

## **EAST AYRSHIRE COUNCIL**

**CABINET – 24 MAY 2013**

### **OPENCAST MINING IN EAST AYRSHIRE – UPDATE**

#### **Report by Chief Executive**

#### **1. PURPOSE OF REPORT**

2. To advise Cabinet on matters relating to the current situation with respect to opencast coal mining within East Ayrshire; to provide an update on the actions being progressed in response to emerging developments; and to recommend that Cabinet:-
  1. Notes the most recent position in relation to Scottish Coal Company Limited (in liquidation) and Aardvark TMC Limited (in liquidation);
  2. Notes the most recent position in relation to Hargreaves Services and their status as preferred bidder to acquire various assets of the former Scottish Coal Company Limited and Aardvark TMC Limited and their subsequent intentions;
  3. Notes the actions taken by the Council to date to safeguard the position of the Council and its communities, and in response to the announcements by Hargreaves Services on their intentions in relation to those open cast sites which they do not deem to be viable and which they wish to abandon;
  4. Notes and approves the engagement of Legal Counsel in the formal opposition to the Directions sought by the liquidators/Hargreaves Services in respect of their abandonment of certain sites and statutory licences as they apply to former Scottish Coal Company Limited and Aardvark TMC Limited, and related matters;
  5. Notes the continuing activity of the National Task Force and of the Local Response Team;
  6. Notes the work being undertaken by the Council and Skills Development Scotland to support those within our communities who have been made redundant as a result of the decisions by Scottish Coal Company Limited and Aardvark TMC Limited;
  7. Notes the work of the Council and of Scottish Enterprise in supporting local companies which form part of the supply chain and which have been affected by the liquidation decisions;
  8. Agrees to the engagement of an economic and social research and development company to assist in analysing impacts and in developing approaches to respond to these economic and social matters and authorises the Chief Executive to so do;
  9. Notes the outcome of the work undertaken to date to review the status of all open cast coal sites within East Ayrshire;

10. Notes that in order to determine the full extent and nature of the outstanding restoration required to a number of sites formerly operated by Scottish Coal Company Limited and Aardvark TMC Limited, the Depute Chief Executive/Executive Director of Neighbourhood Services, has engaged the services of specialist mining engineering companies and authorises the continuation of this work;
11. Notes that on completion of the work of the mining engineering companies, these matters will be reported to Cabinet;
12. Notes that on completion of the Court actions these matters will be reported to Cabinet;
13. Notes that on completion of the assessments of the outstanding restoration of those sites which are not to be operated by Hargreaves Services and the cost thereof not covered by Bonds, the ultimate position will be reported to Cabinet;
14. Notes the involvement of the Head of Planning and Economic Development in the Scottish Government's Restoration Bonds Working Group;
15. Agrees to recommend to Council that one Member and one Officer be proposed to the Scottish Mines Restoration Trust as Trustees and Members of the Board of Trustees and, in the meantime, to note that the Chief Executive in exercise of her emergency powers, has written to the Scottish Mines Restoration Trust on this basis;
16. Notes the position in relation to the Office of Rail Regulation and agrees that the Leader of the Council writes to the Office of Rail Regulation condemning the proposed increases in rail freight charges which in the view of the Council will further inhibit the prospects of the open cast mining industry in this area;
17. Notes the legal, financial and risk implications for the Council as set out in the report and the continuing requirement for the services of Legal Counsel;
18. Notes the proposal by the Chief Executive that there be undertaken an independent review of all of the processes and procedures around the management, determination, implementation, monitoring and review of the planning processes in relation to open cast coal operations within East Ayrshire, all within the governance arrangements in place throughout the period and agrees to receive a report from the Chief Executive setting out the proposed remit and terms and conditions of that review and, indeed, who should undertake that review, at the meeting of Cabinet on 19 June 2013; and
19. Otherwise notes the content of the report.

### **3. BACKGROUND**

4. A report by the Chief Executive on Scottish Coal – Ministerial Task Force and Local Response Team was considered and noted by Cabinet on 8 May 2013. The report highlighted the national and local response to the announcement on 19 April 2013 to wind up Scottish Coal Company Limited (SCCL) and appoint KPMG as the interim Liquidators.

5. At that time, Cabinet was made aware of a number of potentially serious, but not fully quantifiable, implications arising from the collapse of Scottish Coal, in terms of job losses and the environment, particularly around the Liquidators petition to the Court of Session to abandon owned sites and to abandon statutory licences, related to planning, health and safety and environmental responsibilities. The potential consequences of this were and continue to be a concern in terms of liabilities for these sites and the Council's own statutory responsibilities and possible contractual or delictual liabilities, including third party claims. This report provides an update in relation to these matters and the continuing actions being progressed to understand fully what these consequences might be and to protect the interests of the Council and our communities, as far as possible.

## **6. SCOTTISH COAL COMPANY LIMITED**

7. It is important to briefly highlight the sequence of events in relation to the progress of matters since 19 April 2013 when the SCCL were placed in liquidation. On 24 April 2013, KPMG, the interim liquidators lodged a Note in the Court of Session seeking formal Directions about how to deal with certain aspects of SCCL's business, including:-
  - Whether they have the right to disclaim (i.e. abandon) certain open cast sites owned by the SCCL;
  - Whether they have the power to disclaim statutory licences;
  - The question as to where planning costs i.e. the cost of any liability falling to the liquidator to restore the sites, require to be met as liquidation expenses (basically whether the planning costs would be paid for first before all other costs and expenses or whether they should rank alongside all other unsecured ordinary debts); and
  - If the planning costs are liquidation expenses, then the question as to whether the liquidator's fees can be paid for before anything else including the planning costs.
8. East Ayrshire Council (possibly along with North Lanarkshire, South Lanarkshire and Midlothian Councils) and other statutory bodies (at present, these are believed to include Scottish Government, SEPA and SNH) are formally opposing the Directions sought and it is likely that the Court of Session will hear the case in early July 2013. On 17 May 2013 KPMG advised that they intend to "abandon/disclaim" certain sites and statutory licences in the week commencing 20 May 2013. They are taking this action due to significant concerns in relation to "Acts of God" and as the risks involved in the open cast sites could involve potential liabilities which could incur criminal penalties.

## 9. AARDVARK TMC LIMITED/ATH RESOURCES PLC

10. As Members were advised, on 16 May 2013, Aardvark TMC Limited (Aardvark), the main trading subsidiary of ATH Resources PLC, were placed in liquidation with KPMG being appointed as the liquidators for Aardvark. Aardvark are a company registered in England. The winding up of the company, therefore, comes under the jurisdiction of the English Courts. Hargreaves Services (Hargreaves), a leading UK supplier of solid fuels and bulk material logistics, have options to acquire various assets including OCCW (Netherton) Ltd and OCCW (Duncanziemere) Ltd, which is understood to include the Glenmucklock conveyor belt. Hargreaves have been contracted by OCCW (Duncanziemere) Ltd and OCCW (Netherton) Ltd to continue operations at these open cast mine sites.
11. On 15 May 2013 East Ayrshire Council was served with formal Notices of Disclaimer which seek to disclaim a number of sections of the Aardvark open cast sites. The disclaimed sections appear to correlate with the sections of the sites that Hargreaves, do not want to purchase. The effect of the liquidator serving these Notices is to disown/reject property which they consider to be onerous. The liquidators have also served notices on SEPA disclaiming statutory licences. Counsel's opinion is being sought as to whether these Notices are effective in relation to property which is situated within Scotland.
12. In the announcement they made on 16 May 2013, Hargreaves advised that they are committed to invest in Scottish mining but advised that their due diligence would only allow them to take on assets that were commercially viable to the company. Hargreaves now control the former ATH Sites of Netherton and Duncanziemere via the "New Co" or "Hive co" and two planning applications have been submitted for the changes to the personal consent and Section 75 Variation.
13. The sites disclaimed under the English Law and subject to review by Legal Services are as follows:-
  - **Skares Area D**:- (CD/95/0254/MIN; 97/0596/FL; 08/0752/FL):- Remaining void, water body and overburden;
  - **Grievehill**:- 98/0452/FL; 00/526/FL, 06/0537/FL; 06/1174/PP):- Remaining void, water body and overburden;
  - **Garleffan** (98/0539/FL and 04/0873/FL):- Final restoration to be completed.

## 14. COMMON ISSUES

15. Members will be aware that Hargreaves has also recently been confirmed as preferred bidder for elements of the SCCL business. Hargreaves clearly have an important part to play in the future of opencast mining within East Ayrshire and this report highlights how Officers are working with Hargreaves and through the Scottish Mines Restoration Trust (SMRT) to seek to achieve the best outcomes possible.

16. Clearly, the Council has had no control over the factors that have led to the serious difficulties that beset the opencast mining industry; however, we do have a pivotal role in working with others to reduce the impact on our communities. A significant number of people have lost their jobs as a result of these events and this report also provides an update on the work being progressed to tackle the economic and employment consequences resulting from Scottish Coal's collapse and the other wider consequences on the local economy of East Ayrshire.
17. Members will recall that both a National Ministerial Taskforce and also a Local Response Team have been established to co-ordinate actions to secure jobs in the sector, restore worked sites and achieve the best possible outcome for our communities. The National Taskforce has now met on two occasions and the Local Response Team has met once and meets again on 28 May 2013.

## **18. EMPLOYMENT AND BUSINESS MATTERS**

19. At the time of the report to Cabinet on 8 May 2013, it was understood that within East Ayrshire, a total of 348 employees had been made redundant from sites at House of Water, Dunstonhill, Dalfad, Kyle Forest, Pennyvenie and Killoch. Indications were that 235 of the 348 were East Ayrshire residents principally from Cumnock, New Cumnock, Dalmellington and Muirkirk.
20. The most up to date information provided by Skills Development Scotland (SDS) confirms that of the 348 redundancies, 290 people live in Ayrshire, of whom 250 are East Ayrshire residents.
21. At the recent National Task Force meeting it was reported that Hargreaves will seek to protect the jobs of existing employees nationally and are committed, if possible, to potentially increasing that number by another 300 within 12 months.
22. Cabinet of 8 May 2013 was advised of the early actions being taken in association with the Council's Skills Development and Employability Service, particularly the holding of an employment event on 1 May 2013. At this event, the Skills Development and Employability Service supplied information on the Council's employability offer via the PACE Team. Partner agencies who also participated in the event and provided advice and guidance to individuals included Jobcentre Plus, Kilmarnock College, Business Gateway, Sibbald Training and Dumfries and Galloway Council. An estimated 150 workers attended the event and a total of 60 had an immediate follow-on individual appointment with our employability officers. At the last meeting of the National Task Force, it was confirmed that KPMG has issued letters on behalf of PACE to all redundant employees to encourage them to make contact and to ensure that all have one-to-one interviews and support; this will be monitored by the Local Response Team.

23. Skills Development Scotland has identified additional resources within its Employability Fund to support the training and certification needs of all redundant workers, where the training and certification can be aligned to labour market opportunities. Only one training/certification opportunity will be funded for each individual through the Employability Fund but there are other funding packages in place to support our unemployed residents as well as those in work who require additional training and these resources can be accessed by the redundant workforce. To date, particular problems have been identified as to the wider application of certain training certificates – “ticketing” – and the National Task Force has set up a short life working group to resolve these issues; the Council will be represented on this group.
24. Given the scale of redundancies in East Ayrshire, it is recognised by partners that the referral system for individuals needs to be as streamlined as possible and with this in mind it has been agreed that SDS will draft in an additional three Careers Advisers (bringing the total to five in Ayrshire); all appointments with these Advisers will take place at either Muirkirk, Cumnock or Dalmellington and the Council’s own employability officers will be available at the same time to action any training or certification requests arising from those appointments.
25. Our Skills Development and Employability Service has already engaged with 119 individuals, arranged careers appointments for 52 during the current week and established good links by providing practical help around basic IT skills and CV preparation. Given our own intelligence about the individuals involved, we have also provisionally pre-booked some certificated training to further minimise the delay between careers appointment and practical help. At this early stage, we can report to Cabinet three individuals have moved into permanent employment. We will continue to ensure that we extend our reach and ensure that affected individuals are aware of and have access to the help, support, training and advice available.
26. Through our wider economic development activities, officers of the Council are continuing to engage with companies within the area who are part of the supply chain and working with Scottish Enterprise, will provide all available support to these companies at this difficult time.
27. Given the scale of the job losses and the impact of these on some of our smaller, more remote communities, it is considered that the Council needs to engage external advice to assist in analysing those impacts and in developing approaches to most effectively respond to these important matters. Cabinet may recall that an economic and social research and development company assisted the Council in relation to the M77 campaign and in the Council’s response to the serious impacts around the closure of the Diageo plant in Kilmarnock. Additional independent support of this nature, deployed to support the Council’s own internal resources, would be of great value in the current difficult circumstances.

## 28. REVIEW OF ACTIVE AND WORKED SITES

29. An important aspect of the work to date (being undertaken by a team of officers who have been designated to do so) since the announcement of the collapse of SCCL and, latterly, Aardvark has been to review the status of all opencast coal sites within East Ayrshire. This work has mainly been in relation to the following key aspects:-

- An assessment of the planning permissions granted in respect of opencast coal working within East Ayrshire
- A review of the current physical status of sites against the approved phasing plans associated with their planning permissions
- The known level of financial bond coverage
- The potential level of restoration costs for worked sites

30. It is important to highlight that this is a complex task and is still a work in progress, with the current information available being subject to further review and verification with the assistance, where necessary, of external professional support, in the form of Mining Engineers. In view of the urgency required to gather the necessary information relating to the current physical status of sites and the potential associated restoration costs, officers took appropriate steps to engage such support and the nature of this support and the outputs from it are discussed in greater detail elsewhere in this report.

31. An initial task for the officer team has been to undertake an extensive desktop review of all relevant and available information relating to opencast planning permissions. Following an assessment of the 42 historic planning permissions previously granted to SCCL and two pending applications received in 2012, it appears that the appropriate pre-decisions procedures have been followed. It is also apparent that mechanisms are in place within most of the planning permissions to allow the appropriate monitoring and enforcement of the surface mine developments post determination, including specific conditions relating to the restoration and aftercare of the sites. A summary of the Planning applications applicable to the five SCCL Complexes comprising sites at Chalmerston, Dalmellington, Dunstonhill, Patna, House of Water, New Cumnock, Piperhill, Sinclairston, Powharnal and Spierslack, Muirkirk is detailed below. Of the 42 Consents, these range as follows:-

1980 -1989	-	5
1990 -1995	-	7
1996 -1999	-	12
2000 - 2009	-	16
2010 - 2012	-	2

32. The majority of the decisions taken by EAC to grant planning permissions for the opencast sites were taken by the Southern Local Planning Committee and on occasion, as required by the Scheme of Delegation, by the Development Services Committee (sitting as Planning Committee) or Council. The planning permissions for each site contain a range of conditions which typically include the following requirements in relation to the current issues regarding restoration and aftercare:-
- The requirement to follow the approved plans;
  - Requirement for progressive restoration of the site;
  - Requirement for Annual Formal Reviews;
  - Provision of a forward plan for the year;
  - The holding of Community Liaison Groups; and
  - The holding of Technical Working Groups.
33. Generally speaking, where the principal planning permission for the original site (of a complex) was granted, it was also subject to a Section 75 Legal Agreement which is a contract between the Coal Mine Operator, the Council and the Land Owner. The legal agreement is registered in the Land Register in the General Register of Sasines and “would run with the Land”. The Section 75 imposes a number of obligations on various matters which typically included:-
- Contributions to the Minerals Trust;
  - Contributions to road improvements;
  - Provision of Restoration and Aftercare Bonds;
  - Review of bonds provision;
  - Transport routes;
  - Noise dust and blasting monitoring;
  - Provision of Conservation Management Plan;
  - Requirements for a Technical Working Group; and
  - Requirement for a Community Liaison Group.
34. Subsequent to the approval of the original mine complex Planning Applications, on occasions applications were submitted for site extensions. In some instances, these permissions had their own Section 75 Agreements and bond coverage, while other generally smaller permissions were incorporated into the principal Section 75 Agreements for the Complex through a Minute of Variation being entered into between the parties. However, some are standalone consents with no Section 75 or Bond provision.
35. A key mechanism to ensure appropriate community engagement in an opencast site development is through the provision by the operator of a Community Liaison Group, with membership from the Developer, the Minerals Officer (on behalf of the Authority), land owners and local residents, Community Council representative and Local Ward Councillors. While such arrangements are recommended within the East Ayrshire Opencast Subject Plan and incorporated into many decisions and Section 75 Agreements, the Community Liaison Groups are independent of the



Council and have no powers with respect to the Council's decision making processes under the Planning Acts. The meetings are organised by the developer, as are their frequency and agenda, but usually occur between one to four times a year, with an expectation that the issues raised would be addressed by the Planning Authority with the Developer. It is understood that meetings took place and were attended by Planning Officials; however, there are inconsistencies in the number and frequency of meetings across all sites.

36. Another important mechanism to ensure appropriate development of opencast sites is the Technical Working Group whose remit includes such items as environmental management of the application site, procedures for the protection of birds and other wildlife during the operational life, restoration of the application site, the implementation of the Conservation Management Plan and the implementation of the restoration and aftercare of the application site. Its membership includes the Developer, an Ecological Clerk of Works, if so appointed by the Coal Company, the Minerals Officer (on behalf of the Authority) and representatives of SNH, SEPA, RSPB and any another local body deemed appropriate. It is understood that meetings took place and were attended by Planning Officials; however there are inconsistencies in the number and frequency of meetings across all sites.
37. There are a number of Restoration and Aftercare Bonds which are intended to provide surety for the cost of restoration and aftercare works. Bonds act in a similar way to an "insurance policy" and can be called up in specific circumstances where there is default by the open cast mine operator in carrying out the agreed restoration works.
38. Bonds will generally subsist for the stipulated duration of the mining operations as set out in the planning permission for that site. The Bond value will usually reduce on a sliding scale, calculated by assessing the duration and extent of the mining works which is set out in the planning permission. The requirement for a Bond is usually an obligation stipulated within the Section 75 Agreement which accompanies the planning permission.
39. The duration of the operation of the open cast sites will often be prolonged due to a range of factors which include, continued use of sites due to existing infrastructure, slippage in the timescale for coaling due to economic conditions and weather conditions. Therefore the Section 75 will also, often, provide for a yearly assessment to be undertaken, by an independent expert, to ensure that the value of the Bond is sufficient to cover the restoration costs required at that site.
40. There are Bonds in place for a number of the sites operated by SCCL and Aardvark. The total potential existing bond value for SCCL amounts to a maximum £16.1m. The total potential existing bond value for Aardvark amounts to £11.525m. The potential existing bond cover in relation to the SCCL and Aardvark sites are set out in detail elsewhere in this report.

41. The existing Bonds are in the process of being called up by the Council given that the SCCL and Aardvark (and their liquidators) are in default of the restoration obligations. Uncertainty exists as to what the reaction will be from the Bond providers and whether or not they will agree to pay out on the Bonds. A number of the bonds require the Council to carry out the restoration works and then recover the sums from the Bond provider as the works are completed. It is a matter of legal uncertainty whether the Bond providers will pay out on Bonds if the restoration is not what has been agreed in the restoration scheme.
42. Further, the bonds are obligations between the bond provider and mine operators. In the event that the Court of Session action is successful and KPMG are allowed to abandon sites, it is unclear what effect such an action would have on the Bond provider's obligation under the Bond, and whether they may be able to refuse to pay out on the Bond given that they would be the only party to the Bond.
43. Hargreaves have also indicated that they wish, through planning applications, to develop alternative restoration schemes for the sites they are taking on from Aardvark. It is equally uncertain if the Bond providers will continue to be bound by those Bonds in the event that the restoration schemes are amended.
44. Further, in considering the Aardvark bonds, they cover a "site" and given that Notices of Disclaimer have been served in relation to sections of sites, it is not clear if the Bond could be called up seeking to restore the "disclaimed" sections and it is unclear what the effect would be on the Bond for the remaining sections of the sites purchased by Hargreaves.
45. Counsel's opinion is being sought on the complexities which arise from the bond coverage and the ability to rely on their terms.
46. The assessment of planning files includes the process for the agreement of the Restoration Bonds and the value of such bonds. From an assessment of the Planning Permissions and assessment of correspondence, it would appear that the value of the bonds were generally proposed by the developer and following assessment thereafter this was agreed and signed off by Officer(s).
47. Of primary importance in responding to the current situation has been to establish the nature of the physical status of opencast sites within East Ayrshire. Areas of opencast workings not fully restored may carry risk to the public from a safety aspect due to issues such as open voids, unstable land forms and unenclosed water bodies. While SEPA have control of certain elements of the opencast sites under the Environmental Protection Act, there may be obligations which may rest with the Local Authority under the Act in relation to any statutory nuisances or any contamination issues which would not fall to SEPA. In any event, the Council and SEPA are working closely on these matters.

48. At present, work is well in hand to reconcile all of the available mineral information in relation to each of the site complexes against the actual site position when work ceased due to the liquidation of both companies. In order to appropriately assess the potential costs for restoration of each site within the five SCCL complexes and also for the three Aardvark TMC Ltd sites against the current level of restoration bond coverage in existence, three independent Mining Engineers have been engaged to undertake a review of affected sites and provide a restoration assessment report and details of this are to be found later in this report.

#### 49. CURRENT POSITION

50. Whilst we will not be in a position to report fully on a site by site basis until the Council's Mining Engineers engaged by the Council have completed their work, the following provides an interim summary of the current situation which has been drawn together primarily from a desktop review (a map of the open cast coal complexes/sites is appended to this report):-

#### 51. AARDVARK TMC/ATH RESOURCES SITES

**Table 1**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status
<b>Skares</b>	CD/95/0254/MIN, 97/0596/PP, 98/0407/FL 08/0752/FL	Y	No	Yes	£0.75m	£2.0m	Partially, restored; water void and overburden on site
<b>Current Known Status</b>							
This site has finished coaling. Areas of consented worked land have been restored in line with the Planning permission. Areas of uncompleted restoration remain particularly in Area D.							

**Table 2**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status
<b>Netherton</b>	09/0891/PP	Y	Yes	Yes	£4.5m	£10.6m	Coaling
<b>Current Known Status</b>							
This site is currently operational. A Planning application has been received from OCCW (Netherton) Ltd to alter Condition 1 (Personal Consent) and Condition 5 relating to the approval method for revising the restoration scheme of 09/0891/PP. This application is currently under consideration by the Planning Authority. Hargreaves has indicated to the Council that they are willing to work with the Council to try and address some of these issues within this complex. This may involve a revised restoration scheme for the wider complex.							

**Table 3**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status
Duncanziemere	09/0511/PP	Y	Yes	Yes	£2.6m	£4.4m	Coaling
<b>Current Known Status</b>							
This site is currently operational. A planning application has been received from OCCW (Duncanziemere) Ltd to alter Condition 1 (Personal Consent) and Condition 5 relating to the approval method for revising the restoration scheme of 09/0511/PP. This application is currently under consideration by the Planning Authority. Hargreaves has indicated to the Council that they are willing to work with the Council to try and address some of these issues within this complex. This may involve a revised restoration scheme for the wider complex. The original Restoration Bond for the site was not renewed. This matter is being actively pursued with the Bond providers.							

**Table 4**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status
Laigh Glenmuir (part of above site)	05/0232/FL	Y	No	Yes	Shared with 09/0511/PP	As above	Partial restoration with overburden
<b>Current Known Status</b>							
This site has finished coaling. This site is not fully restored due principally to the overburden from the Duncanziemere operations.							

**Table 5**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status
Glenmucklock Conveyor	05/1309/FL	Y	N/A	N/A	£0.075m	Information not provided by ATH	Operational
<b>Current Known Status</b>							
This equipment is still operational. A new Planning application is anticipated to regularise this continued operation.							

**Table 6**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status
Grievehill	98/0452/FL	Y	No	Yes	£2.5m (original)	£5.9m	Partially Restored
<b>Current Known Status</b>							
This site has finished coaling. This site is not fully restored. The original Restoration Bond for the site was not renewed. The second bond to the value of £25K per hectare is in place. This matter is being actively pursued with the Bond providers.							

**Table 7**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status
Garleffan II	04/0150/FL	Y	No	Yes	£1.1m	£0.5m	Partially Restored
<b>Current Known Status</b> This site has finished coaling. Large areas of site restored with the exception of existing infrastructure and coal processing area.							

**Table 8**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	ATH Restoration Value:-	Restoration Status
Overland Conveyor between Laigh Glenmuir and Garleffan	06/0291/FL & 09/0770/PP	Y	N/A	N/A	N/A	N/A	Operational
<b>Current Known Status</b> This equipment is still operational and provides the transportation infrastructure for transferring coal from Duncanziemere to the nearby railhead.							

**52. SCOTTISH COAL COMPANY LIMITED****53. CHALMERSTON COMPLEX****Table 9**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Chalmerston	87/99/Q	N/A	No	No	N/A	N/A		Partial restoration
<b>Current Known Status</b> This site has finished coaling. The site has been restored for the majority of areas. Areas requiring restoration include Area D, haul roads, barrel wash and works areas.								

**Table 10**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Chalmerston North Phase 1 and Pennyvenie area A	96/0076/FL	Y	No	Yes	£0.370m	£1.55m	£1.4m	Partial Restoration
<b>Current Known Status</b> This site has finished coaling. The site has been partially restored.								

**Table 11**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Chalmerston North/Pennyvenie	97/0582/FL	Y	No	No	N/A	N/A	N/A	Partial Restoration
<b>Current Known Status</b> This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 12**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Benbain Remainder	12/0093/PP	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Current Known Status</b> This area is the subject of a pending planning application by Scottish Coal which proposes to incorporate the void and overburden from the above Chalmerston North/Pennyvenie mine site.								

**Table 13**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Chalmerston Area P	07/0448/FL	N	No	No	N/A	N/A	N/A	Partial Restoration
<b>Current Known Status</b> This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 14**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Chalmerston North Extension	06/0685/FL	Y	No	Yes	£ 2.6m	£11m	£8m	Partial Restoration
<b>Current Known Status</b> This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 15**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Dunstonhill, Patna	08/0783/FL	Y	Yes	Yes	£4.2m	£9.4m	£9.4m	Initial Restoration
<b>Current Known Status</b> This site is currently operational. The site has been partially restored with significant areas of restoration required to be carried out. A claim has been made against the Restoration Bond due to the pending reduction in the bond value from £4.2 million to £2.2 million.								

**54. PIPERHILL****Table 16**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Piperhill	90/0343/FL	Y	No	N/A	N/A	N/A	N/A	Restored except Haul Road
<b>Current Known Status</b> This site has finished coaling. The site has been fully restored. Kyle Forrest Haul road remains through this area of restored workings.								

## 55. HOUSE OF WATER COMPLEX

**Table 17**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
House of Water	94/0072/MIN	Y	No	No	N/A	N/A		Partial Restoration
<b>Current Known Status</b>								
This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 18**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Extension to House of Water and River Nith Diversion	96/0400/FL	Y	No	No	N/A	N/A		Partial Restoration
<b>Current Known Status</b>								
This site has finished coaling. The site has been partially restored.								

**Table 19**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Area B Variation	03/0506/FL	Y	No	No	N/A	N/A		Partial Restoration
<b>Current Known Status</b>								
This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 20**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Extension and River Nith Diversion	04/0397/FL	Y	No	Yes	£0.07m	£1.9m	£1.3m	Partial restoration
<b>Current Known Status</b>								
This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out.								



**Table 21**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Burnston Fields Extension	09/0371/FL	Y	No	Yes	£0.097m	£8.79 m	£6.17 m	Partial Restoration
<b>Current Known Status</b>								
This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 22**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Lanehead	09/178/FL	Y	Yes	N/A	N/A	N/A	N/A	N/A
<b>Current Known Status</b>								
This site has not commenced coaling as the Planning Consent has expired.								

**Table 23**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Tappet Hill	09/0286/FL	Y	No	No	No	N/A		Unrestored
<b>Current Known Status</b>								
This site has finished coaling. The site has significant areas of restoration required to be carried out.								

**Table 24**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Craigman South	09/364/FL	N	No	No	No	N/A		Unrestored
<b>Current Known Status</b>								
This site has finished coaling. The site has significant areas of restoration required to be carried out.								

**Table 25**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Burnston Remainder	12/0022/FL	Y	Yes	No	No	N/A	N/A	N/A
<b>Current Known Status</b>								
This site has not commenced coaling as the Planning Consent has not been implemented.								

**56. POWHARNAL****Table 26**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Gasswater	99/0761/FL	Y	No	N/A	N/A	N/A	N/A	See below
<b>Current Known Status</b>								
This site has finished coaling. This consent has been superseded by the Powharnal Rephasing 05/1242/FL								

**Table 27**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Powharnal	99/0761/FL and 05/1242/FL	Y	No	Yes	Restoration £0.775m  Aftercare £0.278m	£17m  £6.1m	£4.8m  £1.7m	Partial restoration
<b>Current Known Status</b>								
This site has finished coaling. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 28**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Dalfad	10/842/FL	Y	Yes	Yes	Restoration £3.34m  Aftercare £0.219m	£5.7m	£5.7m	Partial Restoration
<b>Current Known Status</b>								
This site is currently operational. The site has been partially restored with significant areas of restoration required to be carried out. A claim will be made against the Restoration Bond due to the pending reduction in the bond value during June 2013.								

## 57. SPIRESLACK COMPLEX

**Table 29**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
<b>Spireslack Viaduct Mine</b>	96/0014/FL	Y	No	Yes	£0.55m	£6.7m	£2.3m	Partial restoration
<b>Current Known Status</b> Coaling has ceased on the site. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 30**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
<b>Spireslack</b>	96/0670/FL	Y	No	Yes	£0.5m	£7.9m	£2.7m	Partial restoration
<b>Current Known Status</b> Coaling has ceased on the site. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 31**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
<b>Grasshill</b>	07/0444/FL 01/0807/FL	No	No	No	N/A	£7.2m	N/A	Partial Restoration
<b>Current Known Status</b> Coaling has ceased on the site. The site has been partially restored with significant areas of restoration required to be carried out.								

**Table 32**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
<b>Ponesk</b>	09/0344/FL	Y	No	Yes	£3.1m	£7m	£6.3m	Partial restoration
<b>Current Known Status</b> Coaling has ceased on the site. The site has been partially restored with significant areas of restoration required to be carried out. A claim has been made against the Restoration Bond due to the pending reduction in the bond value.								

**Table 33**

Application Site	Planning Ref.	S75	Coal Remaining as per Planning Consent	Bond in Place	Bond Value	KPMG Restoration Value:-		Restoration Status
						High	Low	
Galawhistle extension	12/0657/PP	No	Yes	No	N/A	N/A	N/A	N/A
<b>Current Known Status</b>								
This area is the subject of a pending planning application by Scottish Coal which proposes to incorporate the restoration of the complex. It has been informally indicated by Hargreaves that given the depth of the coal in this area, its extraction may be uneconomical.								

**58. INSTRUCTION OF EXPERT ASSESSMENT**

59. As noted above there is outstanding restoration required to a number of sites formerly operated by SCCL and Aardvark. It is also noted that a number of the unrestored sites do not have purchasers and these sites are to be abandoned.
60. KPMG have provided an assessment of restoration costs for the SCCL sites in East Ayrshire which have Bonds in place. The total restoration costs being estimated by KMPG in the region of £48m to £90m. These figures are based on SCCL calculations for the approved restoration scheme at the upper limits with a revised restoration scheme at the lower limits.
61. The Council is in the process of verifying these figures. KPMG did not provide information as to how these figures were calculated and what costs were taken into account. These figures, therefore, require to be treated with caution given that they have not been independently verified on behalf of the Council. However, as already noted in this report the total potential bond coverage for the SCCL sites totals £16.1m and the Aardvark sites totals £11.525m. It is considered, therefore, that there will be the potential for a significant shortfall in the costs of fully restoring sites.
62. In order to best understand what restoration is required; what, if any, risks exist at these sites; and the overall costs of the restoration work which should have been undertaken by SCCL and Aardvark, the Council requires to have its own independent assessment completed. The Depute Chief Executive/Executive Director of Neighbourhood Services has, therefore, approved the instruction of independent mining engineering companies to assess the restoration and associated costs in respect of all the former SCCL sites and Aardvark sites affected by the disclaimer notice in order that up-to-date and accurate information is available to the Council. The three companies are:-
- SLR Consulting;
  - JWH Ross; and
  - Dalgleish Associates.

63. There are a number of particular reasons why this is necessary and considered appropriate, and include that:-

- These unrestored sites carry with them significant risks and it is imperative that the Council have properly assessed all risks which exist at these sites, in order that safety plans can be drawn up and any remedial action can be taken where necessary;
- The restoration obligations are conditions in the planning permissions issued for these sites, and they are arguably therefore “planning costs”. Accurate costs are required to properly instruct Counsel on the extent of the planning costs referred to in the Court of Session action;
- Accurate restoration costs for each site will be a material factor in any discussions going forward with Hargreaves around possible sales of sites and/or other operators in considering any future restoration programme.
- Accurate restoration costs will be required in advancing discussions with Scottish Mines Restoration Trust about support for outstanding restoration of sites; and
- Accurate restoration costs will be relevant in the consideration and assessment of any future third party claims which may emerge, (see Legal Implications elsewhere in this report).

64. Priority in the review of sites has been given to those sites where the restoration bonds are due to decrease in value over the May and June 2013 period, thereby allowing claims to be submitted. Further assessments are being carried out to all other SCCL and Aardvark sites subject to insolvency proceedings. Additionally, where sites are being considered by Hargreaves under the preferred bidder arrangements for the SCCL sites, these sites will also be assessed prior to the submission of any forthcoming Planning Application and variation of the Section 75 agreement. The programme set out for our Mining Engineers for evaluating the restoration status of all sites sees this work being completed by the end of June 2013.

## **65. LEGAL IMPLICATIONS**

66. As will be appreciated from the other contents of this report, there are currently a large number of uncertainties in respect of the potential implications which may flow from the liquidation of SCCL and ATH. Accordingly, it is difficult to give a full assessment at this time of what the specific legal implications might be for the Council.

67. Senior Counsel’s opinion has been sought in respect of these matters and once this has been received, a further report will be made to Cabinet as appropriate.

68. In general terms, the current position can be summarised as follows:-

- If the Liquidator for SCCL is given approval by the Court of Session to disclaim all of their sites (other than those to be sold on to Hargreaves) then it is not considered that the Council would be legally obliged to assume responsibility for the complete restoration of those sites.
- Obviously, in any instance where the Council is successful in calling in a restoration bond that would then require the Council to use these funds for the restoration of the relevant site.
- The likely position of the various bond providers is the most significant area of legal uncertainty and once Counsel's considered opinion has been received, the position will be the subject of a further report together with an appropriate set of recommended actions.
- Further, if the sites are rendered ownerless then the Council may require to take appropriate action in fulfilment of its statutory responsibilities under the Environmental Protection Act 1990 to address any statutory nuisance identified on any site (i.e. any risk to public health or safety). The Council would have limited likelihood of recovering the costs of any works required to make such hazards safe (which could be achieved by restricting access to them rather than removing them completely) as the costs would form the basis of an unsecured claim in the liquidation which is unlikely to yield any payment whatever the outcome of the current Court proceedings at the instance of the liquidator.
- The Council will also have to address any responsibilities under the 1990 Act in respect of the parts of the three sites at Skares, Grievehill and Garleffan which have already been disclaimed by KPMG as the Liquidators for Aardvark under English Insolvency Law.

69. For the sake of completeness, Counsel's opinion is also being sought as to any possible third party contractual or delictual right of action against the Council by affected landowners and, again, this will be reported appropriately when the situation has become clearer.

## **70. RISK AND FINANCIAL IMPLICATIONS**

71. The financial implications for the Council can be categorised but not fully quantified at this stage. Current information included in this report indicates the following position:-

## **72. Restoration Works**

73. Whilst the Council has no liability for the restoration of sites, calling in the restoration bonds will result in an obligation to use those funds for that purpose. There is currently no certainty with regard to the extent that bond providers will honour the bond obligations. Verifiable estimates of works required will only be available once the consultant mining engineers have completed their surveys and calculations, and are in a position to make recommendations on action required. This is expected by the end of June 2013. The only estimates of cost which are currently available are those provided by KPMG and Aardvark/ATH and whilst these may be unreliable, they indicate significant liabilities are possible but it is likely to take some time before it is clear which organisations will require to satisfy them.

## **74. Safety Costs**

75. It is likely that there will be a requirement under the Environmental Protection Act 1990 to ensure that hazardous areas are made safe in the short term by, for example, restricting access to them. The extent of this will be known once the work of the consultant mining engineers is completed. If these costs fall to the Council, it is anticipated that they will be significant enough to require a draw on General Fund balances to meet them. Should this be required, Cabinet authority for this will be sought at the earliest opportunity.

## **76. Survey Costs**

77. Consultant mining engineers have been engaged to assess restoration and safety costs. Fees are likely to be in the region of £0.100m but can not be finally quantified until the work is completed. These costs will be charged to departmental balances. Opportunities will be explored for contributions to these costs by other organisations who may be able to use the data.

## **78. Legal Costs**

79. Counsel's opinion has been sought in conjunction with North Lanarkshire, South Lanarkshire and Midlothian Councils with East Ayrshire Council meeting 50% of the costs and the remainder being shared equally by the others. This recognises the relative scale of operations in each area. The Council's share for work currently instructed is estimated at £0.015m and will be charged to departmental balances. If advice received means that further work needs to be instructed and costs escalate beyond expected levels, this will be reported to the Cabinet together with the proposed source of funds.

## **80. Economic and Social Impact Study Costs**

81. Paragraph 26 confirms the need to engage external advice to develop approaches to respond to the economic impact on communities and it is anticipated that the costs will be in the region of £0.020m. This will be met from departmental budgets.

## **82. Risks**

83. The contents of this report highlight significant potential risks for the Council. These include the financial risks indicated above which officers will seek to minimise and to avoid by ensuring that they are accepted by the appropriate organisations.
84. The environmental risks of opencast mining are well known and the collapse of the companies and the determination of the liquidator to disclaim obligations may mean many of those risks will crystallise. The Council will continue to monitor developments and as indicated above will take immediate action to mitigate any health and safety risks where responsibility lies with the local authority.
85. The economic risks arising from the job losses will mean the deployment of Council resources to assist those directly affected and the wider consequential impact on the economy of the area may affect other services.
86. East Ayrshire Council has an excellent and well deserved reputation and proven track record as an organisation that delivers on behalf of the communities it serves. This has been demonstrated over a sustained period of time and strong political and corporate leadership together with excellence in service delivery have been validated, often at a national level. These attributes will be essential to the Council in its response to the challenges presented by the difficult circumstances currently presented and as detailed in this report. It is, however, important to highlight that the matters outlined do have the potential to impact on the Council's reputation. The actions of the Council and its determination to address these matters will contribute to the amelioration of this risk.

## **87. INDEPENDENT REVIEW**

88. Whilst the focus at this time has to be in establishing a firm basis for taking action to tackle the direct economic, environmental, legal and certain financial implications of the current situation relating to opencast coal operations, it will be necessary to fully review all of the processes and procedures around the management, determination, implementation, monitoring and review of the planning processes in relation to opencast coal operations within East Ayrshire, all within the governance arrangements in place throughout the period.



89. The Chief Executive is presently considering the terms of reference of this independent review and, indeed, who should undertake the review, and will submit proposals for this to Cabinet at its meeting on 19 June 2013.

#### **90. THE SCOTTISH GOVERNMENT'S RESTORATION BOND WORKING GROUP**

91. Concerns about the requirement for restoration bonds for opencast coal mines developments was raised by the Coal Operators with the Scottish Government early last year. These concerns were raised due to the increase in the bond premiums at that time. Scottish Government then set up a Working Group on Restoration Bonds to investigate the options available to Planning Authorities dealing with these types of applications. The Head of Planning and Economic Development participated on this group. The conclusions of the Working Group have yet to be reported; however, it is clear that a variety of options will require to be available in the future to allow the industry to progress. These options include the use of short term restoration bonds, Parent Company Guarantees and ESCROW accounts requiring regular payments on a cost per tonnage of coal extracted basis. It is highly likely that future development will require the use of more than one of these financial restoration securities.

#### **92. SCOTTISH MINES RESTORATION TRUST**

93. The insolvency of SCCL and Aardvark has required a focused examination of the restoration liabilities for each site and as a result incurred expenditure which was unbudgeted. However, the programme of assessment will also enable a baseline level of information to facilitate the work of the Scottish Mines Restoration Trust (SMRT) in its site by site assessment of restoration solutions. It is proposed that the Council submit bids to the SMRT in relation to the expenditure incurred for the mining assessments carried out as a result of the insolvency proceedings. For the remaining operational sites mined by Kier Mining and Hargreaves Services subsidiary companies, further assessments are scheduled to be carried out beyond the current independent review in line with the Annual Review at the cost of the mining operator.

94. The Scottish Mines Restoration Trust (SMRT) was recently set up with the objective to support restoration of former coal mining sites in Scotland. The Trust is aiming to gain charitable status and is not part of the Scottish Government. The Trust has a Board of Directors drawn from a range of individuals with an interest in the Restoration of former coal mines across Scotland and is currently Chaired by Prof Russell Griggs. The SMRT has no direct income stream and, therefore, will require donations to enable it to achieve its objectives. It has been indicated that donations will be made from the Mining Industry to support the SMRT and Hargreaves have already made a donation of £1.1m.

95. The principal role of the SMRT will be to provide technical support as well as small scale financial support to allow Councils to commission consultants to investigate Restoration schemes. It has also been indicated that they would act as facilitators in assisting Councils in the restoration of the former coal mine sites.
96. It is considered vital that the Council has the opportunity to be a member of the SMRT and that the most appropriate representation is at both Member and Officer level.

#### **97. OFFICE OF RAIL REGULATION**

98. The Office of Rail Regulation is the independent safety and economic regulator for Britain's railways. They regulate Network Rail's stewardship of the national rail network and are responsible for determining the framework for track access charges and for establishing caps, set by Network Rail.
99. Charges are designed to recover Network Rail's operating, maintenance and renewals costs that vary with traffic. Each vehicle operating on the rail network is charged a specific rate which reflects the wear and tear it causes to the network.
100. In January 2013, the Office of Rail Regulation published its conclusions on its review of the structure and level of track access charges for rail freight for the Period 1 April 2014 – 31 March 2019. This set out the level of cap on the variable charge, which is paid by all rail freight operators, and introduced a new freight specific charge to cover freight avoidable costs, which are defined as infrastructure costs caused by freight operating on the network and which would not be incurred if all freight services were to cease.
101. This new freight specific charge will apply to the movement of Electricity Supply Industry (ESI) Coal, spent nuclear fuel and iron ore and is designed so that rail freight pays a greater contribution to Network Rail's costs.
102. The table below shows current track access charges for ESI coal, as well as the planned charges for the Period 1 April 2014 to 31 March 2019. The rate is on the basis of per thousand gross tonne miles (kgtm) at 2011/12 prices, which means that the overall charge will reflect the distance travelled.

103. The ORR has proposed phasing the freight specific charge in gradually, for example at 20% of its final level in 2016-17, 60% in 2017-18 and 100% in 2018-19.

	Current access charges*	Freight specific charge cap 2014/15	Freight specific charge cap 2015/16	Freight specific charge cap 2016/17	Freight specific charge cap 2017/18	Freight specific charge cap 2018/19
ESI Coal	£2.83	£0.00	£0.00	£0.80	£2.40	£4.04

\*current charge comprises variable usage charge, capacity charge, coal spillage charge, freight only line charges. Note that freight specific charge will be **additional** to these current charges.

104. The ORR commissioned NERA Economic Consulting to examine the likely impact of increased track access charges on electricity supply industry (ESI) demand for coal, nuclear fuel and biomass. NERA reported that an increase in track access charges would have only limited effects on ESI coal demand, as coal producers could absorb some of the increases themselves and the impact on the delivered cost of coal would be relatively small compared with changes in international coal prices. Further, NERA reported that continued extraction is likely to be worthwhile even at lower prices.

105. The Scottish Minister’s Guidance to the ORR in July 2012 stated that “in developing track access charges arrangements for freight operators, the Scottish Ministers expect the ORR to use a mechanism which recognises the impact that freight operators have on the network but maintains the attractiveness of rail to freight customers, and which is adaptable to prevent the outputs of businesses in Scotland from becoming uncompetitive in their key markets”. Whilst the ORR is not bound by the guidance, they are required to take account of it in the overall balancing of their statutory duties.

106. The use of kgtn as the basis of freight specific charges means that any increase will lead to higher than average cost increases for Scottish coal supplied to English Power Stations, increasing the competitive disadvantage to Scottish coal suppliers. The Minister for Transport and Veterans has written to the ORR to express concern regarding the potential disproportionate impact on Scotland.

107. The Minister for Transport and Veterans met with the Chair of the ORR on 16 April 2013 to discuss these issues and to highlight the concerns of the Coal Industry. At the meeting, the ORR provided assurances that they would reconsider the final proposals. They are expected to publish their Draft Determination on 12 June 2013, with the Final Determination due in October 2013.

108. Further, the Coal Industry has disputed the assessment by NERA and has highlighted a number of effects that increased track access charges could have.

- Risks to security of supply;
- Risks of closure of all Scottish coal mines supplying the power generation market in England;
- Increased need for imports to meet demand;
- Modal shift from rail to road transportation within Scotland;
- Loss of jobs;
- Increased need for gas imports; and
- Disincentive for future investment.

109. The matter was considered at the most recent meeting of the National Taskforce when Sue Johnston, ORR Deputy Director for Scotland, made a presentation. The Operators present, namely Hargreaves and Kier, confirmed that these are indeed risks and should the new charges be implemented, this would have a significant impact on the future operation of the coal industry within Scotland.

110. Accordingly, it is recommended that the Leader of the Council write to the Office of Rail Regulation condemning the proposed increases in rail freight charges which in the view of the Council will further inhibit the prospects of the open cast mining industry in this area.

#### **111. MINERALS TRUST**

112. As stated elsewhere in this report, Section 75 Agreements impose certain obligations on coal companies, including contributions to the Minerals Trust.

113. It is to be noted that SSCL had failed to make payments to the Trust for the quarters commencing September and December 2012 and March 2013. As a result the Minerals Trust is owed £0.257m a claim in respect of which has been intimated to KPMG as liquidator of SCCL.

#### **114. COMMUNITY PLANNING IMPLICATIONS**

115. The impact of the announcement is significant in relation to Delivering Community Regeneration but also has potential to impact on the other three themes of the Community Plan – Improving Community Safety in relation to safety considerations at the mothballed sites; Promoting Lifelong Learning in relation to retraining of the workforce; and Improving Health and Wellbeing in relation to income maximisation and prevention of poverty for those affected by redundancy.

## 116. RECOMMENDATIONS

117. It is recommended that Cabinet:-

1. Notes the most recent position in relation to Scottish Coal Company Limited (in liquidation) and Aardvark TMC Limited (in liquidation);
2. Notes the most recent position in relation to Hargreaves Services and their status as preferred bidder to acquire various assets of the former Scottish Coal Company Limited and Aardvark TMC Limited and their subsequent intentions;
3. Notes the actions taken by the Council to date to safeguard the position of the Council and its communities, and in response to the announcements by Hargreaves Services on their intentions in relation to those open cast sites which they do not deem to be viable and which they wish to abandon;
4. Notes and approves the engagement of Legal Counsel in the formal opposition to the Directions sought by the liquidators/Hargreaves Services in respect of their abandonment of certain sites and statutory licences as they apply to former Scottish Coal Company Limited and Aardvark TMC Limited, and related matters;
5. Notes the continuing activity of the National Task Force and of the Local Response Team;
6. Notes the work being undertaken by the Council and Skills Development Scotland to support those within our communities who have been made redundant as a result of the decisions by Scottish Coal Company Limited and Aardvark TMC Limited;
7. Notes the work of the Council and of Scottish Enterprise in supporting local companies which form part of the supply chain and which have been affected by the liquidation decisions;
8. Agrees to the engagement of an economic and social research and development company to assist in analysing impacts and in developing approaches to respond to these economic and social matters and authorises the Chief Executive to so do;
9. Notes the outcome of the work undertaken to date to review the status of all open cast coal sites within East Ayrshire;
10. Notes that in order to determine the full extent and nature of the outstanding restoration required to a number of sites formerly operated by Scottish Coal Company Limited and Aardvark TMC Limited, the Depute Chief Executive/Executive Director of Neighbourhood Services, has engaged the services of specialist mining engineering companies and authorises the continuation of this work;
11. Notes that on completion of the work of the mining engineering companies, these matters will be reported to Cabinet;
12. Notes that on completion of the Court actions these matters will be reported to Cabinet;
13. Notes that on completion of the assessments of the outstanding restoration of those sites which are not to be operated by Hargreaves Services and the

cost thereof not covered by Bonds, the ultimate position will be reported to Cabinet;

14. Notes the involvement of the Head of Planning and Economic Development in the Scottish Government's Restoration Bonds Working Group;
15. Agrees to recommend to Council that one Member and one Officer be proposed to the Scottish Mines Restoration Trust as Trustees and Members of the Board of Trustees and, in the meantime, to note that the Chief Executive in exercise of her emergency powers, has written to the Scottish Mines Restoration Trust on this basis;
16. Notes the position in relation to the Office of Rail Regulation and agrees that the Leader of the Council writes to the Office of Rail Regulation condemning the proposed increases in rail freight charges which in the view of the Council will further inhibit the prospects of the open cast mining industry in this area;
17. Notes the legal, financial and risk implications for the Council as set out in the report and the continuing requirement for the services of Legal Counsel;
18. Notes the proposal by the Chief Executive that there be undertaken an independent review of all of the processes and procedures around the management, determination, implementation, monitoring and review of the planning processes in relation to open cast coal operations within East Ayrshire, all within the governance arrangements in place throughout the period and agrees to receive a report from the Chief Executive setting out the proposed remit and terms and conditions of that review and, indeed, who should undertake that review, at the meeting of Cabinet on 19 June 2013; and
19. Otherwise notes the content of the report.

Fiona Lees  
Chief Executive

23 May 2013  
FL/JS

#### **LIST OF BACKGROUND PAPERS**

1. Articles of association of the Scottish Mines Restoration Trust Limited
2. East Ayrshire Council Open Cast Coal Subject Plan, 2003

Members requiring further information should contact Fiona Lees, Chief Executive,  
Telephone: 01563 576103

**IMPLEMENTATION OFFICER: FIONA LEES, CHIEF EXECUTIVE**