

## **EAST AYRSHIRE COUNCIL**

### **SPECIAL COUNCIL MEETING - 24 FEBRUARY 2011**

#### **RECOMMENDATION OF SOUTHERN LOCAL PLANNING COMMITTEE HELD ON 21 JANUARY 2011 RELATING TO PLANNING APPLICATION NO 10/0842/PP: PROPOSED MINING OF COAL USING SURFACE MINING METHODS WITH RESTORATION TO IMPROVE PEATLAND AND WET HEATH HABITATS AT DALFAD SURFACE MINE, NEAR POWHARNAL SURFACE COAL MINE, SKEW BRIDGE, CRONBERRY BY SCOTTISH COAL**

##### **Report by the Executive Director of Finance and Corporate Support**

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

- 1.1 The purpose of this report is to inform the Special Council meeting of the recommendations of the Southern Local Planning Committee held on 21 January 2011 regarding the above planning application, and to invite Council to determine the application for planning permission in terms of the Scheme of Delegation on the grounds that the application under consideration proposes a major development as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, that is considered significantly contrary to the Development Plan.

### **2. BACKGROUND**

- 2.1 East Ayrshire Council at its meeting held on 25 June 2009, agreed amendments to the Scheme of Delegation and Administration to meet the requirements associated with the Government's proposals to modernise the planning system in Scotland.

- 2.2 Key changes, effective from 3 August 2009, included:-

- Local Planning Committees would determine all applications for major developments with the exception of (i) national developments as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009; and (ii) major developments that are significantly contrary to the Local Development Plan. However, where required to do so, Local Planning Committees will hold Hearings on these applications and make recommendations to the Council, but only the Council can make the decisions.

### **3. APPLICATION NO 10/0842/PP: SCOTTISH COAL: DALFAD SURFACE MINE, NEAR POWHARNAL SURFACE COAL MINE, SKEW BRIDGE, CRONBERRY**

- 3.1 The application is for planning permission for the proposed mining of coal using surface mining methods with restoration to improve peatland and wet heath habitats at Dalfad Surface Mine, Near Powharnal Surface Coal Mine, Skew Bridge, Cronberry by Scottish Coal.

## **3.2 Pre-Determination Hearing**

- 3.2.1** A Pre-Determination Hearing was held by the Southern Local Planning Committee on 21 January 2011 to consider the report dated 17 January 2011 by the Head of Planning and Economic Development **(the report is attached as Appendix 1)**.
- 3.2.2** Members of the Southern Local Planning Committee were advised that the application was advertised in the Cumnock Chronicle and the Edinburgh Gazette on 15 October 2010 and again on 17 December 2010 as additional supplementary environmental information had been submitted by the applicant, and four parties had objected to the application; letters of support for the application had also been received from 47 parties (details of the letters of objection and support are summarised in the attached report); and of the recommendations of the Head of Planning and Economic Development as follows:-
- (i) that the Local Planning Committee endorses the view of the Head of Planning and Economic Development that the application should be approved subject to the conditions and for the reasons detailed in the attached report; and
  - (ii) that the recommendation of the Local Planning Committee should be referred to the next appropriate Council meeting for consideration in the determination of the application.
- 3.2.3** The Committee heard Philip Rayson representing the applicant in support of the application. Members of the Committee asked questions of the applicant's representative.
- 3.2.4** The Committee then heard Gordon Cathcart representing 46 supporters of the application, and Craig Beck, a supporter. Members of the Committee asked questions of the supporters' representative and the supporter.
- 3.2.5** The Committee then heard from Brian Broadley representing the objections of Lugar and Logan Community Council, Greta Roberts representing the objections of MEGA Mining and Environment Group and Zoe Clelland representing RSPB, in support of their objections. Members of the Committee asked questions of the objectors and their representatives.
- 3.2.6** The applicant's representative then exercised their right of reply to points raised by the supporters and the objectors.
- 3.2.7** Members of the Committee asked further questions of the applicant's representative.
- 3.2.8** Fiona Finlay, Principal Planning Officer, provided clarification on points raised during the Hearing with regard to there being no objection to the application from SNH and SEPA, and that a condition could be applied to any consent to cover a point raised about the concerns of The Ayrshire Rivers Trust.

### **3.3 Recommendation by Southern Local Planning Committee**

**3.3.1** Having heard the Pre-Determination Hearing, the Southern Local Planning Committee agreed:-

- (i) to endorse the view of the Head of Planning and Economic Development that the application be approved subject to the conditions and for the reasons detailed in the report; and
- (ii) that the recommendation of the Local Planning Committee be notified to the Council for its consideration in the determination of the application.

**4. FINANCIAL/POLICY/COMMUNITY PLANNING IMPLICATIONS - Nil.**

### **5. LEGAL IMPLICATIONS**

**5.1** Prior to the Council determining the application, a Pre-Determination Hearing required to be heard by a Committee of the authority, in this case the Southern Local Planning Committee.

**5.2** As a consequence, this planning application now requires to be determined by Council in terms of Section 56 of the Local Government (Scotland) Act 1973 (as amended), and in terms of the Council's Scheme of Delegation, given that it comprises a major development that is considered to be significantly contrary to the development plan.

### **6. RECOMMENDATIONS**

**6.1** It is recommended:-

- (i) that Council determine the planning application, giving consideration not only to the terms of the report by the Head of Planning and Economic Development referred to in Appendix 1; but also the recommendation by the Southern Local Planning Committee as detailed above; and
- (ii) to otherwise note the contents of the report.

Alex McPhee  
Executive Director of Finance and Corporate Support

24 January 2011  
JM/SR

### **LIST OF BACKGROUND PAPERS - NIL**

Any person wishing further information on this report should contact Jennifer Morrison, Administrative Officer, on Tel No (01563) 576139.

**Implementation Officer: Jennifer Morrison, Administrative Officer.**

## EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 21 JANUARY 2011

### 10/0842/PP: PROPOSED MINING OF COAL USING SURFACE MINING METHODS WITH RESTORATION TO IMPROVED PEATLAND AND WET HEATH HABITATS AT DALFAD SURFACE MINE, NEAR POWHARNAL SURFACE COAL MINE, SKEW BRIDGE, CRONBERRY

#### APPLICATION BY SCOTTISH COAL

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=10/0842/PP>

#### EXECUTIVE SUMMARY SHEET

#### 1. DEVELOPMENT DESCRIPTION

1.1 Planning permission is sought for a surface mine at Dalfad providing for the extraction of approximately 700,000 tonnes of coal over an approximate 18 month extraction period plus an additional 18 months for start up and final restoration works.

1.2 The proposed site has been planned as part replacement for the existing Powharnal operational site which ceased coaling late in 2010. The current application is, in effect, an extension to the Powharnal / Gasswater mining complex and this is borne out by the application site boundary including the existing site offices, maintenance and coal handling facilities that serve the existing operational site. Coal from the site will be used principally for electricity generation. The applicant advises that the overall restoration strategy for Dalfad is to create a much improved moorland landscape with area of replacement habitats with high wildlife conservation value such as marshy grassland, peat bog and wet heath and other wetland habitats.

1.3 The proposed development will involve mineral recovery in three phases totalling an area of approximately 47 hectares with the remainder of the site being utilised for temporary overburden storage, water treatment lagoons and coal processing or remaining undisturbed. An additional 45 hectares of degraded modified bog and a former mineral railway cutting will be restored to enhance peat habitats and the applicant advises that overall approximately 177 hectares of the total application site area will remain undisturbed. Similar techniques to those employed on the applicant's other operational sites will be used to mine the coal and the applicant advises that the mining operations will be progressively reported, re-vegetated and subject to aftercare as the site progresses. Maximum excavation depth will be to 80 metres and limited blasting will be employed. Overburden mounds will be formed to a maximum height of 25 metres above the original ground level. Topsoil mounds will be a maximum of 5 metres and subsoil to a maximum of 12 metres.

1.4 The current coaling operations at Powharnal ceased in the late part of 2010 and the proposed operations in the Dalfad mine are to be a partial replacement for the existing Powharnal operation. The applicant advises that this proposal is an important means of ensuring continuity of employment in the area. Up to 10,000 tonnes of coal per week will be extracted and exported from Dalfad. Coal will be exported from the site via the A70 to the railhead at Killoch, near Ochiltree. Almost 100% of coal will then be exported by rail and the remainder will be dispatched to final customers in the local area via the local road network.

1.5 Site infrastructure and maintenance facilities situated to the east within the existing Powharnal site will be used as will the existing site access which enters directly onto the A70. This access will also be used by site staff and for local deliveries.

1.6 The site will be operated on a 24 hours a day basis from 7am on Monday to 4pm on Saturday. Coal will be dispatched between the hours of 8am to 5pm Monday to Friday. This is consistent with the working hours operated at the Powharnal site. Other than plant maintenance and water management, no mining operations will take place on Sundays or Public Holidays, although the applicant advises from time to time coal may be dispatched by road on Public Holidays to meet customer requirements with the prior approval of the Local Authority.

1.7 The nearest communities to the proposed Dalfad site are Cronberry (1.5km), Lugar / Logan (2.5km) and Muirkirk (5.5km) and at closer distances, there are individual houses, cottages and farmhouses with the main noise source in the area being the A70. The applicant advises that noise mitigation measures will be adopted in the operation of the site. The applicants intend to retain the existing Powharnal storage mounds in the vicinity of the processing and office areas in addition to noting also that due to the topography of the site, the proposed excavation area is largely behind the crest of the hill when viewed from properties to the north west and this natural screening will reduce noise levels in that direction.

1.8 The ES therefore states that these measures, together with the exercise of reasonable engineering control over general operations and the incorporation of measures in relation to the formation of the overburden mound (i.e. formation of the outer faces of the mound during the day with plant working behind benefiting from screening during the night), will ensure that all working at the mine will be carried out within the PAN 50 noise criteria.

1.9 Blasting is also proposed and the ES confirms that all blasting will work to the established procedure at Powharnal and the level of charge used at each blast will take account of the particular circumstances, for example, the proximity to sensitive receptors i.e. residential property.

1.10 The applicant advises that the proposed Dalfad site will continue to provide the economic benefits associated with the existing Powharnal Surface Mine Complex which has over the past 12 years played a significant role in the local economy. Operations will provide employment for up to 80 direct

jobs from the current labour force at Powharnal and Spireslack, with further jobs maintained through the use of coal haulage contractors. From experience gained at the current site, approximately 85% of employees reside within a 10km radius of the site. The total number employed will be dependent upon market conditions, speed of operations and the particular phase of the scheme being worked although in addition to direct employment, a number of indirect jobs will also continue to be supported or created in terms of site servicing continuing the company's policy of utilising local service suppliers on its surface mines typically for road haulage, fuel supplies, vehicle purchase and hire, contractors for fencing, drainage, forestry and landscaping as examples. The projected annual wage bill during the life of the proposed development is some £2.84 million, a large proportion of which will contribute towards the local economy. In addition in excess of £3 million per year will be expended with local businesses and over £200,000 contributed through business rates.

1.11 The Dalfad application has been accompanied by an Environmental Statement and the information provided suggests that, subject to the implementation of a range of mitigation measures as described in the ES documents, the development can take place without significant adverse, long term impacts on the environment or more particularly on local communities.

1.12 As part of the statutory requirements for this major application, the applicant has undertaken pre-application consultation with the local community with regard to the proposed development. The applicant has undertaken a full programme of engagement involving different sectors of the community in order to elicit views on the development proposals and issues which should be considered in the EIA process. Regard has been had to PAN 81 and to the Scottish Government's Regulations on planning application consultation in respect of engaging with the community.

1.13 The applicant proposes the removal of some 47 hectares of peat bog from the Provisional Wildlife Site of Dalfad Moss. The applicant has submitted a Compensation Plan to mitigate this loss which will operate for a period of 8 years, based upon a 3 year active working site at Dalfad and the 5 year aftercare period. It is proposed to undertake works on Airds Moss which lies within the Muirkirk and North Lowther SPA and is a Special Area of Conservation (SAC) and a SSSI and these centre around Tarmac Loch. Airds Moss is currently degraded following a history of surface and deep mining. In addition to the off site compensation, the applicant also proposes that there will be onsite mitigation at Dalfad through the restoration of a former railway cutting and race course to mitigate the direct loss of wet heath habitat.

The purpose of the compensation plan is to improve the peatland habitat for important plant and animal species and it will include:-

- restoring appropriate hydrology levels within the peat resource in distinct watershed areas
- Reverse vegetation changes caused by the drying-out effect of the drains and modified natural features
- Increase the extent of peat forming vegetation across the site.

The compensation plan will include management proposals for this area comprising:-

- A drain blocking programme in the defined watershed areas
- Maintaining appropriate grazing levels across the site
- Managing the establishment of scrub and tree seedlings.

## **2. RECOMMENDATION**

**2.1 It is recommended Local Planning Committee endorses the view of the Head of Planning and Economic Development that planning application 09/0130/FL be approved subject to the conditions indicated on the attached sheet.**

**2.2 It is recommended that the recommendation of the Local Planning Committee be subsequently referred to the Council for consideration in the determination of this planning application.**

## **3. CONCLUSIONS**

3.1 As is indicated in Section 5 of the report, the application is considered to be significantly contrary to the development plan in that it represents departures from Policies MIN3, MIN11, MIN26 and MIN27 of the EAOCS. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated in Section 6 of the report, there are material considerations relevant to this application. However, these material considerations are generally supportive of the proposed development as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

3.2 The proposal effectively represents an extension to the existing Powharnal / Gasswater mining complex to recover some 700,000 tonnes of coal which in environmental terms is considered to present no significant additional adverse impacts on local communities or nearby residential properties and this is essentially borne out by the consultation process. In addition, the proposed development has not attracted any significant level of objections.

3.3 It is considered that, given the relatively remote and sparsely populated area in which the existing Powharnal / Gasswater site and the proposed Dalfad development site are located, the proposal to effectively extend the existing consented site will not have any significant adverse effects on any local community and therefore it is considered that the extended operations proposed can be undertaken within acceptable environmental standards in operational terms.

3.4 The existing Dalfad operation provides full time employment for 80 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 3 year working life of the proposed Dalfad extension. This is considered to be of significant community benefit noting in addition the indirect employment opportunities and contribution to the local economy including the applicant's spending locally and contribution to business rates.

3.5 In landscape and visual amenity terms, the proposed development will have significant, albeit temporary adverse impacts. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term. The site is currently considered partly derelict having been the subject of historic and more recent industrial activities. Overall it is considered that the long-term landscape would be enhanced by restoration proposals.

3.6 With respect to the objections raised, it is considered that the points of objection, where relative to the conflicts with policy and loss of peat bog are valid and of merit. Other points raised are either not of sufficient weight to justify refusal of the application or raise matters that can be addressed by imposition of conditions or by means of obligations secured by a Section 75 Agreement, should planning permission be granted.

3.7 The prime issue relative to the application centres on the Dalfad Moss Provisional Wildlife Site as the Dalfad development will result in the loss of 47 hectares of peat bog. This raises the conflict with Policies MIN3, MIN11, MIN26 and MIN27 of the EAOCSP. However, in recognition of this loss, the applicant has offered a compensatory package of measures for mitigation off site that would see the management and enhancement of around 200 hectares of the Airds Moss Special Area of Conservation. This compensatory package will deliver greater benefits to the environment and to habitat enhancement than will be lost through the Dalfad development. It is respectfully suggested that the non-objections from SNH and SEPA are as a direct result of this compensation package.

3.8 In considering the environmental acceptability of the proposed surface mining development, planning authorities are guided to consider acceptability in the context of the impact on both local communities and the environment. This can be achieved by weighing up the various benefits and disbenefits that would be likely to arise if the development proceeded. In respect of the proposed Dalfad development the benefits and disbenefits are as follows:

### **Disbenefits**

- (i) **Proximity to communities:** There are no communities within 500m of operational areas of the development. The closest individual property to the development at Stonebrigg is approximately 400m from the application boundary but in the order of 600m from the proposed extraction areas. The scheme has been prepared to minimise disruption. The ES has included an assessment of the potential effects on the closest sensitive properties to the development in terms of matters such as dust and noise. The ES has identified appropriate

mitigation measures and reported acceptability of the scheme at those receptors.

- (ii) Uncertainty for local communities: the planning application would not create any uncertainty for local communities as to future extraction given the information provided by the applicant in Section 5.9 above.
- (iii) Haulage of Traffic: the proposed development will result in the continuation of HGV traffic along the A70 passing through Lugar, Cumnock and Ochiltree to access Killoch Coal Disposal Point. This is however an A Class road and the transport assessment within the ES has identified capacity within the road network to accommodate the development. No significant impacts from haulage have been identified. With regard to dispatch hours, it is considered that the applicant's amended proposals are in line with standard dispatch hours applied to all surface mining sites. The Roads and Transportation Service, subject to a Section 75 Agreement regarding road maintenance, does not object to the proposed development.
- (iv) Other Cumulative Developments in Close Proximity: the ES has included an assessment of likely cumulative effects that would occur from the Dalfad development co-existing with other similar developments in the area, particularly as the sites at Garleffan and Grievehill are in the restoration phase at this time. The relevant assessments within the ES (including noise, air quality and landscape and visual amenity) have considered the cumulative effects in detail. No significant overriding cumulative effects have been identified.
- (v) Disturbance and Disruption from Noise etc: the ES includes detailed assessments in respect of a wide scope of environmental impacts. Appropriate mitigation has been identified in the ES that can be secured through planning conditions and/or agreements to control the effects of the development to acceptable levels. These would include restricting operating hours for certain operations, setting noise conditions and setting conditions to control blast events.
- (vi) Loss of Landscape Features, Habitats, Species & Archaeological Features: The ES has taken into account the potential impacts on all of these assets and has identified that clearly the loss of the peat bog is significant. While peat removed will be set aside and subsequently restored, the habitat lost is unlikely to be recreated. Archaeological interests can be addressed by the condition indicated by WOSAS in its consultation response above.
- (vii) Impact of Extraction on other Investment: the development is located in a rural area, with little alternative development apparent and there is not considered to be any reasonable likelihood of detracting investment from the local area. The proposed development would in fact bring about further investment from the applicant in the local area and the likely commitment to the area from other businesses and industries used to service the development.

- (viii) The loss of local Opportunities for Recreation: there are no formal public access routes or ways within the planning application area.

### **Benefits**

- (ix) Removal of Existing Dereliction and Land Instability: a significant proportion of the application site has been subject of previous mining operations and there are areas within the site that are derelict and the site has been previously undermined. Despite the loss of the peat bog, the restoration will bring about an overall improvement in the character and setting of the application site for local communities and for biodiversity targets.
- (x) Removal of all Coal in one Operation: the planning application is made for the removal of all known economically recoverable coal within the planning application boundary. If planning permission were to be refused, then so long as the coal deposits remained in situ there would be continued uncertainty at the site being revisited and reapplied for extraction at some future date.
- (xi) Distance of the Proposal in Relation to Local Communities: the Dalfad development is considered to be sufficiently separated from nearby communities and complies fully with the policy provisions of the EAOCSP in this regard.
- (x) Planned Restoration and Aftercare Arrangements are Clear: the planning application is accompanied by a clear restoration strategy and plan. The scheme would bring about local landscape and biodiversity improvements and in a progressive manner.
- (xi) Restoration will Provide new Landscape and Biodiversity Features: the direct landscape and biodiversity benefits of the scheme are described in the ES and would result in notable beneficial effects within the site. Of significance is the compensatory measures proposed by the applicant for mitigation off site that would see the management and enhancement of around 200 hectares of the Airds Moss Special Area of Conservation. This compensatory package will deliver greater benefits to the landscape, environment and to habitat enhancement than will be lost through the Dalfad development.

3.9 In respect of all relevant matters and material considerations to be taken into account, it is recognised that the application is in part contrary to the provisions of the development plan but that substantial mitigating measures have been proposed which on balance point to a favourable recommendation. There are no significant environmental or community concerns regarding the proposal. Consequently it is considered that the application should be approved subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

## Section 75 Agreement

(i) The agreement of the applicant to make road maintenance contributions towards repair work which requires to be carried out on the East Ayrshire section of the A70 public road coal haulage route between the site access at Powharnal and Killoch DP west of Ochiltree with the Roads Authority under Section 96 of the Roads (Scotland) Act 1984. The simplest method to attribute maintenance costs is by a contribution from Scottish Coal under Section 96 of the Roads (Scotland) Act 1984 incorporated into a Section 75 planning agreement. Scottish Coal's contribution will be £0.30 pence per tonne of coal or other mineral extracted from the site by road haulage and will be payable to the Roads Authority on a quarterly basis to assist in the ongoing maintenance of the route.

(ii) The subscription of the applicant to the Council's Transportation Protocol to provide for agreement on routing, timing and marking of vehicles for minerals won within the Dalfad site transported on the public road network within East Ayrshire.

(iii) The extension of the remit of the existing Powharnal Management Committee / Technical Working Group to embrace the proposed Dalfad site.

(iv) The securing of the proposed off site compensatory measures and mitigation as described in the Compensation Plan: Airds Moss by Wardell Armstrong dated December 2010. The measures shall also include the agreement of a mechanism by which the details and implementation of the compensation, including the proposed mitigation and restoration measures, can be approved and overseen. The delivery of the compensatory and mitigation measures and site restoration and aftercare shall be secured by an appropriate bond to be agreed between the Council and the applicant. The long term conservation management of the off site compensatory area and the restored site shall form part of the agreed mechanism.

(v) The production of a comprehensive Conservation Management Plan for the comprehensive Powharnal complex as extended by the Dalfad development, this plan to be agreed by the Powharnal Management Committee / Technical Working Group.

(vi) The appointment of an Ecological Clerk of Works (ECoW) by the applicant and approved by the Planning Authority in consultation with SNH for the period from commencement of development to the completion of aftercare or such earlier date as may be agreed in writing with the Planning Authority. The scope of work of the ECoW shall be agreed by the Council and will include:

- overseeing the storage of peat, turf removal and storage, and bund construction;
- advising and implementing restoration works; and
- monitoring and reporting during restoration and aftercare periods to the PMC/TWG.

(vii) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Dalfad site following consultation with the Planning Authority and the Environmental Health Service, such monitoring schemes to be in place prior to the commencement of operations associated with this development;

(viii) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.

(ix) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 35 of the East Ayrshire Opencast Coal Subject Plan 2003, including the establishment and implementation of an appropriate independent monitoring regime.

(x) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;

(xi) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site;

(xiii) The undertaking of structural surveys of residential properties lying in close proximity to the proposed excavation areas, the identification of properties considered for survey being the subject of discussion and agreement with the Planning Authority, and only to be required where the property owners give consent for such surveys. Copies of the requisite surveys shall be made available to the Planning Authority and to respective property owners.

**Alan Neish**  
**Head of Planning and Economic Development**

**Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.**

# EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 21 JANUARY 2011

## 10/0842/PP: PROPOSED MINING OF COAL USING SURFACE MINING METHODS WITH RESTORATION TO IMPROVED PEATLAND AND WET HEATH HABITATS AT DALFAD SURFACE MINE, NEAR POWHARNAL SURFACE COAL MINE, SKEW BRIDGE, CRONBERRY

### APPLICATION BY SCOTTISH COAL

#### Report by Head of Planning and Economic Development

#### 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a planning application which is to be considered firstly by the Local Planning Committee. Under the scheme of delegation the proposed development represents a major application in terms of the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 which is significantly contrary to the Development Plan and therefore determination of the application rests with the Council. The Local Planning Committee is required to consider all representations made as part of a pre-determination hearing procedure prior to making a formal recommendation on the application to a subsequent meeting of the Council.

#### 2. APPLICATION DETAILS

2.1 **Site Description:** The proposed Dalfad opencast coal site lies at the western end of the Muirkirk Valley some 4.5 kilometres west of Muirkirk, 2.5 kilometres east of Lugar and Logan and approximately 1.5 kilometres north east of the village of Cronberry and comprises an area of open countryside to the south of the A70 road. The application site lies immediately to the west of the larger Powharnal Surface Mine complex (which incorporates the former Gasswater surface mine) which is currently operated by the applicants. The planning history of the Powharnal site is given in section 6.7 and 6.8 below.

2.2 The present application site which the applicant has termed the Dalfad Surface Mine, extends to approximately 322 hectares in total with an area of 145 hectares being disturbed for mining, overburden, water treatment, haul road construction and habitat recreation/restoration. The site boundary to the north-west is the Boghead Lane and Bellow Water, to the north-east lies the existing Powharnal site, to the south-east the Knockbreck and Glenmuir Hills and to the south-west, the improved agricultural lands of Hillhead, Duncanziemere and Carbellow Farms.

2.3 The proposed site comprises a south facing shallow sloping hillside also known as Dalfad Moss comprising areas of current and former surface mining, areas of rough pasture and low-grade moorland given over to sheep

grazing and areas of peatland habitat managed with a habitat conservation aim. The nearest neighbouring properties to the proposed site boundary are Stonebriggs (400 metres), Carbellow Farm (700 metres), Sunnyside (700 metres), Duncanziemiere (600 metres), Hillhead Farm (800 metres) and High Glenmuir (1km). Historical land-uses have included rough grazing, former significant deep and surface coal mining dereliction and peat bog habitat managed for the benefit of the Powharnal Mitigation Management Plan. The restoration strategy is to generally return the land to these uses once mining is complete with some enhancement to improve wildlife habitats, landscape and possibly public access. In this respect 55% of the site will remain unaffected as rough pasture and previously restored surface mining, whilst 14% will be restored to peat bog and wet heath habitats. This leaves 31% of the site to be mined and then restored in accordance with an agreed restoration strategy and restoration plan.

2.4 Two minor watercourses, the Gass Water and the Glenmuir Water flow through or adjacent to the site and both are ultimately tributaries of the River Ayr. There are also a number of derelict areas and structures across the proposed site consisting of old colliery spoil tips, old mine entrances and disused railway embankments, remnants of the previous surface and deep mining history of the area.

2.5 **Proposed Development:** Planning permission is sought for a surface mine at Dalfad providing for the extraction of approximately 700,000 tonnes of coal over an approximate 18 month extraction period plus an additional 18 months for start up and final restoration works.

2.6 The proposed site has been planned as part replacement for the existing Powharnal operational site which ceased coaling late in 2010. The current application is, in effect, an extension to the Powharnal / Gasswater mining complex and this is borne out by the application site boundary including the existing site offices, maintenance and coal handling facilities that serve the existing operational site. Coal from the site will be used principally for electricity generation. The applicant advises that the overall restoration strategy for Dalfad is to create a much improved moorland landscape with area of replacement habitats with high wildlife conservation value such as marshy grassland, peat bog and wet heath and other wetland habitats.

2.7 The proposed development will involve mineral recovery in three phases totalling an area of approximately 47 hectares with the remainder of the site being utilised for temporary overburden storage, water treatment lagoons and coal processing or remaining undisturbed. An additional 45 hectares of degraded modified bog and a former mineral railway cutting will be restored to enhance peat habitats and the applicant advises that overall approximately 177 hectares of the total application site area will remain undisturbed. Similar techniques to those employed on the applicant's other operational sites will be used to mine the coal and the applicant advises that the mining operations will be progressively reported, re-vegetated and subject to aftercare as the site progresses. Maximum excavation depth will be to 80 metres and limited blasting will be employed. Overburden mounds will be formed to a maximum height of 25 metres above the original ground level.

Topsoil mounds will be a maximum of 5 metres and subsoil to a maximum of 12 metres.

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2.9 Site infrastructure and maintenance facilities situated to the east within the existing Powharnal site will be used as will the existing site access which enters directly onto the A70. This access will also be used by site staff and for local deliveries.

2.10 The site will be operated on a 24 hours a day basis from 7am on Monday to 4pm on Saturday. Coal will be dispatched between the hours of 8am to 5pm Monday to Friday. This is consistent with the working hours operated at the Powharnal site. Other than plant maintenance and water management, no mining operations will take place on Sundays or Public Holidays, although the applicant advises from time to time coal may be dispatched by road on Public Holidays to meet customer requirements with the prior approval of the Local Authority.

2.11 The nearest communities to the proposed Dalfad site are Cronberry (1.5km), Lugar / Logan (2.5km) and Muirkirk (5.5km) and at closer distances, there are individual houses, cottages and farmhouses with the main noise source in the area being the A70. The applicant advises that noise mitigation measures will be adopted in the operation of the site. The applicants intend to retain the existing Powharnal storage mounds in the vicinity of the processing and office areas in addition to noting also that due to the topography of the site, the proposed excavation area is largely behind the crest of the hill when viewed from properties to the north west and this natural screening will reduce noise levels in that direction.

2.12 The ES therefore states that these measures, together with the exercise of reasonable engineering control over general operations and the incorporation of measures in relation to the formation of the overburden mound (i.e. formation of the outer faces of the mound during the day with plant working behind benefiting from screening during the night), will ensure that all working at the mine will be carried out within the PAN 50 noise criteria.

2.13 Blasting is also proposed and the ES confirms that all blasting will work to the established procedure at Powharnal and the level of charge used at each blast will take account of the particular circumstances, for example, the proximity to sensitive receptors i.e. residential property.

2.14 The applicant advises that the proposed Dalfad site will continue to provide the economic benefits associated with the existing Powharnal Surface

Mine Complex which has over the past 12 years played a significant role in the local economy. Operations will provide employment for up to 80 direct jobs from the current labour force at Powharnal and Spireslack, with further jobs maintained through the use of coal haulage contractors. From experience gained at the current site, approximately 85% of employees reside within a 10km radius of the site. The total number employed will be dependent upon market conditions, speed of operations and the particular phase of the scheme being worked although in addition to direct employment, a number of indirect jobs will also continue to be supported or created in terms of site servicing continuing the company's policy of utilising local service suppliers on its surface mines typically for road haulage, fuel supplies, vehicle purchase and hire, contractors for fencing, drainage, forestry and landscaping as examples. The projected annual wage bill during the life of the proposed development is some £2.84 million, a large proportion of which will contribute towards the local economy. In addition in excess of £3 million per year will be expended with local businesses and over £200,000 contributed through business rates.

2.15 The Dalfad application has been accompanied by an Environmental Statement and the information provided suggests that, subject to the implementation of a range of mitigation measures as described in the ES documents, the development can take place without significant adverse, long term impacts on the environment or more particularly on local communities.

2.16 As part of the statutory requirements for this major application, the applicant has undertaken pre-application consultation with the local community with regard to the proposed development. The applicant has undertaken a full programme of engagement involving different sectors of the community in order to elicit views on the development proposals and issues which should be considered in the EIA process. Regard has been had to PAN 81 and to the Scottish Government's Regulations on planning application consultation in respect of engaging with the community.

2.17 The applicant proposes the removal of some 47 hectares of peat bog from the Provisional Wildlife Site of Dalfad Moss. The applicant has submitted a Compensation Plan to mitigate this loss which will operate for a period of 8 years, based upon a 3 year active working site at Dalfad and the 5 year aftercare period. It is proposed to undertake works on Airds Moss which lies within the Muirkirk and North Lowther SPA and is a Special Area of Conservation (SAC) and a SSSI and these centre around Tarmac Loch. Airds Moss is currently degraded following a history of surface and deep mining. In addition to the off site compensation, the applicant also proposes that there will be onsite mitigation at Dalfad through the restoration of a former railway cutting and race course to mitigate the direct loss of wet heath habitat.

The purpose of the compensation plan is to improve the peatland habitat for important plant and animal species and it will include:-

- restoring appropriate hydrology levels within the peat resource in distinct watershed areas

- Reverse vegetation changes caused by the drying-out effect of the drains and modified natural features
- Increase the extent of peat forming vegetation across the site.

The compensation plan will include management proposals for this area comprising:-

- A drain blocking programme in the defined watershed areas
- Maintaining appropriate grazing levels across the site
- Managing the establishment of scrub and tree seedlings.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 Consultations have been carried out both in respect of the Environmental Statement and the planning application. Where appropriate, the final letters of consultation from some consultees are summarised below, with initial responses available as background papers.

3.2 East Ayrshire Council Roads and Transportation Service indicates that it has no objections to the proposed development subject to the following condition:

(i) The applicant will require to agree road maintenance contributions towards repair works which requires to be carried out on the East Ayrshire section of the A70 public road coal haulage route between the site access at Powharnal and Killoch DP west of Ochiltree within the Roads Authority under Section 96 of the Roads (Scotland) Act 1984. The simplest method to attribute maintenance costs is by a contribution from Scottish Coal under Section 96 of the Roads (Scotland) Act 1984 incorporated into a Section 75 planning agreement. Scottish Coals' contribution will be £0.30 pence per tonne of coal or other mineral extracted from the site by road haulage and will be payable to the Roads Authority on a quarterly basis to assist in the ongoing maintenance of the route.

***The requirements of the Roads and Transportation Service can be secured by means of an obligation in a Section 75 Agreement. The applicant has confirmed that there is no objection in principle to this, but would welcome further discussion on the rate of production noting the other sites in the area. The applicant states that a record of the works undertaken should be maintained by the Council and contributions should only be spent on the section of the A70 affected by the proposed development.***

3.3 The Scottish Environment Protection Agency has no objections subject to the imposition of the conditions. SEPA further advises that if these matters are not conditioned then the response should be considered as an objection which would result in notification of the application to the Scottish Government under the Town and Country Planning (Notification of Planning Applications) (Scotland) Direction 2009, should the Council be minded to grant consent.

SEPA requires the following conditions to be imposed in any consent granted for the development:

- The preparation and submission of a Site Pollution Prevention and Incident Plan (PPIP) which takes cognisance of all pertinent issues relating to the water environment;
- The preparation and submission of a Water Management and Monitoring Plan to be agreed with SEPA prior to works commencing at the site;
- The preparation and submission of dewatering calculations with full details of any identified impacts upon sensitive receptors and appropriate proposed mitigation measures to be further reviewed by SEPA;
- The provision of a ground water monitoring plan to be completed prior to work commencing on site and subject to consultation with SEPA;
- The preparation and submission of a Final Contingency Plan relating to groundwater monitoring between 6 and 18 months prior to site closure;

***Conditions can be attached to any consent granted for the proposed development to meet the requirements of SEPA.***

SEPA offers the following advice on the proposals:

(i) **Flood Risk**: SEPA has no objection to the proposed development on flood risk grounds. Notwithstanding this SEPA would expect East Ayrshire Council to undertake their responsibilities as the Flood Prevention Authority (FPA). It should be noted that there is a residual risk of flooding from small watercourses in the vicinity of the former mineral cutting and that the FPA should be contacted for comment on the peatland proposals in the former mineral cutting for flood control purposes, as the restored peatland appears to be over the top of small watercourses in this area.

***Roads and Transportation (Flooding Section) has been consulted on the proposed development and has not raised any significant concerns regarding flood risk***

With reference to the Indicative River & Coastal Flood Map (Scotland) part of the site is within the 1 in 200-year flood envelope (i.e. the flood with a 0.5% chance of occurring in any single year) and there are small watercourses flowing through the site. Parts of the site are therefore at risk of flooding.

It is stated in 4.1.1 of the FRA that in extreme events the Gass Water would inundate “<10m either side of the watercourse”. It is not clear how this conclusion was reached as no hydrological or hydraulic modelling has been provided to support it. However, it is apparent that the proposed works are sufficiently distant from the Gass Water so that the development is not likely to be at medium to high risk of flooding from this watercourse or have an adverse effect on flood risk elsewhere.

It is noted that the ‘Peatland Restoration in Former Mineral Railway Cutting’ appears to be over small watercourses shown on in OS mapping (Figure 8.6

Existing water features). Although it is not thought that this would necessarily have an adverse effect on flood risk elsewhere, the Flood Prevention Authority should be satisfied that this is so.

***Roads and Transportation (Flooding Section) has been consulted on the proposed development and has not raised any significant concerns regarding flood risk***

There also appears to be the potential for watercourse crossings and it should be noted that any engineering activity in or near a watercourse will require some form of regulation under the Controlled Activities Regulations (CAR) and it is recommended that our local Environment Protection and Improvement (EPI) Team are contacted regarding this. Any new crossings should be sized appropriately in order to be able to convey the 1 in 200 year flood.

***The applicant is aware of the comments of SEPA in respect of this matter.***

(ii) The Water Environment (Controlled Activities)(Scotland) Regulations 2005 (as amended), Pollution Prevention and other permitting regimes: SEPA confirms that all discharges from proposed water treatment areas will require to be discussed and agreed with us and duly authorised under CAR. It is accepted by the applicant that additional treatment may be required to mitigate any listed, priority and priority hazardous substances (under WFD) generated as leachate from any previous or proposed mine workings which may enter the water environment.

The proposed alteration to the existing bridge over Gass Water will require to be discussed with the local regulatory team, as this engineering activity may also require to be authorised under CAR. Any proposals to discharge contaminated mine water (after treatment) both during and after the restoration stage also requires to be authorised under CAR. Any abstraction proposed at the site should also be discussed and agreed with the local regulatory team to ensure that this activity is managed by the appropriate level of CAR authorisation.

***The applicant is aware of the comments and requirements of SEPA.***

SEPA requests if planning is approved for the site that a condition is included which requires the applicant to prepare a Site Pollution Prevention and Incident Plan (PPIP) which takes cognisance of all pertinent issues relating to the water environment. Chapter 8 of the ES is thorough and detailed and forms the basis for the preparation of the PPIP. SEPA would expect the PPIP to be made available for discussion and agreement with us prior to works commencing at the site. The PPIP will only be effective if it is fully implemented by all site operatives. When site works commence it is essential that a named person is responsible for the implementation of the PPIP. SEPA would expect this individual to have the necessary authority and expertise to fulfil this important role.

***A condition can be attached to any consent granted for the proposed development to meet the requirements of SEPA.***

Plant fuelling and storage areas must comply with The Water Environment (Oil Storage) (Scotland) Regulations 2006. If the applicant proposes to install additional sewage treatment and effluent disposal arrangements at the site, e.g. for serving any additional staff welfare facilities, these will also require to be authorised under CAR.

***The applicant is aware of the comments and requirements of SEPA.***

A detailed surface water management and monitoring plan should be prepared for the site and agreed to be fit for purpose with SEPA, prior to works commencing at the site. SEPA would request that this issue is also controlled by a condition of the planning approval.

***A condition can be attached to any consent granted for the proposed development to meet the requirements of SEPA.***

Any ditching operations proposed at the site, whether for clean or contaminated drainage must be carefully designed and profiled to prevent its undercutting and erosion, to avoid increasing polluting loading to the adjacent watercourses. The Powharnal opencast site is covered by existing PPC/W/30158 for coal handling and processing, under Regulation 12 of Pollution Prevention & Control (Scotland) Amendment Regulations 2009. The applicant should be aware that prior notification should be given to us, in writing, of any proposed changes to operations at the installation. If any crushing of rock is proposed then it should also be done under a PPC permit.

***The applicant is aware of the comments and requirements of SEPA.***

The Extractive Waste Management Plan for the site has been reviewed and is deemed to be satisfactory and we confirm that it has been prepared in accordance with the relevant Scottish Government guidance.

(iii) Ecology Review: It is stated within the ES that the mining operations will result in the 'temporary loss' of wetland including the bog habitats. Re-creating the same wetland habitats, especially the areas of blanket bog that will be lost as a result of the mining operation will be very difficult, as it is accepted that they are very much dependent on the local hydrological conditions. SEPA therefore considers the loss of this habitat to be permanent with the restoration proposals for the creation of new wetlands being put forward as compensation for this loss.

SEPA welcomes the National Vegetation Classification Survey and Condition assessment information that has been provided. This information also highlights the importance of the active bog habitats located within the development footprint. Within the application constraints SEPA would favour, where possible, further avoidance of direct and indirect impacts on good quality blanket bog. Indirect impacts may occur outside the actual

development footprint due to the complex hydrology of peatland habitats. An active bog indicates that the peatland is currently sequestering carbon as well as being an existing carbon store. The good quality of the bog is indicated by good Sphagnum cover and the presence of varied surface structures (e.g. hummocks and pools) and their associated vegetation.

Groundwater Dependent Terrestrial Ecosystems (GWDTEs) are defined by the Water Framework Directive and are subsequently protected under the Water Environment and Water Services (Scotland) Act 2003 (WEWS). This legislation applies both within and outwith a statutory designated site. SEPA would recommend that the applicant familiarises themselves with SEPA guidance document 'Functional Wetland Typology for Scotland', which is available on our web site. This provides simple information about the different types of wetlands and how they can be identified in the field and may provide further assistance in planning site operations.

SEPA notes that contaminated drainage at the site will be managed using sustainable drainage techniques. We would emphasise that existing wetlands should not be used as treatment areas. Care should be taken during construction to avoid direct and indirect impacts on all wetland areas. For example, settlement lagoons and silt traps should not be located in existing wetlands.

SEPA welcomes the Peat Hazard Risk Assessment and its findings however we note that the peat survey was undertaken using a 100m sampling grid. We prefer a 50m sampling grid to be used as this gives a more accurate picture of peat depth, which can vary locally. In relation to this comment the survey does not give an accurate actual peat depth across the development site because an auger with a maximum depth of 5.5m was used, therefore any peat depth greater than this would not have been recorded. This may result in an underestimation of peat material requiring storage or for use in restoration. We generally prefer actual peat depth to be recorded over the whole of the development site footprint.

It is important to note that excavated peat may not be suitable for re-use in the planned restoration or compensation work due to its unique properties. We would welcome further details clarifying the quantities of excavated peat and the proposed re-use options for this material.

***The information requirements of SEPA can be addressed through the existing Technical Working Group for the Powharnal site, whose remit would be extended to cover the proposed Dalfad site should consent be granted.***

In relation to the Tarmac Loch proposed mitigation area and the restoration work to include ditch/drain blocking and tree felling we recommend that the waste hierarchy is followed and that this proposed work is incorporated into the site waste management plan. We highlight this matter as at the present time there is no definitive evidence that using forest residues as mulch on a bog site is capable of delivering ecological improvement as compared to the option of removing the forest residues from the site. It is therefore preferable to present options for the commercial use of this material off-site, and this

would be seen as our favoured approach, in preference to leaving the material on site, particularly, if there is likely to be a large quantity of material. For certain sites it may be an option to spread a very thin layer of relatively small-sized mulch/woodchips on the surface of bare peatland as part of restoration efforts. This must be included in peat restoration plans or in the Habitat Management Plan (HMP) and is very site specific with hydrological conditions being the most important factor for successful restoration. Faster and more efficient restoration is achievable without mulch at a far lower cost. We have had recent discussions with SNH in respect of this issue and it is our opinion that spreading forest residues on a site should only be considered as a last resort and is not required for enhancing the recovery or restoration of peatland habitats. Even a recent research note from Forest Research – “restoring afforested peat bogs: results of current research (May 2010)” does not produce definitive answers. This broadly states that bog vegetation recovered best in whole-tree removal treatments and least well in the fell-to-waste treatments. It also notes that birch and conifer seed blown on to the deforested bog from adjacent trees can regenerate well on decomposing brash mats – so it is logical to assume that this would be the same for any areas where forest residues form a ‘platform’ slightly above the surface of the bog.

SEPA recommends that any dust management plan for the development also addresses potential impacts on sensitive ecological receptors. Wetland and bog habitats adjacent to or nearby the excavation area contain various plant species that can be affected by dust. It is the highly alkaline dusts (e.g. limestone quarry dust and cement dust) that can be very damaging, as they can potentially change soil pH and plant community structure. In these cases the more acidophilous plant species can be out-competed by more calcareous plant species. Also other plants that may not be seen as nitrophytes may react to increased nitrogen rapidly growing and again out-competing acidophytes or nitrophobic plants. Dust can have direct and indirect (chemical) impacts on vegetation, especially bryophytes and lichens, with major impacts near the source. Type of dust and size of particles can also result in varying impacts and indirect effects are possible via the soil/peat. An area that is rarely considered is dust arising from wagons trafficking up and down un-metalled site roads, not from the load carried but from the vehicle tyres in dry conditions. This depends on the surfacing material used and its pH, with previous work showing the loss of *Sphagnum* up to 20m from roads due to more nutrient-rich dust, with more tolerant mosses providing only partial cover, this could result in gaps in specific vegetation types possibly increasing the risk of erosion.

Bryophytes readily trap dust on their rough surfaces with a strong correlation found in *Sphagnum* mosses and distance from the dust source. Bog mosses are replaced by more minerotrophic species. Often no visible source of damage is noted on vascular plants but bryophytes disappear and soil dwelling invertebrates become reduced in numbers. Also lichens can be impacted directly via thalli or indirectly via substrate chemistry, especially terricolous (inhabiting the soil). Any good dust suppression management plan should mitigate any of these potential impacts however it is often the case that ecologically sensitive receptors are ignored within these plans. In respect of the Dalfad proposal these receptors are present in and around the

development footprint and accordingly there is a need for these matters to be taken into account.

It should be verified that Stonebriggs Farm private water supply is not currently impacted by the existing dewatering abstractions. Consideration should be given to the monitoring of this private water supply, to help determine that future dewatering will have no impact.

***The maintenance of private water supplies or, where necessary, the provision of alternative supplies can be secured by means of a Section 75 Agreement.***

It should be noted that the Muirkirk and North Lowther Uplands Special Protection Area (SPA) is groundwater dependent and may require a specific impact assessment taking into account the dewatering calculations.

***SNH, having considered the information presented within the ES, is of the view that the proposed coal extraction at Dalfad will not have a significant effect on the qualifying interests of either the Muirkirk and North Lowther Special Protection Area or the associated SSSI. SNH has therefore advised that "Appropriate Assessment" of the impacts on the SPA is therefore not required.***

The ground water monitoring plan should be completed prior to works commencing and submitted to us for consultation. The scope should include the collection and interpretation of baseline data; the on-going collection and interpretation of data; the reporting mechanism of this interpreted data; and a mechanism to secure mitigation of impacts should this prove necessary. Monitoring should commence prior to excavation and should continue throughout the works and during the aftercare period of the site. The plan should include a contingency that will be implemented in the event of a significant influx of groundwater into any of the voids being encountered. The monitoring should also include the off-site water features, to help determine the possible impacts of future dewatering and backfilling. Appropriate monitoring of surface waters and discharges will also be required. We would request that these matters are also ensured by an appropriately worded condition. Groundwater level and quality data should continue to be collected on a regular basis for all available monitoring boreholes to allow the dataset to include seasonality variation prior to operations commencing on site. Any piezometers within the excavation area should be correctly decommissioned to prevent a direct pathway to groundwater.

***A condition can be attached to any consent granted for the proposed development to meet the requirements of SEPA.***

The potential impact on groundwater quality of backfilling and restoration of the proposed extension areas has been assessed using the methodology developed for SEPA. Younger and Sapsford 2004: *Evaluating the potential impact of opencast coal mining on water quality (Groundwater Regulations 1998): An assessment framework for Scotland*. The provision of risk mitigation measures and additional monitoring within the backfill on

restoration is welcomed. The provision of passive treatment for the discharge at SW9 is also welcomed. The monitoring will need to demonstrate that there are no long term impacts on groundwater or water features from backfilling. The contingency plan should be reviewed and updated during works. A final contingency plan should be submitted to us between 6 and 18 months prior to closure. SEPA would request this matter is addressed by the provision of a suitably worded condition.

***A condition can be attached to any consent granted for the proposed development to meet the requirements of SEPA.***

It should be ensured that any abstracted water is treated prior to discharge to reduce the risk of pollution. The discharge will require a CAR permit and requirements for treatment should be discussed with the local SEPA Operations Team. All appropriate permits must be in place prior to works commencing on site. SEPA would welcome the use of relevant guidance and codes of practice in relation to protection of the water environment.

***The applicant is aware of the comments of SEPA in respect of other necessary licences and permits.***

3.4 Scottish Natural Heritage advises that the proposed development would adversely affect habitat types of European importance chiefly by the permanent destruction of blanket bog (47ha). SNH notes that the application is at odds with some provisions of national planning policy and the relevant development plan, in particular those that seek to conserve peatland habitats and areas of local importance for wildlife. If the Council is minded to grant planning permission, SNH recommends that mitigation and compensation measures are undertaken. Although it is not possible to mitigate destruction of blanket bog, SNH advises that compensatory measures could lessen the severity of the impacts of development and provide for wider natural heritage benefits and compensatory measures might best be secured through conditions or a legal agreement attached to any consent. These should include the provision of a mechanism by which the details and implementation of the compensation and on-site mitigation/restoration measures can be approved and overseen. SNH suggests this role could be adopted by the existing Powharnal Management Committee involving the applicant, EAC, SNH and RSPB.

***It is considered that the compensatory measures and mitigation package offered by the applicant can be secured by appropriate conditions or by means of obligations contained within a Section 75 Agreement, should consent be granted for the proposed development.***

SNH further advises there is a potential risk of disturbance to otter, a European protected species, which requires further investigation prior to determination of the planning application.

***This matter is addressed in Section 6.12 of the report below.***

SNH is mindful that several other areas of blanket bog in the East Ayrshire coalfield are under consideration by coal operators for future development. It is our view, as expressed during the Regulatory Review process for Dalfad, that there is an urgent need for a new strategic context for surface coal mine development in East Ayrshire so that we can avoid impacts on protected sites and minimise loss of the biodiversity and carbon storage benefits provided by peatlands. SNH would be happy discuss this further.

3.5 Power Systems and Scotland Gas Networks have no objections to the proposed development.

3.6 The West of Scotland Archaeology Service has considered the Cultural Heritage section of the Environmental Statement and finds that the archaeological information is inadequate as it is out of date, omits any mitigation proposals and that the situation on the ground has moved on considerably. Initial indication is that certain sites have been missed whilst other sites recorded in the survey have been destroyed by associated open cast works. WOSAS therefore has provided a general response and advises that it is possible that there could be archaeological remains associated with former farmsteads, buildings or structures, early industrial remains or new discoveries and should the Council determine to grant planning consent for the proposed development, a condition should be attached to any consent to allow the potentially complex archaeological issues to be addressed in detail as the development stands a reasonable chance of unearthing such based on its size. WOSAS advises an intrusive evaluation as it represents best practice and reflects Government guidance. The evaluation should involve trial trenching an 8% sample of the full application area and should be targeted to recorded sites, obviously suitable topography and also provide wide coverage of the areas to be disturbed/destroyed or affected during the course of the proposals. In this respect the developer must use a suitable professional archaeological consultant to carry out the necessary evaluation.

*“No development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.”*

***A condition as per the form of words recommended by WOSAS can be attached to any consent granted for the proposed development to meet the requirements of WOSAS. The applicant has advised that in principle whilst the wording of the condition is acceptable, as the vast majority of the site has already been disturbed by previous mine working, then the necessity to undertake 8% trial trenching across the whole site is questioned. This is because trial trenching that targets upon known features***

***which have not been previously disturbed and are more likely to be disturbed as a result of the proposed development would seem far more reasonable and appropriate. Notwithstanding this, it is considered that appropriate agreement over the level of trenching can be agreed in the process of preparation of the programme of works.***

3.7 East Ayrshire Council Environmental Health Service has no objections to the proposed development and offer the following comments:-

- (i) The developer should be required to carry out routine noise monitoring at the site to determine actual levels of exposure at the nearest noise-sensitive locations, and should provide copies of these results to Environmental Health for scrutiny. The developer should also in the event of complaint regarding noise, be requested to cease operations until the cause of the complaint has been abated.
- (ii) Any private water supplies in the area of the development, or which may be affected by the development, should be identified and protection measure introduced to ensure the integrity of these supplies.

***Conditions can be attached to any consent granted for the proposed development to meet the requirements of the Environmental Health Service.***

***With regard to the potential for noise complaint, an obligation can be included within a Section 75 Agreement to reserve the right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.***

3.8 Historic Scotland states that it has undertaken an appraisal of the Environmental Statement and its comments concentrate on its statutory remit at the national level for:

- (i) scheduled monuments and their settings;
- (ii) category A listed buildings and their settings; and
- (iii) gardens and designed landscapes appearing in the inventory.

The ES confirms that the proposal is unlikely to have a significant impact on any nationally important cultural heritage features and Historic Scotland is in agreement with this assessment. The Council's Conservation and Archaeology Services will be able to advise the developer on the adequacy of the assessment of the likely impacts and mitigation proposed for any sites of regional or local importance.

***WOSAS has been consulted on this application as indicated in paragraph 3.6 above.***

3.9 Transport Scotland (Trunk Road and Bus Operations Directorate) indicates that the proposed development represents an intensification of the use of this site and will increase the associated traffic movements on the local road network. However the percentage increase in traffic is such that the proposal is likely to cause minimal environmental impact on the trunk road network and as such, the TS has no comment to offer.

3.10 The Health and Safety Executive, The Scottish Wildlife Trust, Scottish Water, The River Ayr Salmon Fisheries Board, The Ayrshire Joint Structure Plan Team and British Telecom have not responded to their consultation request at the time of writing this report.

3.11 The Scottish Government (Rural and Environment Directorate) states, in respect of the responsibilities for air quality and noise, on the basis of the information available and without prejudice to any further consideration the Scottish Ministers may be required to give, they have no comments to offer on the ES.

3.12 The Coal Authority, as owner of the coal, encourages and supports this planning application which is seeking to work coal in environmentally and socially acceptable ways to meet the market requirements. The application will contribute towards the Government's policy framework for a diverse and secure energy supply and incorporates the principles of sustainable development. This objective has been incorporated into Scottish Planning Policy which sets the most challenging standards for surface local mining in Scotland and The Coal Authority believes that the coal industry can successfully operate within these principles provided they are applied equitably by MPA's. It is essential that the planning process takes account of the fundamental principle of minerals planning; that minerals can only be worked where they occur.

The Coal Authority also provides some general information for this authority and background information on the privatised coal industry in the UK which is as follows:-

- The Coal Authority will process any subsequent application for an operating licence under Part II of the Coal Industry Act 1994 in accordance with its statutory duties
- The role of surface mining is critical to the continued supply of good quality coal for the market in the UK. It should be remembered that coal currently provides the basis for up to half of the electricity generated in the UK. The CA believes that the coal supply in the UK should contain a significant portion of indigenous production. The electricity generators made similar statements in their submissions to the Energy Review in 2006 which informed the current Energy White Paper published in 2007.
- Coal supplied from the UK offers security against volatility of international coal prices, freight rates, exchange rates and a reliance on port capacity. It should therefore be recognised that the importation of coal from many thousands of miles away has its own environmental footprint by way of increased transport related carbon and sulphur

emissions. The ability of the industry to continue its significant contribution to the energy supply in the UK is dependent equally on success in an extremely competitive energy market place and success through a rigorous planning system. Site life varies typically between one and five years, and it is essential to ensure a regular supply of new/extended environmentally acceptable sites are brought forward to replace sites nearing completion and other exhausted sites.

- There is no shortage of coal in the ground. The CA believes that the commercial industry can find sites that meet the strict criteria contained in SPP, provided that the planning process is conducted fairly and professionally.
- Surface mining frequently assists in the removal of surface dereliction but the CA believes that the local benefits of mining go well beyond the removal of this dereliction. Whilst the advantages of removing dereliction on the surface may be obvious, the benefits of treatment of surface and sub-surface contamination and instability may not be so well recognised or understood. In this proposal the removal of old mine entries with subsequent restoration may also provide a stable platform for future surface developments. Rather than direct investment away from an area, surface mining of coal has often created inward investment particularly in relation to improvements in transport infrastructure. Other local benefits include reduced hazard potential from mine gases and spontaneous combustion, improved water quality from treating minewater discharges and the recovery of minerals other than coal which helps to support the fireclay, building and brick clay industries.

***It is noted that the Coal Authority supports this application and the applicant has been made aware of the remaining detailed comments.***

3.13 The Ayrshire Rivers Trust (ART) emphasises the importance of surface water management at every stage of the proposed development and that past performance by the applicants at nearby sites has been varied and continues to give cause for concern and that the entire site drains via Duncanziemere Burn or Gass Water to the Bellow and Glenmuir Waters and then to the Lugar Water a short distance downstream. The Lugar and the Glenmuir Waters are important salmon and trout spawning rivers and are valuable not only as angling resources but also in terms of their ecological importance in relation to the productivity of the entire River Ayr Catchments. The Bellow and Gass waters are important trout waters and all the watercourses mentioned support the European Eel, a UKBAP priority species and IUCN Red List species that has recently received protection under Scottish law. It is therefore essential that Scottish Coal manage their discharges to extremely high standards.

Sediment leaving the site as suspended solids has the potential to affect many miles of river downstream with possible negative impact on salmon spawning grounds and angling as mentioned above. ART suggest that monitoring of sediment loading in discharges from the site, should be a continuous process rather than the current system employed elsewhere, where samples are collected routinely or in response to incidents. Automated

in-stream data loggers should be employed. This would provide both Scottish Coal and other interested agencies with an accurate record of discharge levels rather than a series of 'snapshots' in time which may or may not record notable events.

ART recommends that Scottish Coal monitor fish populations and invertebrates throughout the course of the development and beyond. This will allow assessment of the true impact of this development as it progresses and would allow any problems arising to be identified quickly. Invertebrates are invaluable indicators of environmental and ecological change as their population structure adapts to long term changes in water quality and habitat. They are also important in terms of fish diet, both juvenile and adult.

Prior to stream diversions, all temporary channels should be constructed and margins naturalised well in advance of the water diversion taking place. This should reduce the sediment loading and impact arising from such channel modifications. Prior to dewatering any burns, Scottish Coal should consider undertaking fish rescues to limit mortality.

The discharge from settlement lagoons is a cause for concern. The chemical composition of the discharge has the potential to alter the nutrient status downstream and thus the electrical conductivity of the Bellow, Glenmuir and Lugar Waters for a considerable distance downstream. Any change from the current low levels would give cause for concern.

In terms of water voles, the ES failed to find any evidence of water voles within the area. The timing of the survey was spring and early summer which is not ideal as field signs are often scarce until late summer and Autumn by which time populations have increased to peak levels following the high winter mortality associated with the species. It is therefore conceivable that evidence was missed. Also, experience gained surveying moorland type habitat in Scotland indicates that following the survey protocol that is listed in 'The Water Vole Conservation Handbook' may lead to missed field signs. It is more effective to survey small upland burns from within the watercourse rather than from a single bank. (This is not solely the opinion of ART but also of Forestry Commission staff working on the Water Vole Project at Aberfoyle).

ART hope that, in the event of extensions being applied for, such applications will be submitted in adequate time for consideration and approval/refusal to allow continuous working and restoration in the shortest time possible.

***The applicant has confirmed that the management of water discharges will all be in accordance with SEPA authorisation and will be regularly monitored both on site and by SEPA staff. No stream diversions are proposed although the applicant accepts that there is merit in undertaking monitoring of fish and invertebrate populations in the watercourses (Gass Water and Duncanziemere Burns) in the vicinity of the proposed development and the applicant will discuss this further with ART.***

3.14 EAC Countryside Development Manager confirms that this proposal does not impact upon any core paths or rights of way and that the lowland

raised bogs are a key habitat within the Ayrshire Local Biodiversity Action Plan as well as being a UKBAP priority habitat with sites in Ayrshire currently being surveyed and ranked for future management. It is important that these sites are thoroughly surveyed with particular focus on invertebrates and flora to determine their ecological value prior to development.

It is disappointing that the indicative restoration plan has no plans for recreation, informal or otherwise. This area has a rich tradition of walking and is an important area for bird watching and it would be beneficial to see this reflected in the restoration plans for the site.

***The applicant has advised that the proposed disturbance of the peatland habitat at Dalfad Moss is the key issue relating to this proposed development and has been the subject of extensive discussions with SNH whose consultation response is detailed above at Section 3.4 of this report. The discussions with SNH have led to the production of the Dalfad Compensation Plan as their response details.***

***Whilst the comments concerning restoration have been noted by the applicant it has been suggested that the creation of peatland and wet heathland habitats is a far more appropriate after-use for the site than recreation, which would not be appropriate in wet peat and heath areas. The applicant has also referred to the proposed Dalmellington to Coalburn multi-user path which will be constructed in the adjacent Powharnal site as a part of the restoration plan for that site and that access is available along the existing Barytes Track that splits the site in two, north to south. Should consent be granted for the development, it is considered that the Powharnal Management Committee (the standing technical working group for the site) would be best placed to consider the potential options for recreation after-use within the development where they would be complementary with the proposed habitat to be created.***

3.15 The RSPB objects to this planning application on the following grounds and has maintained this objection following the submission of additional environmental information:-

- (i) loss of blanket bog habitat which is of high quality habitat and of significant biodiversity value and is accorded priority status in the Scottish BAP, UKBAP and Annex 1 of the Habitats Directive. As an actively forming bog it also has an important value as a carbon store and the Moss would effectively be completely destroyed by the proposed development and there is the potential for additional negative effects on areas of surrounding bog habitat as a result of hydrological changes.
- (ii) the lack of suitable and appropriate mitigation for the loss of the habitat as although further information has been provided on habitat conservation and RSPB note the willingness to investigate and provide

such measures, they do not believe that the proposed measures will offset the loss of habitat or carbon storage value resulting from the destruction of Dalfad Moss. The supplementary information does not address the proposed development site being an existing mitigation area for Powharnal or take account of the loss of mitigation for an existing development that affects the SPA. Should the development be consented, RSPB agrees that the compensation should be overseen by the PMC and they would continue to work as part of that group to maximise the value of the compensation delivered.

***Notwithstanding the comments of RSPB, SNH has not objected to the proposed development on the basis of a lack of suitable and appropriate mitigation for the loss of habitat, or indeed on the basis that the development site is currently part of the mitigation area in respect of the Powharnal development.***

- (iii) The application fails to consider alternative sites for coal extraction that would have less environmental impact. In particular, no explanation is given of the alternatives considered as part of the Scottish Government's Regulatory Review process and why these were discounted in favour of Dalfad.

***The Dalfad site was identified and subsequently applied for following discussion in open forum with the key stakeholders involved in the Minerals Planning process, including East Ayrshire Council and indeed RSPB. In Open Forum Scottish Coal identified a range of potential sites in the Muirkirk Valley that were thought to contain shallow coal reserves. During an iterative discussion process, various sites were discounted for reasons of environmental constraints, proximity to communities and economic viability and Dalfad was the last remaining site.***

- (iv) the proposed development fails to comply with national policy, legislation and the development plan. Granting consent for this development would be contrary to the requirements of the Climate Change (Scotland) Act 2009 which requires public bodies to exercise their functions in the way they consider most sustainable. RSPB does not believe that this proposal, which would result in destruction of peatland habitat, can be considered the most sustainable location in which to consent coal extraction. The application does not also accord with the policies established in the East Ayrshire Opencast Coal Subject Plan with regard to Listed Wildlife Sites or peat habitats.

***Assessment of the proposed development against national policy, appropriate legislation and the development plan is given in Sections 5 and 6 below.***

Notwithstanding RSPB's objection to this application as above, should this authority be minded to grant consent for the application, RSPB states that the following measures to minimise the negative effects of this development must be secured:-

## Legal Agreement

- The role of the PMC in overseeing delivery of compensation alongside a bond to cover all costs of delivering the compensation work and aftercare management.
- Long term conservation management alongside a bond to cover any ongoing management costs of maintaining the conservation value of the site.
- A programme of habitat restoration and enhancement to provide appropriate mitigation for the loss of habitat.
- A replacement mitigation area for Dalfad as part of the Powharnal Mitigation Management Plan

***Scottish Coal has confirmed that they are agreeable to entering into a Section 75 Legal Agreement to allow the PMC to oversee the compensation works and if necessary, provide a suitable bond for the implementation of the works for the proposed plan period. Scottish Coal has also advised that in discussion with SNH, it has been proposed that the compensation area would be transferred to an appropriate conservation organisation at the end of the 8 year Compensation Plan period, once all works have been completed and monitored. Should this proposal go ahead then it is anticipated that the limited ongoing maintenance costs could be met from the grazing income from the land. Informal discussion has already taken place with regard to including the circa 200Ha at Airds Moss within the existing area of ground leased to the RSPB by Scottish Coal. The inclusion of a clause relating to this issue within a Section 75 Agreement would therefore be acceptable.***

***Scottish Coal accepts in principle the request for the programme of habitat restoration and enhancement. This programme has been already demonstrated in the letter Scottish Coal sent to SNH dated 06 January 2010, a copy of which was forwarded to EAC, which includes a commitment to undertake all of the four compensation options and secure their long term management.***

***The Dalfad area was included in the Powharnal Mitigation Management Plan (PMMP) as “copper bottoming” that is supplementary to the actual mitigation areas identified. SNH in their response to the supplementary compensation information, acknowledge this fact and have not requested an additional replacement area. The circa 200Ha Compensation Plan Area at Airds Moss will provide a significant habitat enhancement on an area designated as a Special Area of Conservation (SAC) due to it’s habitat, that has been degraded due to past deep mine workings for coal and ironstone and it is not felt appropriate to provide further “copper bottoming” areas when the area lost is 47Ha and will be replaced by circa 200Ha.***

## Conditions

- The applicants to agree the specification of a bund to prevent dewatering of adjacent bog habitat with EAC, SNH and SEPA prior to the commencement of the development
- A bund to the specifications agreed with EAC, SNH and SEPA to be constructed to the satisfaction of these bodies, before commencement of soil stripping and excavation of the area beyond the bund;
- A monitoring programme to monitor changes in water table and vegetation composition in adjacent bog habitat will be agreed with SNH prior to commencement of the development and implemented by the applicant. The programme will ensure baseline monitoring before development commences.
- Soil stripping and vegetation removal shall only take place outwith the bird breeding season (March to July inclusive) unless with the prior written agreement of SNH, following checks for the presence of breeding birds by a suitably qualified ecologist.
- The existing PMC will be given the role of approving the restoration and monitoring of this site.
- The applicant shall prepare and submit a restoration and aftercare plan to EAC, to be agreed with members of the PMC, prior to commencement of the development.
- The applicant shall implement the agreed restoration and aftercare plan, subject to revisions by the PMC, to the satisfaction of the PMC.
- The peat storage, turf removal and storage, bund construction, habitat restoration and mitigation/compensation will be overseen by a suitably qualified Ecological Clerk of Works.

***Conditions can be attached to any consent granted for the proposed development to meet the requirements of RSPB.***

3.16 Cronberry, Logan and Lugar Community Council objects to this application noting that the Scottish Government's Regulatory Review Group Minutes from 10 November 2009 noted that the first Powharnal meeting was held on the 13 November and that this was a good meeting with all statutory bodies along with a representative attending on behalf of the community council. Despite lying within 2.5km of the proposed site this community council was not represented at this meeting as apparently Muirkirk provided community representation. Throughout the application, this local community is strategically and unacceptably airbrushed out of the proposal.

With reference to the East Ayrshire Opencast Coal Subject Plan (OCCSP) this application is contrary to Policy MIN2 as it lies outside the preferred coaling area, MIN12 as:

- (i) 3 other operative sites at Garleffan, Laigh Glenmuir, Duncanziemere (Gasswater) lie within the prescribed distances from our communities;
- (ii) in addition to the above named sites, previous disruption to their community has been experienced from operations at Birnieknowe,

- Darnconner, Common (east and west) all lying within 3kms and over a period of two decades, and;
- (iii) whilst it is claimed that the proposed development will marginally decrease the volume of coal traffic, it will still remain high and importantly will subject the local community to an extended period of disruption, for example at 8.20am on 04 November 2010, fifteen heavy lorries were counted within the village boundaries of Lugar and 12 of these were coal lorries which is equivalent to living in a lorry park.

***Responses to the policies of the Opencast Coal Subject Plan are provided in Section 5 of this report in more detail.***

***Whilst the traffic concerns are noted, the Council's Roads and Transportation Service and Transport Scotland have not objected to this application.***

- 3.17 Muirkirk Community Council supports this planning application.

***No details are provided in terms of amplification of the reasons for support.***

- 3.18 EAC Roads and Transportation Service (Flooding) has reviewed the information provided and advise that as it concludes that no operations are to take place within the areas identified as within the 1:200 outline of the Gass Water, that the site is not at risk from this or other sources and that the development will have no detrimental flooding effects either upstream or downstream, there are no further comments as far as flood risk.

- 3.19 EAC Business Development Unit notes that although a new site, it is in effect an extension to the existing Powharnal Surface Mine Complex and demonstrates that economic benefit will accrue to the area, as a result of the operation of this new mine facility, principally through:

- The employment of 80 people, with approximately 85% of them being locally resident and a total annual wages contribution to the economy in the order of £2.84 million;
- The commitment to local purchasing which is anticipated at £3.12 million per annum;
- The contribution which would be made to the Cumnock and Doon Valley Minerals Trust

In light of all of these aspects, this development will clearly have economic benefits for the area and thus, from that point of view, should be welcomed.

#### **4. REPRESENTATIONS**

- 4.1 A total of 4 parties have objected to this planning application and letters have been received in support of this application from 47 parties. The points of objection that have been raised by the consultees, namely Cronberry, Lugar and Logan Community Council and the RSPB have been

outlined in Sections 3.15 and 3.16 of this report. The main points of objection from the remaining objectors are as follows:

#### Letters of Objection

4.2 99% of this site is not identified in EAC's approved Opencast Subject Plan for opencasting.

***The adopted East Ayrshire Opencast Coal Subject Plan has identified Potential Coal Extraction Areas and in this regard it is acknowledged that only a very small part of the site lies within such an area. However, the application site is located wholly within an area comprising an existing and previous surface coal mine, where the proposed land use was deemed appropriate. It should be noted that the existing and previous surface mine sites were excluded from the sieving process undertaken when the potential coal areas were determined as it was assumed that no additional coals would be present.***

4.3 This development is sensitive in terms of landscape value and involves the destruction of a Listed Wildlife site at Dalfad Moss which is a blanket bog that is a core habitat, protected under European and national law. Dalfad Moss is already a mitigation area for species displaced from Muirkirk and North Lowther Uplands Special Protection Area and an "Appropriate Assessment" maybe required to determine the scope of impact on the interests of European importance.

***SNH, both in its response to the Scoping Document and having had regard to the information contained within the ES, is of the view that the proposed coal extraction at Dalfad will not have a significant effect on the qualifying interests of both the SPA and the SSSI. SNH has indicated that an "appropriate assessment" of the impacts on the SPA is therefore not required.***

4.4 The application contravenes national policy as it removes very substantial amounts of peat in order to extract fossil fuels for burning.

***The objector fails to recognise that progressive restoration is taking place on opencast sites, where restored and replacement habitats are being provided, all with the guidance and input from the respective Technical Working Groups set up to oversee this process. Appropriate mitigation measures will be undertaken to minimise disruption and displacement of wildlife and habitats. In this regard, subject to the imposition of appropriate conditions and obligations secured by means of a Section 75 Agreement, it is noted that SNH and SEPA do not object to the proposed development.***

4.5 The application will result in the continuation of unacceptable impact of traffic on the A70 and on people living beside it.

***The Council's Roads and Transportation Service has not objected to the application either on traffic impacts or on capacity grounds and the Council's Environmental Health Service has not objected on the grounds of noise/nuisance.***

4.6 One of the justifications for continuing the destruction of the local landscape is the economic benefit to the area which is referred to by the applicant. Communities along the A70 and B741 have endured open-casting and the impact of HGV's for a generation believing that sites will be developed, restored and finally closed. Pleas for job continuation are being accepted before local health, welfare and environmental amenity.

***Dalfad is to provide for continued employment for workers from the applicant's operations at Powharnal and Spireslack and directly for full time employment for approximately 80 staff. All of these jobs will be maintained throughout the 3 year working life of the Dalfad surface mine. In addition to direct employment, a number of indirect jobs will also continue to be supported in terms of site servicing. The projected annual wage bill during the life of the proposed development is some £2.84 million, a large proportion of which will contribute towards the local economy. In addition, in excess of £3 million per year will be expended with local businesses and over £200,000 contributed through business rates. Such socio-economic benefits are a material consideration in respect of the application.***

***Notwithstanding the comments of the objector, the impact of the proposed development on communities has been of prime consideration in the determination of this planning application.***

4.7 MEGA has asked that the Northern Local Planning Committee be reminded that they are on public record stating that East Ayrshire has already "done its bit" in contributing to national energy supplies.

***This application falls initially, prior to referral to Council, for consideration by the Southern Local Planning Committee. This reference is to a previous application for a wind farm which was considered by the Northern Local Planning Committee and since all applications are considered on their individual merits, this is not considered to be a material planning consideration.***

4.8 The proposal is contrary to Policies MIN1, MIN2, MIN3, MIN4, MIN10, MIN11, MIN12, MIN16, MIN17, MIN18, MIN23, MIN26, MIN27, MIN29, MIN30 and MIN31 of the East Ayrshire Opencast Coal Subject Plan and will prolong the effects of open-casting to the detriment of communities.

***The above EAOC CSP policies, where pertinent to the proposed Dalfad development, are fully assessed in Section 5 of this report.***

4.9 Information in the applicant's ES is flawed and inadequate as the assessment impacts are wrong and consistently underestimate the impacts of this development.

***The objector fails to provide information that would define the parts within the ES that are claimed to be flawed. The consultation process has highlighted areas within the ES which are deficient or lacking in detail. Nonetheless, no significant criticism of the ES is made by any of the statutory consultees.***

4.10 The new planning approach set out in the NPF and SPP require setting clear Development Management policies to be supported by firm interpretation. If a proposal is approved contrary to planning policy this sets a precedent which would undermine the credibility of the entire Development Management process.

***The policy implications of this proposal where pertinent to the Dalfad development are fully assessed in Section 5 of this report.***

4.11 MEGA objects in terms of the supplementary environmental information reiterating that the blanket bog should not be removed. If trees are to be felled around Tarmac Loch, then the local fishing club will lose this amenity as there will be no shelter on this exposed site.

***This matter has been discussed with the applicant and the works in the Compensation Plan only proposed that a small part of the woodland is felled to reinstate the peatland habitat at Airds Moss that has been damaged by the commercial plantation. It is intended to leave a stable block of trees around the Tarmac Loch to retain the amenity of local anglers.***

4.12 If SNH undertook a hydrological survey of this part of Airds Moss in 2007, then that organisation clearly had plans for habitat improvement on Airds Moss. Indeed in the current Habitat Survey for the proposed Compensation Area there is reference to grazing programmes already agreed. If SNH has a duty to initiate re-wetting and grazing management programmes, then would not these improvements have been undertaken in any case, without SRG offering to compensate as mitigation for real and irreversible loss at Dalfad?

***It is understood that SNH undertook the condition report on Airds Moss so that it would have a better appreciation of the conservation status of the SAC and to determine appropriate measures for improvement. However, the Airds Moss area is in the ownership of many different landowners and SNH would not be directly undertaking any works without working in partnership with them. The cost of undertaking the compensation works at Airds Moss is significant and, in light of the current financial climate, it would be questioned whether or not the public purse would support the undertaking of these works.***

4.13 Appropriate Assessment under the EU Habitat's Directive is required and the survey information on Aird's Moss is inadequate noting that the walkover survey was done over a very short unrepresentative period in late November and the surveyors accepted that it was not possible to assess species richness at that time of the year. Blanket bog is of high conservation importance and such statements highlight the real loss of such important areas at Dalfad, where these habitats are little disturbed, unlike the site selected as a mitigation area.

***SNH, having considered the information presented within the ES is of the view that the proposed coal extraction at Dalfad will not have a significant effect on the qualifying interests of either the Muirkirk and North Lowther Special Protection Area or the associated SSSI. SNH has advised that "Appropriate Assessment" of the impacts on the SPA is therefore not required.***

***The surveys undertaken to inform the development of the Compensation Plan were to a specification determined by and agreed with SNH. Airds Moss is of high conservation status but it is degraded, hence the applicants confirm it was chosen for compensatory provision.***

4.14 There is no justification for starting remedial work at Airds Moss and destroying a more valuable habitat at Dalfad. It can only be justified by the predatory developers as they are the only beneficiaries, when one precious area is sacrificed and another area of lesser quality is offered for unproven 'improvement'.

***The applicant has been requested to clarify this point and advises that the proposed remedial works have been undertaken in similar peatland habitats at various locations throughout Scotland working in particular with SNH, including already at Airds Moss.***

4.15 We have already referred to 'improvement' work already put in progress at the west end of Aird's Moss. We have seen a plan which was produced in 1991 when Darnconner OCCS was being extended. This extension included part of the currently proposed Mitigation site and what was the outcome at that time? It can only be assumed that if the planning authority approved that application, then restoration plans would have been put in place and effected to its satisfaction. Was that the case?

***The present application, including the compensatory measures proposed, requires to be considered on its own merits.***

4.16 Considerable alterations to the hydrology of the proposed mitigation area are detailed; the outcomes of some of these are uncertain within the site. No risk assessments have been submitted. There is no assessment of the impact of such engineering on surrounding areas within the SAC and SPA and downstream on the Auchinleck Burn at /beyond the void which is still in existence at Darnconner.

***Notwithstanding the comments of the objector, SEPA and SNH have not objected to the proposed development or the package of compensatory measures offered by the applicant.***

4.17 Given that Dalfad is outwith the Council's area identified for open-casting and has already been agreed with SNH as a Mitigation Area for open-casting on the south side of the Muirkirk Valley, MEGA repeats its earlier objection that such an area should remain for this purpose. That such undertaking by the applicant must stand, to ensure confidence in the planning process and in SNH's duties, responsibilities and actions in conserving our valued habitats and environment.

***The Dalfad area was included in the Powharnal Mitigation Management Plan (PMMP) as "copper bottoming" that is supplementary to the actual mitigation areas identified. SNH in its response to the supplementary compensation information acknowledges this fact and has not requested an additional replacement area. The circa 200Ha Compensation Plan Area at Airds Moss will provide a significant habitat enhancement on an area designated as a Special Area of Conservation (SAC) due to its habitat, that has been degraded due to past deep mine workings for coal and ironstone and it is not felt appropriate to provide further "copper bottoming" areas when the area lost is 47Ha and will be replaced by circa 200Ha.***

4.18 Before embarking on yet more mitigation areas for open-cast developments, the Council has a responsibility to assess whether previous mitigation areas have in fact compensated for habitat destruction through open-casting and whether the work has been effective.

***The present application, including the compensatory measures proposed, requires to be considered on its own merits.***

4.19 MEGA asks that the Council having carried out an Appropriate Assessment for Dalfad, accepts that this proposal for the Tarmac Loch as a mitigation area is unacceptable; and that the planning application should be refused.

***SNH, having considered the information presented within the ES is of the view that the proposed coal extraction at Dalfad will not have a significant effect on the qualifying interests of either the Muirkirk and North Lowther Special Protection Area or the associated SSSI. SNH has advised that "Appropriate Assessment" of the impacts on the SPA is therefore not required. Similarly, SNH has not indicated that the proposed compensatory measures are unacceptable.***

4.20 We were promised a rail link from Powharnal years ago but this has never materialised. This development would result in a continuation of the unacceptable impact on traffic on the A70 and people living beside it.

***Consent was previously granted for the formation of a rail disposal point and for the re-instatement of the Auchinleck to Cronberry former rail line. This consent has now expired. However, through the support of the applicant, major road infrastructure improvements were carried out on the A70 Road, particularly in relation to the Welltrees Bridge re-alignment. The Roads and Transportation Service has not raised any objections in terms of public road safety or in terms of the A class Muirkirk – Cumnock – Ayr Road to carry the traffic generated from the Dalfad site.***

***It is accepted that approval of the application will continue HGV coal haulage traffic along the A70 but it is not considered that the impacts on people living along an A class route would be unacceptable in this case.***

### Letters of Support

4.21 The 47 letters of support for the proposed development are all in the same standard format and have been submitted by employees of Scottish Coal. Support has been given in relation to the employment opportunities that would arise from the proposals, the benefits to local communities, groups and organisations that benefit from the Cumnock and Doon Valley Minerals Trust and on the basis that Scotland should use and benefit from our own natural resources.

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

### Ayrshire Joint Structure Plan

5.2 There are no policy changes with regard to opencast coal mining promoted in the joint structure plan 2007 and the current provisions of the 1999 approved structure plan remain relevant to this application. The proposed development requires to be assessed against Policy E14 which states:

*Development opportunities for opencast coal working shall be directed to Preferred Areas of Search in East Ayrshire identified on the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.*

***The proposed Dalfad site falls outwith the Preferred Areas of Search. However, the application site is located wholly within an***

**area comprising an existing and previous surface coal mine, where the proposed land use was deemed appropriate. It should be noted that the existing and previous surface mining sites were excluded from the sieving process undertaken when the potential coal areas were determined as it was assumed that no additional coals would be present.**

5.3 Policy E13 states that proposals to extend the supply of land with planning consent for the winning and working of minerals shall be considered against the following criteria:

- (i) impact on the countryside, landscape character, visual amenity and the natural and built environment.
- (ii) the impact caused by noise, dust and the contamination of ground and surface water.
- (iii) any adverse effect on communities within Ayrshire.
- (iv) opportunity to maximise transport by rail or sea.
- (v) extent of directly related community benefit derived such as enhancement and creation of landscapes and habitats, and removal of dereliction.
- (vi) cumulative impact of proposals in one area and the extraction period.

**The Dalfad application has been assessed and determined against the stated criteria. The proposals promoted by the current application will be implemented under the existing planning controls within the existing consent and Section 75 Agreement (as may be amended) for the existing Powharnal site and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed extension would not conflict with the stated criteria in terms of its operational conduct.**

#### East Ayrshire Opencast Coal Subject Plan

5.4 Policy MIN1 states that all future opencast coal developments will be directed towards the Potential Coal Extraction Area identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies. The Potential Coal Extraction Area seeks to direct operators to the most appropriate locations for coal extraction having regard to a wide range of environmental and ecological criteria.

**The application site is not located within the Potential Coal Extraction Area (PCEA) as identified in the EAOCSPP. It is however wholly located within an area comprising an existing and previous surface coal mine where this land use has already been deemed appropriate. Existing and previous surface mine sites were excluded from the sieving process undertaken when the potential coal extraction areas were determined as it was assumed that no additional coals would be present. It is accepted that part of the site would have been excluded as a PCEA due to the presence of the Dalfad Moss Listed Wildlife Site (Provisional). Notwithstanding**

***this, the application is more appropriately assessed against Policy MIN3, as it represents, in effect, an extension to the Powharnal / Gasswater Complex.***

5.5 Policy MIN2 states that there will be a presumption of refusal for new opencast coal developments outwith the Potential Coal Extraction Areas with the exception of small scale, short terms extraction proposals which meet the following criteria:-

- (i) there is clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction;
- (ii) there is an overall benefit for communities affected including local employment and;
- (iii) there are no conflicts with any other Subject Plan Policies.

The Plan continues to advise that there will be a presumption of refusal of other opencast developments outwith Potential Coal Extraction Areas unless there are positive reasons of sufficient weight to overcome the presumption of refusal and justify the grant of planning permission.

***The Dalfad development is not considered to represent a new site, but an extension to the Powharnal / Gasswater mining complex.***

5.6 Policy MIN3 is pertinent to the application, as the policy states that, subject to detailed consideration, the Council will generally be supportive of any proposal to extend an existing operative opencast site within the Potential Coal Extraction Areas provided that all of the following criteria are met:

- (i) that the proposed extraction operations are carried out as a sequential phase of development and not independently or in isolation from the extraction programme of the original approved site.

***The Dalfad proposal is effectively a stand-alone excavation area but detailed consideration has been given to the phasing of operations in the Powharnal / Gasswater complex to ensure that the site is worked and restored in a logical and structured manner.***

- (ii) that the extended operations utilise fully the facilities and site infrastructure serving the original opencast site.

***The development will utilise existing site facilities and infrastructure which are located within the overall Powharnal complex that has recently completed coaling activities.***

- (iii) that the scale of operations, rate of extraction and number of vehicle movements generated by the extended site are commensurate with those as existing on the original site; and

***The scale of operations, rate of extraction and number of vehicle movements / rail movements generated by Dalfad site will be***

**commensurate with those as prevailed on the Powharnal operational site.**

- (iv) that the proposed extension does not significantly prejudice plans for the restoration of the existing site.

The proposed Dalfad proposal will result in the retention of the existing site infrastructure for the processing and dispatch of coals. However, it is considered that this will not significantly prejudice plans for the restoration of the existing Powharnal / Gasswater Complex site as the sites will be progressively restored.

**However, the proposed Dalfad extension area does not fall within a Potential Coal Extraction Area.**

5.7 Policy MIN3 further states that outwith the Potential Coal Extraction Areas, the Council will assess any extension on its own merits against the above criteria, and will not generally be supportive of such developments except where:

- (i) there is a clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction;

***There are existing areas of dereliction related to previous mining and industrial activities (former mineral rail line, spoil heaps, adits including deep mining issues) that will be removed as a result of the proposed extension. It is recognised however that the proposal will also result in the destruction of some 47 hectares of blanket bog.***

- (ii) there is an overall benefit for communities affected, including local employment; and

***The working of the Dalfad surface mine will result in continuing direct employment of 80 jobs for a further period of up to 3 years and will indirectly support other employment in the local community particularly with sub-contractors and the service sector.***

- (iii) there are no conflicts with any other Subject plan policies.

***There are conflicts with other policies as noted below particularly in relation to the loss of blanket bog.***

*Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a total extraction period in excess of 10 years will not generally be considered acceptable, unless it can be clearly demonstrated that there are significant local community and local environmental benefits to be secured by the development.*

***Operations at the overall Powharnal complex (including Gasswater) have been underway over a period of 12 years with mining operations having first commenced in June 1998 at Gasswater. Powharnal to the east of Gasswater then received planning permission in September 2004. However it is considered that the current proposal for Dalfad will not result in any perpetuation of disturbance to a local community given the location of the site and its relative remoteness from local communities. The life of the Dalfad proposal will extend to 3 years and, with operations commencing at the closest point to the small community of Cronberry and thereafter moving away from it, it is not considered that there would be any perpetuation of existing disturbance to communities.***

***With the proposal to direct almost 100% of extracted minerals from Dalfad site to market via the dedicated rail disposal point at Killoch, the potential for perpetuation of disturbance to local communities through the transportation of coal by road through local communities has essentially been mitigated as far as possible noting that the only road transportation will be to take the coal to Killoch and this transport will be via previously approved coal haulage routes. In addition as indicated within this report there are significant local and community benefits to be accrued from the proposed development in socio-economic terms.***

***Nonetheless it is considered that the proposal represents a departure from Policy MIN3.***

**5.8** Policy MIN4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against the following criteria. This application is considered to be an extension to the existing Powharnal surface mine noting that the proposed development will utilise the existing infrastructure on the Powharnal site.

- (i) the impact on agricultural land quality, the landscape character and visual amenity of the area, and the natural and built environment;

***The Environmental Statement which accompanies the application indicates that the impact on the landscape character and quality of the site will be minimal, particularly given the temporary and reversible nature of the proposed development. Furthermore with the restoration proposed there will be a net benefit in landscape character and visual amenity of the site and net benefits to the natural environment, not least by the removal of existing areas of past mining and industrial dereliction. No statutory natural or built environment interests will be affected by the proposals although it is accepted that the development will result in the loss of part of a Listed Wildlife Site. However, the compensatory measures (off***

**site) promoted by the applicant will also result in positive longer term benefits for the natural environment as well as improvements to the landscape character and visual amenity of that area.**

- (ii) the impact on the area of noise, dust and the contamination of ground and surface water and air quality;

**It is considered that in line with the existing controls imposed in the existing consents for the Powharnal site, the Dalfad development can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards, subject to the imposition of appropriate conditions / and or obligations secured by means of a Section 75 Agreement.**

- (iii) the impact of the development on local communities, groups of houses and individual dwellings;

**It is considered that in line with the existing controls imposed in the existing consents for the existing Powharnal site, together with additional controls as detailed elsewhere in this report, the proposed Dalfad development can be operated in such a manner as to minimise any adverse impacts on communities and other residential properties, and can be undertaken to environmentally acceptable standards.**

- (iv) the extent of any directly related community benefit to be derived from the development such as the enhancement and creation of landscapes and habitats, and the removal of dereliction;

**The proposed operations in the Dalfad development and subsequent restoration of the site will result in the rehabilitation of former remnants of previous mining operations in various locations within the site.**

**The proposed development will also result in significant long term landscape improvements. It is though recognised that the proposal will result in the destruction of 47 hectares of peat bog and, as indicated by both SNH and SEPA, this loss will be permanent as restoration will not deliver habitat of the same quality. However, the compensatory measures proposed at Tarmac Loch will result in the management and improvement of approximately 200 hectares of land lying within the Airds Moss Special Area for Conservation and it is through this that significant benefits will accrue from the development, not least the retention of 80 direct jobs.**

- (v) the opportunities to maximise transportation by rail;

***The applicant has confirmed that coal extracted from the Dalfad surface mine will be transported by rail to markets via the Killoch DP following transport via road on approved coal haulage routes.***

- (vi) any cumulative impact of the proposal in association with other existing or proposed opencast developments in the area, including any significant prejudice to restoration plans for any existing site;

***The applicant has identified 4 nearby sites against which to consider cumulative impact within the ES. Powharnal immediately adjoins and overlaps with this proposed site, is operated by the applicant and has ceased coaling and is undergoing restoration. Should the applicant gain planning permission, the applicant is seeking to utilise the existing facilities, access and infrastructure on Powharnal but this will not impact on or prejudice restoration of that site, except in relation to the current site establishment.***

***The Garleffan / Grievehill mining complex, some 4.5km to the south of Dalfad, is no longer coaling and is in the final stages of restoration. Spireslack is currently operational, although is further away from Dalfad at 9.5km which will reduce the overall cumulative impact. The final site is Duncanziemere which is an extension to the Laigh Glenmuir OCCS and is about to start operations and this site is some 500m south west of Dalfad.***

***Whilst there will be cumulative impacts from Duncanziemere and Powharnal in terms of landscape and visual impact, these impacts however should not be significantly adverse when viewed along the A70 or surrounding landscapes due to intervening topography. It is also pertinent to note that in the longer term, the co-ordinated restoration approach to the Dalfad site within the context of the wider Powharnal Complex will ensure that the original landscape character and visual amenity of the area are reinstated.***

***The Dalfad development site lies to the west of Powharnal and east of Duncanziemere and given the proximity of the two sites, there will be cumulative impacts in terms of landscape and visual impacts. However, owing to the respective short timescales, timing and progressive restoration on both sites, these impacts can be mitigated to some degree.***

- (vii) any impact on inward investment opportunities in the area; and

***It is considered that it would have minimal impact on inward investment opportunities in the area.***

- (viii) the period of extraction.

***The proposed Dalfad mine extension will be worked within a 3 year period which in itself is not considered to present any***

**significant issues. The proposed operations will result in operations extending into 2014, resulting in an overall timescale for the overall wider Powharnal mining complex (including Gasswater) of approximately 16 years. However, given the characteristics of the existing and proposed operations, their location and proximity to communities, there has been no significant detrimental impact on any local community.**

5.9 Policy MIN6: The applicant is required to provide information which indicates their understanding of the location of coal reserves in land surrounding the application site and information about their interest in any likely future extensions to current applications and sites in which they have an interest.

**Consideration has been given to the likelihood of further reserves of coal in the vicinity to the site. A review of known geology and previous underground and surface mine workings indicate that no additional coal resources are likely to exist in the immediate vicinity of the proposed Dalfad site as they have been previously mined at the former Gasswater and current Powharnal operations. The view of the applicant is that there is only a very limited potential for an additional phase of surface mining within the western part of the Powharnal Complex even if the coals are present and economics allow for recovery.**

5.10 Policy MIN11: The council will seek wherever possible to conserve all areas of active peat bog within the boundaries of an opencast coal development site. All peat that requires to be removed in order to access the coal reserves on site will require to be retained on site for future use in the restoration of the area.

**Dalfad Moss is an area of peat bog within the application site. The ES submitted by the applicant notes that whilst Dalfad Moss is an area of peat bog, it has been previously affected by former deep and surface mining activities and it is not covered by any statutory environmental designation. Nonetheless, the proposal will result in the destruction of 47 hectares of peat bog.**

**The ES however includes recommendations for significant compensation measures that are designed to off-set the loss of peatland habitat at Dalfad. The offsite compensatory measures will result in the management and enhancement of approximately 200 hectares of an area designated as a Special Area of Conservation (SAC). In addition to these measures, all peat removed as part of the Dalfad development will be utilised to undertake a peatland/wet heath habitat restoration by infilling the former mineral railway cutting that was excavated through the area over 150 years ago and which split the peatland at Dalfad in half.**

**Nonetheless, the proposed development is contrary to the provisions of Policy MIN11.**

5.11 Policy MIN12: The Council will seek to ensure that a proliferation of opencast coal sites within close proximity to any one community or within one particular area does not occur. In this context, any proposed new opencast developments may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where that development would:

- (i) constitute a third approved or operative site within 3 Kms of each other or within a 3 Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or

***Policy MIN12 seeks to ensure that the cumulative effects of opencast developments are not unacceptable. Any proposed new development may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where it is the 3rd site within 3km, or exacerbates disruption experienced by a group of dwellings from successive operations over an extraction period in excess of 10 years (as well as other potential causes). Where a concentration of workings is likely to occur, an assessment of the likely cumulative impacts of additional workings on local communities and the local environment is required. This assessment is presented within the ES and concludes that cumulative impacts on communities and the environment as a result of the Dalfad development are not likely to be significant. Impacts on communities are reduced by local topography, intervening vegetation (including coniferous plantations), the distance between sites, and the fact that with the exception of the proposed site at Duncanziemere, the adjacent sites are under restoration. Mitigation and control measures put into place at Dalfad will reduce other environmental impacts to acceptable levels, meaning that operational effects from other sites will not be cumulatively significant.***

- (ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or

***The closest community (or group of dwellings) to the Dalfad development is Cronberry, located approximately 1 km from the closest part of the application site. Whilst the proposed development would continue the Powharnal / Gasswater operation beyond a period of 10 years, it is not considered that Cronberry would have experienced excessive adverse amenity or environmental disruption over the whole period of the development.***

- (iii) generate volumes of heavy traffic which taken together with the volumes of coal haulage vehicles already using the routes concerned,

would cause unacceptable detriment to the amenity of any community or group of dwellings located along proposed haulage routes; or

***The proposed development will continue to utilise the existing road haulage route and railhead at Killoch and will therefore not significantly increase existing traffic impacts on communities or groups of dwellings.***

- (iv) result in an unacceptable accumulation of adverse impacts on international or nationally designated sites of nature conservation interest over time and place within a particular locality, or an accumulation of individual impacts which collectively have a significant adverse effect on the integrity of such areas.

***The proposed development will not result in any significant impact upon any international or nationally designated sites.***

The policy states that in an area where a concentration of workings is likely to occur, an assessment of the likely cumulative impacts of additional workings will be requested from the applicants and the proposed measures to be taken to mitigate these impacts.

***See comments at 5.11 (i) above.***

5.12 Policy MIN13: Requires that all planning applications are to contain details of operational procedures including restoration proposals and aftercare.

***The applicant's supporting statement and ES contain full details of the proposed workings and further details regarding restoration will continue to be developed through the existing PMC Technical Working Group the existence and continued operation of which, would be controlled by conditions or by means of a Section 75 legal agreement.***

5.13 Policy MIN 15: All developers are required to restore their operational sites progressively to the highest possible standards. Developers will be required to provide for the creation of new habitats appropriate to the particular after uses of the site concerned as an integral part of their detailed restoration and aftercare proposals.

***The ES states that the restoration of the proposed Dalfad extension is designed to improve the wildlife conservation value of the land and would provide for greater benefits to the area both in bio-diversity terms and also in general amenity terms. Restoration to high standards will be overseen by the Technical Working Group which has been set up, and is operational, as part of the existing Section 75 Agreement for the current operational Powharnal site. The remit of the TWG will include overseeing restoration and aftercare of the Dalfad extension. The applicants ES includes details of their restoration proposals and states that if***

***planning permission is granted, these plans would be subject to development and review through the existing PMC Technical Working Group.***

5.14 Policy: MIN16: Developers are required, whenever possible, to divert and re-route any existing Rights of Way affected by proposed opencast operations.

***As detailed at Section 3.14 of this report, the Council's Countryside Development Manager has confirmed that there are no rights of way or core paths through this site. Regardless the applicant has advised that as is standard practice, current rights of way and other established paths that require to be temporarily stopped-up would be re-established upon restoration of the site. Temporary diversions will be provided where required. The applicant advises that they intend to seek to increase public access to the area following restoration in line with other existing access commitments such as the creation of a multi user path that originates in Dalmellington and ends at Coalburn, South Lanarkshire. Construction works on various sections of this path have already commenced and the path will form in integral part of EA's Core Path Network in relation to which Scottish Coal is a participating partner. As Scottish coal has already advised, public access over the site will be managed to make sure any access is complementary with the proposed habitat creation.***

5.15 Policy MIN17: developers will be required to submit detailed restoration and aftercare plans with their submitted applications in accordance with the criteria detailed in the policy.

***Detailed restoration and aftercare plans are included for the proposed Dalfad surface mine within the applicants submission although the applicant has confirmed that they anticipate these to be subject to ongoing development and review through the existing PMC Restoration Technical Working Group should planning permission be granted. The continued operation of the TWG would be secured by means of a Section 75 legal agreement.***

5.16 Policy MIN18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

***The coal from the Dalfad surface mine will be transported utilising the company's existing railhead at Killoch and coal will be taken by road to the railhead, using previously agreed coal haulage routes.***

5.17 Policy MIN19: All haulage of extracted materials between the area of excavation and the point of dispatch from the opencast site should be via internal haul roads only.

***All coals won from the proposed extension area will be taken via internal haul roads to the existing processing area within the Powharnal complex prior to dispatch by road to Killoch DP, all in accordance with this policy. The applicant has confirmed the intention to utilise the site infrastructure within the existing Powharnal site in order to utilise a single access point from the site onto the A70.***

5.18 Policy MIN20: Haulage of opencast coal on the public road system to be along clearly defined haulage routes agreed with the Council. With the exception of the 'A' Class Roads throughout East Ayrshire, opencast operators will be required, at their own expense, to bring all roads used by their haulage vehicles up to an acceptable standard for haulage purposes, prior to the use of the route for dispatch purposes. Requirement for operators to pay for any necessary upgrading and maintenance of routes used by opencast traffic.

***Contributions by the operator to the maintenance of public roads would be secured through a Section 75 Agreement for the development noting also the consultation response received from the Roads and Transportation Service as detailed in Section 3.2 of this report.***

5.19 Policy MIN21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

- (i) to ensure the highest possible operational standards for the transportation of extracted minerals;
- (ii) to ensure best operational practice regarding road safety and operational matters;
- (iii) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes
- (iv) to audit and record operational details of the transportation of coal on a regular basis; and
- (v) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

The Council is currently formulating with the co-operation of the opencast operators, a 'Transportation of Coal by Road Protocol' addressing the above issues to which existing and potential opencast operators and their approved sub-contractors will be invited to subscribe.

***The applicant is willing to enter into a Section 75 Agreement encompassing the above stated matters.***

5.20 Policy MIN22: All opencast operators will be required to give proper consideration to mitigating the likely impact of their proposed developments on local communities and nearby property.

***The applicant's ES has considered and assessed the likely impacts of this proposed development and concludes that any adverse impacts on local communities can be mitigated by responsible management of the site, should planning permission be granted.***

5.21 Policy MIN23: In order to ensure that opencast operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council is likely to consider opencast developments unacceptable where:

- (i) a development has a boundary which encroaches within 500 metres of the community concerned.

***The proposed Dalfad site does not encroach within 500 metres of any settlement.***

- (ii) the proposal involves a substantial area for extraction over an extraction period in excess of 10 years.

***Although the overall lifespan of the Powharnal / Gasswater mine complex as extended by the proposed Dalfad development would be a total of approximately 16 years, it is considered that the proposal will not result in any perpetuation of disturbance to a local community given the location of the site, the extent of natural screening afforded by the topography of the site and its relative remoteness from local communities. The existing Powharnal operation has not resulted in any significant adverse disturbance to any local community primarily due to its relative remoteness from such community. The Dalfad development area is substantial, but the excavation area is smaller and set within a substantial buffer. The operations to be undertaken for Dalfad will be limited to 3 years and will not exceed the 10 year timescale in itself.***

- (iii) the proposal is likely to be the subject of repeated extensions, perpetuating disturbance to local communities for a period substantially longer than 5 years.

***It is considered that the current proposal will not, in itself, result in perpetuation of disturbance to local communities, nor be the subject of repeated extensions.***

5.22 Policy MIN24: The Council will require all opencast developers to demonstrate the measures they propose to minimise the effect of their operations on sensitive establishments including all individual or small scale groups of dwellinghouses, located outwith communities and not in the ownership or under the control of the developer.

***The applicants have clarified that there will be no site operations located within 850 metres of any dwelling and the nearest community is Cronberry at 1 km distant and at Lugar/Logan at a distance from the site of 2.5km.***

5.23 Policy MIN25: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, group of dwellings or individual dwellinghouses not in the ownership or under the control of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where all of the following criteria are met:

(i) the Council is satisfied that there are no objections which cannot be overcome through the expeditious use of conditions or planning agreements from residents, owners, tenants or occupiers of properties located within 500 metres of the proposed working face of the site;

***There are no residential properties that lie within 500 metres of the working faces of the proposed excavation areas within the Dalfad site.***

(ii) the total period of extraction and restoration within a distance of 500 metres from any sensitive establishment or dwelling does not exceed a period of 12 months.

***The Dalfad development would not present any conflict with this criterion.***

(iii) the proposed extraction does not involve any blasting operations within a distance of 500 metres from any sensitive establishment or dwelling.

***The Dalfad development would not present any conflict with this criterion.***

(iv) the extraction or operational area does not encroach within 100 metres of any group of dwellings, individual dwellinghouse(s) or sensitive establishment concerned.

***There are no residential properties that lie within 100 metres of the operational areas of the Dalfad site.***

5.24 Policy MIN26: The Council will ensure that areas of nature conservation interest are adequately protected from any direct or indirect adverse effects of opencast developments.

***The proposal will result in the destruction of 47 hectares of peat bog, being the Dalfad Moss Provisional Wildlife Site.***

***The ES however includes recommendations for significant compensation measures that are designed to off-set the loss of***

***peatland habitat at Dalfad. The offsite compensatory measures will result in the management and enhancement of approximately 200 hectares of an area designated as a Special Area of Conservation (SAC). In addition to these measures, all peat removed as part of the Dalfad development will be utilised to undertake a peatland/wet heath habitat restoration by infilling the former mineral railway cutting that was excavated through the area over 150 years ago and which split the peatland at Dalfad in half.***

***Nonetheless, the proposed development is contrary to the provisions of Policy MIN26.***

5.25 Policy MIN27: the Council will ensure that opencast coal proposals do not have unacceptable adverse impact on the natural and built environment. In particular, development proposals will not be supported where they would, amongst other things:

(ii) cause permanent adverse impact or cause irreparable damage to heritage resources requiring conservation;

***The Dalfad development will impact directly on heritage resources requiring conservation through the loss of 47 hectares of peat bog.***

(v) result in the destruction of any areas of peat which are considered to be of significant ecological value.

***The Dalfad development will result in the loss of 47 hectares of peat bog.***

***The proposed development is contrary to Policy MIN27.***

5.26 Policy MIN29: The Council will seek to ensure that opencast proposals and related development do not have an unacceptable adverse impact on existing rural tourism, leisure and recreational development potential. In particular, the Council will not be supportive of proposals which would impinge on, or adversely affect, the physical setting, operational viability or recreational quality of specific sites and resources considered to be of importance to the local economy or the enjoyment of local residents.

***The ES submitted by the applicants contains a Landscape and Visual Impact Assessment which demonstrates that the proposed Dalfad surface mine will not have any significant adverse effects upon local visual amenity. Furthermore opencast coal operations are an established part of the local environment and following restoration can positively contribute to local leisure and recreational activity in the local area through the provision of a network of footpaths, bridle paths, and enhanced areas of ecological interest.***

5.27 Policy MIN31: The Council will not be supportive of any opencast proposals which would disrupt or otherwise adversely impact on water catchment areas, principal watercourses and their tributaries or other major water resources such as lochs and reservoirs through East Ayrshire. Where it is considered that opencast operations may impact on such water resources, the Council will not be supportive of the proposals unless:

- (i) adequate mitigation measures can be implemented, to the satisfaction of the Council and SEPA to prevent any pollution to the water resource concerned: and
- (ii) any changes to the levels of surface and ground water, changes to river flows and changes to water quality can be demonstrated to not have an unacceptable adverse impact on natural habitats, water abstraction schemes, or to give rise to an unacceptable increase in flood risk.

***Subject to appropriate conditions being attached to any consent granted for the proposed development, SEPA does not object to the proposals and the applicants supporting statement confirms that they will continue to liaise closely and work in partnership with both SEPA and The Ayrshire Rivers Trust.***

5.28 Policy MIN32: The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an applicant to enter into an agreement with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997 in order to regulate, by agreement, such matters as cannot adequately be regulated by the imposition of planning conditions.

***The applicant has expressed a willingness to enter into a Section 75 Agreement as considered appropriate to the terms of this report.***

5.29 Policies MIN33 and MIN34: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

***The applicant is currently a contributor to the Mineral Trust Fund in respect of the previous sites including the overall Powharnal complex and would continue to contribute in respect of the Dalfad extension.***

5.30 Policies MIN35 and MIN36: Requirement for operators to lodge restoration bonds and requirement to fund aftercare schemes.

***The applicant already provides Restoration Bonds for existing operations in East Ayrshire and it is proposed, should planning permission be granted for this development, that a suitable bond***

***will be provided to cover restoration liabilities on the Dalfad development.***

***It is therefore considered that the proposed development is contrary to Policies MIN3, MIN11, MIN26 and MIN27 of the EAOCSP.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, Scottish Planning Policy (SPP) and associated PAN 50, the representations received, relevant planning history and The Conservation (Natural Habitats, &c.) Regulations 1994.

### Consultation Responses

6.2 There are no consultation responses from an infrastructure point of view that would indicate that the application should be refused, subject to the imposition of appropriate conditions or through obligations secured by means of a Section 75 Agreement should consent be granted for the proposed development. It is recognised that RSPB and Cronberry, Logan and Lugar Community Council have objected to the proposed development on policy and environmental grounds; which objections are addressed in Section 3 of the report.

### Scottish Planning Policy

6.3 Guidance on surface coal mining has been given in the “Scottish Planning Policy” document (SPP) issued in February 2010 which is the up to date statement of the Scottish Government’s policy on nationally important land use planning matters. Subject policy on surface coal mining is given in paragraphs 239-247 inclusive. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coal mining may take place.

6.4 Many of the provisions of the SPP relating to surface coal mining are already addressed within the adopted East Ayrshire Opencast Coal Subject Plan such as the proximity of workings to local communities, repeated extensions, cumulative landscape and visual impacts, protection of natural and built heritage and the preference for rail transport. Nonetheless SPP indicates that Planning Authorities should use their development plans to identify areas where opencast coal extraction may be acceptable. There should be a presumption against development outwith these areas.

***The adopted East Ayrshire Opencast Coal Subject Plan has identified Potential Coal Extraction Areas and in this regard only a relatively small part of the Dalfad extension development lies within such an area. However, it should be noted that having assessed the Dalfad site against the criteria for identification of the Potential Coal Extraction areas in the Opencast Coal Subject***

***Plan, the area has been excluded primarily on this basis that this area formed part of the previous Gasswater development site and in the identification of PCEAs, restored sites and operations sites were excluded as it was assumed that no additional coals would be present. It is recognised however that part of the Dalfad site would have been excluded due to the presence of the Dalfad Moss Provisional Wildlife Site.***

6.5 SPP also indicates, in applying the principles of sustainable development and environmental justice to opencast coal extraction, that there should be a presumption against development unless the proposal would meet one of two tests:

(i) the proposal is environmentally acceptable or can be made so by planning conditions and agreements; or

***The consultation and policy assessment process suggests that the Dalfad development can meet this first test subject to the imposition of appropriate planning conditions and legal obligations secured through a Section 75 Agreement.***

***While there will be the loss of 47 hectares of peat bog, the compensatory package of measures proposed by the applicant more than offsets this loss and will result in significant environmental gains and community benefits.***

(ii) the proposal provides local or community benefits which clearly outweigh the likely impacts of the extraction.

***The second test is also considered to be met as the proposed Dalfad development will result in the continuation of 80 direct jobs, which is particularly beneficial in those areas where the extraction takes place.***

***It is therefore considered that both tests are satisfied in assessing the Dalfad development.***

6.6 The SPP provides guidance in the determination of applications which might affect habitats in the section on Landscape and Natural Heritage. The SPP states that planning authorities should seek to prevent further fragmentation or isolation of habitats and identify opportunities to restore links which have been broken, The SPP continues to state that where possible, planning authorities should seek benefits for species and habitats from new development including the restoration of degraded habitats.

***This application will remove some 47 hectares of peat bog from Dalfad Moss which is a Provisional Wildlife Site. In response to this loss the applicant has agreed an extensive compensatory mitigation package (as detailed in Section 2 of this report) to land at Airds Moss which lies within the Muirkirk and North Lowther SPA, is a Special Area of Conservation and SSSI over a landward***

**area of 200 hectares. The compensation works have been proposed further to detailed discussions that have been held with SNH. Airds Moss is an area which has been degraded due to previous deep and surface mining.**

**In addition to the off site compensation, the applicant also proposes that there will be onsite mitigation at Dalfad through the restoration of a former railway cutting and racecourse to mitigate the direct loss of wet heath habitat.**

#### Planning Advice Notes

6.7 The proposed operations have also been designed to comply with the advice contained within Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D and the applicant has consistently referred to PAN 50 in the ES associated with this application.

#### Planning History

6.8 The Development Services Committee on 3 June 1997 approved application no. 96/0496/FL for the proposed extraction of coal by opencast methods, erection of coal handling and preparation facility, removal of dereliction and enhancement of landscape and nature conservation interests at Gasswater Opencast Coal Site, Cronberry, by Cumnock subject to conditions and a Section 50 (now Section 75) agreement and conditions. Consent was subsequently released on 10 June 1998.

6.9 The Development Services Committee on 14 August 2002 approved planning application no. 99/0761/FL by Scottish Coal for the proposed extraction of coal by opencast methods utilising existing site infrastructure at Gasswater OCCS, restoration of previously despoiled land, and enhancement of landscape and nature conservation interests at Powharnal, Near Muirkirk subject to conditions and a Section 75 legal agreement being agreed prior to the release of the decision notice. Consent was subsequently released on 8 September 2004.

6.10 The Southern Local Planning Committee on 24 March 2006 approved planning application no. 05/1242/FL by Scottish Coal for the proposed rephasing of the approved scheme of working including an extension to the existing overburden storage areas incorporating additional mitigation measures and associated habitat enhancement work at Powharnal Opencast Coal Site, Near Muirkirk subject to conditions and to a Section 75 legal agreement. Consent was subsequently released on 7 March 2008.

#### Representations

6.11 It is noted that there has not been a significant number of objections to the proposed development and that letters of support have been submitted from employees of Scottish Coal highlighting the socio-economic benefits of the proposed development. It is considered that the points of objection, where relative to the conflicts with policy and loss of peat bog are valid and of merit.

Other points raised are either not of sufficient weight to justify refusal of the application or raise matters that can be addressed by imposition of conditions or by means of obligations secured by a Section 75 Agreement, should planning permission be granted.

#### The Conservation (Natural Habitats, &c.) Regulations 1994

6.12 As indicated in the consultation response from SNH, the proposal could result in the disturbance of protected species namely otters. As indicated by SNH, appropriate licences may require to be obtained in this regard. The applicant has advised that there may be potential for disturbance through some of the ancillary operational activities on the Dalfad site and further survey work is being undertaken in this regard. In this regard, the Planning Authority assumes that disturbance to otter resting site(s) is likely in this case.

Scottish Government interim guidance to planning authorities states that no planning decision may be made until the planning authority can assure itself that a licence may be forthcoming. An application for a licence will fail unless all of 3 tests on acceptability for a licence are satisfied. In summary these tests are:

*Test 1: The licence application must demonstrably relate to ... the purpose of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.*

***It is considered that the licence (and the disturbance of the protected species that it would authorise) would be necessary in order to allow work to proceed that is of overriding public interest of a social and economic nature. Furthermore, the development, through the restoration scheme will bring about beneficial consequences for the environment. The strategic and economic importance of coal extraction is recognised in various statements and policies at national, regional and local level. In summary, the following points confirm the overriding public interest in the proposed extension:***

***• At the local level, the proposed Dalfad development would make a direct contribution to the East Ayrshire economy through the sustained employment of the 80 staff and personnel directly employed in the surface mining operations. The majority of the staff employed in the operations live within the communities of East Ayrshire. The proposed extension would also contribute to the sustained indirect employment in the local area for numerous workers and subcontractors.***

***• The retention of employment is considered to be of overriding public interest in the current economic climate.***

- ***The proposed development presents what is likely to be the only opportunity to extract the 700,000 tonnes of coal which underlie the Dalfad area.***

***It is considered that that there is clear overriding public interest in permitting the development to proceed and that Test 1 can be clearly met.***

Test 2: *“that there is no satisfactory alternative”*

***With regard to Test 2, it is considered that there is no satisfactory alternative to the granting of a licence and to the consequent disturbance to protected species. The ability to consider alternative locations for the extension is restricted given that the location of the Dalfad development is guided in the first instance by the geological occurrence of the coal at this location. There are also clear benefits of extending the supply of coal at existing sites rather than allowing that coal to be sterilised.***

Test 3: *A licence cannot be issued unless Scottish Government is satisfied that the action proposed “will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range” (Scottish Government will, however, seek the expert advice of Scottish Natural Heritage on this matter).*

***The interim guidance issued to planning authorities indicates that SNH is the main body to advise on whether the granting of a licence would be “detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range” and so be capable of meeting Test 3. In its consultation response SNH has indicated that the proposed development would be not detrimental to the maintenance of the populations of the protected species.***

6.13 Proposals affecting Special Protection Areas or Special Areas of Conservation are subject to the requirements of the above Regulations. The proposed Dalfad development partially overlaps an area designated as the Muirkirk Uplands Site of Special Scientific Interest (SSSI) and the Muirkirk and North Lowther Uplands Special Protection Area (SPA), although the area of overlap is not shown to be subject to any new operations forming part of the Dalfad development. Accordingly this Council, as Competent Authority must judge firstly whether the proposal is directly connected with or necessary for the conservation management of the sites for their qualifying interests. In this case, the Dalfad development is not directly connected with or necessary for conservation management of the SPA. Therefore as Competent Authority must consider whether the proposal is likely to have a significant effect on any of the features for which the SPA is designated. Where a significant effect is likely, the Competent Authority must undertake appropriate assessment of the effects of the proposals on the interests of the SPA.

***The Council, as Competent Authority, is entitled to seek the view of SNH in relation to the requirement for “appropriate assessment” and SNH, both in its response to the Scoping Document and having had regard to the information contained within the ES, is of the view that the proposed coal extraction at Dalfad will not have a significant effect on the qualifying interests of both the SPA and the SSSI. SNH has indicated that an appropriate assessment of the impacts on the SPA is therefore not required.***

***In this regard it is considered that for the reasons and justifications set out above it is a reasonable expectation that a licence would be granted and that in arriving at this conclusion the Council, as Planning Authority, has fulfilled the general requirement established under Regulation 3(4) to have regard to the provisions of the Habitats Directive, and in particular to the provisions of Articles 12 and 13 of the Directive and Regulations 39 and 43 of the 1994 Regulations.***

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement to conclude a Section 75 Agreement as indicated within the report and as specified in Section 8.9 below.

7.2 As this proposal relates to a major development that is significantly contrary to the Development Plan, determination of the application will rest with Council.

7.3 In terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, the application, if approved, would not require to be notified to the Scottish Ministers should the Council be minded to approve opencast proposals.

## **8. CONCLUSIONS**

8.1 As is indicated in Section 5 of the report, the application is considered to be significantly contrary to the development plan in that it represents departures from Policies MIN3, MIN11, MIN26 and MIN27 of the EAOCS. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated in Section 6 of the report, there are material considerations relevant to this application. However, these material considerations are generally supportive of the proposed development as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

8.2 The proposal effectively represents an extension to the existing Powharnal / Gasswater mining complex to recover some 700,000 tonnes of coal which in environmental terms is considered to present no significant additional adverse impacts on local communities or nearby residential properties and this is essentially borne out by the consultation process. In addition, the proposed development has not attracted any significant level of objections.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the existing Powharnal / Gasswater site and the proposed Dalfad development site are located, the proposal to effectively extend the existing consented site will not have any significant adverse effects on any local community and therefore it is considered that the extended operations proposed can be undertaken within acceptable environmental standards in operational terms.

8.4 The existing Dalfad operation provides full time employment for 80 staff, operatives and contractors. All of these jobs will be maintained throughout the additional 3 year working life of the proposed Dalfad extension. This is considered to be of significant community benefit noting in addition the indirect employment opportunities and contribution to the local economy including the applicant's spending locally and contribution to business rates.

8.5 In landscape and visual amenity terms, the proposed development will have significant, albeit temporary adverse impacts. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term. The site is currently considered partly derelict having been the subject of historic and more recent industrial activities. Overall it is considered that the long-term landscape would be enhanced by restoration proposals.

8.6 With respect to the objections raised, it is considered that the points of objection, where relative to the conflicts with policy and loss of peat bog are valid and of merit. Other points raised are either not of sufficient weight to justify refusal of the application or raise matters that can be addressed by imposition of conditions or by means of obligations secured by a Section 75 Agreement, should planning permission be granted.

8.7 The prime issue relative to the application centres on the Dalfad Moss Provisional Wildlife Site as the Dalfad development will result in the loss of 47 hectares of peat bog. This raises the conflict with Policies MIN3, MIN11, MIN26 and MIN27 of the EAOCSP. However, in recognition of this loss, the applicant has offered a compensatory package of measures for mitigation off site that would see the management and enhancement of around 200 hectares of the Airds Moss Special Area of Conservation. This compensatory package will deliver greater benefits to the environment and to habitat enhancement than will be lost through the Dalfad development. It is respectfully suggested that the non-objections from SNH and SEPA are as a direct result of this compensation package.

8.8 In considering the environmental acceptability of the proposed surface mining development, planning authorities are guided to consider acceptability

in the context of the impact on both local communities and the environment. This can be achieved by weighing up the various benefits and disbenefits that would be likely to arise if the development proceeded. In respect of the proposed Dalfad development the benefits and disbenefits are as follows:

### **Disbenefits**

- (i) Proximity to communities: There are no communities within 500m of operational areas of the development. The closest individual property to the development at Stonebrigg is approximately 400m from the application boundary but in the order of 600m from the proposed extraction areas. The scheme has been prepared to minimise disruption. The ES has included an assessment of the potential effects on the closest sensitive properties to the development in terms of matters such as dust and noise. The ES has identified appropriate mitigation measures and reported acceptability of the scheme at those receptors.
- (ii) Uncertainty for local communities: the planning application would not create any uncertainty for local communities as to future extraction given the information provided by the applicant in Section 5.9 above.
- (iii) Haulage of Traffic: the proposed development will result in the continuation of HGV traffic along the A70 passing through Lugar, Cumnock and Ochiltree to access Killoch Coal Disposal Point. This is however an A Class road and the transport assessment within the ES has identified capacity within the road network to accommodate the development. No significant impacts from haulage have been identified. With regard to dispatch hours, it is considered that the applicant's amended proposals are in line with standard dispatch hours applied to all surface mining sites. The Roads and Transportation Service, subject to a Section 75 Agreement regarding road maintenance, does not object to the proposed development.
- (iv) Other Cumulative Developments in Close Proximity: the ES has included an assessment of likely cumulative effects that would occur from the Dalfad development co-existing with other similar developments in the area, particularly as the sites at Garleffan and Grievehill are in the restoration phase at this time. The relevant assessments within the ES (including noise, air quality and landscape and visual amenity) have considered the cumulative effects in detail. No significant overriding cumulative effects have been identified.
- (v) Disturbance and Disruption from Noise etc: the ES includes detailed assessments in respect of a wide scope of environmental impacts. Appropriate mitigation has been identified in the ES that can be secured through planning conditions and/or agreements to control the effects of the development to acceptable levels. These would include restricting operating hours for certain operations, setting noise conditions and setting conditions to control blast events.

- (vi) Loss of Landscape Features, Habitats, Species & Archaeological Features: The ES has taken into account the potential impacts on all of these assets and has identified that clearly the loss of the peat bog is significant. While peat removed will be set aside and subsequently restored, the habitat lost is unlikely to be recreated. Archaeological interests can be addressed by the condition indicated by WOSAS in its consultation response above.
- (vii) Impact of Extraction on other Investment: the development is located in a rural area, with little alternative development apparent and there is not considered to be any reasonable likelihood of detracting investment from the local area. The proposed development would in fact bring about further investment from the applicant in the local area and the likely commitment to the area from other businesses and industries used to service the development.
- (viii) The loss of local Opportunities for Recreation: there are no formal public access routes or ways within the planning application area.

### **Benefits**

- (ix) Removal of Existing Dereliction and Land Instability: a significant proportion of the application site has been subject of previous mining operations and there are areas within the site that are derelict and the site has been previously undermined. Despite the loss of the peat bog, the restoration will bring about an overall improvement in the character and setting of the application site for local communities and for biodiversity targets.
- (x) Removal of all Coal in one Operation: the planning application is made for the removal of all known economically recoverable coal within the planning application boundary. If planning permission were to be refused, then so long as the coal deposits remained in situ there would be continued uncertainty at the site being revisited and reapplied for extraction at some future date.
- (xi) Distance of the Proposal in Relation to Local Communities: the Dalfad development is considered to be sufficiently separated from nearby communities and complies fully with the policy provisions of the EAOCSP in this regard.
- (x) Planned Restoration and Aftercare Arrangements are Clear: the planning application is accompanied by a clear restoration strategy and plan. The scheme would bring about local landscape and biodiversity improvements and in a progressive manner.
- (xi) Restoration will Provide new Landscape and Biodiversity Features: the direct landscape and biodiversity benefits of the scheme are described in the ES and would result in notable beneficial effects within the site. Of significance is the compensatory measures proposed by the applicant for mitigation off site that would see the management and enhancement of around 200 hectares of the Airds Moss Special Area

of Conservation. This compensatory package will deliver greater benefits to the landscape, environment and to habitat enhancement than will be lost through the Dalfad development.

8.9 In respect of all relevant matters and material considerations to be taken into account, it is recognised that the application is in part contrary to the provisions of the development plan but that substantial mitigating measures have been proposed which on balance point to a favourable recommendation. There are no significant environmental or community concerns regarding the proposal. Consequently it is considered that the application should be approved subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

#### Section 75 Agreement

(i) The agreement of the applicant to make road maintenance contributions towards repair work which requires to be carried out on the East Ayrshire section of the A70 public road coal haulage route between the site access at Powharnal and Killoch DP west of Ochiltree with the Roads Authority under Section 96 of the Roads (Scotland) Act 1984. The simplest method to attribute maintenance costs is by a contribution from Scottish Coal under Section 96 of the Roads (Scotland) Act 1984 incorporated into a Section 75 planning agreement. Scottish Coal's contribution will be £0.30 pence per tonne of coal or other mineral extracted from the site by road haulage and will be payable to the Roads Authority on a quarterly basis to assist in the ongoing maintenance of the route.

(ii) The subscription of the applicant to the Council's Transportation Protocol to provide for agreement on routing, timing and marking of vehicles for minerals won within the Dalfad site transported on the public road network within East Ayrshire.

(iii) The extension of the remit of the existing Powharnal Management Committee / Technical Working Group to embrace the proposed Dalfad site.

(iv) The securing of the proposed off site compensatory measures and mitigation as described in the Compensation Plan: Airds Moss by Wardell Armstrong dated December 2010. The measures shall also include the agreement of a mechanism by which the details and implementation of the compensation, including the proposed mitigation and restoration measures, can be approved and overseen. The delivery of the compensatory and mitigation measures and site restoration and aftercare shall be secured by an appropriate bond to be agreed between the Council and the applicant. The long term conservation management of the off site compensatory area and the restored site shall form part of the agreed mechanism.

(v) The production of a comprehensive Conservation Management Plan for the comprehensive Powharnal complex as extended by the Dalfad development, this plan to be agreed by the Powharnal Management Committee / Technical Working Group.

(vi) The appointment of an Ecological Clerk of Works (ECoW) by the applicant and approved by the Planning Authority in consultation with SNH for the period from commencement of development to the completion of aftercare or such earlier date as may be agreed in writing with the Planning Authority. The scope of work of the ECoW shall be agreed by the Council and will include:

- overseeing the storage of peat, turf removal and storage, and bund construction;
- advising and implementing restoration works; and
- monitoring and reporting during restoration and aftercare periods to the PMC/TWG.

(vii) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Dalfad site following consultation with the Planning Authority and the Environmental Health Service, such monitoring schemes to be in place prior to the commencement of operations associated with this development;

(viii) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.

(ix) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 35 of the East Ayrshire Opencast Coal Subject Plan 2003, including the establishment and implementation of an appropriate independent monitoring regime.

(x) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;

(xi) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site;

(xiii) The undertaking of structural surveys of residential properties lying in close proximity to the proposed excavation areas, the identification of properties considered for survey being the subject of discussion and agreement with the Planning Authority, and only to be required where the property owners give consent for such surveys. Copies of the requisite surveys shall be made available to the Planning Authority and to respective property owners.

## **9. RECOMMENDATIONS**

**9.1 It is recommended Local Planning Committee endorses the view of the Head of Planning and Economic Development that planning**

application 09/0130/FL be approved subject to the conditions indicated on the attached sheet.

**9.2 It is recommended that the recommendation of the Local Planning Committee be subsequently referred to the Council for consideration in the determination of this planning application.**

**Alan Neish**  
**Head of Planning and Economic Development**

17 January 2011

FMF/HM

FV/DVM

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

1. Application Form, Plans and Environmental Statement and Supplementary Environmental Information.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of representation
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (2007)
7. Previous applications
8. Scottish Planning Policy
9. PAN50 and Annexes.
10. The Conservation (Natural Habitats, &c.) Regulations 1994

Any person wishing to inspect the background papers listed above should contact Miss Fiona Finlay on 01563 576798.

**Implementation Officer: Dave Morris**

EAST AYRSHIRE COUNCIL  
TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 10/0842/PP

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Location	Dalfad Surface Mine c/o Powharnal Surface Coal Mine, Skew Bridge, Cronberry
Nature of Proposal:	Mining of coal using surface mining methods with restoration to improved peatland and wet heath habitats
Name and Address of Applicant:	Scottish Coal Castlebridge Business Park, Gartlove Alloa Clackmannanshire FK10 9PZ
Name and Address of Agent	Philip Rayson Garan House 28 Main Street Muirkirk East Ayrshire KA18 3RA

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DPO's Ref: [FMF ]

The above application for PLANNING PERMISSION should be granted subject to the following conditions:

1. The development hereby permitted shall enure for the benefit of the applicant only, and the approved operations shall be completed within 3 years of the date of commencement of operations on the Dalfad site, or by such other time as may be formally agreed in writing with the Planning Authority.

REASON –The development is acceptable only because of the individual circumstances pertaining to the applicant and on a temporary basis.

2. The applicant shall give notice in writing to the Planning Authority of the commencement of operations on site, one month prior to their commencement.

REASON – To ensure that the development is undertaken in accordance with the submitted plans and conditions, and to ensure that appropriate monitoring systems are in place in the interests of environmental protection.

3. Prior to any works commencing on site, the applicant shall prepare a groundwater monitoring plan developed through prior discussion and agreement with SEPA and submitted to the Planning Authority for approval in consultation with SEPA. The scope of the plan shall include:
  - the collection and interpretation of baseline data;
  - the on-going collection and interpretation of data;
  - the reporting mechanism of this interpreted data; and
  - a mechanism to secure mitigation of impacts should this prove necessary.

Monitoring shall commence prior to excavation and should continue throughout the works and during the aftercare period of the site. The plan shall include a contingency that will be implemented in the event of a significant influx of groundwater into any of the voids being encountered. The monitoring shall also include the off-site water features, to help determine the possible impacts of future dewatering and backfilling. Appropriate monitoring of surface waters and discharges shall also be undertaken. Groundwater level and quality data shall continue to be collected on a regular basis for all available monitoring boreholes to allow the dataset to include seasonality variation prior to operations commencing on site. Any piezometers within the excavation area shall be correctly decommissioned to prevent a direct pathway to groundwater. The contingency plan shall be reviewed and updated during works with a final contingency plan being submitted to SEPA between 6 and 18 months prior to closure of the Dalfad development.

REASON: In the interests of environmental protection and prevention of pollution of watercourses.

4. Prior to the commencement of operations on site, the applicant shall submit to, and have approved by the Planning Authority in consultation with SEPA, a Site Pollution Prevention and Incident Plan (PPIP) which takes cognisance of all pertinent issues relating to the water environment.

REASON: In the interests of environmental protection and prevention of pollution of watercourses.

5. Prior to the commencement of operations on site, the applicant shall submit to, and have approved by the Planning Authority in consultation with SEPA, a detailed surface water management and monitoring plan.

REASON: In the interests of environmental protection and prevention of pollution of watercourses.

- 6.. Prior to the commencement of works on site, the applicant shall submit to, and have approved by the Planning Authority in consultation with the Powharnal Management Committee / Technical Working Group, details of proposed bund to prevent the dewatering of bog habitat adjacent to the Dalfad development site. The bund, as approved, shall thereafter be constructed to the satisfaction of the Planning Authority, prior to the commencement of soil stripping and excavation of the area beyond the bund. In addition the applicant shall establish a monitoring programme to monitor changes in water table and vegetation composition in adjacent bog habitat, to be agreed with Powharnal Management Committee / Technical Working Group prior to commencement of the development and thereafter implemented as agreed by the applicant. The programme will require to ensure the undertaking of baseline monitoring before development commences.

REASON: To prevent dewatering of peat bog habitat in the interests of environmental protection.

7. All demolition of structures, vegetation clearance, tree and forest felling and soil stripping shall be carried out outwith the bird breeding season (March to July inclusive). Where this is not possible, surveys for nesting birds shall be carried out and suitable mitigation measures put in place, as approved by the Planning Authority in consultation with the Powharnal Management Committee / Technical Working Group.

REASON – In the interests of environmental protection.

8. Prior to the commencement of operations on site, the applicant shall establish a comprehensive restoration programme and plan for the comprehensive Powharnal complex and shall submit the details of this programme and plan to the Planning Authority for approval. The required programme and plan shall be the subject of prior consultation with the Powharnal Management Committee / Technical Working Group. Any subsequent revisions to the restoration and aftercare plan as approved shall be the subject of approval of the Planning Authority in consultation with the Technical Working Group.

REASON – In the interests of environmental protection and to ensure a high standard of site restoration.

9. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.

REASON – In order to identify and record any archaeological resource that may be present on site, prior to disturbance or destruction by the proposed operations.

10. No operations shall commence on site until a Mining Waste Management Plan, in compliance with the provisions of The Management of Waste from Extractive Industries (Scotland) Regulations 2009, has been formally approved by the Planning Authority in consultation with SEPA.

REASON – To comply with statutory regulations in the interests of environmental protection.

11. Prior to the commencement of operations on site, the applicant shall submit details of the means of illumination of the working areas and this illumination shall be installed in a manner which minimises any potential nuisance. Operations shall not commence until the Planning Authority has approved the submitted details, with thereafter the details being implemented as approved.

REASON - In the interests of amenity.

12. Except in the case of emergency and with the prior agreement of the Planning Authority, the hours of operation for the Dalfad development site shall be confined between 0700 and 1600 hours Mondays through Saturday inclusive (24 hours working). No works shall take place outwith these hours or on Sundays or recognised Public Holidays with the exception of essential site maintenance works.

REASON – In the interest of residential amenity.

13. Except in the case of emergency and with the prior agreement of the Planning Authority, the dispatch of coal and other minerals from the site by road shall be confined to between the hours of 0800 and 1700 hours Mondays to Fridays inclusive. No transportation of coal by road shall take place on Saturdays or Sundays except in cases of emergency as indicated.

REASON – In the interest of residential amenity

14. No blasting operations shall take place within 500 metres of any occupied residential property, unless the developer is able to demonstrate a controlling interest in this property or has secured an appropriate legal agreement with respective property owners consenting to such operations.

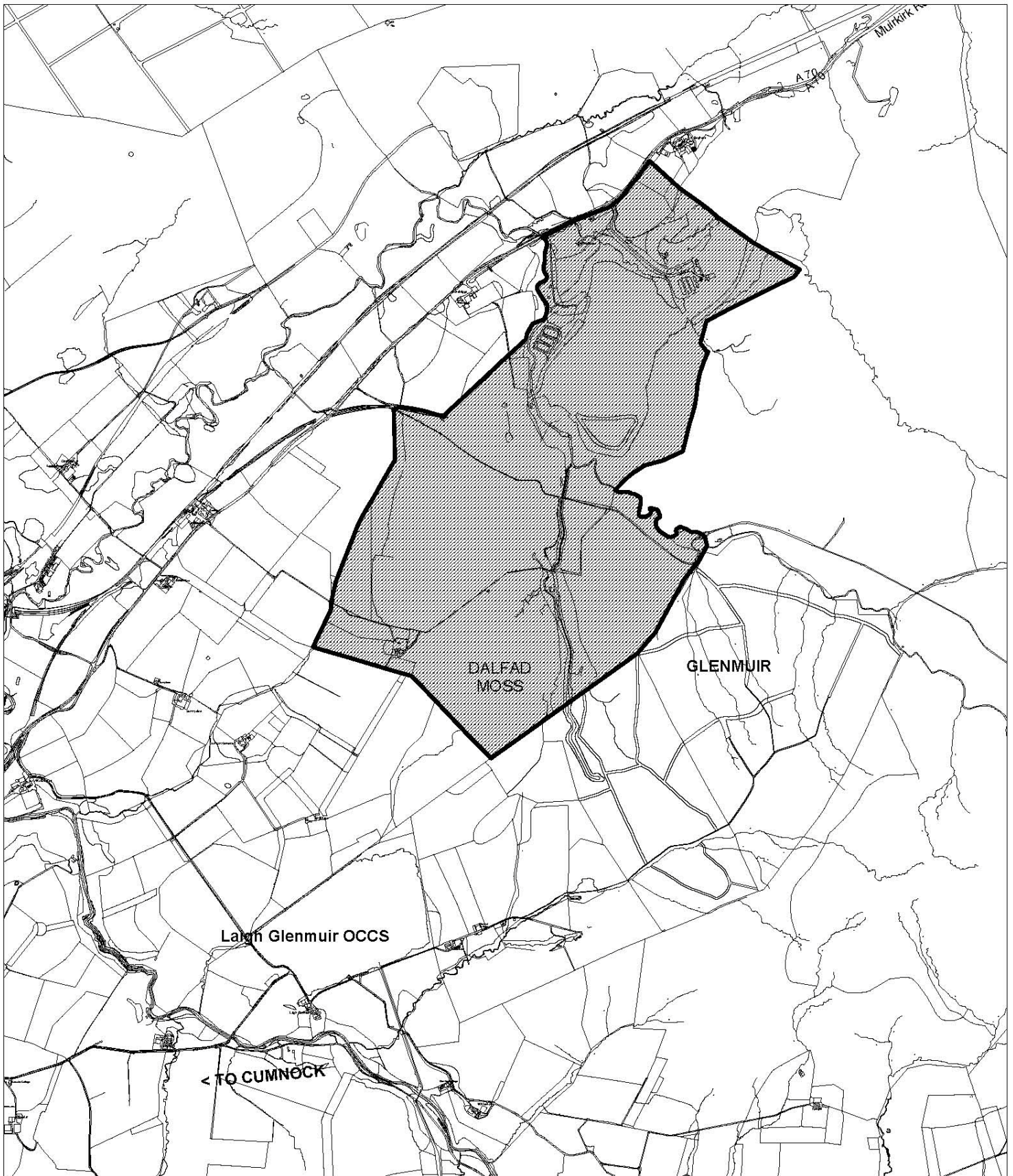
REASON – In the interests of residential amenity.

15. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 96/0496/FL dated 10 June 1998 as amended by planning consent 99/0761/FL dated 07 March 2008.


REASON: To retain effective planning control over the proposed development in accordance with current consents relating to the comprehensive Powharnal opencast site.

#### Reason for the Decision

It is recognised this application is in part contrary to the provisions of the development plan; in particular given the loss of peat bog. However, substantial mitigating measures have been proposed within the application. As a consequence, it is considered that the material considerations detailed within the report are such as to outweigh the departure from the development plan and the disbenefits associated with that departure. Consequently it is considered that the application can be approved subject to obligations secured through Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997.



Title/Location     **Dalfad OCC, Powharnal OCC**  
**Skew Bridge, Cumnock**  
**Application No. 10/0842/PP**

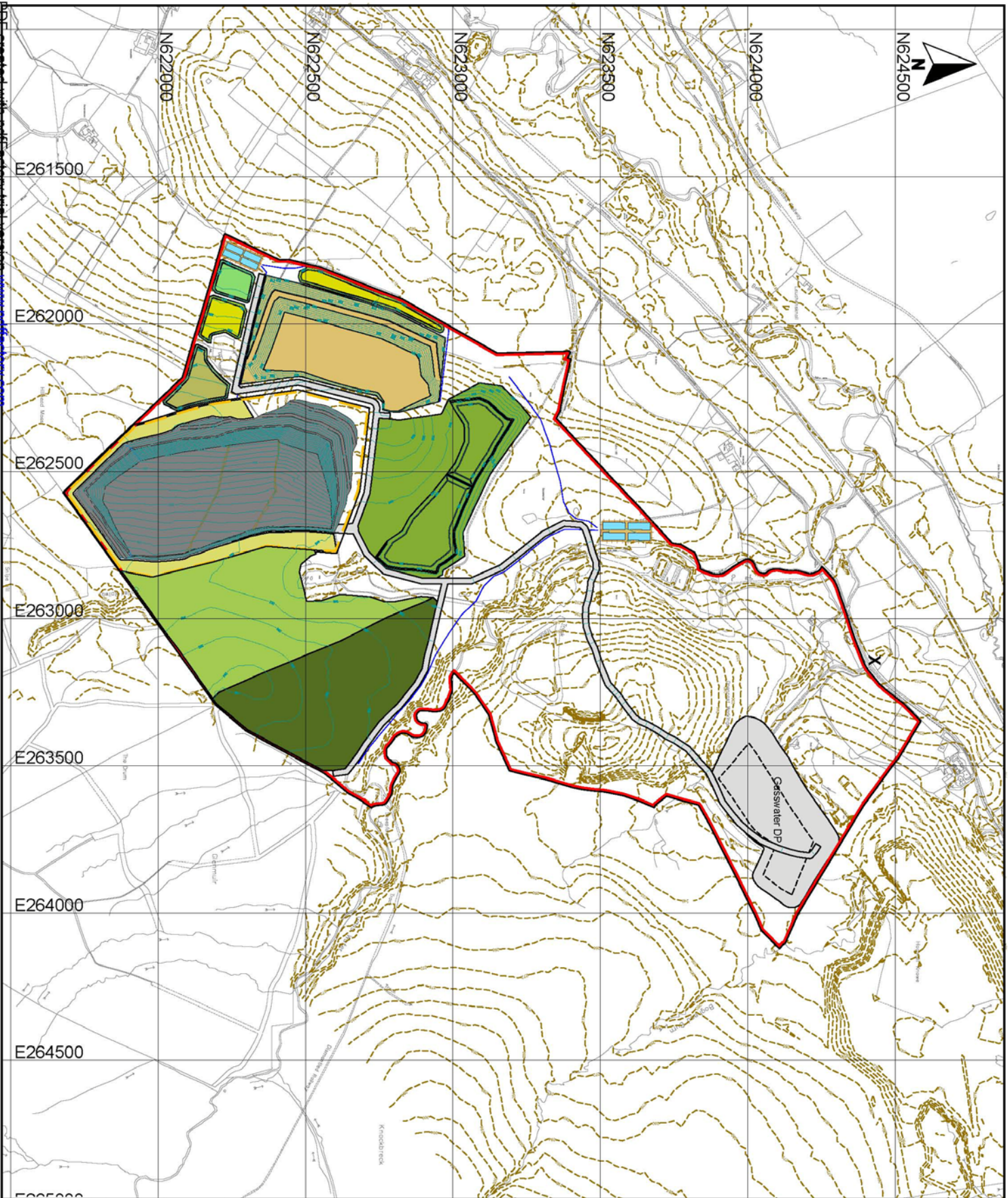
Key          **Application Site**

**East Ayrshire Council**

Department of Neighbourhood Services  
 Planning & Economic Development Service.  
 6 Croft Street  
 Kilmarnock KA1 1JB  
 Tel: (01563) 576790     Fax: (01563) 576774  
 E-Mail : [Planning@east-ayrshire.gov.uk](mailto:Planning@east-ayrshire.gov.uk)

**Com Date: 21/1/2011**





- Proposed Dalfad Site Boundary
- Limit of Excavation
- Top Soil Storage
- Sub Soil Storage
- Clay Storage
- Overburden Storage
- Excavation Area
- Peatland Restoration on Former Racecourse Area
- Peatland Restoration in Former Mineral Railway Cutting
- Temporary Storage Area for Peat Turfs and Bulk Peat
- Water Treatment
- Ditches
- OGL contours at 4m intervals
- Site Access

**Scottish Coal**

Scottish Coal Company  
 Castlebridge Business Park,  
 Glasgow  
 G4 0LW  
 Checkroom  
 Edinburgh  
 F10 9PZ  
 Tel: 01292 733800  
 Fax: 01292 733800  
 www.scottishcoalresources.co.uk

**Dalfad Surface Mine**

Figure 1.2  
 Indicative Site Layout  
 (OS Detail)

Project	DR
Drawn	ABP
Checked	FR
Date	07/08/10
Scale	1:12000
Drawing No.	25491

**SRG** **SCOTTISH RESOURCES GROUP**

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