

Case reference	NA-EAY-024
Application details	Restoration of open cast site
Site address	Powharnal Opencast & Gasswater open cast coal site, Cronberry, Cumnock
Applicant	Mine Restoration Limited
Determining Authority	East Ayrshire Council
Local Authority Area	
Reason(s) for notification	Category 1
Representations	Nil
Date notified to Ministers	29 June 2017 but not fully documented until 3 July 2017
Date of recommendation	13 July 2017
Decision / recommendation	Clear

Description of Proposal and Site:

- Planning permission is sought for the restoration of the former Powharnal surface mine by Muirkirk, East Ayrshire. The mine is currently vacant and has been non-operational since 2013 when the operators went into liquidation leaving an unrestored environment.
- The Powharnal surface mine covers an area of 418 hectares and is located approximately 2.5 km west of Muirkirk and 4km east of Cronberry and is adjacent to the A70 road.
- The site is characterised by a large water filled void in the east (Powharnal Final Void) and a substantial over-burden mound in the centre of the site (Powharnal Overburden Mound) and at the western end of the site (Gasswater 'A' Mound). It is proposed to retain the large water-filled void in the east of the site to create a loch.
- Operational works at Powharnal encroached within the Muirkirk and North Lowther Uplands SPA and Muirkirk Upland SSSI boundary. This was in breach of planning consent and EU Legislation. The restoration proposals seek to restore the site to an environment that is complimentary to the designations and objectives of the SPA and SSSI.
- The intended timescale for the completion of the restoration work is approximately three years.

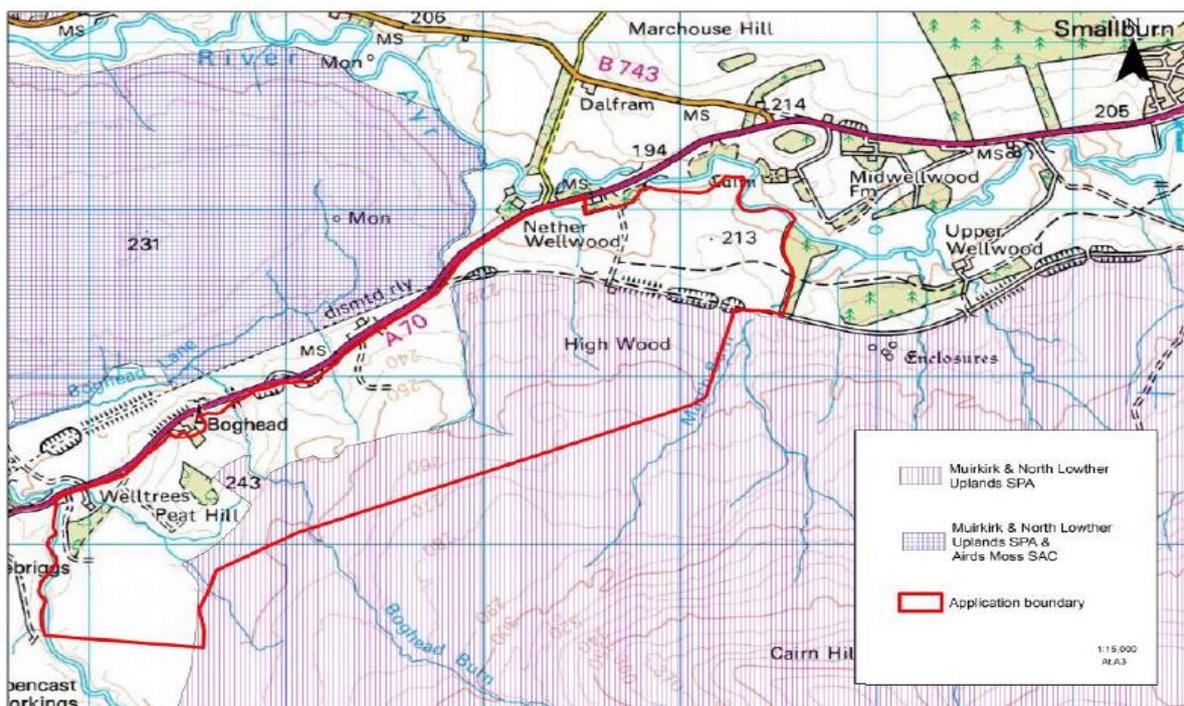
EIA Development:

- An EIA was submitted with the application.

Site Location Plan



Application boundary (red line) and Mine Restoration Ltd ownership boundary (blue line)



Location and extent of statutory designated nature conservation sites

Consultations and Representations:

- No representations were received and there are no objections from statutory consultees subject to conditions.

Assessment:

1. The application has been referred to Scottish Ministers because of the Council's interest in the development and the development being significantly contrary to the development plan, due to the permanent loss of SPA/SSSI qualifying habitat.
2. The revised restoration scheme, for which planning permission is sought, is considered to be contrary to policy MIN15 of the Opencast Coal Subject Plan (OCCSP) as it proposes to retain the water filled final void, resulting in the permanent loss of SPA/SSSI qualifying habitat. As such the revised restoration is not considered to be the best possible solution as required by the policy.
3. The void lies partly within the Muirkirk and North Lowther Uplands SPA and the Muirkirk Uplands SSSI. Retention of the flooded void will result in the permanent loss of 13.51 hectares of SPA qualifying habitat (bog). This loss represents 0.051% of the total SPA area and 0.072% of the SSSI. The "highest possible standard" of restoration would be the full reinstatement of the SPA/SSSI qualifying habitat as per the approved restoration plan, but the council consider there are unique technical and financial circumstances that act as significant barriers to the achievement of this.
4. While the proposal is considered a departure to development plan policy the council also consider that there are significant material considerations which support a recommendation for approval. The principal material considerations are the Scottish Government's published report "Addressing Opencast Coal Impacts on the Muirkirk and North Lowther Uplands SPA (March 2016)" and the Habitat Regulations Appraisal carried out in consultation with Scottish Natural Heritage (SNH). The council considers a solution involving the retention of the water filled final void is the only practical and financially feasible solution to the lack of reinstatement of the application site.
5. The council has stated that infilling the void would require significantly greater transport of materials through the site, resulting in more significant and prolonged disturbance of wildlife, over a period of ten years. Furthermore, removal of material from the Powharnal and Gasswater overburden mounds would result in the loss of previously reinstated areas, which have matured over the years and now provide a type of habitat that is complimentary to the qualifying interests of the SPA and SSSI. In addition to the technical and environmental issues the financial cost of implementing the approved reinstatement plan would be significantly greater than the alternative reinstatement plan - the cost of the proposed scheme is £9.57 million, the cost of implementing the approved reinstatement plan has been estimated at £58.78 million. The council sets out that the cost of the approved reinstatement plan

would be prohibitive within the funds available from Scottish Government and the Council's own financial resources.

6. SNH consider that that the approval of this planning application and the supporting mitigation plan is the most practical option available for addressing the damaging impacts caused because of the abandonment of the mine, the cessation of mitigation works and the lack of restoration. Planning conditions are proposed to address the potential adverse ecological impacts identified in the SNH response
7. The basic shape of the existing landform will stay as it currently is, with the water filled void at the eastern end and overburden mounds in the centre and western end being retained. The proposed works involve reshaping to remove steep slopes, forming new channels to replace the former watercourses and spreading soils and re-vegetation. The primary future land uses include agricultural grazing, nature conservation and public access for walking and cycling.
8. The Council has set out its reasons for arriving at its decision, specifically that the proposed restoration is the best option available within the considerable economic and technical constraints on the site. It does not appear that a conflict of interest has influenced the Council's decision-making, and it has taken account of the issues raised. There is no reason to believe the Council has acted inappropriately given its interest in the land. There are no issues that would raise issues of national importance that would merit intervention by Scottish Ministers.

Decision/Recommendation:

- The application should be cleared back to East Ayrshire Council