS so strongly promotes a local plan alteration or SPG as the appropriate course of action for the Council to follow, it is difficult to understand how the application proposal can now be regarded as anything but contrary to the current development plan or why Scottish Coal did not press the Council to do so. A local plan alteration or SPG remain courses of action open to the Council. As things stand, this application is contrary to the local plan and should be refused as premature until that position changes.
- vi) If recovery of coal from one of the designated Areas of Search (such as Stobs) is proven to be uneconomic, 3.9.14 states only that *“consideration”* (not *“approval”*) of Airfield *“may”* (not *“will”*) be given, in the context of a local plan policy review. Neither does it say that in this circumstance Airfield would automatically *“substitute”* for Stobs or be *“embraced”* as an Area of Search, as suggested by RPS. If this had been the intention, then use of the word *“substitute”* would have been a succinct and obvious way to enable such a mechanism.
- vii) RPS also consider that Airfield can assume Area of Search status due to the consideration already given to the site by the Council and the level of public consultation already carried out in the local plan process. This is disputed because:
- a) the actual Local Plan text implies that, in this circumstance (vi above); greater consideration of Airfield than had previously been made by the Council would still be required for it to satisfy the Area of Search criteria under Policy MIN1. This would include the three criteria referred to in 3.9.14 but these are not stated as exclusive of other material considerations.
 - b) There is no location plan of Airfield on the local plan proposals map (as RPS agree) but this would be a prerequisite to be regarded as an appropriate site under Policy MIN1 or for the public to have passed meaningful comment.
 - c) The late introduction of the amended wording to 3.9.14 as a pre-inquiry amendment provided insufficient opportunity for the community to respond. This was exacerbated by inappropriate consultation.

- d) Airfield should have undergone scrutiny as a possible alternative site within the Strategic Environmental Assessment of the Local Plan adopted in December 2008. Such scrutiny is a fundamental part of SEA yet there was no mention of Airfield as an alternative.

viii) Notwithstanding all the above, the three criteria listed for consideration in 3.9.14 have not been satisfied. The non viability of Stobs remains to be demonstrated (see Section 3). Also the application site remains significantly larger than the area referred to in 3.9.14 such that planning permission should be refused due to loss of sensitive landscape.

The wording of paragraph 3.9.14 does not provide for Airfield to be regarded as an Area of Search under Policy MIN1 nor for it to be regarded as being in conformity with the development plan.

CONFORMITY WITH SCOTTISH PLANNING POLICY

Before considering detailed economic and environmental impacts, the SPP sets two matters of principle which opencast proposals must satisfy. In our view failure on either criteria, should result in Airfield falling at the first hurdle.

(i) Plan-led development - Para 240 states: *“Development plans should identify broad areas where surface coal extraction may be acceptable and set out the criteria to be addressed when assessing individual proposals.....There is a general presumption against extraction outwith areas of search identified in the development plan.”*

RPS consider the proposal satisfies this test but we have demonstrated above that it fails.

(ii) Distance from communities/impact on identified receptors - Para 244 states *“Surface coal extraction is unlikely to be environmentally acceptable if...*

- i) Proposed site boundaries are within 500m of the edge of a community (or)*
- ii) It would have unacceptable impacts on individual dwelling houses or sensitive establishments outwith communities and effects cannot be mitigated satisfactorily”*

Cousland – We consider Cousland is in sufficiently close proximity to the application site that the SPP criteria should apply. The village boundary is 505 metres from the application boundary but we consider Cousland is at risk of damage from ground subsidence caused by blasting. This merits monitoring during the excavation period and should also merit the SPP threshold being marginally extended. The Council is provided discretion by the SPP to vary the 500m threshold according to circumstances, and we note in any event that RPS concede that the site boundary is an artificial feature. RPS suggest that the relevant distance to consider is the distance from the nearest works within the site (680m). However the SPP is clear that the application boundary is the relevant measure. It may be that Scottish Coal has an intended purpose for the intervening land which may cause local impact. Otherwise why didn't they draw the site boundary at 680 metres?

Small clusters of housing – The SPP provides for small clusters to constitute a community and we consider this is satisfied by the houses at Oxenfoord Mains (adjacent to site boundary), Tynemount Cottages (415 metres) and Airfield Farm buildings (within the site). RPS seek to discredit the credentials of Oxenfoord but make no comment on the others. We consider Oxenfoord Mains should qualify and dispute the RPS opinion as follows:

- i) The houses have been considered as “sensitive receptors” in the EIA (agreed by RPS) so the threat of impact from the opencast is undisputed.
- ii) It is irrelevant that the houses are in the same ownership as the development site and inappropriate to consequently reduce the level of care afforded to them. It is the

residents of the properties who will be affected, not the owner. It would be surprising if they had objected to the opencast at risk of upsetting their landlord, who stands to gain financially from the opencast. Neither should the houses be ignored if they were taken out of occupancy as this would have a clear negative impact on the housing stock. We understand the Airfield farm houses will be taken out of the housing stock if the development proceeds.

- iii) The two appeal decisions referred to by RPS do not support RPS' claim that the houses should form some sort of "communal facility" and this is not defined. Even if this was relevant there is a clear synergy between the terraced Oxenfoord houses as a composite communal group.

The merits of Tynemount Cottages and Airfield Farm as communities are similar to Oxenfoord Mains and they are not considered by RPS. In our view the in-principle concern defined in the SPP applies to all three clusters.

Individual houses and Sensitive establishments – there are several individual houses close by which will suffer detrimental impact including Pardivan, Melvin Hall (2) and Hadfast House. These are acknowledged in Scottish Coal's EIA. There are also several sensitive establishments either within the site or close by which stand to suffer detrimental impacts. These include the scheduled monument within the site, the Hadfast SSSI, Cousland Park Livery and Cousland Castle. Within 500 metres of the site there are 29 cultural heritage features identified on Scottish Coal's Non-Technical Summary (Fig NTS7) of the 2009 submission.

Conclusion

From the criteria at paras. 240 and 244 of the SPP we conclude there is respectively a presumption against Airfield proceeding and a consideration it will generally be unacceptable. This must presume very strongly against planning permission being granted, as a matter of principle. This is in addition to the absence of the site from the Areas of Search which itself imposes a presumption against approval in terms of the development plan.

On this basis Midlothian Council should refuse planning permission and give it no further consideration. CAAOC finds it difficult to see any justification to do otherwise, as this would constitute over-ruling the national planning policy for a proposal that will raise issues of huge significance, economic impact and environmental sensitivity.

Two further tests are set at para 243 of the SPP:

"Within areas of search there is a presumption against surface coal extraction unless the proposed development meets one of the following tests:

- *The proposal is environmentally acceptable or can be made so by planning conditions and/or agreements, or*
- *The proposal provides local or community benefits which clearly outweigh the likely impacts of extraction"*

To assess the latter it continues that:

"local or community benefits will only arise where

- a) *extraction generates employment which is particularly beneficial in the area and*
- b) *jobs are genuinely available to local communities and*
- c) *the proposal safeguards the interests of impacted communities, or*

- d) where there is improvement of local amenity or future development opportunities arising from the clearance of a substantial area of derelict or despoiled land, the stabilisation of a previously undermined site or other similar benefits.*

However these tests should only be applied if Airfield is within an Area of Search. The SPP does not offer these two tests as a “get-out clause” for proposals outwith the Areas of Search. They are only intended for sites within Areas of Search. Not surprisingly, this emphasis is not highlighted by RPS, as Scottish Coal’s case would benefit by it being overlooked. We have demonstrated that Airfield is not in an Area of Search and, it would follow that permission should be refused.

If the Council agrees Airfield is outwith the Areas of Search but still chooses to apply the tests, we consider there is an increased requirement on Scottish Coal to demonstrate the acceptability of any impacts. There must also be a duty of care on the Council to demonstrate this in making the determination. We urge the Council to consider the two tests in their correct context.

Notwithstanding this, and given the lengthy submissions on matters of impact, the following sections set out our detailed concerns arising from the recent Scottish Coal submission, allied to our previous objection. From this assessment we conclude:

- i) There is a risk that unacceptable detrimental environmental impacts will be suffered particularly in respect of health from air particulates; noise intrusion; ground subsidence and associated risk to property; harm to sensitive landscape; and visual impacts
- ii) The economic benefits have been exaggerated by Scottish Coal and, there will be detrimental effects on local business. From this it cannot be concluded that there are any substantive net local or community benefits, and none that clearly outweigh the likely impacts of the proposal.

SECTION 2 ECONOMIC IMPACTS

Summary

- CAAOC does not seek to repeat its previous Economic objection, but does wish to respond to various points within the Biggar Economics report entitled “Economic Impact of Airfield Surface Mine” (Jan 2010).
- While Biggar have attempted a more complete appraisal, their report still lacks sufficient hard evidence to substantiate their projected economic impacts. In relation to their Economic Impact Calculations, the figures are extremely misleading and inaccurate.
- The report fundamentally fails to demonstrate that the economic benefits to the local economy outweigh the environmental impacts. Indeed we are not convinced that there are any economic benefits available to the local economy.
- Despite previous requests, there is still no breakdown of specific jobs on the site, wage structures or supplies, therefore we have no basis for determining the likely number of local jobs and corresponding benefits. We do however have our own views which we have set out.
- Numerous calculations are based upon a comparable site which we believe is Shewington. We cannot understand why real figures should not be provided for Airfield thus avoiding any discrepancies in scaling up the Shewington figures.
- The report relies on a mathematical calculation of monetary benefit (GVA) based on assumptions of an unsubstantiated number of jobs at Airfield, with a proportional share to the local economy which is not justified, and within a market area that is not defined. This confused approach is compounded by a total lack of analysis of the existing business environment and no judgement of whether there is a realistic prospect of local employment, supply contracts to local companies, or increased expenditure in local stores.
- The number of jobs and the beneficial economic effect is overstated by Biggar. The detrimental impact on local business, which we believe would be significant, is ignored
- Biggar have not attempted to measure the specific impacts on local businesses via a survey. Their contention that a survey would offer no more than a business owner’s opinion is a major flaw and without this they have only been able to offer subjective opinion which is naturally biased.
- Comparing a small number of opencast jobs for five years with the long term and perhaps permanent environmental costs cannot reasonably be regarded as an acceptable trade-off. This is particularly when the planning guidelines presume against a development like this unless there are clearly demonstrable economic benefits - this is simply not the case here.

‘Priority is given to economic development that is designed to build on and fit with existing strengths and assets’

Midlothian Economic
Development Framework

NATIONAL/STRATEGIC ECONOMIC CONTEXT

National Energy Sector - in Sections 2-4 Biggar seek to find support for the Airfield mine from the need for coal to support national energy production and from various strategic policy statements.

Biggar state that national energy production remains dependent on coal and gas-fired power stations, despite ambitions for expanding the renewable sector. They state that as coal sites close, new ones have to emerge to ensure that supply meets demand, and this is preferred to the alternative of imported coal. They also refer to support for opencast coal extraction from the UK Energy Review and Scottish Energy Review.

Whilst this context is of interest, it is of little relevance to this planning application. It is notable that Biggar do not suggest that refusal of Airfield will hinder the attainment of any national energy objectives. Indeed they specifically refer to the Scottish Energy Review's overview that "**there are vast proven reserves of coal remaining (in Scotland)**" and the Review's lack of concern over "*how long the coal reserves will last*" (4.3). Therefore, if indigenous coal is required there is more than enough coal available elsewhere in Scotland, and in the UK.

Biggar offer simple calculations of the proportion of UK coal production which the 2m tons from Airfield will contribute. However they provide no evidence of coal production expectations across Scotland or the UK, and no data on previous, existing or proposed opencast sites at a national level. How can the need for Airfield be assessed within the national context without greater information? We submit the Council should give this no weight.

Biggar suggest that a benefit of the Airfield site is that coal will be supplied to the power station close by at Cockerzie and further afield at Longannet, as part of Scottish Coal's contract with Scottish Power to supply those stations, as referred at 4.3. Reference is also made to coal from Scotland being preferred to English coal due to its lower sulphur content (4.1). However these matters are irrelevant as SPP clearly states that: "*A contract between a surface coal mine operator and any of the electricity generators is not a material consideration in planning decisions, nor is the quality of coal.*" (para. 239)

Opencast coal proposals are not classified as National Developments in NPF2 and the SPP guides Councils to consider the affect on the national economy simply as one material planning consideration alongside the wide range of local impacts.

Strategic Economic Development Objectives - Biggar refer to a number of strategic policy documents whose objectives they assert will be satisfied by jobs and income generated by the Airfield mine. These include Govt Economic Strategy; Economic Development Frameworks for Edinburgh, Midlothian and East Lothian; and Single Outcome Agreements for Midlothian and East Lothian.

However it seems to CAAOC that:

- these documents set ambitions for economic development which are so wide-ranging that support for any development could be claimed
- they provide no specific support for coalmining
- most of Biggar's references are entirely unrelated to coal mining
- on the contrary, the support that these documents provide for green business and environmental sustainability weighs heavily against the Airfield proposal

Initial justification for Airfield was based on its proximity to Cockerzie. Biggar still refer to Cockerzie as being "*observable from the site*" (1.5.1). However it is now revealed that Cockerzie will be de-commissioned by 2015 and its capacity will be substantially reduced before then.

Most coal from Airfield will be transported to Longannet or elsewhere over the 5 year extraction period. However Scottish Coal has given no commentary on other coal resources closer to Longannet than Airfield and Midlothian Council has received no evidence in this application of any regional justification for the Airfield mine. We note a planning application has just been submitted by Scottish Coal at Loch Fitty in Fife which will be a 3.4m ton extension to the St Ninian's opencast.

Biggar refer to the ambitions of the UK Low Carbon Transition Plan as a fundamental part of the strategic context for Airfield. However their justification for Airfield at 2.4 is simply on the basis of Govt support for carbon capture and storage methods at Longannet, rather than any carbon efficiency enhancement from the Airfield proposal itself. The situation at Longannet will not be influenced by refusal of Airfield and is not a relevant consideration.

Biggar also rely on a general implication that indigenous coal extraction will have a beneficial effect over imported coal due to reduced transport emissions. However they provide no evidence of Airfield's "carbon footprint" from transportation to justify this.

The switch to Longannet and elsewhere will result in all HGV journeys being considerably longer with increased environmental impact. SC has also given no stated intention for any transportation by rail, as required by Scottish Policy (242), despite rail facilities being available at both power stations. These negative effects of the Airfield proposal have not been quantified by Biggar.

Summary - There is nothing in the various Govt policy statements which provides direct support for the Airfield coal mine and Biggar have demonstrated no evidence of need for Airfield within their policy appraisal of national energy or strategic economic development. Their analysis provides nothing to over-ride the consideration of the proposal based on policy in the SPP and development plan.

LOCAL / COMMUNITY BENEFITS

Consideration of local or community impacts has two particular flaws in Biggar's approach:

i) *Definition of "local"* – Biggar refer throughout to its investigation of impact within a "study area", but this is not defined at any point.

One possibility is that Biggar intend to refer to the Midlothian and East Lothian Council areas, deriving from the data analysis for the two Council areas in Section 3. However this contrasts with the initial report (page 14-19) and the RPS policy response (App12) which assume a radius of 20km from the site. This would include all of the City of Edinburgh as well as Midlothian and part of the Scottish Borders, but only include part of East Lothian. Either definition would suggest any benefits would be dissipated across the region and, with inclusion of Edinburgh, the local effect would be diluted even further. This uncertainty prevents clear conclusions from Biggar's analysis.

Most importantly, neither definition meets the SPP requirement to assess impacts on the immediate area around Airfield Farm within which its detrimental effects will be suffered. This flaw is exemplified by the absence of any properly considered assessment of existing businesses in the area or the character of the local economy to which they contribute.

ii) *Theoretical approach* - Biggar continue to rely on a calculation of indirect and induced expenditure which they claim show a benefit to business across the "study area". However this is based on hypothetical assumptions. Whilst this is an approach commonly taken in economic studies, it is vital to follow this up with an appraisal of the actual local business environment in order to judge if the assumptions appear reasonable, based on empirical research. Furthermore the assumptions made in these calculations must be based on reasonable and relevant evidence from elsewhere. Biggar have not demonstrated this.

Number and type of Jobs at Airfield

Scottish Coal were asked to provide a breakdown of the type of jobs, the number of each job, skill levels, respective wage levels and longevity. They seem reluctant to do so and there is nothing new in the Biggar report. The only information provided is that 50 full time staff will be employed at the Airfield mine for the 5 year excavation period with 40 jobs during the 6 month start up and 1 year restoration phases.

Without an appropriate breakdown, we have spoken with former employees of Scottish Coal, one of whom has over 20 years of experience working on open cast mines, in order to build up a picture of the number and types of jobs in the proposed development. Accordingly, we calculate that Airfield will be staffed by approximately 35 workers who are presently employed at Shewington and will be transferred over to Airfield once operations commence.

Our calculations are based on the assumption that there will be 2 Prime Movers on site employing around 10 workers, 3 or 4 dozer drivers, 6 drivers and machine men on the coal stocking ground, 5 or 6 fitters and welders and one worker on each of the following – grading and upkeep of roads, water bowser sprayer, diesel bowser, the service wagon, the workshop, coal sampling, coal cleaning, foreman and manager.

Out of these 35 employees, 12 will need to be qualified dumper drivers and it is likely that they will be difficult to recruit locally. Scottish Coal claims that it is committed to training workers but the pressure of getting coal out quickly means they prefer to recruit experienced staff. Scottish Coal

could utilise another Prime Mover which would supply another 4 or 5 jobs but this is unlikely given the proposed plans for working the site in sections. Nevertheless, we have assumed that they do use an additional 5 staff, thus making a total of 40.

According to Biggar, of the 50 jobs at Airfield 31 would be local jobs. However we calculate that Airfield will be staffed by some of the 35 or so workers presently employed at Shewington Mine in Rosewell, who will be transferred over to Airfield once operations commence. We believe that there will be few, if any, new jobs.

Jobs for “local” people

Biggar state that 31 of the 50 jobs (63%) will be for residents within the “study area” (in section 7 a higher figure of 39 is mentioned, presumably an error) and 19 elsewhere in Scotland. For the start up and restoration phases 25 of the 40 jobs promised will be to residents in the “study area” with 15 people from further afield. We have various concerns.

Unproven data - At 5.2 it states these numbers are estimated based on a figure of 63% at an unnamed mining operation elsewhere. We presume this is Shewington but this is not stated. Scottish Coal could have provided a list of where its Shewington workers reside or for opencast sites elsewhere. Without this it must be questioned whether their 63% estimate is exaggerated.

We understand the Shewington site presently employs around 8 workers from Midlothian out of the workforce of 35 (23%). Only one of them lives in Rosewell where the mine is situated. The rest of the workforce is from East Lothian, West Lothian, Fife and Central Scotland.

Mining skills no longer available locally - Biggar provide a socio-economic profile of Midlothian and East Lothian in Section 3 in which they point out (3.1 and 3.9) the historic role deep mining once played in the area and that more recent opencast sites have been completed. The role of mining as a bygone sector is further reinforced by the existence of the Museum at Newtongrange. Biggar’s data shows that employment of residents has now switched away from mining to a wider range of sectors (3.1) and the role of mining in the Midlothian economy has reduced to be negligible.

Biggar show data for unemployment, skill levels, poverty and existing jobs in the construction sector. However this does not demonstrate that the necessary skills are available within the local workforce and they concede at 2.2.3 that mining provides no direct support for the construction sector. It must be concluded the skills required for a mine at Airfield are no longer available locally.

Scottish Coal has suggested training programmes will be available at the site. However with no detail provided of the type of skills required, or the number of trainees to be taken on, there can be no assurance that this will benefit any local resident seeking a position at the mine.

Inappropriate study area – Whichever way the study area is defined it does not address the test set by SPP to consider the impact within the communities which are directly impacted by the proposal i.e. in Cousland and Ormiston. SPP requires the jobs at the mine to be “genuinely available” to local people and “particularly beneficial to the area”. SC does not demonstrate that any jobs will be available to local residents, or that the required skills exist locally.

If it is Biggar’s case that the “local” jobs will be for residents in disparate locations in East Lothian and across Edinburgh, it is difficult to see how this will provide adequate compensation for those suffering the detrimental economic and environmental effects close to the site. Even if a small number of Midlothian residents worked at the mine, we do not consider this conclusion would change.

SC claim they have “a policy of securing employees from local communities around operational sites to ensure maximum positive benefits to these communities” (Appendix 12 p7). However no evidence has been provided from other coal mines and no information provided how this will be achieved for Airfield. The Council has no basis from the submitted information by which to give this status. The evidence suggests to the contrary and we expect Scottish Coal will have to look far afield for their staff. This is borne out by the number of letters of support from miners already employed elsewhere in Scotland received by the Council, but so few from local people.

New jobs v existing jobs

In its initial presentation to residents, SC claimed all jobs would be newly created positions. However transfer of staff from the Shewington site would simply continue existing posts... There is no demonstration by SC that any of the 50 jobs will be newly created. On the evidence available, the Council should assume that any remaining positions are also likely to be filled by transfers from other mines around Scotland, rather than locally.

In the light of these figures the claim by the Economic Development Department that the transferred, temporary jobs promised by this development will, if approved, make an important contribution to Midlothian’s target of 10,000 new jobs by 2020 (Midlothian Economic Development Plan) is completely inaccurate. Furthermore the harmful effects of the coal mine on the businesses and residents of the area will be wholly contrary to an integrated and vibrant area sought by the Framework. It is significant that the Framework identifies six key sectors which are expected to lead in generation of jobs in Midlothian, but excludes mining in any form.

Impact on Local Businesses

In its initial submission SC undertook a review of some local businesses and offered an opinion as to whether the impact of the mine would be positive, negative or neutral in each case. We raised numerous concerns regarding its content and conclusions and it is now conceded by RPS (Appendix 12 p7) that this was carried out only as a “limited desk top exercise”.

The latest submissions were an opportunity for Scottish Coal to provide a comprehensive study to support its case. However they decided not to survey local business because this “*was unlikely to add value to the analysis since it would gather business opinion on the proposed development rather than evidence of impact*” (1.6). Instead Biggar state that their revised analysis “*focused on evidence of business impacts from comparator projects, in particular Shewington...*”

SPP requires appraisal of the effects on employment in the areas where extraction takes place but gives no specific guidance on assessing the impact. In our opinion a review of local businesses is a logical step to address this. We find Biggar’s approach surprising and deficient. It actually seeks to ignore the opinions of local businesses within the immediate vicinity of the site in preference to the consultant’s own value judgements and theoretical calculations.

In our view in carrying out an economic assessment, the most substantive way to understand what the economic impact of a development would be at ground level, both positive and negative, is to survey local businesses. If you don’t attempt to understand the local business economy, you can only make academic points about the effect of a new development on it.

This approach is highlighted by the Inquiry Reporters in their decision in May 2002 on the planning appeal by I &H Brown for an opencast coal mine at Harry’s Burn. They found a critical factor in measuring economic impact was **the perception** of local businesses regarding the likely detrimental impacts of the proposal on their performance and in attracting further investment (paras. F97-102 of decision letter). This could not have been established without directly engaging with local companies. The Harry’s Burn proposal was for land within 1 mile of the Airfield site. If it was relevant then, it must be relevant to this planning application.

To compound Biggar's approach, they even fail in their new report to provide any comparative evidence of impacts on businesses around the Shewington mine at Rosewell, which they promise at 1.6.

Scottish Coal's business review in Section 14 of their initial Environmental Statement identified 38 local companies and concluded they would either not be affected, or would benefit. However it turned out this was based on a simple desk top exercise by their consultants, which proved to be inaccurate and misleading. CAAOC has since contacted the 38 businesses direct. It transpires that some of these firms did not even exist. However many have since submitted their personal concerns at impact on their trade to the Council, including annoyance at being misrepresented by Scottish Coal.

We last year pointed out that Scottish Coal had ignored a large number of other existing businesses within 2km from their analysis (we have since listed over 60) and requested a review by an independent economics advisor. As this was ignored we have recently been seeking to extend our study and approach the remaining firms. Due to the constrained time available, this additional survey is not quite complete but we will be submitting a separate paper with results of the initial 38 and subsequent 60+ businesses as soon as practically possible. Effectively this will continue, correct and complete the study abandoned by Scottish Coal.

In researching the economic impact of Scotland's natural environment, Scottish Natural Heritage found that *"two-thirds of businesses believed that Scotland's natural environment benefits their company"*. They also confirm that *"of 30 factors of potential importance in determining regional locations of businesses in Scotland, quality of landscape, low levels of pollution and proximity to natural areas were all identified in the top ten."* (SNH- Valuing Our Environment)

CALCULATION OF ECONOMIC IMPACT BY GROSS VALUE ADDED (GVA)

The calculations provided by Biggar (Section 5) are extremely hypothetical and inaccurate in some cases. The figures derived are therefore of limited worth and we consider that they undermine the credibility of this report. The method used in the recent report is very different to that in July 2009 yet the results appear similar. Given the number of broad assumptions and inaccuracies in the GVA calculations, it is unclear if this is by accident or design.

Direct Impacts

- As we have previously mentioned, we do not believe that Scottish Coal will employ 50 people on the Airfield site. We anticipate that it may be less than 40.
- Out of those 50 employees, Biggar suggest that 63% will reside within the "study area". Given that we do not know the extent of their "study area" this is difficult to verify, but in addition to that, they have assumed that the employment profile at Airfield will be the same as that of a comparable site.
- In our view, less than one third of the employees will come from within Midlothian/East Lothian. Furthermore, we would be surprised if more than 5% come from the locally affected communities i.e. 2 people based upon total 40 employees. The latter figure contrasts sharply with Biggar's figure of 31 employees from the "study Area".
- However, we also understand that it is a conventionally accepted appraisal assumption that a part-time construction related job is only deemed to be a full time position (FTE) if it lasts for more than 10 years. Consequently, during the operational phase of Airfield, the purported 31 jobs would only represent 15.5 FTE jobs i.e. 5 yrs x 1/10th x 31.

- In calculating the GVA derived from Direct employment, Biggar have provided a figure of circa £2.2m. They fail to state that this is their figure for Scotland as a whole. If they had calculated the figure for their “study area”, it would have been less than £1.4m.
- However, if they had utilised the conventional FTE conversion factor detailed above, their figures would be £1.1m and £0.7m respectively.
- By comparison, using our more realistic employment projections, the GVA for Midlothian/East Lothian would be less than £300,000 (based upon 6.5 FTE jobs) and for the immediate local communities it would be less than £45,000.
- The differences in the figures are staggering and demonstrate the misleading nature of Biggar’s report.

Supplier Impacts

- Biggar have used various national indices and ratios to derive the employment and GVA generated at “Scotland” level and within the “study area” as a result of supplies purchased for the site. Notwithstanding the debate over the worth of these figures, they are wrongly calculated and hence overstated.
- In calculating the “Net Supplier Impact of Comparison Mine” (table 5.6), Biggar have miscalculated both the number of employees and the GVA generated within the “study area”. This is because they have erroneously used the “Scotland” multipliers in table 5.5 rather than the correct “study area” multiplier. Consequently, all of the “study area” figures in table 5.6 are incorrect.

Income Impact

- Biggar’s next calculations attempt to quantify the value in terms of GVA arising from the expenditure of employees wages. The calculation of these impacts is once again based upon arbitrary and highly questionable assumptions.
- Firstly, they have failed once again, to use the FTE job conversion, which reduces the FTE employees by 30 – 50% (dependent on whether restoration or operation phase is assumed) and hence the resulting calculations should be reduced by the same amount.
- Also, in proposing the average % of each employees’ wages spent in the local area, Biggar state that *“This is an issue where there are few studies”*. They then go on to quote 3 very dissimilar studies where, by their own admission, *“...the definition of local area is different in each source.”* Undeterred by the fact that they know the studies are incomparable, they select a figure of 45% for their “study area”, the extent of which is still not specified.
- The approximations and errors in these figures are then compounded by multiplying them together with the net result that the final figures are meaningless.

Summary

- The final section of Biggar’s economic calculations comprises an aggregation of the above figures to produce some very sizable figures. Nevertheless, all of these figures have no merit as they represent the sum of numerous other speculative and inaccurate calculations which overstate the true financial and employment impacts.
- None of the above calculations contemplate any negative economic impacts resulting from this development – which further exaggerates the figures they have produced.

OTHER IMPACTS

Tourism Impact

Biggar consider (Section 6.1) the mine will not cause any detriment to tourism in the area or any reduction in expenditure from visitors to them by suggesting there is a lack of existing local accommodation and other attractions or places for visitors to spend money. This is based on a highly simplistic analysis and we contest this.

Cousland Castle and Cousland Smiddy are significant local attractions and will suffer from reduction in visitors to the area. Biggar do not deny likely impact but their reference to restricted summer opening times is irrelevant.

Equestrian businesses such as Cousland Park and Ashgrove are at potentially greatest risk from the mine out of all local businesses. The horses would be directly affected by noise, smell and dust. The routes for riding in the area would be physically restricted and there is a strong risk that owners' perception of the area will lead them to withdraw their horses. This will affect the stables directly and also the wide range of suppliers, saddlers, etc whose livelihoods will suffer. Biggar's assessment that design and operational controls at the mine will negate any impacts shows a total lack of appreciation of these businesses.

Biggar accept there will be a reduction in walkers, cyclists and horse riders using the area. They claim this will not result in loss of expenditure as the area generally has minimal cafes, sandwich shops, etc but have provided no assessment of local stores or facilities. They also ignore the loss of trade in the wider area

Biggar make no suggestion that any benefit will be achieved to tourism from the coal mine or increased visitors to the area. In fact they do not deny the number of visitors to the area will be reduced. The most they can target is no net change in the area. We dispute this and suggest there will be considerable decline in the attraction of the area and most importantly, people's perception of it. There will be a corresponding reduction in visitor numbers, who will be difficult to bring back. This will affect trade in the local area, and the wider Midlothian and East Lothian tourist market.

The mine is directly at odds with Council's ambitions for tourism:



'Working together we will build on the existing strengths and assets of Midlothian ensuring that the development proposals planned for the area are fully exploited to the advantage of the tourism sector.'

Midlothian Tourism Action Plan 2008 - 10

'Aiming for a 50% increase in tourism revenues by 2015'

Midlothian Tourism Action Plan 2008 - 10



'We will promote our attractive countryside locations as a base to visit the City and locations further afield'

Midlothian Tourism Action Plan 2008 - 10

- The Midlothian Economic Development Framework sets a vision with 4 performance measures by which achievement of economic goals will be assessed. These include “*the numbers of visitors that come to Midlothian to experience the high quality environment and enjoy accessible activities and facilities.*”
- The Tourism Action Plan 2008-10 states that “*a major asset of Midlothian is its attractive countryside setting*”. As a consequence it makes a commitment to excellence, “*in exceeding the expectations of high spending visitors that come to Midlothian to experience the high quality environment and enjoy accessible activities and facilities*”.

The Scottish Tourist Board also recently ran a newspaper ad/poster campaign headed “*A Perfect Day in Midlothian*”, highlighting outdoor activities – hill walking, golf, butterflies, etc

Enhanced Wage Levels

SC make claims that wages to be paid will be significantly higher than the average wages of Midlothian and East Lothian residents. However there are inconsistencies in the figures given for average weekly wages suggested for Airfield at 1.4, 5.4 and Table 6.1 due to variation in allowances for tax and national insurance. This is compounded by miscalculation of the average wage figures at 1.4. These errors and inconsistencies cause confusion in achieving a true picture such that Scottish Coal’s claims of impressive wage differentials may have been significantly exaggerated.

From their analysis Biggar conclude at 6.7 that the wages of 31 local workers will be increased above the Midlothian average if the Airfield proposals are approved. However, regardless of the correct wage figures, if these workers are already employed at Shewington and are simply to be transferred to Airfield, their wages are already in place and would not change. The increase of wages as a consequence of the Airfield proposal would therefore be zero.

Refusal of consent may require such workers to find positions at sites elsewhere but in the context of this application, the correct economic analysis must be made. In any event the continuation of short term unsustainable, old fashioned jobs is progressively degrading the Midlothian economy and making it undesirable as a location for the modern, sustainable jobs lauded in the Economic Development Framework, the Midlothian Council Sustainable Development Scheme and Action Plan 2009-10 and the Midlothian Tourist Action Plan.

Community Fund

In its suggested Heads of Terms for a Section 75 Agreement SC proposes “*a contribution of 25p per tonne of coal sold from the site to go to some form of Community Trust Fund*”. For 2 million tonnes this would total £500,000. Biggar explain at 6.3 that this money “*will be made available through an appropriate vehicle for distribution to projects and groups*”.

However the SPP makes clear at para 246 that:

*“Benefits in the form of new community facilities or community trust funds may be proposed by the developer but **such benefits should not be treated as a material consideration** unless they meet the tests set out in Circular 1/2010 Planning Agreements. Attempts to secure unreasonable provision not directly related to the proposed development or securing general benefits for the wider community should not be taken into account in decision making on planning applications.”*

Circular 1/2010 sets 5 tests and requires that ALL of them are met. The matter in question should:

“1. Be necessary to make the proposed development acceptable in planning terms

2. *Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should be relevant to the development plan,*
3. *Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area,*
4. *Fairly and reasonably relate in scale and kind to the proposed development, and*
5. *Be reasonable in all other regards”*

The proposed Community Fund meets none of these tests, and it would be contrary to the SPP and “ultra vires” for the Council to regard this as a material consideration in determining the planning application.

CAAOC recognises that the Council may generally regard receipt of such funds favourably and we understand such Funds have been offered by Scottish Coal relative to opencast planning approvals elsewhere in Scotland. However this must not be regarded by the Council as an inducement to grant planning permission in any way.

Coal Authority

Biggar explain at 6.4 that Scottish Coal will be required to pay some £200,000 to the Coal Authority, the Govt Agency that regulates the mining of coal, and this will constitute a benefit of the mining operation.

They state this will be used by the Coal Authority to operate various services including mine water remediation schemes. However there is no indication that this money will have any benefit to local people at Airfield and it seems the services to which it is directed may be anywhere in the UK. It is effectively a tax on the coal operator for the purpose of addressing coal related interests across the UK.

On this basis it is entirely inappropriate to regard this matter as a benefit of the Airfield proposal in the context of the SPP tests at para 243. No planning merit whatsoever should be afforded to the intended payment to the Coal Authority.

Business Rates

Biggar explain at 6.5 that £100,000 per year, totalling £650,000 over 6.5 years, will constitute a benefit of the mining operation. It is entirely inappropriate to regard this matter as a benefit of the Airfield proposal in the context of the SPP tests at para 243. No planning merit whatsoever should be afforded to the payment of business rates.

Should the Council disagree with the above, it would be required to notify Scottish Ministers of any decision to grant planning permission due to its financial interest in the development.

Oxenfoord Estate

Biggar state repeatedly in sections 6 and 7 that the Oxenfoord Estate is committed to re-investing income received from the mine into the Estate, *“maximising the local long term local economic impacts”*. It is stated this will secure the future of the estate and its farm, allow further investment in estate buildings and the designed landscape and *“possibly (our emphasis) allow investment in new areas of activity that will provide longer term employment and other local economic benefits”*.

The Estate has offered no indication of the sum of money it will receive or the proportion that will be invested into causes other than the personal interests of the land owner. It is significant that no

guarantee is offered that any money whatsoever will be invested by the land owner for the benefit of the wider community, as indicated by the word “possibly”.

CAAOC finds it barely credible that our elected representatives would give greater priority to the financial interests of a large inherited landowner than to the livelihoods and environment of the citizens they are elected to serve. Anything less than that would be an affront to local democracy

Affect of reduced property values on local economy

The impact on individual house owners of any decline in residential property values resulting from a development is not normally a material consideration for the planning authority in considering planning applications. However the wider economic effects of the same are nevertheless very relevant to the planning decision.

Given the slump in property values over the past 3 years it will be particularly unjust for property owners in the communities adjacent to Airfield Farm if they have to endure further falls in value as a result of the open cast mine. While Scottish Coal strenuously denies that its activities have any effect upon property values, we believe the reality is somewhat different.

It is only common sense to conclude that the property market in the locality will be negatively affected by open cast mining operations. This will in turn have an impact upon perceived household wealth and household spending is likely to reduce as a consequence for those affected. This will impact negatively upon spending within Midlothian and the wider economy as well as raising the possibility of mortgage difficulties for those involved.

CONCLUSION

With reference to the SPP criteria:

- i) extraction will not generate employment which is particularly beneficial in the area, and
- ii) jobs will not be genuinely available to local communities, and
- iii) the proposal does not safeguard the interests of impacted communities, and
- iv) there is no proposed improvement of local amenities or future development opportunities arising from the clearance of a substantial area of derelict or despoiled land, the stabilisation of a previously undermined site or other similar benefits.

There will be no demonstrable local or community benefits arising from Airfield opencast.

We have consulted again with David Crichton, who concludes;

“I do not therefore believe that Biggar have addressed my reservations about the original report. What they have done is laid out their methodology and calculations in more detail. But the conclusions they reach are the same as before and just as flawed. Their raw data are too limited and non-specific to make the case that they are trying to. And even if they had done that, I return to my original point that the jobs impact is too limited and doubtful to pass the test of having to outweigh the environmental impact.”

SURVEY OF LOCAL BUSINESSES WITHIN 2KM OF AIRFIELD FARM

Within the Councils Midlothian Economic Development Framework it is stated that the Council seeks to focus “...on opportunities that will help to achieve the vision for Midlothian by identifying actions that support growth, protect assets, add value and create employment in Midlothian.”

‘Economic development must be managed to meet the needs of our community and protect our assets’
 Midlothian Economic Development Framework

If Midlothian want to encourage and support local rural businesses, many of whom are already struggling in the current economic climate, the economic impact on local businesses should be one of the key factors in deciding this application.

Scottish Coals economic analysis of the impact on local businesses was based on out of date, incorrect and incomplete information. Whilst Scottish Coal expects you to accept their own opinions on the impact the mine will have on local businesses, they have refused to consult with the local businesses owners and employers to determine their views.

Scottish Coal stated in their EIA that there were 38 local businesses within 2km of the site. Ten of the 38 businesses are either not commercial businesses (medical centre and primary schools) or were not found at the stated address.

Only 28 active businesses were identified by Scottish Coal.

From a survey carried out by CAAOC, of these 28 active businesses, seven are businesses which are either tenants of Oxenfoord Estate, or otherwise have business relationships with Oxenfoord Estate and have stated a preference to offer no opinion. Seven have not yet responded.

Of those who have responded (14) 100% have stated there will be a negative impact.

CAAOC have also identified **an additional 67 businesses within 2km of the site**. The views of all local business owners should be considered, to ensure they are supported, and not hindered, during these difficult economic times. CAAOC are currently conducting a survey of these additional businesses to determine their views on the impact of the proposed open cast mine. Due to the short time scale CAAOC has had to prepare this response we have been unable to include the full results of this survey as the responses are still being received. However, we have included an analysis of the results received to date.

20 have stated negative impact, 5 are neutral, and none have stated there will be a positive impact.

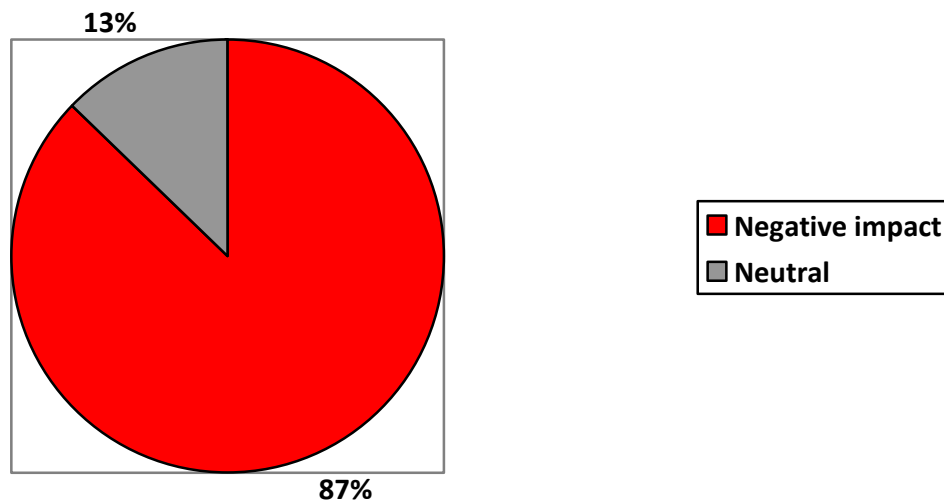
Business Survey – analysis of responses received

Combining the responses received from first CAAOC survey of Scottish Coal’s list of businesses, with our second survey responses received from the 67 businesses omitted from Scottish Coal’s list, the following is a summary of what local employers believe the impact will be on their businesses.

Total businesses responded	Negative impact	Neutral impact	Positive
39	34	5	0

Impact of the Airfield open cast mine on local businesses

Responses as a percentage



NB: the full report on this business survey will be submitted to Midlothian Planning department prior to the Pre-Determination Hearing as responses are still being received.

Sample of comments received (copies of all comments received will be included in our final report on the business survey)

“I have genuine health & safety fears for my staff and clients. Horses will be frightened by the after shocks of blasting, risking bolting and serious injury/fatality to riders and/or horses, along with incidental cars/pedestrians as well as staff risking injury whilst handling horses.”

Celia Henderson, Cousland Park Training and Livery Centre

This business alone provides employment for 8 full time staff (including a working pupil scheme with 4 working pupils currently enrolled), and indirect employment to farriers, vets, feed merchants, saddlers, garages.

“The preparation of food in the cleanest environment is paramount to the service I provide. Particles of any size whether hazardous or not will only add to difficulties in preparation and I shall have to think of an alternative site to provide this, or potentially close the business as my overheads would prove too expensive at rented premises.”

Shona Sharp, Sharp Buffet Services

We consider that Scottish Coals assessment of impact shows little understanding of the nature of our business and the complex interplay of factors that lead to a positive visitor experience of a small-scale rural attraction. The environmental setting is a key element and the scarring of the landscape and associated noise and traffic, resulting from the opencast development, would be seriously detrimental.

“The Smiddy is also registered with Scottish Screen and Lothian Film and has been used as a location by production companies. The proposed development would majorly compromise a potential income stream for our business.

“The impact of the Airfield Opencast development would be negative on our business as a whole.”

Gordon Brown, Secretary, Cousland Smiddy Trust

"If the application succeeds there will be some cost to my business. It may be reduced inflow of new clients, it may be reduced profitability due to deterioration of productivity, it may be actual monetary expense to physically mitigate the nuisance. The result, what that actually means, is that at the end of the day some of Mr Cornes' (majority shareholder Scottish Coal) profit is my loss. "

John K Kirk, CTA

"The prospect of lorries travelling through the village (Ormiston) does concern me greatly. Even if not on the official route there's a real prospect that they will take shortcuts."

Dr Lynda Carlisle

"...yes I am a one - man business but it is all the more fragile because of this - and in the current financial situation of the country a development of this crude nature could cause my fragile business to fold. I strongly oppose this proposed development for all the reasons above."

Michael McManus, Wood carver /sculptor

"Should this opencast mine be permitted then I would choose to re-locate my family and businesses to the Borders region rather than suffer the physical and emotional impact from noise and dust"

Joyce Couper, Joyce Couper Stress & Management Consultant

"Cousland is a rural area and as a childminder, most of my business is incoming, and I would potentially lose business if parents don't want their children in dusty, noisy, polluted area. I use the local park and walks to Ormiston, but this would be difficult. My back garden would also be polluted."

Carol McArthur, Carol Mac Childcare

"As a small company already struggling to stay afloat in this economic climate, I find yet another hurdle as the dust in the air from opencast will result in my having to install a large filtration and venting system in my French polishing workshop, at a cost of around £5000. My small company can't cope with such a large outlay. This is particularly relevant to me as the opencast will be less than 500 metres away."

Malcolm Sharp, M Sharp Upholstery Services

"My successful and growing business has been located on the outskirts of Cousland for 13 of its 25 years existence. I produce audio visual programmes and soundtracks for visitor attractions and museums, both within the UK and internationally. It is essential for voice recording and editing that there is a quiet environment to work in."

Sheena Irving, Owner, Sheena Irving Audio Visual

This business alone also supports an additional 15 local businesses including printers, designers, digital media providers, banks, post office, and restaurants.

SECTION 3 VIABILITY OF MOUNTSKIP/STOBS

- 1) The non-viability of the Mountskip/Stobs coal reserve is critical to Scottish Coal's argument that Airfield should now be considered as an area of search. CAAOC have already made it clear that we do not agree with this line of argument as we do not believe para 3.9.14 of the Local Plan should facilitate the substitution of the sites by consideration of a planning application.
- 2) Our view is supported by the SPP which states that "*the quality of coal is not a material consideration in planning decisions*". By contrast the local plan at para 3.9.14 requires a viability assessment of alternative sites for which the quality of available coal appears to be a fundamental factor. This being the case, it can only be appropriate for a viability assessment of Mountskip/Stobs, or any other Area of Search, to be conducted as part of a local plan review rather than Scottish Coal's approach of seeking to justify the substitution by Airfield through a planning application. The Council should uphold the requirement of the Government policy document.
- 3) Nevertheless, Scottish Coal claim that the reserve at Mountskip/Stobs amounts to no more than 150,000 tonnes of shallow, low quality coal in thin seams. They claim that the coal has a high moisture content, low calorific value and a high sulphur content. They also claim that the majority of the workable coal is now situated within 500m of the new housing at Gorebridge.
- 4) Midlothian Council commissioned a study by consultants, Johnson Poole and Bloomer, to ascertain the accuracy of Scottish Coal's claim independently. They have since submitted a brief report to Midlothian Council dated 23 July 2010 which concludes that the reserve is indeed uneconomic.
- 5) Firstly, we have various comments to make on the appointment of Johnson Poole and Bloomer-
 - a) Prior to their appointment we expressed reservations that it would be difficult to obtain a truly independent opinion and that the consultant must have no conflict of interest unless fully declared and deemed acceptable.
 - b) We were therefore extremely disappointed to note that JPB were ultimately selected due to their close involvement with the Scottish mining industry.
 - c) In particular we pointed out that JPB have 10 staff at Director level in the UK of which 4 are based in their Glasgow office. All of those based in Glasgow are either wholly or partly involved in consultancy relating to the mining industry and it is therefore almost certain that one of their main clients – or target clients - must be Scottish Coal (the largest coal mining operator in Scotland). This is confirmed by their website.
 - d) Midlothian Council claim that JPB have no conflict of interest because they were asked to confirm this fact in writing. We note that JPB were not asked the simple question of whether they are currently acting, or have ever acted for Scottish Coal or Scottish Resources Group. This would be a fundamental starting point from which to assess the impartiality of any prospective consultant. Instead, JPB were left to make their own assessment of conflicting interests and Midlothian Council simply accepted this.
- 6) Regarding the instructions which were issued to JPB, we were very surprised to note that rather than simply asking JPB to verify the viability or otherwise of Mountskip/Stobs, they were also provided with a lengthy summary of the Local Plan policy and in particular the precise contents of para 3.9.14 and its conditions. We would question what relevance this planning policy information had to the single issue of viability. We would also point out that given our foregoing concerns regarding conflict of interest, the provision of this information appears highly "leading" i.e. JPB knew precisely what conclusion Scottish Coal would prefer them to reach.

- 7) We were not therefore surprised when JPB's report fully supported the position of Scottish Coal. Indeed, the most surprising elements of their report were not just the brevity of it, but also the degree to which they were prepared to offer their own interpretation of planning policy in support of the Airfield site:-

"It is therefore considered that this assessment fully justifies Scottish Coal's desire to have the council's agreement to allowing them to develop the alternative site located outwith the identified Area of Search."

Considering that JPB were not asked to comment upon this "alternative site", we find it astonishing that they have seen fit to pass a written judgement on the merits of the planning application for Airfield. If ever there was a strong indication that JPB have a conflict of interest, then this surely is the evidence.

- 8) In relation to the main issues concerning the viability of Mountskip/Stobs, JPB's report states that Sulphur levels in excess of 1% are not acceptable to Scottish Power at Longannet. They then state that:-

"it is understood that the Mountskip/Stobs site has such high sulphur levels."

Note that it is only their "understanding" i.e. they have not verified that this is the case, which is unacceptable. Furthermore, by implication they are dismissing the potential market for such coal elsewhere in Scotland or the UK, most notably at Cockenzie Power Station.

- 9) Although JPB were asked to provide a financial analysis in the form of cost/value of coal extraction potential at Mountskip/Stobs, nothing has been provided. Instead, JPB appear to be simply stating that the sulphur content is too high and the amount of relatively low quality coal is not viable. While this may be a fact, they were specifically asked to provide figures to support their analysis and this has not been done.
- 10) Having regard to all of the foregoing, we are unconvinced that JPB do not have a conflict of interest which affects their impartiality. We do not accept that they have adequately carried out the remit which they were given by Midlothian Council and we would ask that the Council seek more detailed justification of their conclusions. In short, the JPB report is not adequate for the purpose of the condition contained in para 3.9.14 relating to Mountskip/Stobs.
- 11) It is also worth noting that in April 2006, Scottish Coal wrote to Midlothian Council and welcomed the inclusion of the Mountskip/Stobs area of search in the draft Local Plan. They confirmed at that time that they thought the reserve would make a valuable contribution. Around the same time the Council had refused to include Airfield as an area of search in the draft plan. In these circumstances and having regard to the nature of the amendments which Scottish Coal negotiated in para 3.9.14 of the Local Plan, a cynical mind might propose a theory that Mountskip was welcomed with the sole objective of making it the "sacrificial lamb"!
- 12) One additional and very significant point arising from this exercise is the question of the proposed market for the coal from Airfield. Since Scottish Coal has confirmed that all of the coal at Airfield is in excess of 1%, we are confused as to how this coal can be supplied to Longannet having regard to JPB's report. Indeed, we are aware that the maximum sulphur content of coal suitable for supply to Cockenzie power station is actually less than 1%, so the same issue would appear to arise. How can Scottish Coal meet these Sulphur content criteria with coal from Airfield and why is this not possible with coal from Mountskip/Stobs? In the absence of a credible explanation, we must question whether Scottish Coal has an alternative destination in mind for coal from Airfield which they have not disclosed?

SECTION 4 - ENVIRONMENTAL IMPACTS

Summary

- The following environmental sections demonstrate that Scottish Coal has failed to show that the proposal is environmentally acceptable in accordance with the first test of the SPP relating to areas of search.
- Scottish Coal has produced projections which show that even with a full and consistent mitigation strategy employed on site – which experience would suggest is not a realistic expectation – the predicted impacts are in excess of statutory limits for some receptors.
- Furthermore, we strongly believe that the predictive modelling carried out by Scottish Coal is misleading and fails to properly address worst case scenarios. As a consequence, the predictions in relation to noise and air quality are understated.
- The community have expressed significant opposition to the visual and landscape impacts which will result from this development. While Scottish Coal continues to produce subjective arguments to supposedly demonstrate the insignificance of such impacts, the people of this community do not share these views in relation to their landscape.
- Health is an overwhelming point of concern amongst the local communities. While the mining industry continues to rest its entire health argument upon a single medical study carried out over 10 years ago, we believe we have shown that there are now sufficient grounds to question the application of its conclusions. Midlothian Council must take a more balanced view of the evidence and resist the temptation to follow the precedents set by other open cast applications.
- We have highlighted the complex risks in relation to ground stability which are particular to this site. It is not sufficient to take the applicant's unsubstantiated assurances that these can be adequately controlled and the community will undoubtedly look towards Midlothian Council if injury, loss or damage should result.
- Having regard to all of the above, the only manner in which the precautionary principle can logically be applied in this case – and there can be no debate that it must be applied - is to refuse the grant of planning consent for this development.

'The vision for Midlothian is to provide a high quality of life for residents'

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4.1 Ground Stability and Vibration

1) Both CAAOC and numerous members of the community have objected to this application expressing strong concerns in relation to ground stability around Cousland and the Airfield site.



Limeworkings under Cousland Village
Source: British Geological Survey

2) As part of their second submission, Scottish Coal has submitted more extensive plans of the former lime workings beneath and surrounding Cousland. Unfortunately, they have done nothing more to address the reservations expressed by the local community in relation to them.

3) The plans which Scottish Coal has submitted appear to be based upon British Geological Survey (BGS) records of the abandoned mines. It is questionable why Scottish Coal has not seen fit to include the annotations on the BGS plans which state in a number of locations to the South of the village, that the extent of the workings is un-surveyed due to flooding. The same applies to the mention of “*a road driven to coal workings*”. We believe this is an attempt to play down the high level of uncertainty regarding the extent and condition of the limeworkings and associated blasting risks.

4) Other than production of this BGS based plan, there is no additional discussion or evidence of any research into the lime workings. As CAAOC stated in its last submission, establishment of their full extent should be a fundamental pre-determination requirement upon Scottish Coal along with a scientific assessment of the ground stability risks. If this is not forthcoming, then the application should be declined on these grounds alone.

5) We include at Appendix 1 a plan showing the below ground extent of recorded lime works around Cousland sourced from public records. This shows a wider coverage than the plan produced by Scottish Coal in their Appendix 10. The true extent may be wider still due to unrecorded workings. Our plan shows the playing field where loss of a child’s life was narrowly avoided following a recent spontaneous land collapse. There is a very real concern amongst the community that further instances will be caused by the effects of blasting and disruption to underground watercourses with risk both to life and property.

6) The original Environmental Statement made a fleeting reference to the limeworkings and then focused on other pieces of work carried out with the objective of ascertaining the minimum level of ground vibration necessary to cause collapse of mine workings. It was evident that while the vibration levels quoted were relatively high, the outcomes were extremely variable and this is no doubt why there is no recommended maximum within UK or EU legislation in relation to former mine workings. The methodology is highly reliant upon knowing the blast design, the geology and the receiving structure, therefore in the absence of full detail regarding the limeworkings, the bland reassurances from Scottish Coal are nothing more than conjecture.

7) In relation to former coal workings below and surrounding the Airfield site, it is perhaps ironic that in the first few months of 2010, there were two instances of spontaneous ground collapse. One of these was on the Airfield site and the other was close by. Both were fenced off by the Coal Authority and significant stabilisation works followed. Photographs are included at Appendix 1.

- 8) While Scottish Coal may claim that the mining of Airfield will result in greater stabilisation of these coal workings, it is the peripheral effect of excavation works, blasting, ground water and mine water movements which provoke greater concern in relation to ground stability.
- 9) Coal Authority records show significant workings extending beneath the site and back towards Ormiston. While ground stability has not generally been a problem, there is a high risk that open cast activity will open a "Pandora's box" of ground issues.
- 10) Ordinarily, such concerns in relation to former coal workings would be addressed as part of the Coal Authority licensing procedure after the grant of planning consent. However, we have been advised by the Coal Authority that they would be happy to conduct this work in advance of determination if the planning authority were to require. In doing so, this would open the exercise to public scrutiny and go a long way towards reassuring the local community that issues with former coal workings can be managed without unacceptable risk.
- 11) SEPA have also mentioned in their report that; *"There may be stability issues associated with underlying historic mineworkings, however further comment is beyond the scope of the groundwater unit."*
- 12) With regard to blasting specifically, it seems apparent that dwellings within the immediate vicinity of the site will be subject to discernible ground vibration. Human sensitivity commences at levels of approx 0.5 mm/s and ground vibration projections for most properties surrounding Airfield, as well as the village of Cousland, are well in excess of this level. The frequency of blasting has not been made clear, but it would seem reasonable to assume that local residents will have to endure daily ground vibration resulting from blasting for 5 years.
- 13) Blasting is a highly sensitive matter for the equestrian businesses in the local area. Cousland Park livery is located nearby and horse owners there are extremely concerned for their own safety while riding in the area as a result of blasting and the effects this can have upon animals. Owners will most likely take their horses elsewhere if this proposal goes ahead which will have a potentially terminal effect upon these businesses.

4.2 Noise

- 1) Our concerns regarding noise impacts remain undiminished following Scottish Coal's latest submissions. In summary, we have strong reasons to believe that noise levels will exceed PAN 50 advisory limits for a number of receptors.

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for people and enterprise'**
Midlothian Economic
Development Framework

- 2) The original Scottish Coal submission stated that:-

"it should be possible to operate this site within PAN 50 advisory limits provided appropriate mitigation measures are adopted."

Use of the word "should", rather than the word "will" gives limited confidence and indicates that even if appropriate mitigation measures are employed, there remains an element of doubt. We would point out that the predictive model assumes that all mitigation methods are consistently employed throughout the lifetime of the development. This is an unrealistic assumption even with a diligent operator on site.

- 3) In carrying out predictive modelling, we are very concerned that no operational scenarios between months 18 and 36 have been modelled. While scenarios at months 12, 15, 18 and 36 have been produced, the period between months 18 and 36 has significant operations above ground level in relation to Phase 1 and Phase 2 overburden mounds. The noise impacts at Pardivan and Fordel Park/Cottage should have been assessed and stated at no less than 6 monthly intervals during this period.
- 4) The operational noise predictions at Pardivan, Tynemount Cottages, Fordel Park/Cottage and Oxenfoord Cottages are very much at the PAN 50 limit of 45 - 47dB L Aeq 1 Hr. In some instances it is exceeded.
- 5) PAN 50 Annex A (para20) states:-

"The effects of barrier attenuation and soft ground attenuation should not be added together for predictive modelling purposes. It is generally accepted that barriers intercept much of the noise which would otherwise be reduced by soft ground, so that combining the corrections for barrier and soft ground attenuation would introduce an element of double counting. In practice it is sufficient to use the higher of the two corrections for modelling purposes."

It would appear that all of the modelled operational scenarios assume soft ground and perimeter bunding of 4-6m in height. If this is the case it is clearly contrary to PAN50 and therefore leads to an understatement of noise levels.

- 6) All operational scenarios assume "working at depth". It is not apparent whether this relates to all plant or simply to haulage. In either case, this would be inaccurate as some plant will undoubtedly work near the surface, including haulage. Such an assumption will lead to further understatement of noise levels.
- 7) PAN 50 Annex A (para 23) also states:-

"Meteorological records of wind speed and direction can provide a useful reference from

which both planning authorities and operators may recommend that a fixed allowance of 2 dB(A) should be incorporated in predictive modelling, having first considered site-specific conditions, e.g. elevation, general topography, and natural or artificial wind shielding.”

Given the fact that meteorological data has been used from the former Turnhouse weather station for the period 1996 – 2000 and having regard to the elevation of the Airfield site, its topography and the distance from Turnhouse, it would seem reasonable by any standards to conclude that there is sufficient scope for variation in wind speeds and direction between the two locations to justify such a 2 dB allowance. This being the case, the noise level predictions produced by Scottish Coal are in excess of PAN 50 guidance in relation to a number of receptors throughout the lifespan of the mine.

8) In the case of Fordel Park and Cottage, PAN50 advisory limits can only be achieved during certain operational scenarios by the construction of a temporary screening bund on top of the overburden mound. This is a contrived solution which demonstrates the marginal nature of the noise mitigation strategy. (Note that we have seen no evidence of this screening bund in any montages or drawings – what is the height?)

9) The applicant concedes the following with regard to predictions during operational phases:-

“In some Scenarios the model assumes that the CAT D9 is operating at 50% of the time where these operations are close to the surface e.g. where material is being backfilled.”

Once again, this contrived approach suggests that were it not for this assumption, the PAN 50 advisory limits would be breached. The assumption that a large dozer will only carry out such work for 30 minutes in each hour is unrealistic and demonstrates that modelling inputs are being adjusted to produce the desired results. In practice we believe the noise limits will be breached.

10) With regard to Temporary Operations, it would appear that predicted noise levels at Fordel Park and Cottage only achieve the PAN 50 standard by again assuming that the large dozer will operate 50% of the time in every hour whilst forming the screening bund on top of the overburden. We must therefore conclude that the noise predictions based on a more realistic 100% operating assumption are much closer to, or even in excess of the PAN 50 limit of 70dB.

11) Predictive modelling takes no account of HGV coal haulage. We believe it is likely that there will be a number of HGV's queuing on site for loading at different times of the day in addition to the movement of loaded vehicles. It is not appropriate to ignore the engine noise from these vehicles if a realistic assessment is to be made, therefore this would appear to be a further distortion of the modelling exercise which lowers the predictions.

12) Scottish Coal has not published the actual baseline noise levels for any receptor below 35 dB. However, the predicted operational noise levels for each receptor differ significantly between the modelled scenarios. In the case of Cousland Park, the lowest predicted noise level of 8.5dB occurs in Scenario 5 versus a maximum of 37.4dB in Scenario 2. Assuming that Scenario 5 approximates to current noise levels, then the differential of almost 30dB will represent a perceived increase of over 8 times the currently perceived noise level. The increase at Hadfast of 26dB is almost as large. In a number of cases, predicted noise levels are over 4 times the likely current levels. The magnitude of these noise increases represents a significant impact for the receptors concerned.

- 13) Notwithstanding our view that this proposal will exceed PAN 50 limits and should therefore be refused, the detail offered by Scottish Coal in terms of noise monitoring proposals is very limited. They refer to an Environmental Management System including procedures for liaison with ELC and the community but no detail is given. The location and type of monitoring equipment is not specified. As a minimum, we would expect proposals to include confirmation of real time noise monitoring with audio capture to be located at all sensitive receptors with appropriate trigger levels specified and corresponding actions. We strongly believe that such information should be assessed pre-determination and not deferred as a planning condition.
- 14) No details of night time noise generation have been provided. It is reasonable to assume that in addition to generators for lighting, there are likely to be pumps in operation during most of the extraction phases. It would appear that this has not been modelled to assess compliance with the PAN 50 night time noise thresholds.

4.3 Air Quality

- 1) It is essential to firstly note that annual mean PM₁₀ predictions for Oxenfoord Mains and Oxenfoord Cottages (x3) are in excess of the Scottish Government maximum Air Quality Objective of 18 ug/m³. In the case of Oxenfoord Cottages, they are some way in excess at almost 22 ug/m³.
- 2) PM₁₀ impacts at the above locations are therefore categorised as “Major” even after taking account of mitigation measures. This is not an acceptable situation.
- 3) Both Tynewater Community Council and CAAOC expressed reservations in the last round of consultation regarding the accuracy of meteorological data from the Turnhouse weather station in its application to the Airfield site. We remain unconvinced that there are not significant differences in the prevalent wind speed and direction between the Turnhouse site and Airfield Farm. The absence of any site data readings by Scottish Coal to give some verification of accuracy is of great concern.
- 4) While we accept that data must come from a quality assured source, Scottish Coal’s Air Quality Technical Report states that site specific readings are preferable. It would therefore seem logical to make some assessment of on-site weather conditions to at least attempt to confirm the suitability of the weather station data in its raw form. Where significant variations are noted, it would appear prudent to model a greater variety of scenarios (wind speed and direction in particular) in order to build a better picture. The only response received from Scottish Coal in this regard was from their consultant who confirmed that if the wind speeds were greater than Turnhouse, the dispersion of finer particulates would be increased, thus reducing their concentrations, although there would most likely be an increase in nuisance dust generated. We would question what the results might be if the wind speed was to be lower than Turnhouse.
- 5) We would question why the meteorological data set is for the period 1996 – 2000 rather than a more recent 5 year period.
- 6) No account taken of seasonal variation – it is confusing as to what has been assumed but Scottish Coal has stated that “*In view of the indicative nature of the modelling, it would probably be of little additional benefit to conduct modelling for seasonal variations*”. It is therefore difficult to draw any clear implication from this approach other than that the accuracy of the predictive model is so low that further seasonal sensitivity analysis would be pointless.

- 7) To confirm this point, in relation to the dispersion modelling it is stated that “...these estimates should be regarded as indicative rather than absolute. The model uncertainties in the source estimates for fugitive dusts are not sufficiently precise to confirm that emissions will comply with the air quality objectives.”
- 8) The modelling of worst case dispersion scenarios has not actually been carried out. The Technical Report states that “In both cases, the worst-case scenarios consider dust impacts when the rate of overburden excavation and backfill is at a peak, between years 1 and 4 for the proposed scheme”. We therefore fail to see how modelling scenarios at months 12 and 48 can be considered to be adequate given that these points represent the start and the finish of the “worst-case” period. Modelling should have been carried out at a minimum of 12 monthly intervals throughout that period.
- 9) Nuisance dust impacts are categorised as “Major” at Oxenfoord Cottages. Since there is no statutory limit for nuisance dust it is questionable whether the impact on Oxenfoord mains is also “Major”.
- 10) As detailed above, concerns have been raised regarding the accuracy of the wind speed data produced by Turnhouse. Scottish Coal’s consultants attempt to provide reassurance by stating that higher wind speeds will tend to increase the pick up of coarser particles in the non respirable fraction “...this can lead to emissions of highly visible nuisance dust, but is probably less important in terms of protecting human health. “ It is remarkable that so little concern should be expressed regarding the generation of significant quantities of “nuisance dust” when in planning terms, the local authority surely has a duty to protect the community from precisely this type of nuisance.
- 11) We have a strong belief that harmful effects of dust will be worse than predicted by Scottish Coal and will be suffered by residents both immediately adjacent to the site, such as at Oxenfoord Mains, but also further afield in Ormiston and individual houses to the east and south.
- 12) We have had accounts from numerous community members throughout the UK regarding the nuisance dust emissions from open cast sites. The fact that there are no statutory standards for the control of nuisance dust is not helpful. Nuisance dust will be one of the main sources of public complaint and will be the most apparent to the community.
- 13) Amongst the mitigation measures proposed by Scottish Coal during adverse conditions is the halting of activities on site to allow the dust to settle. PAN 50 states quite clearly that:-

“This type of condition is difficult if not impossible to enforce as action can only be taken after the event and again there is the difficulty of defining what constitutes ‘adverse’ conditions.”

Consequently this type of strategy is not credible and no consideration should be given to it as a further mitigation method.

- 14) NH Lothian has requested a Dust Action Plan as part of the Environmental Management System (EMS). Amongst other things, they require detailed monitoring proposals including type and location of equipment, together with proposed trigger levels and dust suppression measures. Scottish Coal has declined to provide this on the basis that it is too early to provide such detailed information which would normally be provided as a planning condition. We must state that we

are utterly opposed to what seems to be the accepted practice of providing such essential information after the grant of planning consent by attaching lengthy planning conditions.

- 15) Without prejudice to our request that this application be refused in its entirety, we can see no reason why (other than minor expense) the applicant should not specify the types of monitoring equipment, the locations and trigger levels which they propose to use in their EMS during different phases. For the avoidance of doubt, we believe that this should include real time monitoring at receptor locations as well as boundary monitoring and East Lothian Council should have full and immediate access to all data from devices.

4.4 Health Impacts

- 1) Scottish Coal has submitted a report entitled "Fine Particulate Matter From Surface Coal Mining and Public Health" prepared by Entec Ltd. The report is apparently very comprehensive and attempts to bring some balance to the debate over air quality and public health. A substantial portion of the report is focused upon the results of the Newcastle Study together with discrediting the Douglasdale Coal Health Study.
- 2) While the Douglas Coal Health Study (DCHS) was lacking the necessary rigor for medical research purposes, the fact remains that the report identified some trends which were not adequately explained by Entec or NHS Scotland.
- 3) The data sources used by Entec differ from the DCHS in many cases therefore direct comparison is difficult but their data did not show markedly different outcomes from the DCHS in respect of COPD and Lung Cancer. Entec fail to explain the following:-
 - a) Chronic Obstructive Pulmonary Disease (COPD) – Entec have produced data which actually shows that the prevalence of COPD between 2004 – 2009 in Douglasdale is substantially higher than the national average throughout the period (approx double), but most importantly, that the figures increased significantly in 3 consecutive years and only in 08/09 was a fall witnessed. The increase during the 3 yr period was alarmingly high and the rising trend may yet resume, but the fact that the Douglasdale rate was 2.7% in 08/09 (having dropped from 3.6% in 07/08) against a UK rate of 1.5% is disturbing and Entec offer no clear theory to explain this other than a conjectural reference to smoking.
 - b) Lung Cancer registrations – while Entec demonstrate that there is no trend to the annual number of overall cancer registrations in Douglasdale, on separating out the specific lung cancer registrations for the period 2000- 2005, the figures show a steady growth of registrations in Douglasdale. Admittedly, during the same period in Biggar (a comparator town) the number also rose for the first 5 years, but fell in the 6th year where Douglasdale continued to rise. In Prestwick there was no apparent trend. Once again, Entec make reference to smoking in an attempt to explain these figures, but rather than providing regional figures, they instead talk about UK smoking trends which lend no support to their case.
- 4) With regard to the Newcastle Study, Entec place great store in its conclusions despite the fact that the study was only conducted over a 6 week period and only related to the respiratory health of children. It was therefore unable to ascertain the effects of particulate emissions on the incidence and progression of long term/chronic diseases, particularly in the case of adults. It has been stated many times previously no doubt, but the sole reliance of the planning system and the open cast industry on this single health study is quite staggering. It is particularly

perplexing when viewed alongside many of the statements from the medical profession and most notably in this case from Entec and NHS Lothian in relation to the Airfield application:-

“There is little doubt that improvements in air quality will bring about improvements in health, welfare and mortality rates.”

(Entec, consultants to Scottish Coal, Jan 2010)

“In recent years evidence has accumulated which shows that day to day variations in concentrations of airborne particles including PM10, PM2.5 and black smoke are associated with variations in a range of health indicators including, hospital admissions (for treatment of both respiratory and cardiovascular diseases), symptoms amongst patients suffering from asthma and daily deaths.”

(Entec, consultants to Scottish Coal, Jan 2010)

“There is substantial evidence for an association between adverse health effects and exposures to particulate matter, particularly PM10 fractions.”

(NHS Lothian response re Airfield application, Jan 2010)

“Although the evidence associating adverse health effects of open cast mining is limited, inconsistent and inconclusive, it cannot be dismissed. The scientific “uncertainty” on the significance of possible adverse effects should justify the adoption of a ‘Precautionary Approach’.”

(NHS Lothian response re Airfield application, Jan 2010)

- 5) The above statements are quite clear in their assertion that particulates of the PM10 fraction and smaller emanating from open cast operations are potentially damaging to health. It is presumably with this in mind that Air Quality Objectives have been set throughout Europe and fairly stringent target reductions have been specified for the period up to 2020. None of this is consistent with the conclusions of the Newcastle Study which concludes that there is no risk and upon which the open cast industry relies throughout the UK. In fact, such views and actions are far more consistent with the identified trends in the Douglasdale Coal Health Study.
- 6) Having regard to the last two statements from NHS Lothian, there is a clear recognition of the potential dangers from open cast mining. The very fact that medical evidence is “inconclusive” necessitates the employment of the “Precautionary Principle” and in that context we strongly believe that this application must be declined.
- 7) In a letter dated 11th June 2010 to Midlothian Council Dr Othieno from NHS Lothian Department of Public Health mentions re-reading the 2001 paper by Howel et al¹ regarding any possible impact on PCT resources in the area. He indicated that the study found no difference in consultation rates between Open Cast and control communities over a 52 week period. However, the paper is clear that when looking at respiratory and skin conditions specifically, the levels of GP consultations were, in the words of the authors, “significantly higher than those in their paired control communities (by approximately 40%)”.
- 8) In this 2001 paper, Howel et al documented the fact that during the 52-week period that Dr

1 “Consultations of Children Living Near Open-Cast Coal Mines”, Howel D, Pless-Mulloli T, Darnell R, Environmental Health Perspectives, Vol 109:6, Pgs 567-571, June 2001

Othieno refers to, a number of mines were unexpectedly inactive for significant periods. For three of the Open Cast communities, the mines were inactive for up to 26 out of the 52 weeks studied. The authors made clear their concerns over the 52 week data, stating that “the differing periods during which the open-cast sites were active complicated the interpretation of the results”. We therefore reiterate the previous assertion that the mere existence of the mine (regardless of health impacts) is likely to generate a significant increase in the consultation rates at local GP practices and place an increased burden upon the PCT resource.

4.5 Landscape and Visual Impact

1) In our last submission we raised numerous issues with regard to mis-description of baseline landscape, biased interpretation and inconsistency. While we accept that many issues are subjective assessments, Scottish Coal has submitted nothing in the latest submission to add any balance to the debate or retraction of inaccuracies. Given that many of our original points of objection have not been addressed in this latest submission, we would recommend that Midlothian Council revisit the points made in our last objection regarding Landscape.

‘A major asset of Midlothian is its attractive countryside settings’

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2) By way of example, in our last submission we mentioned the following:-

“To demonstrate the generally biased and inaccurate assessment of visual impacts within the Environmental Statement, we would draw attention to the description of site views from the A6093 on page 4-36/37. Throughout the narrative the assessment tends to understate the extent of views towards the site when travelling westwards along the A6093 from the Ormiston junction. However, it then states that on reaching the section passing West Byres, the “views to the site are obscured by mature roadside trees”. This is a gross misrepresentation as in reality there is a clear elevated view of the site which is unhindered for at least 250m before views become intermittently broken by trees (which are far from mature). The narrative then seeks to emphasise the pylons crossing the road in an effort to further enhance Scottish Coal’s distorted image of a landscape of industrial character.”

Scottish Coal has made no mention of this inaccuracy which is fully evidenced by the photograph they provided from viewpoint 06.

3) Both CAAOC and East Lothian Council objected to the understatement of visual impact in relation to screening bunds. However, Scottish Coal continue to offer the perverse argument that views of site operations and the loss of existing features will be mitigated by soil bund screening. Not only does this fail to recognize the fundamental difference between a pile of earth and a natural landscape, but it is inaccurate to suggest that receptors will not have views into the operational areas of the site. The elevation of the B6093 as it passes West Byres is such

“We will work with our neighbours to ensure well planned and integrated development that will maximise the benefits not just to Midlothian but to the wider region”

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that motorists and the nearby dwellings will inevitably have views into working areas. It is acknowledged by Scottish Coal that the overburden mounds will be visible from many viewpoints

therefore they must equally acknowledge that the heavy plant which operates upon them will also be visible.

- 4) The upper parts of the site where overburden will be stored are also visible from much greater distances. The zone of theoretical visibility demonstrates this and while woodland does reduce this visibility in reality, the fact remains that the overburden and soil storage areas of the site will be seen from the A68, the B6371 (Humbie Road), the B6372 and the A6093.
- 5) The photomontages which have been provided by Scottish Coal are all produced assuming views at month 48. We therefore have no idea how these views will look at any point in the previous 4 years. This is unacceptable and we believe it is a deliberate attempt to conceal the visual impacts which will be experienced throughout the majority of the site lifetime. In particular, the screening bunds and overburden mounds are assumed to be grassed over. Whether or not this is the case at month 48, it will not be the case for much of the preceding 4 years. Screening bunds vary in their standard of seeding, but it is rarely the case that overburden mounds ever become green given their dynamic nature.
- 6) The photomontages fail to show the additional screening bund proposed on top of the western overburden mound to protect Fordel Park. This will provide additional visual intrusion.
- 7) The photomontages show flat topped overburden mounds which are fairly typical on most sites. This is contrary to the proposals in the Environmental Statement which said that the overburden mounds would not be flat topped in order to make their profile more natural. This is a further demonstration of inconsistency and gives the community little confidence with regard to the applicant's real intentions.
- 8) East Lothian Council identified significant discrepancies between the current numbers of trees and hedgerows on site versus the number which Scottish Coal will replace as part of the restoration plan. The applicant justifies this by stating that the restoration plan is "indicative". This is unacceptable and while it is claimed that all trees and hedgerows will be replanted, this casual approach does not cultivate great faith.
- 9) The latest Scottish Coal submission makes reference to the reduced "airfield site" as mentioned in paragraph 3.9.14 of the Local Plan. They point out that in their view the mining of this reduced area would necessitate the removal of the mature woodland block adjacent to the sawmill. Notwithstanding the fact that we still believe this reduced site is unacceptable, we would point out that the operational preference to remove trees in mining a smaller site is not a planning matter. The reduction in the site boundary was suggested to remove sensitive areas and while a boundary is delineated, it does not mean that the operator would be granted consent to conduct extraction over all of that area i.e. removal of mature trees would still be unacceptable. Consequently this is not an acceptable justification for mining the larger site. Ensuring the commercial viability of the site is not a planning matter.
- 10) There will be floodlighting installed at the mine and we are concerned this will cause significant visual impact in the surrounding area, particularly during hours of darkness in early mornings and late afternoons. This does not appear to have been addressed by Scottish Coal, nor any assurances provided on the hours of operation of the floodlighting, which we are concerned may exceed the permitted hours for excavation.

4.6 Transport

- 1) We maintain our assertion that contrary to the consultation response provided by Transport Scotland, the design of the Fordel junction is extremely marginal in terms of its compliance with DMRB Vol 6. The reopening of the Northbound junction has done nothing to rectify the dangers which will be posed by the merging of northbound fully laden coal trucks joining the A68 with no accelerating lane available. We are convinced that this will result in accidents and we urge Midlothian Council to give this serious consideration with regard to this application.
- 2) Scottish Coal has expressed surprise that CAAOC should suggest that development at the Fordel junction is feasible as they believe this is contrary to our argument that the junction is substandard. We would therefore like to clarify that the deficiencies which we suggested in the junction's design are particularly relevant to HGVs joining the A68 Northbound. The slip road joining the A68 has very poor visibility and no accelerating lane. While this should not be a problem for cars joining the A68, fully laden trucks will struggle to accelerate and cars approaching at the maximum speed limit will have very little time to see a truck joining the northbound carriageway and adjust their speed. Development at the junction would not generate HGV traffic of the size and frequency proposed by Scottish Coal.
- 3) Whilst some local residents may have misgivings about the Fordel development we sense the majority welcome the proposed facilities in making a positive contribution to the local economy with the prospect of permanent jobs genuinely available amongst the local community. This is in stark contrast to Airfield opencast.
- 4) The approval of the Smeaton Recycling Centre will add HGV traffic load to the Fordel junction and Midlothian Council is now in the process of considering an application for the Fordel View development which will significantly increase the complexity of traffic flows if approved. Indeed it is difficult to imagine how HGV traffic from Airfield open cast can be satisfactorily routed past a retail/tourist development such as this without posing a significant accident risk. This is in addition to the economic debate as to whether the Airfield HGVs will jeopardise the viability of the Fordel development and in turn, the substantial sustainable employment it could create.
- 5) The potential traffic impacts of Smeaton Recycling Centre, Fordel View and Airfield open cast must now be given consideration with regard to their **cumulative impact** upon the local community. We strongly believe that the local community should not be subject to the aggregated transport impacts of these 3 developments.
- 6) The visibility splays at the main site entrance from the B6093 require a relaxation from the standard requirements of DMRB Vol 6 Sec2. The DMRB ordinarily requires visibility splays of 9m x 215m, although the 9m requirement can be reduced to 4.5m in "difficult" circumstances and then down to 2.4m in "exceptionally difficult" circumstances. Scottish Coal are proposing the latter 2.4m distance yet we are unaware of what circumstances could possibly be so "exceptionally difficult" as to merit such relaxation. We are not aware that such a relaxation has been granted and we would question why public safety should be compromised to meet the commercial objectives of Scottish Coal.
- 7) Within Scottish Coal's noise and air quality assessments, no account has been taken of the likely impacts resulting from the routing of fully loaded HGVs up the steep incline of Fordel Dean. The impacts upon the properties at Fordel Dean should be assessed in our view as the noise and fumes generated will be significant.

- 8) We question whether Fordel Dean is of sufficient width to allow vehicles going downhill to pass laden HGVs coming uphill at the same time as protecting the safety of pedestrians, horse riders and others.
- 9) Scottish Coal now require widening of the junction of Fordel Dean with A6093 to accommodate HGV right turns. We question the acceptability of tree and habitat loss this will cause. We also question how this can be made a suspensive planning requirement when it relates to land outwith the Airfield application site boundary.

4.7 Other Environmental matters

1. **Cultural Heritage** – East Lothian Council Archaeology Service have requested an 8% trial trenching over most of the site although we understand that in parts this has been reduced to 5%. This was firmly stated as a pre-determination requirement yet Scottish Coal maintain that they are waiting for the land to become available following the harvest. It is however apparent that the fields concerned are currently being harvested and re-seeded so it would appear that this survey is unlikely to happen in the immediate future. Since this request was made clear from the outset, it remains the responsibility of the planning authority to ensure that determination if this application does not take place until any archaeological interests have been assessed.
2. **Soils** – in his personal letter of objection, Mr I Cane raised a number of points in relation to the handling and management of soils on the site. None of these points have been answered by Scottish Coal and we believe it is essential that such answers are forthcoming prior to determination. The points raised were as follows:-

i) Handling of soil when wet - recommendations such as 'avoid handling the soil in wetter periods from October to May' and 'soil movements taking place when soils are drier than field capacity' are nonsense. Rainfall figures for 2009 will show that the driest part of the year was from Feb to April and the wettest was from July to August. Field capacity is the point at which the drains on a farm stop running and the maximum volume of water is held in the soil. At that point, a person would still barely be able to walk on the land without sinking into mud.

Therefore, if the recommendation is simply that soil movement takes place at a point drier than field capacity, then there is nothing to stop machinery going onto the land after a break of two hours following rainfall of say 100mm, which would be extremely damaging. There is a preference that workings happen when the plastic limit has been passed, but this is not a firm recommendation and the reality is that this will be disregarded. These mitigations are very loose and will allow great scope for contractors to move soil whenever they want thus resulting in significant damage to the soil structure. In short, their method statement will not achieve the suggested outcome.

ii) Keeping topsoil and subsoil separate - there are significant inconsistencies here. The method they recommend for keeping the two layers of soil separate is by using colour - topsoil is darker due to higher organic matter. However, organic matter levels are very low on this site at 6% (this is no indicator of the quality of the land however) and there are two soil types where the colour change from topsoil to subsoil is gradual (Darvel and Macmerry). Consequently there would be significant scope for the inadvertent mixing of top and subsoil and it is unreasonable to expect that this would be achieved in an opencast mine operation. Again this will result in significant damage to the soil structure after restoration.

iii) European Council Directives re Potato Cyst Nematode (PCN) - PCN is already the subject of legislation within Scotland and the EU. In simple terms, the spread of this quarantine disease is banned within the EU and this must be a significant consideration in the testing and proposed handling of any agricultural soils on site.

A new directive, PCN(2007/33/EC), will provide further control measures which come into force on 1 July 2010. Scottish Coal has made no mention of their proposed management of PCN risk having regard to existing or forthcoming legislation. It is therefore essential that testing and risk assessment be carried out to establish whether handling of soils and control of PCN spread is feasible within their proposed site management arrangements and in line with EU Directives.

SECTION 5 - PLANNING CONSTRAINTS/IMPLEMENTATION ISSUES

1. Scottish Coal has referred to a number of issues which might be subject of planning control, including by Section 75 Agreement, if the Council decided to grant planning permission. CAAOC considers granting consent would be wholly unjustified, and so all comments are made on a “without prejudice” basis to this firm belief and to our vehement opposition to any excavation proceeding. Our views are not offered as a means of negotiation and should not be regarded as complicit acceptance of development proceeding in any way.
2. We have already demonstrated in the Economics section that several alleged “benefits” offered by Scottish Coal, including in their draft Heads of Terms, should be given no weight by the Council as material planning considerations in determining the application. However we offer the following comments on various matters which should be subject of planning conditions and/or a Section 75, and also on the need for Notification to Scottish Ministers.
3. **Use of Planning Conditions** – It would be a major concern to the local communities if Scottish Coal was allowed to address significant issues regarding environmental management and amelioration of harmful impacts after planning consent had been granted by the inclusion of wide-ranging suspensive planning conditions. Once consent is granted, there is a risk that these matters will be dealt with in a piecemeal way by individual submissions to planning officers, with reserved matters approved out of the public eye.
4. It seems a common approach is for opencast approvals to be granted subject to a long list of conditions. The most recent Shewington approval had 72. We question whether the Council officers can effectively ensure appropriate consideration, approval and subsequent management of a major development with so many issues still to be agreed after determination.
5. Fundamental deficiencies, which may have prejudiced the grant of planning permission, may only be fully appreciated after the event. Once granted the consent cannot be repealed. Diversion of watercourses, environmental monitoring methods, protocol for shutting down operations if thresholds are exceeded, restoration master plans, and many other factors all merit detailed review before any consent is granted.
6. It is suggested by Scottish Coal that a Good Neighbour Agreement, Community Liaison Group and Independent Compliance Assessor are put in place. All of these are new concepts and no clear roles and responsibilities are suggested. This would be exacerbated with so many issues held over for subsequent approval. It would not be acceptable for Airfield to be used as a test case to experiment with these new concepts. We would look to the Council to ensure Scottish Coal provides sufficient further information in advance of determination and only minor issues are made subject of suspensive planning conditions. The community should be consulted in drafting of conditions and on how they are subsequently satisfied.
7. **Community Trust Fund** – It would be vital that all decisions regarding selection of projects to which any funds are allocated, and the amounts involved, are publicly accountable. We would propose two options to ensure appropriate management.

- i) The Trustees of any such Fund should include a majority of representatives of Community Councils and/or village organisations. Tynewater CC, Ormiston CC and Cousland Village Hall Association would be proposed by CAAOC,

OR

- ii) The Fund should be managed by the Scottish Community Foundation (SCF) in accordance with written terms of reference, and reporting to a Local Advisory Group. The SCF is an independent charity that provides small grants to community organisations and is the largest grant-making body of its type in Scotland, including funds provided by developers of (mainly energy related) projects where a community benefit must be provided. We understand SCF has a track record of projects in Midlothian including the Carcant Wind farm Scheme which benefits Moorfoot Community Council and has separately provided funding over the last three years in support of 28 individual community projects in the county.

The Council should require an increased payment to the Fund than that proposed, in compensation for the damage that would be inflicted on the communities by the mine. Payments per tonne should increase as more coal is extracted. SCF should be directly involved in advising on appropriate payments.

13. Good Neighbour Agreement and Community Liaison Group – The management of the Good Neighbour Agreement and the purpose of the Group should be clearly defined to avoid duplication. Both should involve CAAOC as well as the two local Community Councils.

14. Restoration Bonds - This should be agreed at a level which is consistent with the worst case obligations for full restoration of the site based on a professional cost appraisal.

15. Independent Compliance Assessor - any such position must have clear capability to invoke enforcement powers, either directly or by recourse to Midlothian's Enforcement Officer, including capability to immediately stop works carrying on in the event of planning conditions being breached. The independence of the appointed person(s) is crucial and we would expect the local communities to have a direct role in the initial appointment and the right to review their performance.

16. We would expect the Assessor to have equal regard to impacts within East Lothian as Midlothian, particularly as the worst effects are anticipated to be to the east of the site due to the prevailing wind and topography. A clear line of reporting must be established to ensure this with Ormiston CC and East Lothian Council. If Midlothian Council is unable to invoke enforcement action in respect of impacts suffered by residents in the neighbouring authority, Scottish Coal should resource a second ICA specifically for matters within East Lothian, reporting to OCC and ELC, to ensure accountability.

17. Pre-Development Condition Survey - This should include photographic and written records of relevant properties to include Pardivan, Hadfast House, Airfield Farm properties, Oxenfoord Farm and Cottages, Melvin Hall and Tynemount Cottages.

18. Reduced site area Any planning consent should be restricted by planning condition to only a smaller site area based on protection of the most sensitive landscape as stated at para 3.9.14 of the Local Plan. This would reflect the weight the Council has already afforded to this criterion in the current local plan and should be included in a Section 75 Agreement (below).

19. In addition there should be a requirement to retain the existing roads and trees within any area approved for extraction. The drawings submitted by Scottish Coal for the larger site show an

extraction programme which retain the roads and associated tree corridor in situ. This demonstrates the technical capability of this approach. The road would continue to provide important local access and Scottish Coal has acknowledged the valuable role the trees would play in shielding views into the excavation site. Their comments on p31 of the Addendum are designed only to restate their preference for the larger site rather than demonstrate non-viability of the smaller site.

20. Restriction on future expansion - There is strong community concern that Scottish Coal would seek future extension to any opencast approval and we have little confidence that Scottish Coal's assurances to the contrary can be relied upon, particularly given experience elsewhere in Scotland of initial approval providing justification for subsequent extensions.

21. With a reduced site area, prevention of future extension into the remainder of the application site area should be ensured by entering a clause in a Section 75 agreement. We believe the Council would be legally empowered to require this as the Section 75 would relate to the entirety of the application site, not just an approved smaller section. This approach is justified in providing the community certainty for the future whilst they sought to re-establish their livelihoods which would be seriously damaged even by excavation of the smaller site. It would be supported by the SPP, which presumes against opencast proposals resulting in disturbance to communities of more than 10 years, a period which would be exceeded by the accumulated development plan, planning application, excavation and remediation periods.

22. A restriction by planning condition alone would always be subject to future challenge by Scottish Coal, or another party, pursuing a planning application and/or planning appeal seeking to vary that condition.

23. Notification of Application - Before any planning permission is issued the application should be notified to Scottish Ministers on any of three grounds:

- i) **Circular 3/2009** requires notification of "*Development consisting of works connected with the extraction of coal by opencast methods where the site boundary falls within 500 metres from the edge of an existing community or sensitive establishment.*" We have referred to the presence of a community within 500 metres in the planning policy section above. There is also a scheduled monument within the application site.
- ii) **Petition on Circular 3/2009** - CAAOC has lodged a petition with the Scottish Parliament seeking to vary Circular 3/2009. This would provide for an objection by a neighbouring Council to a major application which was contrary to the development plan to merit notification to Scottish Ministers. East Lothian Council's objection to the Airfield opencast would trigger such a notification. The petition will have its second hearing by the Petitions Committee on 7th September and as, at time of writing, this remains a "live" issue with Parliament, Midlothian Council should take a proactive approach to this prospective change in planning guidance.
- iii) **Council interest** - Should the Council consider that payment of business rates by Scottish Coal constitutes a material consideration in favour of the development, this would merit grounds for notification as the Council would have a financial interest.