

EAST AYRSHIRE COUNCIL

**SPECIAL SOUTHERN LOCAL PLANNING COMMITTEE
20 NOVEMBER 2007**

**06/1174/FL: PROPOSED EXTENSION OF EXISTING OPENCAST SITE TO
ALLOW THE RECOVERY OF 920,000 TONNES OF ADDITIONAL COAL
OVER TWO YEARS FOLLOWED BY RESTORATION OVER A FURTHER
YEAR AT GRIEVEHILL OPENCAST COAL SITE, NEW CUMNOCK**

APPLICATION BY ATH RESOURCES PLC

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for the extraction of approximately 920,000 tonnes of coal by opencast method in seams that are contiguous with those currently being worked in the existing consented Grievehill site. The extraction of coal would be at the rate of approximately 460,000 tonnes per annum, designed to extend operations at Grievehill for a period of two years

1.2 The proposed extension site covers 24.7 hectares with an excavation limit of 20.6 hectares. The amount of land take lying within the boundary of the SPA is approximately 21.8 hectares with excavations in the SPA amounting to 18.3 hectares. The proposed extension will not result in the need for any additional overburden storage areas and will operate under the terms and conditions of the original Grievehill site including hours of operation. Coaling will continue at an expected extraction rate of 10,000 tonnes per week and is anticipated to be completed within two years of commencement.

1.3 The coal reserve is present in 10 seams overlain by deposits of peat and clay. Old mine workings are present in a number of the coal seams, worked from the Mansfield Pit that ceased operations in 1913. There are also areas of former opencast working that extend to the eastern boundary of the current Grievehill working area that has removed coal from the surface seams.

1.4 The proposed Grievehill extension is to be worked in two phases that will be an extension of the current operations at the existing Grievehill site. The applicant has commenced a series of advance mitigation measures considered important to deliver mitigation for the Qualifying Species of the SPA. The initial phase of the Grievehill extension development would be to complete advance mitigation works adjacent to the application site boundary including the re-wetting of degraded SPA bog (total area 100 ha), predator control and grazing control. Such management measures would be ongoing for the duration of the proposed development.

1.5 The proposed development will also require the relocation of a section of the existing Glenmuckloch to Crowbandsgate coal conveyor which currently passes through the proposed Grievehill extension area. This alignment is to be altered such that the conveyor will route on the southern boundary of the proposed extension area. Peat would then be removed from the Phase 1 area which will then be transferred to donor areas within the existing Grievehill site or stored in windrows in the Grievehill site. The total volume of peat to be stripped from within the Grievehill extension area is 242,250 m³.

1.6 Overburden (some 12 million tonnes in total) will be stripped in a series of blocks and will be transported by dump truck and used to backfill previously worked out areas up to the agreed restoration landform. No further overburden storage areas will be required as a result of the proposed Grievehill extension. Coals exposed will be cleaned off, lifted and transported to the Garleffan site via the existing internal haul road for processing at the facility located there prior to onward dispatch. The coals won from the Grievehill extension site will primarily be transported via the consented conveyor system from Garleffan to Crowbandsgate railhead. The extraction areas will progress in a general easterly direction in to the Phase 2 area until the final stage of the development. When the final stage has been coaled out, the remaining final void will be backfilled with overburden currently in storage.

1.7 The proposed Grievehill extension would in the main utilise existing site infrastructure associated with the current Garleffan / Grievehill mining complex in terms of water treatment, haulage of coal, staff facilities and coal processing. It is proposed to use the same hours of operation and shift system as the consented Grievehill site i.e. between 0600 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No operations are to be undertaken on Sundays or Bank Holidays with the exception of routine maintenance and emergency works.

1.8 Progressive restoration is integral to the proposed development, with worked areas being backfilled with newly excavated overburden. The restoration design and methodology proposed by the applicant, adopted firstly at the Garleffan site and currently within the Grievehill site, will be used as a model for the restoration and management within the proposed Grievehill extension area. The extension area is to be restored to a mosaic of small wetland, mire/peat habitat, acid grassland and heath vegetation. The surface of the land would be restored to a similar level and gradient to its natural condition. The restoration works will be completed in consultation with the existing Technical Working Group established for the Grievehill site which includes representatives from SEPA, the Nith District Salmon Fishery Board, SNH and RSPB. Aftercare will be undertaken for a five year period following restoration of the site to achieve quality of restoration.

1.9 An Environmental Statement has been provided by the applicant which provides a comprehensive assessment of the environmental affects of the proposed Grievehill extension operations. Significant potential impacts have been identified on biodiversity and on the peat and peat hydrology of the

designated SPA / SSSI habitat. It is suggested in the ES that these temporary and long term impacts can only be mitigated by a combination of advance and ongoing measures that influence and are beneficial to the management aims of the SPA / SSSI as a whole.

1.10 The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the Section 75 Agreement.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and subject to Notification of Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Direction 2007.

2.2 The issue of the decision notice should further be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant and Scottish Natural Heritage in respect of the matters detailed in Paragraph 8.9 of this report.

3. SUMMARY OF ANALYSIS

3.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan but conflicts with the EAOCSP in respect of Policies MIN 3 (minor departure) and Policy MIN 27. 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 above, there are material considerations relevant to this application.

3.2 The proposals represent what would otherwise be a relatively small extension of an existing consented site at Grievehill and will involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts in terms of landscape and visual impact. It is considered that, given the relatively remote and sparsely populated area in which the Grievehill site is located, the proposal to extend the existing consented site will have no significant adverse effects on any local community. This is essentially borne out by the consultation process.

3.3 However, the greater part of the application site lies within the Muirkirk and North Lowther Uplands Special Protection Area and the Muirkirk Uplands Site of Special Scientific Interest and the proposed development is likely to have a significant effect on the qualifying interests of the site as advised by SNH, RSPB and by the applicant in terms of the Environmental Impact Assessment carried out in respect of the proposal. Since the submission of

the planning application in December 2006, the applicant has sought to address issues of concern raised through the consultation process and has on three occasions provided supplementary Environmental Information to promote a scheme that would provide sufficient mitigation measures to compensate for the disturbance to the SPA and Qualifying Species and the loss of blanket bog.

3.4 As the proposal could have a significant effect on an SPA, and is not directly connected with or necessary for the management of the site, the Council as a Competent Authority, requires to make an appropriate assessment of the implications for the site in view of that site's conservation objectives before deciding whether to grant consent. The Competent Authority in this matter should take account of the advice provided by SNH in making its assessment. Article 6 of the Habitats Directive indicates that the Competent Authority shall agree to development proposals only after ascertaining that they will not adversely affect the integrity of the site concerned. Subject to the imposition of conditions and obligations secured through a Section 75 Agreement, SNH has advised that the proposed development will not adversely affect the integrity of the SPA / SSSI. In this case, SNH is of the opinion that the impacts on the SPA can be mitigated, whereas the view of RSPB is that it can not.

3.5 There will be a direct loss of 17.88 ha of blanket bog habitat which forms a notified feature of the Muirkirk Uplands SSSI and the potential for further indirect impacts on adjacent blanket bog habitat. SNH states that the indirect loss could be suitably protected through the imposition of appropriate conditions and through habitat management specified in a Section 75 Agreement. This direct loss of the SSSI habitat has been considered acceptable by SNH in terms of its balancing duty.

3.6 Notwithstanding the specific development plan provisions which generally presume against development that has significant impacts on sites of international and national importance, it is considered that the proposed development, subject to conditions and obligations in a Section 75 Agreement, can be undertaken in a manner that will not result in an adverse affect on the integrity of the SPA. Advance and proposed mitigation measures, together with environmental management proposals are considered to be beneficial to the management aims of the SPA and SSSI and are measures that would not otherwise be delivered in the absence of the proposed development.

3.7 In simplistic socio-economic terms, the proposed Grievehill extension will safeguard the jobs of 84 employees and maintain indirect employment through site servicing and use of local contractors. However, this is considered to be a significant material consideration as demonstrated by the level of support that the proposed development has attracted from the local community, local contractors and community organisations including New Cumnock Community Council. It is considered that the loss of this level of employment to the local community would have a severe damaging impact in an area that already has a high level of unemployment and is already

economically depressed, as clearly demonstrated by the closure and loss of local facilities. Notwithstanding the qualified view that the proposed development will not have an adverse impact on the integrity of the SPA, there is a compelling argument for the proposed development on the basis of over-riding socio-economic benefits. In this regard, a departure from the development plan is considered to be justified.

3.8 In terms of the objections submitted, it is considered that while acknowledging the validity of points made in respect of conflicts with the development plan in relation to impacts on the SPA / SSSI, it is considered that the proposed development can be made acceptable with the imposition of appropriate conditions and by means of a Section 75 Agreement. The comments of RSPB in its objection are respected and reflect serious concerns regarding detrimental impact on the SPA and the uncertainty around the mitigation measures proposed. This is clearly at odds with the consultation response from SNH. However in this case the Planning Authority is required to take cognisance of the comments of SNH as a statutory consultee. SNH would also be a signatory to any Section 75 Agreement in respect of this matter and would clearly require to be satisfied by the provisions of such an Agreement to secure the necessary mitigation and management measures to prevent adverse impact on the integrity of the SPA.

3.9 In respect of all relevant matters and material considerations to be taken into account, it is considered that application should be approved subject to appropriate conditions and the securing of an amendment to the existing Section 75 Agreement to embrace the following matters:

Section 75 Agreement

(i) The undertaking of additional hydrological assessment works in the vicinity of the Glenmuir Fault including drilling of additional boreholes, non-intrusive survey works and the establishment of baseline groundwater monitoring network prior to excavations commencing. This shall include deep groundwater monitoring wells with response zones in the bedrock aquifer around the boundary of the development site outwith the excavation area (on both sides of the Glenmuir Fault) and shallow groundwater monitoring wells with response zones in the peat deposits. Following these additional works, the conceptual hydrogeological model for the Grievehill Extension shall be reviewed and refined as appropriate and water management and monitoring plans reviewed and amended as necessary. The assessment of risks to private water supplies shall also be updated in this regard. The results of the further investigations works, including all factual data, together with the updated hydrogeological conceptual model shall be submitted to the Planning Authority and SEPA for information.

(ii) The securing of a Water Monitoring Plan. The scope of this scheme shall be the subject of prior consultation with the Planning Authority and SEPA and shall include the installation of suitable water monitoring points, e.g. boreholes; the collection of baseline data and its interpretation; the on-going

collection of data as appropriate and its interpretation; the reporting mechanism of this interpreted data; and a mechanism to secure mitigation of impacts should this prove necessary. Consideration shall be given to including off-site monitoring of nearby private water abstractions as appropriate in the Water Monitoring Plan.

(iii) The securing of the proposed mitigation measures including the production of a Habitat Management Plan as outlined in the consultation response from Scottish Natural Heritage dated 22 October 2007 and as detailed in Appendix 2 of that letter.

(iv) A requirement that the restored landform must mitigate the disruption of the SPA and SSSI. This will be through an agreed habitat management plan approved by the Planning Authority in consultation with the Garleffan / Grievehill Technical Working Group.

(v) The securing of contributions to the Minerals Trust Fund at the agreed Contribution Rate in respect of the coals won from the proposed Grievehill extension.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development the application will not require to be referred to the Principal Planning Committee because that would not be a significant departure from the development plan.

Alan Neish
Head of Planning, Development and Building Standards

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.

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APPLICATION BY ATH RESOURCES PLC

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 full planning application which is to be considered by the Local Planning Committee under the scheme of delegation because it represents an extension to an existing opencast site, is contrary to policy and is recommended for approval.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located approximately 4 km north east of New Cumnock and relates to the existing operational opencast coal site at Grievehill which is part of the Garleffan-Grievehill mining complex operated by ATH Resources plc. The application site extends to approximately 24.7 hectares in area and lies to the east of the existing operational Grievehill site which currently extends to approximately 118 hectares. The application site would extend the current operations of the Grievehill site in a general easterly direction.

2.2 The application site comprises mainly of semi-natural areas of blanket bog, acid grassland and heath and predominantly lies within the Muirkirk and North Lowther Uplands Special Protection Area (SPA) and also lies within the Muirkirk Uplands Site of Special Scientific Interest (SSSI). The topography within the application site has a gentle gradient dipping to the south and west towards the existing Grievehill site. The land falls from 280 metres AOD in the east to 250 metres AOD on the boundary of the existing site. The application site is crossed by the Shiel and Meadow burns

2.3 Permission for the extraction of 0.5 million tonnes of coal by opencast method from the existing Grievehill site was granted on 16 June 2005 under planning application 98/0452/FL with operations on site commencing shortly after the issue of the planning consent. The Grievehill site is connected to the Garleffan site by an internal haul road. All coal extracted from the Grievehill site is currently hauled to the Garleffan site where it is then taken to the Crowbandsgate rail terminal via an overland conveyor system for onward

transportation by rail or via the A76 trunk road for onward transportation to local domestic markets. No more than 10% of total production is allowed to be transported by road to local markets.

2.4 Proposed Development: Permission is sought for the extraction of approximately 920,000 tonnes of coal by opencast method in seams that are contiguous with those currently being worked in the existing consented Grievehill site. The extraction of coal would be at the rate of approximately 460,000 tonnes per annum, designed to extend operations at Grievehill for a period of two years

2.5 The proposed extension site covers 24.7 hectares with an excavation limit of 20.6 hectares. The amount of land take lying within the boundary of the SPA is approximately 21.8 hectares with excavations in the SPA amounting to 18.3 hectares. The proposed extension will not result in the need for any additional overburden storage areas and will operate under the terms and conditions of the original Grievehill site including hours of operation. Coaling will continue at an expected extraction rate of 10,000 tonnes per week and is anticipated to be completed within two years of commencement.

2.6 The coal reserve is present in 10 seams overlain by deposits of peat and clay. Old mine workings are present in a number of the coal seams, worked from the Mansfield Pit that ceased operations in 1913. There are also areas of former opencast working that extend to the eastern boundary of the current Grievehill working area that has removed coal from the surface seams.

2.7 The proposed Grievehill extension is to be worked in two phases that will be an extension of the current operations at the existing Grievehill site. The applicant has commenced a series of advance mitigation measures considered important to deliver mitigation for the Qualifying Species of the SPA. The initial phase of the Grievehill extension development would be to complete advance mitigation works adjacent to the application site boundary including the re-wetting of degraded SPA bog (total area 100 ha), predator control and grazing control. Such management measures would be ongoing for the duration of the proposed development.

2.8 The proposed development will also require the relocation of a section of the existing Glenmuckloch to Crowbandsgate coal conveyor which currently passes through the proposed Grievehill extension area. This alignment is to be altered such that the conveyor will route on the southern boundary of the proposed extension area. Peat would then be removed from the Phase 1 area which will then be transferred to donor areas within the existing Grievehill site or stored in windrows in the Grievehill site. The total volume of peat to be stripped from within the Grievehill extension area is 242,250 m³.

2.9 Overburden (some 12 million tonnes in total) will be stripped in a series of blocks and will be transported by dump truck and used to backfill previously worked out areas up to the agreed restoration landform. No further overburden storage areas will be required as a result of the proposed

Grievehill extension. Coals exposed will be cleaned off, lifted and transported to the Garleffan site via the existing internal haul road for processing at the facility located there prior to onward dispatch. The coals won from the Grievehill extension site will primarily be transported via the consented conveyor system from Garleffan to Crowbandsgate railhead. The extraction areas will progress in a general easterly direction in to the Phase 2 area until the final stage of the development. When the final stage has been coaled out, the remaining final void will be backfilled with overburden currently in storage.

2.10 The proposed Grievehill extension would in the main utilise existing site infrastructure associated with the current Garleffan / Grievehill mining complex in terms of water treatment, haulage of coal, staff facilities and coal processing. It is proposed to use the same hours of operation and shift system as the consented Grievehill site i.e. between 0600 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No operations are to be undertaken on Sundays or Bank Holidays with the exception of routine maintenance and emergency works.

2.11 Progressive restoration is integral to the proposed development, with worked areas being backfilled with newly excavated overburden. The restoration design and methodology proposed by the applicant, adopted firstly at the Garleffan site and currently within the Grievehill site, will be used as a model for the restoration and management within the proposed Grievehill extension area. The extension area is to be restored to a mosaic of small wetland, mire/peat habitat, acid grassland and heath vegetation. The surface of the land would be restored to a similar level and gradient to its natural condition. The restoration works will be completed in consultation with the existing Technical Working Group established for the Grievehill site which includes representatives from SEPA, the Nith District Salmon Fishery Board, SNH and RSPB. Aftercare will be undertaken for a five year period following restoration of the site to achieve quality of restoration.

2.12 An Environmental Statement has been provided by the applicant which provides a comprehensive assessment of the environmental affects of the proposed Grievehill extension operations. Significant potential impacts have been identified on biodiversity and on the peat and peat hydrology of the designated SPA / SSSI habitat. It is suggested in the ES that these temporary and long term impacts can only be mitigated by a combination of advance and ongoing measures that influence and are beneficial to the management aims of the SPA / SSSI as a whole.

2.13 The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the Section 75 Agreement.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division indicates that it has no objections to the proposed development as 90% of the coal extracted will be removed from the site via the Glenmuckloch conveyor to the Crowbandsgate railhead.

Noted.

3.2 The Scottish Environment Protection Agency has made the following comments:

(i) Flooding - SEPA is in receipt of the Environmental Statement in support of the above application and, with reference to the location plan, SEPA has no record of flooding or flood risk in this area. Furthermore, the only record of flooding that SEPA holds for the immediate catchment is in New Cumnock, from the River Nith during the flood event on 12 December 1994 (Strathclyde Regional Council Water Services Committee, January 1995) although there are records of flooding in Cumnock from the Lugar Water during the same event. It is recommended that discharge from the site is suitably controlled to ensure that there is no additional discharge to the catchments that would adversely affect flood risk elsewhere while there should be no transfer of flow between catchments that would adversely affect flood risk. It is noted that, post-development, minor watercourses will be reinstated in line with best practice.

As stated within the Environmental Statement, no additional provisions for discharging water from the proposed extension area would be required. Existing treatment areas at Grievehill and Garleffan would be utilised in the event of permission being granted within the constraints of the existing discharge consent conditions. As such flood risk would not be adversely affected should the development proceed.

(ii) Hydrogeology - The ES has identified that the most significant risk to groundwater posed by the scheme is the potential for acid mine drainage to be generated. Mitigation against the potential risk of release of acid mine drainage during operation is planned and welcomed, in the form of a scheme to pump such water to the neighbouring Garleffan Quarry and treat it there prior to discharge to the environment. It is noted and welcomed that the potential risk of acid mine drainage by groundwater rebounding in the backfill has been assessed using the methodology developed for SEPA.

Acid mine waters have been encountered in historic mine workings at the site and a marine band has been identified in the strati-graphical sequence. Both these factors indicate the potential for acid rock drainage to occur. However, the sulphur concentration in the coal seams is below the threshold where significant concentrations of List I and II metals in the acid rock drainage would be expected. On the basis of the assessment and data as presented, SEPA agree it is reasonable to conclude that leaching of List I metals will not

occur. However, limited confidence can be placed in the conclusion that significant leaching of List II metals will not occur, since elevated List II metals have been detected during recent water sampling at the site. Obtaining information on groundwater quality within areas already backfilled at the existing OCCS site would give greater confidence that significant acid rock drainage issues will not arise in future.

The potential risks to the local hydraulic regime that have been identified are considered less significant as active dewatering is not anticipated to be required and because the surface water features do not appear to be in direct hydraulic connection with the bedrock aquifer. It is agreed that the available evidence suggests that active dewatering of the void may not be required. However, faults and historic mine workings may form preferential pathways for groundwater movement. Thus, the potential for encountering discrete groundwater discharges into the void cannot be ruled out.

Further assessment of potential risks to nearby water abstractions, both in terms of water resource and quality, is required.

With regard to the SEPA request for more specific locations of abstractions, the applicant has stated in response that a review of the original WA Environmental Statement Section 9 (Water Resources) identifies the following:

"The BGS GeoIndex database records the presence of a large number of boreholes in the area, however the database indicates that there are no recorded water wells or abstraction boreholes on or within 2km of the site. East Ayrshire Council Environmental Health Department has indicated that its private water supply records are currently in the process of being checked and updated. However, existing historical records have logged the following premises surrounding the site as having a private supply: Polquheys, High Polquheys, Rottenyard, Lochhill, Lowes, Calton, Watston, Borland Mains, Meikle Auchengibbert, Avisyard, High Glenmuir, Guelt, Kyle, Glen and Meikle Garclaugh."

Many of these locations are greater than 3km from the proposed site and have therefore not been considered within the ES. To date, it is understood that the opencast operations at Grievehill have not affected the water supply at the abstractions identified and this has not been raised as an issue by any of the landowners involved. The applicant has stated that it is important to clarify that the existing workings within Grievehill are essentially dry, with very little groundwater encountered in the void. For all abstraction points, with the exception of Meikle Garclaugh and Glen, the existing opencast void is located in closer proximity than the proposed extension. It is anticipated that the proposed extension would require minimal or no dewatering because there is little evidence of groundwater in the void on the boundary of the proposed extension and the current void would be largely

backfilled as excavations progress into the extension. In addition the depth of excavation within the extension is significantly shallower than the main void at Grievehill, by approximately 20m (246m AOD existing void compared to 270m at the deepest point within the proposed extension).

The potential for risk associated with the proposal for abstraction wells with the Meikle Garclaugh land holding (see Section 4 below) has been assessed by the applicant and the results discussed with the relevant property owner and his advisors.

(iii) Recommendations - The water management plan being developed for the site should include contingency plans that will be implemented in the event of a significant influx of groundwater into the void being encountered. All relevant CAR permits must be in place prior to works commencing.

The applicant has been advised of these recommendations and is content to take these on board.

A suitable groundwater monitoring network must be established prior to excavation commencing. This shall include deep groundwater monitoring wells with response zones in the bedrock aquifer around the boundary of the site outwith the excavation area (at least 2 on southern boundary and 1 on north eastern boundary) and shallow groundwater monitoring wells with response zones in the peat deposits. Appropriate surface water and discharge monitoring points must also be established. An appropriate monitoring plan shall be developed. It is recommended that groundwater level monitoring is undertaken in all available boreholes at least monthly and that groundwater quality monitoring of all available boreholes is undertaken quarterly. Appropriate monitoring of surface waters and discharges will also be required. SEPA welcomes the use of relevant guidance and codes of practice in relation to protection of the water environment.

The applicant's consultants have identified that it would be prudent to install monitoring boreholes at agreed locations on the southern side of the Glenmuir Fault prior to the commencement of excavation works. It is proposed that four boreholes are installed to a depth equivalent to the base elevation of the proposed opencast excavation. Monitoring of the boreholes to determine groundwater levels would be undertaken on a regular basis. A full and comprehensive surface water and discharge point monitoring scheme (developed in conjunction with SEPA) is already in place at the Garleffan/Grievehill complex. As no new discharge points will be required this scheme will also be applicable in the event that the proposed development proceeds, only minor additions to this plan will be required to accommodate changes to the surface water drainage systems.

(iii) Ecology -SEPA is satisfied with the parts of the application dealing with watercourses, i.e. the reinstatement plan is satisfactory and the small catchment areas mean that the temporary loss of these will have no significant impact downstream

Noted.

The proposal to construct a clay bund along the extraction boundary to protect adjacent areas of deeper peat and mire is welcome. However, the success of this should be kept under review and further work carried out if required.

A similar structure has been successfully constructed in order to protect Low Moss which is adjacent to the Laigh Glenmuir OCCS. SNH as part of its consultation response has indicated that the proposed clay bund should be the subject of a condition requiring the details of the proposed hydrological barrier to be submitted for approval by the Planning Authority prior to the commencement of works on site.

(iv) Mitigation - SEPA supports any opportunities to enhance the site for nature conservation especially the wader scrapes, rush management, rewetting of mire habitats and thinning of the 7.5 ha of conifer plantation and 3.5 ha of Guelt Young Wood.

Noted.

In relation to the continuing and planned grazing control it is unclear whether this will involve shepherding of stock to reduce the possibility of reduced stock grazing in favoured areas.

The proposed grazing control involves the reduction of grazing in areas which have been overgrazed, eliminating grazing at times when land is sensitive to poaching from livestock and during the bird breeding season. Such grazing control will take advice from ecological consultants and from the existing Garleffan / Grievehill Technical Working Group which includes representation from SNH and RSPB.

(v) Restoration – SEPA is disappointed that translocation of wetland habitats within the proposed extension area is already being seen to be the solution to the loss of these habitats in the first place, with no data or information on similar successful translocation schemes being provided. The translocation of wetland habitats is prone to failure and in this case these habitats are vital for the qualifying SPA species.

Whilst SEPA's disappointment is noted, it is clear that with any surface mineral extraction, surface vegetation and habitat must be disturbed in order to access and exploit the relevant mineral. In the case of the proposed Grievehill extension, the extraction area (and hence the area disturbed) is minimised through:

- *the use of existing infrastructure at the Garleffan/Grievehill complex; and*
- *the careful design of the site extraction area which facilitates the recovery of the mineral but minimises the extent of mire habitat disturbed.*

Fundamentally, however, coal can only be worked where it is found and substantial quantities of high grade coal are located within very economic ratios at Grievehill. In order to access this coal, inevitably some habitat must be disturbed. Nevertheless, the importance (as listed features of the SSSI) of these habitats has been identified in the Environmental Statement (notwithstanding the presence of relic drainage systems within the blanket bog at Grievehill). In mitigation, the applicant has stated that detailed translocation plans have been developed and translocation trials have also already been undertaken on site to inform and develop the approach to restoration. The trial plots have been inspected by SNH and in essence have removed peat habitat and underlying peat to a depth of 0.5m and replaced on a receptor area with the turf intact with the vegetation at the surface. Each section of turf can be carefully laid to ensure that the joins can be established with minimal additional disturbance. The proposed restoration design combines these translocation techniques with control of the water level on the receptor surface. The details of these plans and trials have been submitted by the applicant as supplementary information. It is noted however, that SEPA, SNH and RSPB have strong doubts over the potential success of the translocation proposals.

Notwithstanding the acknowledged importance of the habitat to the SSSI, the applicant disagrees with the comment that these habitats are vital for the qualifying SPA species. Surveys over two years have demonstrated that the operations within the extension area are likely to result in the temporary displacement of one pair of golden plover, and their ornithologist's view is that this pair can be accommodated on adjacent undisturbed land where management works are improving the habitat for this species. As a consequence, no adverse impact on the integrity of the SPA is expected. This is confirmed in the consultation response from SNH.

Under the UK BAP neutral grassland (broad habitat), acid grassland (broad habitat), blanket bog (priority habitat), upland heath (priority habitat) are all listed and they all appear in the Ayrshire LBAP and are therefore part of the Scottish Biodiversity Strategy (SBS). Recently UKBAP targets have been amended and include in order of priority:

- Maintain Current Extent, the aim is no reduction in area of BAP habitat (no net loss and overall integrity sustained) based on the estimate at time of plan publication, or the current estimate, whichever is greater. It is not guaranteed that the translocation proposed in the scheme will be successful and loss could be the result.

The applicant has stated that whilst every effort will be made to ensure that there will be no net loss of mire habitat, it should be acknowledged that the proposal involves only 18 ha of blanket bog amongst an SPA of 26,000 ha and an SSSI of 19,000 ha. Mitigation proposals would result in the enhancement of 150 ha of mire habitat historically degraded by ditching through re-wetting. The restoration design identifies that the majority of the proposed extension area would be returned to mire and wet heath habitat, with the specific objective to provide good quality habitat for upland waders from the start, and to progressively increase its value as plant species colonise. The proposed development provides an opportunity to develop ways of working that allow the translocation of species and the recreation of bog habitats.

- Achieving Condition, the aim is to maintain condition (where it is good) and improve the condition (where it is poor) of existing BAP habitat resource, compared to the baseline i.e. the amount of resource in good condition at plan publication or currently, whichever is greater.

The habitats within the proposed site have been degraded by drainage for agricultural improvements and by over grazing in the past. The applicant considers that when taking account of the mitigation measures proposed, including habitat enhancement, re-wetting and the translocation of blanket bog, the proposal is not in conflict with this UKBAP target.

- Restoration, to restore area of degraded habitat or remnant elements to a state where it is considered to be BAP habitat in good condition.

The mitigation proposals will result in the enhancement of 150ha of degraded blanket bog and so is not in conflict with this UKBAP target.

The rewetting process will contribute to the third target listed above but the overall proposal could negatively impact on targets one and two as listed above.

Information submitted demonstrates how together with the mitigation proposed, the restoration of the site will result in an increased biodiversity. In particular, restoration design seeks to increase numbers of upland waders through the creation of wader scrapes and areas of open water, habitats that are currently uncommon in the area.

(vi) General comments - All contaminated runoff from the overburden areas must be collected, stored, treated and disposed of in accordance with the terms of existing consents granted to Scottish Coal by SEPA for the site. The applicant must ensure that the existing treatment facilities and the associated infrastructure have the available capacity to manage the potential additional volumes of runoff which may arise from these new soil storage areas, especially during periods of inclement weather. It is the responsibility of the applicant to fully liaise with SEPA in respect of these matters.

Any works, inclusive of vehicle movement (crossing points) in and around the bed or banks of any watercourse must be discussed with SEPA, particularly if there is a requirement to divert or culvert any of the small streams. The Water Environment (Controlled Activities) (Scotland) Regulations 2005 were implemented on 1 April 2006. Any engineering works proposed at the site would require to be authorised under these regulations.

The applicant is aware of the requirements of SEPA in respect of the stated matters.

(v) Further Hydrogeological Comments - The proposed OCCS extension is situated to the northwest of the Glenmuir Fault and will extract coal from seams within the Limestone Coal Group. The Meikle Garclaugh abstractions are located to the southeast of the Glenmuir Fault and abstract from sandstone strata mapped as Kinnesswood Formation. A key aspect of the local hydrogeological regime is the hydraulic behaviour of the Glenmuir Fault and thus the potential for hydraulic connection between the two aquifer blocks. It is agreed that the Glenmuir Fault may actually be a fault zone, comprising major and minor faults with associated jointing. It is plausible that hydraulic conductivities may be higher in the fault zone if fracturing is locally more intense. The OCCS extension will be up to 52m deep, although the average depth is reported to be 28m. Initial monitoring suggests that groundwater levels in the area of the proposed extension are around 20mbgl. Therefore, the void will extend below the water table. The existing OCCS has a maximum void depth of around 90m. Observed groundwater ingress into the existing void is reported to be limited. Although the existing void is located further from the Glenmuir Fault than the proposed extension, it is notable that several mapped faults oriented approximately perpendicular to the Glenmuir Fault intersect the existing mine area and have not been associated to date with major groundwater ingress.

Noted.

SEPA agrees that it is possible that the greater proximity of the extension area to the Glenmuir Fault zone may potentially allow groundwater ingress at higher rates than in the existing void owing to the potential for more intense rock fracturing in the vicinity of the fault zone. However, there is insufficient factual evidence available to SEPA at present to confirm whether or not this is likely. Estimations of rates of potential groundwater ingress into large excavations in fractured aquifers cannot reliably be made using borehole

yields by comparing the open areas of boreholes with face areas of excavations. This is because of the differences in geometry and because groundwater flow is likely to be concentrated along a number of discrete preferential flow paths. However, hydraulic properties calculated from borehole pumping tests can be used in the appropriate calculations to estimate potential inflows to voids. SEPA agrees that the backfill may be unlikely to have the same hydraulic properties as the bedrock aquifer. However, it cannot be assumed that the backfill will act on the local hydraulic regime in an identical manner as an open void.

Noted.

The applicant's consultants indicate that the void is approximately 32m from the Glenmuir Fault, and approximately 90m from the fault at the base of the void. Insufficient factual information has been presented to date for SEPA to comment on whether the location of the fault relative to the proposed mine extension as shown on the consultant's figures, and thus the assumed offset distances for the void from the fault, are factually correct. SEPA cannot comment at this time as to whether the estimated offset distances of 32m at surface and up to 90m at depth are sufficient to prevent significant hydraulic connection between the void and the fault zone.

Noted.

SEPA welcome the proposals by the applicant to undertake additional investigation works in the vicinity of the Glenmuir Fault zone, including drilling of additional boreholes, non-intrusive survey works and baseline groundwater monitoring. It is understood that these works will be undertaken by the applicant in association with Geodivining International, including drilling of additional boreholes, non-intrusive survey works and baseline groundwater monitoring. These additional works are welcomed by SEPA. Consideration should be given to including groundwater monitoring points on both sides of the Glenmuir Fault zone to allow any significant differences in groundwater levels and/or quality between the aquifer blocks to be identified and characterised.

The proposals by the applicant, which are supported by SEPA, can be secured through an obligation in a Section 75 Agreement.

Following these additional works, the conceptual hydrogeological model for the OCCS extension and surrounding area should be reviewed and refined as appropriate. Additionally, the water management and monitoring plans for the site should be reviewed and modified as necessary

Noted.

It is requested that the results, including all factual data, of the proposed investigation works, plus any available factual data from previous investigative works in this area, together with the updated hydrogeological conceptual

model are provided to the Council and SEPA for information. The applicant has submitted additional information regarding the locations and types of existing private water supplies in the vicinity of the site. The assessment of risks to the identified supplies should be revised and updated as required following review of the hydrogeological conceptual model after the additional investigation has been undertaken.

The requirements of SEPA can be secured through an obligation in a Section 75 Agreement.

It is understood that the existing Section 75 Condition for the existing OCCS will also cover the proposed extension. It is recommended that the East Ayrshire Council ensures this is the case.

The existing Section 75 Agreement will be amended to embrace the proposed Grievehill Extension, ensuring that existing obligations are also tied to this area.

SEPA considers that the applicant should be required to submit, for approval of the Council, in consultation with SEPA, a water management plan for the proposed extension. This plan should include details of the proposed strategy for managing groundwater and surface water ingress into the void, including contingency plans that will be implemented in the event of a significant influx of groundwater into the void being encountered.

The requirements of SEPA can be secured through a condition in any consent granted for the proposed development.

SEPA considers that the appellant should be required to submit, for approval of the Council, in consultation with SEPA, a Water Monitoring Plan. The scope of this scheme should be agreed with SEPA and the Council and should include for the installation of suitable water monitoring points, e.g. boreholes; the collection of baseline data and its interpretation; the on-going collection of data as appropriate and its interpretation; the reporting mechanism of this interpreted data; and a mechanism to secure mitigation of impacts should this prove necessary. Consideration should be given to including off-site monitoring of nearby private water abstractions as appropriate in the Monitoring Plan such that data is available should the Section 75 Condition be required to come into force.

The requirements of SEPA can be secured through an obligation in a Section 75 Agreement.

The applicant has submitted additional information regarding water quality issues associated with the existing OCCS. Although the data provided is of potential relevance for the operational phase of the OCCS extension, the potential water quality issues that may arise as groundwater levels rebound through the backfill on cessation of mining must also be considered. Prior to mineral extraction commencing, a method statement detailing the procedure

for the identification, isolation and treatment of any substrate that pose a potential risk to groundwater quality, and a contingency plan for the isolation of any ferruginous discharges that may appear after restoration of the site, shall be submitted shall be submitted to the Council for approval, in consultation with SEPA. In the event of the appearance of any ferruginous discharges following the restoration of the site or significant changes to any existing local mine water discharges, the applicants, or their successors, shall carry out all necessary measures, as identified in the approved contingency plan.

The requirements of SEPA can be secured through a condition in any consent granted for the proposed development.

SEPA would therefore confirm that provided the issues as detailed above can be managed through the provision of suitably worded planning conditions and that in due course the relevant information is provided for assessment and critique, **SEPA has in principle no objection to the granting of planning permission for the extension to the opencast operations at Grieve Hill.**

Noted.

3.3 Scottish Water and Scottish Power have no objections to the proposed development.

Noted.

3.4 Scottish Natural Heritage objects to the proposal as currently submitted for the following reasons:

(i) European Interests - Muirkirk and North Lowther Uplands Special Protection Area (SPA): SNH's advice is that this proposal is likely to have a significant effect on the qualifying interests of the site. SNH objects to the proposal as submitted. However SNH would further advise East Ayrshire Council that on the basis of the appraisal carried out to date, that if the proposal is undertaken strictly in accordance with the following conditions and legal agreement, then the proposal will not adversely affect the integrity of the site:

- A Section 75 Agreement should be entered into by the developer, landowner(s)/occupiers as required, the planning authority and SNH and overseen by a Technical Working Group. This Agreement should be secured prior to the issue of any planning permission.
- A condition should be applied specifying that no ground stripping work should take place within the main bird breeding season for ground nesting birds (March to August inclusive) unless with the agreement of the Planning Authority.
- A condition should be applied that the restored landform must mitigate the disruption of the SPA and SSSI. This will be through an agreed habitat

management plan agreed by the Planning Authority in consultation with the technical working group.

(ii) National Interests - Muirkirk Uplands Site of Special Scientific Interest (SSSI): There has been no information presented regarding the indirect impacts on the adjacent SSSI blanket bog habitat. SNH objects to the proposal as submitted, but this objection could be overcome by the following condition:

- A full method statement should be produced prior to the commencement of operations regarding the protection of adjacent blanket bog habitat detailing the construction methods and materials for the wall/bund to prevent indirect impacts of drying of the bog and overseen by an Ecological Clerk of Works. This should be approved by East Ayrshire Council in consultation with SNH.

SNH's advice is that this proposal is likely to have a significant effect on the qualifying interest(s) of the Muirkirk & North Lowther Uplands Special Protection Area (SPA) for the following reasons:

- There will be a direct loss of one golden plover nest site (a qualifying species of the SPA) from the extension site and potentially another four from the 500m buffer area due to disturbance for a temporary period.
- There could be a temporary loss in the distribution and extent of habitat for hen harriers

SNH's view is that, as a consequence East Ayrshire Council is required to undertake an appropriate assessment of the implications of the proposal for the site in view of the site's conservation objectives for its qualifying interests. In relation to this SNH offers the following advice:

1. Long term implications of the proposals: The applicant has produced information on restoration of the proposed extension site aimed at maintenance of qualifying bird species populations and maintenance of the quality and quantity of upland habitats and their upland bird assemblage. Habitats capable of supporting the qualifying interest species such as hen harrier and golden plover may be recreated in the manner described in the applicants' restoration plans. SNH advises therefore, that the proposed extension will result in temporary loss of habitat extent for these species during 2 years operations and a further 1 year restoration.

Noted.

2. Implications on golden plover: The applicant has produced information on mitigation in relation to impacts on golden plover and other matters. This information is contained within their Environmental Statement and other documents such as 'Proposals For Habitat Management & Enhancement Works Within The Muirkirk & North Lowther Uplands Special Protection Area', 'Habitat Rewetting Scheme' (February 2007) and 'Supplementary Information

dated September 2007'. In addition the applicant has provided further information (copy letter from consultants E3 to ATH 19 September 2007), particularly concerning the capacity of the area around the proposed extension to accommodate additional golden plover territory. The documents correctly identify management that will result in the creation of optimum habitat conditions for golden plover. The applicant has supplied information on the surrounding habitat and the current golden plover population distribution that shows there is likely to be capacity for additional golden plover to disperse to such areas. In addition the applicant has agreed in recent contacts with SNH, that delivery of the measures in these documents will be overseen by a specialist in golden plover ecology. This package of measures will be enforced through legally binding planning agreement. SNH therefore advises that, on the basis the above information, mitigation is possible which will ensure there is no adverse impact on the integrity of the site and this will need to be delivered under the terms of a planning agreement.

Noted.

3. Implications on hen harrier: Information in the documents quoted above from the applicants and from SNH's own surveys show hen harrier have not nested within the development site or within 2km of it for over 5 years therefore this temporary loss of habitat extent may not be significant. In addition, despite much of the SPA now being under positive management for hen harriers, the population is declining indicating that suitable habitat is not constraining the bird numbers. Reports from SNH's contractors undertaking hen harrier survey indicate disturbance or persecution may be leading to this decline. The applicant has agreed therefore to undertake surveillance of key parts of the SPA to address possible persecution. SNH would advise that these measures are likely to address loss of this part of the SPA for hen harrier use by ensuring breeding success over other parts of the SPA. SNH therefore advises that, on the basis the above information, mitigation is possible which will ensure there is no adverse impact on the integrity of the site and will be delivered under the terms of a planning agreement.

Noted.

4. National Interests: There will be a direct loss of 17.88 ha of blanket bog habitat which forms a notified feature of the Muirkirk Uplands SSSI and the potential for further indirect impacts on adjacent blanket bog habitat. The indirect loss could be suitably protected through the condition detailed above and through habitat management specified in the S.75. The direct loss of the SSSI has been considered acceptable through SNH's balancing duty.

Noted.

If East Ayrshire Council is minded to grant consent without conditions, and planning agreements that would overcome the above noted concerns, SNH's position should be regarded as an objection. As with all applications which are subject to an objection from SNH, we ask to be advised at the earliest possible stage about any proposed modifications, conditions or legal

agreements relevant to our interests. Because this proposal affects the Muirkirk and North Lowther Uplands SPA, we remind you of the requirement to notify the Scottish Ministers if the Council is minded to approve planning consent against our advice on this case.

Noted.

In summary SNH, in providing advice to the Council as Competent Authority in these matters, states that subject to appropriate conditions and obligations delivered through a Section 75 Agreement, adverse impacts can be mitigated and consequently the proposed development will not adversely affect the integrity of the SPA.

3.5 The Nith District Fishery Board, The Ayrshire Rivers Trust, The Ayrshire Joint Structure Plan Team and The Scottish Wildlife Trust have not responded to the consultation letter.

Noted.

3.6 New Cumnock Community Council fully supports the application and requests that planning permission is granted as soon as possible.

Noted.

3.7 The Royal Society for the Protection of Birds Scotland states that this application is for an extension of opencast operations into an area of land within the Muirkirk and North Lowther Uplands Special Protection Area (SPA), (designated for its breeding population of hen harrier, merlin, peregrine, short-eared owl and golden plover) and Muirkirk Uplands SSSI (designated for its upland and blanket bog habitats, upland bird assemblage, wintering hen harriers and breeding population of hen harriers and short eared owl). 21.8 ha of the development lies within the SPA/SSSI. Impacts will include excavation and direct loss of 18.3 ha of SPA and SSSI habitat and indirect effects on SPA and SSSI habitats and species through disturbance and hydrological impacts.

Noted.

As the proposal could have a significant effect on an SPA, and is not directly connected with or necessary for the management of the site, it is subject to the requirements of Article 6 of EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora (the 'Habitats Directive') and The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), which implement the Directive in the UK. In particular, Regulation 48 requires that the local planning authority, as a competent authority, make an "...appropriate assessment of the implications for the site in view of that site's conservation objectives" before deciding whether to grant consent. RSPB does not believe there is sufficient certainty regarding the impact of this proposal, particularly given uncertainty over the outcome of restoration and

mitigation, for the competent authority to be able to conclude there will be no adverse effects on the Muirkirk and North Lowther Uplands SPA. In this situation, the competent authority must take a precautionary approach.

The comments in this regard are not reflected in the advice given by SNH in its consultation response. The Council, as Competent Authority in this matter, can rely on the advice provided by SNH in making its assessment. Indeed it is required by statute to consult SNH in making such an assessment. Article 6 of the Habitats Directive indicates that the Competent Authority shall agree to development proposals only after ascertaining that they will not adversely affect the integrity of the site concerned. Subject to the imposition of conditions and obligations secured through a Section 75 Agreement, SNH has advised that the proposed development will not adversely affect the integrity of the SPA / SSSI.

The proposal will result in damage to the Muirkirk Uplands SSSI, which is designated for its breeding bird assemblage and upland habitats. Section 1 of The Nature Conservation (Scotland) Act 2004 places a general duty on every public body and office holder to further the conservation of biodiversity. However, Section 12 of the Act specifically requires public bodies, when exercising any function affecting land which forms part of a SSSI, to take reasonable steps to further the conservation and enhancement of the natural features specified in the SSSI notification. Planning authorities must comply with this section of the act when considering an application such as this, affecting a SSSI.

In our letter of 2 May 2007, RSPB submitted an objection to the proposal based on information available at that time. I can confirm that following receipt of additional information on habitat, ornithology and mitigation proposals, we maintain our objection to the application for the following reasons:

1. The development is contrary to the development plan

1.1 Applications for planning consent must be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan consists of the Ayrshire Joint Structure Plan 1999, the East Ayrshire Local Plan 2003 and the East Ayrshire Opencast Coal Subject Plan. We believe that this development would be clearly contrary to a number of elements of the development plan.

1.2 Ayrshire Joint Structure Plan 1999: Policy E7 requires an assessment of the implications of development for the nature conservation objectives of Natura sites. The policy requires that development only be permitted where an assessment indicates that it will not adversely affect the integrity of the site or there are no alternative solutions and there are reasons of overriding public interest, including those of a social or economic nature. As set out in section 2 of our response, we do not believe that the applicant has been able to

provide sufficient evidence to demonstrate that the development would not adversely affect the integrity of the site.

Policy E8 requires that development which would affect SSSIs shall conform to the plan only where any objectives of the designation and the overall integrity of the site will not be compromised, or where any significant adverse effects on the qualities for which the site has been recognised are clearly outweighed by social or economic benefits of national importance. As set out in section 3 of our response, we believe the development would be contrary to the objectives of the SSSI designation. While we acknowledge that there would be social and economic benefits associated with the development, these would be of local and not national importance.

An assessment of the proposed development against the policies of the Approved Ayrshire Joint Structure Plan is set out in Section 5 of this report. It is considered however that the proposed development is generally in accordance with the provisions of the structure plan.

1.3 East Ayrshire Local Plan 2003: Opencast coal extraction is not addressed as a specific subject in the Local Plan, this issue being addressed in the opencast coal subject plan. However, a number of policies in the adopted local plan are relevant. The following are considered to be of particular relevance to this proposal:

Policy ENV10 provides an overriding presumption against development that could adversely affect sites designated or proposed for designation as SPA. This is reflected by a similar policy in the opencast coal subject plan. As set out in section 2, we believe the proposal would be contrary to this policy.

Policy ENV14 (v) provides a presumption against development that would result in the destruction of any areas of peat that are considered to be of significant ecological value. We believe the proposal would be contrary to this policy, as discussed in section 3 of our response.

Noted but in this case the development requires to be specifically assessed against the adopted East Ayrshire Opencast Coal Subject Plan.

1.4 East Ayrshire Opencast Coal Subject Plan: The opencast coal subject plan provides the detailed planning policy context for the consideration of opencast coal proposals. The proposed development at Grievehill would be contrary to a number of provisions and policies within the subject plan.

Paragraph 6.16 of the subject plan states *“Proposals to develop coal resources within or affecting areas of nature conservation importance are unlikely to be considered acceptable and will only be favourably considered in circumstances where comprehensive measures to mitigate all adverse effects of the operations can be successfully implemented and achieved. The extraction of opencast coal reserves in the identified potential coal extraction*

areas should also not impinge upon fragile habitats which may lie within these areas. In particular, the Council would not be supportive of opencast proposals which would impinge on areas of peat which are actively growing, areas of peat which have been damaged but are capable of recovery, or other areas of peat soil which are hydrologically linked to these areas.”

Although this is not a policy within the plan, it provides context and clearly illustrates that the proposed development would be contrary to the principles of the plan as we do not believe that adequately comprehensive mitigation measures have been proposed and active peat habitats will be destroyed.

The comments of RSPB are noted. However, the advice from SNH, a statutory consultee in respect of the proposed development, is that subject to the imposition of appropriate conditions and the securing of stated specific obligations through a Section 75 Agreement, it considers that the proposal can be mitigated to the extent that the Grievehill extension would not adversely affect the integrity of the SPA and SSSI. Indeed SNH requires to be a party to the Section 75 Agreement to ensure that the necessary mitigation meets its requirements. It is accepted that active peat habitats will be disturbed as a result of the proposed development and that this conflicts with EAOCSP policy MIN 27 as indicated in Section 5 of this report.

Policy MIN 1 directs all future opencast developments towards the Preferred Coal Extraction Areas (PCEAs) identified in the plan. Only part of the proposed development would be within a PCEA. The proposal is therefore, at most, only offered partial support from this policy.

Policy MIN 2 provides a presumption of refusal for applications for new opencast coal developments outwith the PCEAs, with the exception of small scale, short-term extraction proposals that meet certain criteria. Although the proposal may qualify to be considered as a small-scale extraction proposal, the proposed development would not meet the stated criteria, which includes a requirement for proposals to result in a clearly demonstrated environmental benefit through the removal of an existing area of dereliction.

Policy MIN 3 provides general support for proposals to extend existing operative opencast sites within the PCEAs. Outwith PCEAs, proposals for extension will not generally be supported except where there are clearly demonstrated environmental and community benefits. The extension is only partly within a PCEA and would not result in clearly demonstrated environmental benefits.

Policy MIN7 requires that, within PCEAs, all applicants for opencast coal development will be required to demonstrate that their proposals will not create any permanent adverse effect on the environment. As set out in sections 2 to 4 of our response, we believe the proposed development has the potential to create a permanent adverse effect on the environment, which would not be outweighed by benefits from the proposal.

Policy MIN 26 provides a presumption against development that could adversely affect SPAs. Development will only be permitted in such areas where an assessment of the proposal indicates that it will not adversely affect the integrity of the site, that there are no alternative solutions and that there are reasons of over-riding public interest, including those of a social or economic nature. As set out in section 2 of our response, we do not believe that the applicant has been able to provide sufficient evidence to remove uncertainty over the effects of the development on the integrity of the site. Regarding alternative solutions, we accept the demand for coal requires coal extraction sites. However, we note that the minerals plan identifies other Potential Coal Extraction Areas that are outwith the SPA and do not believe these areas have been adequately considered as reasonable alternatives that may have a lesser impact.

Policy MIN 27 states that development proposals will not be supported where they would result in the destruction of any areas of peat considered of significant ecological value. As discussed in section 3, the area that would be lost is of significant ecological value, so the development would be contrary to this policy.

An assessment of the proposed development against the policies of the adopted East Ayrshire Opencast Coal Subject Plan is set out in Section 5 of this report.

2. There is uncertainty over the impact of the proposal on the SPA.

2.1 The development will result in loss of habitat that supports SPA species (breeding golden plover and foraging raptor species) and has historically been within the core range of breeding hen harrier. We are therefore concerned about the potential impact of the development on the SPA, given the uncertainty over the outcome of site restoration and mitigation measures.

2.2 Assessment of impacts on foraging raptors - The Review of Ornithological Survey Data for Grievehill OCCS Proposed Extension (September 2007) gives historical raptor breeding information for 2002 to 2006. However, information regarding nests from 1997 to 2001 is not given in detail. Hen harriers have nested within 1 km of the development site on 3 occasions in the past 10 years (between 1997 and 2000) and this breeding pair formed part of the population that resulted in SPA designation. In years when this territory is used, the extension site is within the 2 km core range of a pair of breeding hen harrier. As we have no reason to believe that other factors affecting likelihood of occupying this territory has changed since 2000 (when a nest was last within 1 km of the site) and harriers habitually return to the same nesting areas, we have to assume that this territory is likely to be used again. The fact that, for other reasons, 2006 and 2007 were years with poor breeding success across the SPA should be taken into account when assessing survey results. In general, the presentation and analysis of ornithological survey data is confusing and difficult to assess.

2.3 Assessment of impacts on golden plover: Golden plover is the only SPA species currently breeding within the extension site and 500m buffer. The Review clarifies the location of golden plover territories and confirms that the two pairs predicted to be displaced by the operational conveyor line were still present in 2007. There was also an increase from 3 to 4 breeding pairs within the 500 m buffer after the conveyor and associated mitigation were put in place. However, we do not agree that *“it is most probable that a single breeding pair would be lost to the extension but that pairs within the 500 m buffer zone would persist”*. This assumption is based on the fact that disturbance from the automated conveyor has not displaced golden plover, as predicted. It is generally observed that irregular or unpredictable sources of disturbance have greater effects than constant sources. The conveyor, which is unmanned and gives a relatively constant level of noise and movement, is therefore not comparable with the OCCS, which will include blasting, sudden noises and irregular movement of vehicles and people. Direct extrapolation from disturbance effects caused by the conveyor cannot therefore be made. The current operational OCCS is separated from the area where golden plover breed by a small hill (Millstone Knowe). This gives a degree of barrier between the operations and the current breeding locations but this barrier effect would be lost if the extension were mined, as it is within the proposed extension. Direct extrapolation from disturbance effects caused by the current operations cannot therefore be made.

We note that golden plover have not bred less than 200 m from the existing OCCS and if disturbance effects were the same for the extension, a second territory would be likely to be displaced, based on 2007 data. A minimum prediction of displacement would therefore be two pairs. A third territory was recorded at 250 m from the OCCS, indicating likely displacement, and a further two pairs within the 500 m buffer. Research into golden plover habitat use has shown that chicks use an average home range of 40 ha and it should be remembered that locations marked on a map represent approximate territory centres and loss of part of the territory surrounding the mapped territory centres could result in displacement. The extraction and potential hydrological impacts on the Moss are therefore likely to affect the home ranges of 2 - 3 pairs.

We therefore believe that a more realistic assessment of impact is loss of habitat supporting 1-2 pairs and potential displacement of up to 5 pairs. We also note that although the Millstone Moss area (extension site and 500m buffer) is only 0.65% of the SPA area, it holds 3.2 % of the golden plover population for which the SPA was designated, demonstrating that it is an ecologically important part of the site with higher than average density of this species. We do not therefore believe that the developer has been able to demonstrate that there will be no impact on the integrity of the SPA.

The comments in this regard are not reflected in the advice given by SNH in its consultation response. The Council, as Competent Authority in this matter, can rely on the advice provided by SNH in making its assessment. Indeed it is required by statute to consult SNH in making such an assessment. Article 6 of the Habitats

Directive indicates that the Competent Authority shall agree to development proposals only after ascertaining that they will not adversely affect the integrity of the site concerned. Subject to the imposition of conditions and obligations secured through a Section 75 Agreement, SNH has advised that the proposed development will not adversely affect the integrity of the SPA / SSSI.

3. The development will result in negative impacts on the Site Condition of the Muirkirk Uplands SSSI through loss of 17.88 ha of blanket bog, a SSSI notified feature and a priority habitat listed under Annex I of Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora and a SSSI qualifying feature.

3.1 The Habitat survey update and analysis (June 2007) confirms that the area of M15d (wet heath) within the ES is more appropriately categorised as M19a (blanket bog). This is an important difference as blanket bog is a notified feature of the SSSI. We are concerned by this scale of loss of peatland habitat, given the status of blanket bog as a priority habitat listed under Annex I of Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora and a SSSI qualifying feature. RSPB has worked extensively with opencast operators and therefore has considerable experience of the challenges of site restoration. While we have highlighted several good examples of restoration in RSPB publications, none of these include blanket bog habitat. This is because of the difficulty of restoring the hydrological integrity of bogs and we are not aware of any successful examples of bog recreation on such sites. Indeed no UK Biodiversity Action Plan targets have been set for creation of this habitat, which is regarded as technically impossible.

Loss of this habitat would negatively affect the Site Condition of the SSSI as extent of blanket bog is a monitored feature that is currently in favourable condition. Section 1 of The Nature Conservation (Scotland) Act 2004 places a general duty on every public body and office holder to further the conservation of biodiversity. In addition, Section 12 of the Act requires public bodies, when exercising any function affecting land that forms part of a SSSI, to consult with and have regard to the advice of SNH and to take reasonable steps to further the conservation and enhancement of the natural features specified in the SSSI notification. RSPB Scotland does not believe that damage to the blanket bog SSSI feature is outweighed by any social or economic benefit that might result from the development.

The comments of RSPB are respectfully noted, but in this case the advice from SNH does not support the RSPB views. The merits of potential socio-economic benefits are discussed in sections 6 and 8 below.

3.2 The applicant also makes the assertion in 4.1 of this document that “favourable status does not necessarily reflect the current situation” and “reassessment to current guidelines would highlight the adverse impacts of

drainage and degradation” which is *“likely to result in having unfavourable recovering conservation status assigned to the feature”*. We are not convinced that there is evidence available to support this and while it is true that areas of the site have been drained, any existing adverse impacts as a result of historical drainage could be addressed through positive management. Excavation would have permanent impacts. It should also be noted that condition and extent of a feature are two separate aspects of Site Condition. Maintenance and enhancement of both condition and extent are long-term objectives of the Site Management Statement for the site. A decision to consent a development resulting in loss of extent would therefore still have an adverse effect on Site Condition.

While the ES states that the direct loss of blanket bog would extend to 17.88 ha, there is potential for wider hydrological effects on the surrounding area. Detailed and comprehensive mitigation measures need to be presented to assure the competent authority, in consultation with SNH, that all negative hydrological impacts on the surrounding area could be addressed before there can be certainty that the net loss of this development would be restricted to the excavation area. The ES states that 75 % of the development site is blanket bog with a depth of over 50 cm and the average depth of peat across this area is 1.25 m. The development would result in removal of 213,500 m³ of peat. In addition to the habitat loss caused by the removal of the blanket bog, this would result in the excavation of a large volume of peat and damage to its carbon storage value. The impact on this carbon store should also be considered when determining this application.

4. The applicant has not proposed measures that would adequately mitigate or compensate for the impacts of the development.

4.1 The developer has submitted supplementary information on mitigation measures (September 2007) but the proposed measures would not mitigate for the impacts of the development. In particular, we provide the following comments on the supplementary information and the proposed mitigation measures:

(i) The work carried out by ATH at Skares Road, Hannahston and Garleffan and as a member of the CEI is welcome and demonstrates a willingness to address environmental concerns. However, it does not demonstrate an ability to mitigate for the impacts of the proposed extension, which will result in very specific impacts on designated sites.

(ii) Successful mitigation must deliver specific targets based on the impacts of the development, not just general biodiversity benefit. Section 3.5 of the Supplementary Information makes the statement that mitigation for Garleffan has delivered biodiversity benefits, including increased numbers of grasshopper warblers. Although this is the case, the aim of this mitigation area was to increase breeding wader numbers, not grasshopper warblers, which require different habitats. While we acknowledge and appreciate their commitment to mitigation, the applicant has not demonstrated experience of delivering specific habitat improvements that would be required to mitigate or

compensate for the impacts of this proposal. The presence of national and international designations means that this requirement is more stringent for this site than for Garleffan. It will require a clearly demonstrated ability to mitigate for specific impacts on the SSSI and SPA, rather than the relatively more straightforward ability to make general biodiversity improvements.

(iii) The proposal to recreate "*mire and pool habitat*" on the restored extension site using donor material from scrape and wetland creation is unrealistic and impractical. Scrapes and wetland features are likely to be small, particularly if they are not to result in damage to peatland habitat elsewhere and we do not believe this would produce sufficient material. There is no evidence to suggest that this method would be hydrologically feasible and we do not believe the areas of blanket bog could be recreated.

(iv) The translocation of "*degraded blanket bog*" from the SSSI to land in the existing Grievehill site will not help to maintain extent of the habitat within the SSSI and is a misleading description of the habitat that will be lost.

(v) The applicant claims that this process will "*provide a unique opportunity to further knowledge and conservation of mire habitats through translocating and broad scale wetting*". However, considerable expertise of bog restoration already exists. Translocation is not a means of restoring bogs and we do not believe it is appropriate to trial unproven restoration techniques in a designated site.

(vi) The applicant's own conclusion acknowledges the low likelihood of creating blanket bog - "*vegetation with the ability to comprise blanket bog could be achieved as a target habitat on restored areas*". This is not the same as recreating blanket bog across the site. We do not believe EAC can take a decision based on this level of uncertainty regarding the success of mitigation.

(vii) There remains confusion over the areas of mitigation being carried out for different operations, granted consent by different planning applications, at Grievehill. Any work proposed as mitigation or compensation for the extension must be clearly differentiated from previous measures and deliver additional benefits to those resulting from existing management, which already needs to be delivered as a result of existing obligations.

(viii) Advance mitigation work at Grievehill has included creation of several scrapes within the SPA. We are extremely concerned by the approach being taken here as pools have been created within areas of bog with well-developed Sphagnum communities. The proposed mitigation was to create wader scrapes in areas of rush pasture to benefit breeding waders. The sites selected appear to be inappropriate, as they may have damaged areas of bog that would more appropriately have been left undisturbed. This seems to demonstrate a lack of understanding of the aims of the mitigation measures agreed.

(ix) Insufficient information is provided on the wider management measures, including grazing management and predator control, and the

baseline conditions in these areas to enable the net benefits to be quantified. In order to fully consider the adequacy of mitigation proposed, far greater detail on these proposals would need to be presented.

(x) While commitment from ATH to help address this problem is welcome, we do not believe that the measures proposed to tackle persecution in the SPA can be presented as mitigation for the habitat and disturbance effects of the development. Persecution is illegal and efforts are being made to address this significant problem through other channels. We do not, therefore, believe that the measures put forward can be a material consideration in determining the acceptability of this development.

RSPB welcomes and appreciates the work that the applicant has carried out at other sites to benefit biodiversity and local communities. However, the proposed extension is located in a nationally and internationally important designated site and therefore has particular additional challenges. Given RSPB Scotland's considerable experience of peatland restoration, and our work with opencast operators at many sites over a number of years, we do not believe that it will be possible to carry out the works proposed without significant long-term damage to the habitats on the site.

In conclusion, we do not believe an achievable, realistic programme of mitigation has been proposed and we remain of the opinion that the applicant has not yet demonstrated an ability to adequately mitigate for the impacts on the SSSI habitat or SPA bird species. A very comprehensive and detailed mitigation package addressing all of the above issues would need to be produced and secured through appropriate legal agreements before this application could be considered.

The conclusions of RSPB run counter to the advice given by SNH in its response. SNH believes that in respect of the SPA and SSSI impacts, mitigation is possible which will ensure there is no adverse impact on the integrity of the site and will be delivered under the terms of a planning agreement. In this regard SNH has also indicated the requirement to be a party to the Section 75 Agreement to ensure that it is satisfied with the terms of the agreement in delivering mitigation in this case.

3.8 The West of Scotland Archaeology Service states that the application for the existing site at Grievehill was granted consent subject to a series of conditions, one of which required a programme of archaeological works to be conducted in advance of the development. This work was undertaken and a series of archaeological features, related to nineteenth and possibly eighteenth century industrial activity in the area, was recorded. Whilst elements of this programme covered the area currently being proposed for an extension to the workings, recording here was undertaken to provide for a better understanding of the sites that were destroyed when the existing opencast area was created. This work was designed under the premise that the sites would not be destroyed. On the basis of this new application, additional work will be required.

Noted.

WOSAS would argue that the proposals if granted consent would result in the destruction of a number of recorded archaeological sites, with the significance of the impact being assessed in the ES as being moderate in two cases. Whilst the proposed mitigation would provide for an archive detailing the features, this will not alter the fact they would have been destroyed. The proposed scheme would therefore have a serious deleterious affect on the archaeological resource.

Noted.

The mitigation proposed in the ES is acceptable in terms of the millstone quarries which will require appropriate recording and survey, the level of which is to be agreed through a Written Scheme of Investigation. The evaluation and recording proposed for the line of the wagon way is also appropriate. This will be used in assessing the impact of the Glenmuckloch OCCS conveyor line, which was constructed in places without archaeological monitoring. The pits and trials which were initially recorded under the previous application may require further work in order to assess their phasing and in attempt to provide a date for their use. This would be contrary to the mitigation proposed in the ES. In addition to the above there will be a need to evaluate the potential for the survival of buried archaeological remains sealed beneath the deep peat to the north of the proposed extension.

Noted.

WOSAS recommends that the only appropriate form of condition to attach in these circumstances would be a negative suspensive condition such as that suggested in paragraph 34 of PAN42. The wording suggested is based on that in the PAN but has been updated to reflect recent experience and current best practice i.e.

'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 the archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service'

The applicant has been advised of the comments of WOSAS. A condition can be attached to any consent granted for the development to meet the requirements of WOSAS.

3.9 East Ayrshire Council Environmental Health Division has no objections in principle to the proposed development. Given the remote location of the proposed extension and the low impact on residential amenity the development is likely to have, it is suggested that noise limits be imposed at 55 dBA daytime and 42 dBA night-time with variances to 70 dBA (daytime for up to 8 weeks per year for temporary operations).

Conditions are already in place for the existing Grievehill site that can be applied similar to the proposed extension if approved.

Of concern however is the potential noise impact to residential properties surrounding the Crowbandsgate railhead and the rail line to and from that location caused by increased rail traffic. Information has been provided by the applicant to indicate that the proposed extension, if approved, will be worked sequentially; that is to say after the main site is worked out. Consequently as there will be no increase in rail traffic movements from the Crowbandsgate railhead, there is no objection in respect of this issue.

Coaling within the existing operational Grievehill site is very likely to have ceased by the time any consent for this extension may be granted.

3.10 Transport Scotland notes that the extension will be worked in two phases over a period of two years with 920,000 tonnes of coal worked at an output of 10,000 tones per week. Coal from Grievehill will be transferred to the Garleffan OCCS for processing via existing internal haul roads. It is expected that the majority of this coal will then be transferred via the new conveyor to the Crowbandsgate rail terminal for onward distribution. Typically less than 10% of the coal produced from Grievehill will be transported by road northbound along the A76 (T). As such development traffic is likely to cause minimal environmental impact on the trunk road network, TS therefore offer no comment.

Noted.

3.11 The Health and Safety Executive states that its principal concerns relate to the health and safety of people affected by work activities and therefore has no comments to make on the ES.

Noted.

3.12 Historic Scotland considers the ES to be an acceptable assessment of the impacts on the historic environment and for its statutory interests, has no comments to make.

Noted.

3.13 The Scottish Government (Environment Directorate) offers the following comments:

(i) The developers should ensure that there is no significant impact on the water environment (both surface and ground waters) during and after construction. Potential impacts include track construction, use of plant and machinery, plant compounds and oil storage. They should identify all potential pollution risks associated with the proposals and identify preventative and mitigation measures.

(ii) The Water Environment (Controlled Activities) Regulations 2005 require specific controls to be placed on activities which impact on the water environment. Method statements should be produced for all aspects of site work that might impact upon the environment. These statements should contain information on preventative and mitigation actions to limit impacts. It is recommended that SEPA is provided with the opportunity to view these method statements in draft form prior to their being finalised, should the development take place.

Appropriate Method Statements are to be prepared by the applicant and submitted to SEPA for approval.

(iii) Although it is not clear where the mine is situated at New Cumnock, the proposed development may be within the catchment of the River Nith which is designated as a salmonid water under the terms of the Fresh Water for Fish Directive (2006/44/EC) and requires certain, mainly chemical, standards to be met for the quality of the water.

The Nith Fishery Board has been consulted on the proposed development but has not responded. It is understood however that the Board has a monitoring relationship with the developer in respect of salmonid interests. The Board is also represented on the Garleffan/Grievehill Technical Working Group.

3.14 The Scottish Government (Climate Change and Water Industry Directorate) has no comments to make on the further additional information to the ES.

Noted.

4. REPRESENTATIONS

4.1 Two letters of representation has been received objecting to the proposed development in addition to the objection received from RSPB indicated above. One other letter of objection received has now been formally withdrawn. The main points of objection are summarised as follows:

4.2 MEGA Members object to this further development at Grievehill. In fact re-reading our last objection just last summer, to alterations to the previous

planning consent the year before, makes our Group realise that we should also direct you to that objection, as those objections are clearly relevant to this encroachment eastwards.

The previous extension to the Grievehill opencast site related to an increase in the excavation limit within the existing consented site. This application (referred to in Section 6 of this report) was approved unanimously by the Southern Local Planning Committee in October 2006.

4.3 This new application involves the further encroachment into more ecologically sensitive areas:-into the Muirkirk Uplands SPA, which is just not acceptable. ATH's plans simply refer to this as being within a SSSI. This area is even more important, as the SPA designation recognises its European importance, in terms of habitats and species.

It is acknowledged that the proposed Grievehill extension involves the extraction of coal reserves within the SPA. The objector is however totally incorrect in asserting that the applicant simply refers to the extension as being within an SSSI and thus only assess such issues. The comprehensive ES and subsequent supplementary additional information acknowledges and assesses the impact of the proposed extension in relation to the SPA designation and its qualifying interests and features.

4.4 Part of the proposed extension is also outwith the area identified for open-casting in the Council's Open-Cast Subject Plan. These boundaries should be adhered to, if there is to be any confidence in that plan, which was tested and examined at PLI.

It is correct that part of the proposed extension area lies outwith the identified Potential Coal Extraction Areas as identified in the East Ayrshire Opencast Coal Subject Plan. An assessment of the proposals against this plan is given in Section 5 of the report below.

4.5 We note that the current site has been carefully 'tailored' to be under the 25h supposed limits for extension.

The proposed development has been carefully designed to minimise the development footprint within what is acknowledged to be an area covered by national and European designations. The area of the extension also reflects the last remaining coal reserves at Grievehill based on the applicant's detailed understanding of the geology of the area.

4.6 MIN3 in the Adopted Subject Plan is relevant. There is no 'dereliction' to be removed, apart from that nearby of the applicant's own making.

The ES acknowledges that there is no dereliction within the application site but does state that coaling of the site would ensure that coal which is currently subject to underground combustion will be removed from the SPA and any acid mine drainage experienced would also be treated.

4.7 There cannot be a plea for continuity of employment, when the applicants tried this questionable approach, when justifying their need for open-cast development at Laigh Glenmuir, when their Glenmuckloch site nearby, in Dumfries & Galloway, was also being developed.

The proposed Grievehill extension will provide a continuation of employment for the existing 84 employees at Grievehill for an additional two years. The consented operations at Laigh Glenmuir allowed for the transfer of employment from the Garleffan site on the cessation of coaling activities on that site.

4.8 Garleffan 1& 2 and Grievehill are already interdependent. Links with Laigh Glenmuir and Glenmuckloch will also extend their life and delay complete restoration.

Synergies between the Garleffan and Grievehill sites have been particularly beneficial to the current proposed Grievehill extension. In particular, the existing site infrastructure at Garleffan will be used in order to avoid the need for duplicate facilities at Grievehill. The links with Laigh Glenmuir and Glenmuckloch in Dumfries and Galloway relate to the consented overland conveyors which provide a sustainable method of coal transport through existing opencast sites. Only a narrow corridor of land will remain un-restored whilst these conveyors remain in use. The alternative would be that the conveyors would require to be routed through currently undisturbed ground or that coal is transported by HGVs via the public road network. Neither of these options represents the best practical environmental option in this regard.

4.9 We draw the elected members' attention to the incremental encroachment by the developers of this site:

- 2005: 118h site with 48h extraction:
- Oct.2006: a further 10h extraction.
- only 2 months later in December 2006, this application for extraction from a further 24.7h.

Why does the Council not require this company to declare its interests/intentions, instead of this ad hoc approach in line with Subject Plan Policy MIN 6 and SPP16?

The applicant, as required to do so by the relevant policy documents referred to by the objector, made a specific statement with regard to potential interests within the area of the current application site as part of the Supporting Statement submitted with application 06/0537/FL.

4.10 There is no environmental benefit. We suggest that the community benefit is questionable and certainly does not outweigh the disbenefits of yet more open-casting in this area. Until the Council, officials and elected members, SEPA and SNH are all satisfied with the rate and quality of restoration on these conjoined sites, this application should not be approved.

The issue of environmental benefit has been addressed within the ES and subsequent Supplementary Information. Environmental benefit will accrue through the removal of the remaining coal at Grievehill which in turn eliminates the potential for both coal combustion and formation of acid mine water, both of which have been known to be present at Grievehill. Additional environmental benefit will accrue through the comprehensive mitigation (both advance and proposed), the proposed habitat enhancement and creation and land management programme which has been proposed. With the restoration proposals, the applicant believes that the suite of measures proposed will ultimately be beneficial to the bird interest at Grievehill as well as resulting in increased biodiversity in the longer term.

The question of community benefit is in fact quite clear. The economic benefits associated with the proposal have been very clearly demonstrated within the applicant's submissions. While the provision of jobs may not be acknowledged by the objector, the continuation of employment directly to the existing 84 employees at Grievehill, the indirect provision through the requirement of goods and services and the induced knock-on effect of increased economic activity within the local area have been acknowledged by other parties. In particular, the proposed development has generated a significant level of support from the local community including local people and employees, site contractors and the local community council including the local MP (see 4.14 below).

The Planning Division is not aware of any dissatisfaction nor has it itself dissatisfaction with respect to the ongoing restoration at the Garleffan/ Grievehill mining complex either in terms of its quality or quantity. Restoration of the sites is overseen by the existing Technical Working Group which includes representation from SNH, RSPB, SEPA and the Nith District Fishery Board whose knowledge and expertise is used to ensure that restoration is carried out to the highest possible standards to meet stated restoration aims.

4.11 A total of 187 individual letters of support have been received with respect to the proposed development from employees of the applicant, local contractors, community groups and other individuals including the local MP. Support for the application is mainly offered on the basis of continued employment and on the continued benefits to the local economy.

The continuation of 84 jobs and the associated socio-economic benefits that would accrue from the proposed development is a material consideration in the determination of this application.

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 (1999) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

Ayrshire Joint Structure Plan

5.2 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the Grievehill extension site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads (it should be noted that the relevant Preferred Area of Search in this case was identified prior to the formal designation of the SPA and SSSI). 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 extension site falls within a Preferred Area of Search as indicated on the Structure Plan Key Diagram.

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.*

Given the location of the existing Grievehill site and the proposed extension area, it is not considered that the proposed development will result in any significant additional adverse

impacts relating to countryside, landscape character, visual amenity or the built environment.

The proposed development will result in incursion into the SPA and the SSSI with the loss of approximately 18 ha of blanket bog. Notwithstanding this, SNH advises that subject to appropriate conditions and obligations within a Section 75 Agreement, it is considered that the integrity of the SPA will not be adversely affected.

- (ii) *the impact caused by noise, dust and the contamination of ground and surface water.*

It is considered that there will be no significant adverse impacts caused by either dust or noise associated with the coaling operations in the proposed Grievehill extension with the mitigation measures proposed within the ES. It is further considered that with the mitigation measures proposed and the securing of the requirements of SEPA by conditions or Section 75 Agreement as outlined in its consultation response, there should be no significant adverse impacts on water resources.

- (iii) *any adverse effect on communities within Ayrshire.*

Given the remote location of the existing Grievehill site and the proposed extension, it is not considered that the proposal will result in any significant adverse impacts on any local communities.

- (iv) *opportunity to maximise transport by rail or sea.*

A minimum of 90% of the coals won from the proposed Grievehill extension will be transported by overland conveyor directly to the existing dedicated railhead at Crowbandsgate, New Cumnock for onward dispatch to markets.

- (v) *extent of directly related community benefit derived such as enhancement and creation of landscapes and habitats, and removal of dereliction.*

The ES acknowledges that there is no dereliction within the application site but does state that coaling of the site would ensure that coal which is currently subject to underground combustion will be removed from the SPA and any acid mine drainage experienced would also be treated. Additional environmental benefit will accrue through the comprehensive mitigation (both advance and proposed), the proposed habitat enhancement and creation and land management programme which has been proposed. With the restoration proposals, the

applicant believes that the suite of measures proposed will ultimately be beneficial to the bird interest at Grievehill as well as resulting in increased biodiversity in the longer term.

(vi) *cumulative impact of proposals in one area and the extraction period.*

It is considered that the working of the proposed Grievehill extension would not result in any significant adverse cumulative impacts in one area or over time given that the proposal is for an area of 24.7 ha with coaling and restoration taking place over a period of three years.

5.4 Policy E7 states that development likely to have a significant effect on a Natura 2000 site will be subject to an appropriate assessment of the implications for the site's conservation objectives. The development will only be permitted where the assessment indicates that it will not adversely affect the integrity of the site, or there are no alternative solutions and there are reasons of over-riding public interest, including those of a social or economic nature.

It is accepted that the proposed development will have direct and indirect impacts on the Muirkirk and North Lowther Uplands SPA and Muirkirk Uplands SSSI and will result in the loss of approximately 18 ha of blanket bog. However, subject to the imposition of conditions and obligations secured through a Section 75 Agreement, it is considered that the proposed development will not adversely affect the integrity of the SPA / SSSI (as advised by SNH). Notwithstanding this, it is further considered that there are significant reasons of a socio-economic nature that would justify approval of the proposed development.

5.5 Policy E8 further states that development which would affect ... Sites of Special Scientific Interest shall conform only to the Structure Plan where any of the objectives of designation and the overall integrity of the site will not be compromised, or where any significant effects on the qualities for which the site has been recognised are clearly outweighed by social or economic benefits of national importance.

See comments above. It is noted that the balance test of over-riding social or economic benefits in this instance requires to be of national importance for this national site designation rather than the apparently lesser test afforded to designations of international importance.

The proposed development is generally considered to be in accordance with the approved Structure Plan.

5.6 The proposed extension area of Grievehill partly falls within a potential coal extraction area (approximately 40%) but partly lies outwith it (approximately 60%). Policy MIN 3 is pertinent to the application, the policy stating 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.*

Extraction will be carried out as a sequential phase of development from the existing operational Grievehill site through into the proposed extension area coaling the same contiguous seams.

- (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 relative to the existing Garleffan / Grievehill mining complex.

- (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 and rate of extraction by the proposed Grievehill extension are commensurate with those as existing currently on site. In terms of vehicle numbers, these have now been significantly reduced for the existing operations with the introduction of the new overland conveyor system.

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

The proposed extension will not significantly prejudice plans for the restoration as the site will be progressively restored.

However, part of the proposed Grievehill extension area does not fall within a Potential Coal Extraction Area.

Policy MIN 3 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:

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

The ES acknowledges that there is no dereliction within the application site but does state that coaling of the site would ensure that coal which is currently subject to underground combustion will be removed from the SPA and any acid mine drainage experienced would also be treated (see also comments above from SEPA on this issue). However additional environmental benefit will accrue through the comprehensive mitigation (both advance and proposed), the proposed habitat enhancement and creation and land management programme which has been proposed. With the restoration proposals, the applicant believes that the suite of measures proposed will ultimately be beneficial to the bird interest at Grievehill as well as resulting in increased biodiversity in the longer term. Nonetheless it is considered that the proposed development represent a minor breach of Policy MIN3 in respect of this criterion.

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

The working of the proposed extension area will safeguard the continued direct employment of 84 people at the Grievehill site for a further two years.

- (vii) *there are no conflicts with any other Subject plan policies*

See further assessment below. It is considered that the proposed development represents a breach of Policy MIN27 as indicated below.

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.

The proposal will not result in any perpetuation of disturbance to a local community.

5.7 Policy MIN 6: The Council will require opencast coal operators to support applications with information which indicates their understanding of the location of coal reserves in surrounding land and about their future interests in the locality.

The applicant has indicated that the proposed extension represents the last element of the contiguous coal reserve at Garleffan / Grievehill and confirms that should this application be successful, then no further applications will be sought for

extensions to the contiguous coaling areas of Grievehill or Garleffan.

5.8 Policy MIN 7: Within Potential Coal Extraction Areas, all applicants will be required to demonstrate that their proposals will not have any significant adverse effect on communities or create any permanent adverse effect on the environment.

It is considered that the proposed Grievehill extension, as demonstrated by the information contained within the ES, will not have any significant adverse effect on local communities. It is accepted that the proposed incursion into the SPA and SSSI will result in the loss of approximately 18 ha of blanket bog. However, subject to the imposition of conditions and obligations secured through a Section 75 Agreement, it is considered that the proposed development will not adversely affect the integrity of the SPA / SSSI (as advised by SNH).

5.9 Policy MIN 12: 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

(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

(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 is not a new site but an extension to the existing Grievehill site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12 with respect to the above criteria.

(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.

It is accepted that the proposed extension will result in an incursion into the SPA and SSSI and will result in the loss of approximately 18 ha of blanket bog. It is further recognised that there have been other developments approved in the locality of the SPA / SSSI such as the recently constructed conveyor system. However, subject to the imposition of conditions and obligations secured through a Section 75 Agreement, it is considered that the proposed development, taking account of potential cumulative impacts, will not adversely affect the integrity of the SPA / SSSI (as advised by SNH).

5.10 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 restoration of the existing Grievehill site and the proposed extension site is designed to improve the wildlife conservation value of the land that 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 Agreements for the Garleffan/ Grievehill mining complex.

5.11 Policy MIN 18: 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.

A minimum of 90% of coals won from the proposed extension area will require to be dispatched via the existing dedicated railhead facilities at the Crowbandsgate site.

5.12 Policy MIN 19: 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 to the coal preparation area at Garleffan via internal haul roads. Permission has recently been granted for the construction of an overland conveyor system connecting the Glenmuckloch site near Kirkconnel with the Grievehill and Garleffan sites to the Crowbandsgate railhead. Coal not destined for local markets will be transported via the new conveyor system to the Crowbandsgate railhead.

5.13 Policy MIN 21: 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 existing Section 75 Agreement for the Grievehill site contains an obligation in respect of this matter, although only 10% of the coal production can in any case be dispatched to market by road.

5.14 Policy MIN 23: 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 extension area 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.

The proposed extension to the existing site area extends to approximately 24.7 hectares and will be undertaken in a period of 3 years. It is considered that the development will not have any significant adverse impact on nearby communities and the proposal is therefore considered acceptable in terms of this policy.

(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.

The applicant has indicated that the proposed extension represents the last element of the contiguous coal reserve at Garleffan / Grievehill and confirms that should this application be successful, then no further applications will be sought for extensions to the contiguous coaling areas of Grievehill or Garleffan. Furthermore, it is considered that the current proposal will not, in itself, result in perpetuation of disturbance to local communities.

5.15 Policy MIN 25: 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, outwith the applicant's ownership or control that lie within 500 metres of the extended working face of the site.

(ii) 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, outwith the applicant's ownership or control that lie within 100 metres of the extended working face of the site.

5.16 Policy MIN 26: In order to ensure that areas of nature conservation interest are adequately protected from any direct or indirect adverse effects of opencast developments:

(i) there will be a presumption against development which could adversely affect sites designated as Special Protection Areas (SPA) and Special Areas for Conservation (SAC). Development will only be permitted in such areas where an assessment of the proposal indicates that it will not adversely affect the integrity of the site, that there are no alternative solutions and that there are reasons of over-riding public interest, including those of a social or economic nature.

(ii) there will be a presumption against development which could adversely affect Sites of Special Scientific Interest and National nature reserves. Development will only be permitted in such areas where the overall integrity of the site would not be compromised or where any significant adverse effects of the development are clearly outweighed by social or economic benefits of national importance.

It is accepted that the proposed development will have direct and indirect impacts on the Muirkirk and North Lowther Uplands SPA and Muirkirk Uplands SSSI and will result in the loss of approximately 18 ha of blanket bog. However, subject to the imposition of conditions and obligations secured through a Section 75 Agreement, it is considered that the proposed development will not adversely affect the integrity of the SPA / SSSI (as advised by SNH). Notwithstanding this, it is further considered that there are significant reasons of a socio-economic nature that would justify approval of the proposed development.

5.17 Policy MIN 27: The Council will ensure that opencast coal proposals do not have an unacceptable adverse impact on the natural and built environment. In particular, development proposals will not be supported where they would, amongst other things:

(iii) adversely affect air quality and the quality of water resources or create air or water pollution.

It is considered that with the mitigation measures proposed in the ES, the proposed development will not result in any adverse impacts on air quality or quality of water resources.

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

It is accepted that the proposed development will result in the loss of approximately 18 ha of blanket bog. While the applicant, in mitigation, proposes to translocate this resource, the outcome of this technique is questioned by both SNH and RSPB. The proposed development is considered to be contrary Policy MIN27.

5.18 Policy MIN 31: The Council will not be supportive of any opencast proposals which would disrupt or otherwise adversely impact on water catchment areas, principal watercourses, or other major water resources. 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 of the water resource concerned; and

(ii) any changes to the levels of surface and ground water, changes to water quality can be demonstrated not to have an unacceptable adverse impact on natural habitats, water abstraction schemes or to give rise to an unacceptable flood risk.

It is considered that with the mitigation measures proposed and the securing of the requirements of SEPA by conditions or Section 75 Agreement as outlined in its consultation response, there should be no significant adverse impacts on water resources.

5.19 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 existing Grievehill opencast site is the subject of a current Section 75 Agreement which can be amended if necessary to include any further obligations that may be required as identified in this report, should consent be granted.

5.20 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 existing Grievehill opencast site and would continue to contribute in respect of the coals won from the proposed extension.

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

The existing Grievehill opencast site is subject to a Section 75 Agreement encompassing the above matters that would be amended to include the proposed extension site, should consent be granted.

It is therefore considered that the proposed development will result in a minor breach of Policy MIN 3 and a breach of Policy MIN 27.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received,

relevant planning history, Scottish Planning Policy Guideline 16: Opencast Coal, the new Finalised Draft Ayrshire Joint Structure Plan 2006, The Habitats Directive (The Conservation (Natural Habitats, &c.) Regulations 1994), Planning Advice Notes, the Muirkirk Uplands Nature Conservation (No. 2) Order 2001 and the Economic Impact Report relative to the proposed development submitted by the applicant.

Consultation Responses

6.2 In general, subject to the imposition of appropriate conditions and / or the use of a Section 75 Agreement, the main concerns of consultees can be suitably addressed. The exception to this is the consultation response from RSPB Scotland that indicates an objection to the proposed development for the reasons set out in section 3.7 of this report.

As stated elsewhere in this report, the advice given by SNH to the Planning Authority is that if the proposed development is undertaken strictly in accordance with the stated conditions and a Section 75 Agreement then the proposal will not adversely affect the integrity of the SPA /SSSI.

Representations

6.3 It is considered that the objections to the proposed development are in part valid but other points are either not borne out by the consultation process or can be addressed through the imposition of appropriate conditions in any consent granted for the proposed development or by means of a Section 75 Agreement. While some of the points of objection could be considered of significant weight, consideration has also to be given to other material considerations relevant in this particular case. It is noted that the application has also attracted a significant level of local support highlighting the importance of the proposed development to the local community in socio-economic terms.

Planning History

6.4 Planning permission for the extraction of 0.5 million tonnes of coal by opencast method from the application site was granted on 16 June 2005 under planning application 98/0452/FL.

6.5 Planning permission has recently been granted for the construction of an overland conveyor part of which passes through the Grievehill site (Ref. No. 05/1309/FL dated 08 September 2006)

6.6 Planning permission for an alteration to the limit of excavation within the Grievehill site to allow extraction of additional coals was approved on 19 February 2007 (Ref. No. 06/0537/FL)

Scottish Planning Policy Guideline 16: Opencast Coal

6.7 The proposed development has been assessed against the general tests set out in the recently published SPP16 on Opencast Coal and it is considered that the proposed development meets the relevant test of environmental acceptability subject to appropriate conditions and legal agreements and also on the test of the provision of local or community benefits that would outweigh likely impacts. Many of the provisions of SPP16 are enshrined within the East Ayrshire Opencast Coal Subject Plan, a full assessment against this plan being given in section 5 above.

6.8 SPP16 states that in applying the principles of sustainable development and environmental justice to opencast coal extraction, there should normally be a presumption against development unless the proposal would meet one of the following tests:

(i) Test 1: Is the proposal environmentally acceptable, or can it be made so by planning conditions and / or agreements?

Having due regard to the environmental acceptability in the context of the impact on local communities and the environment, it is considered when weighing up the benefits and dis-benefits of the proposed scheme that the proposed Grievehill extension can be made environmentally acceptable subject to the imposition of conditions and by the use of a Section 75 Agreement, thus meeting the provisions of Test 1.

(ii) Test 2: Does the proposal provide local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission?

Notwithstanding the fact that the proposed development would satisfy Test 1, it is considered that the continuation of 84 jobs for a further period of 2 years will generate significant socio-economic benefits for the local area. The antithesis of this, being the loss of these jobs, would have a significant detrimental impact on an area of already high levels of unemployment and economically depressed communities. In this regard it is considered that Test 2 is also met.

Finalised Draft Ayrshire Joint Structure Plan

6.9 Policy ENV7 of the finalised draft structure plan states:

Natural Heritage Designations - The three Ayrshire Councils shall:

- (a) recognise international and national natural heritage designations and the statutory protection afforded by them;
- (b) support the identification of additional Local Nature Reserves and continue to work with other stakeholders to implement the Ayrshire Local Biodiversity Action Plan.

Local plans shall prepare detailed policies for the protection of all sites of recognised international and national natural heritage importance.

The provisions of the finalised draft structure plan, once formally approved by the Scottish Government, will be incorporated within the proposed modifications to the East Ayrshire Local Plan.

6.10 There are no specific new policies pertaining to opencast coal extraction within the finalised draft structure plan.

Noted.

The Habitats Directive (The Conservation (Natural Habitats, &c.) Regulations 1994 as amended 2007)

6.11 As the proposal could have a significant effect on an SPA, and is not directly connected with or necessary for the management of the site, it is subject to the requirements of Article 6 of EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora (the 'Habitats Directive') and The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended 2007), which implement the Directive in the UK. Regulation 48 requires that the local planning authority, as a Competent Authority, make an appropriate assessment of the implications for the site in view of that site's conservation objectives before deciding whether to grant consent.

The Council, as Competent Authority in this matter, should take account of the advice provided by SNH in making its assessment. Indeed it is required by statute to consult SNH in making such an assessment (Regulation 48(3)). Article 6 of the Habitats Directive indicates that the Competent Authority shall agree to development proposals only after ascertaining that they will not adversely affect the integrity of the site concerned. Subject to the imposition of conditions and obligations secured through a Section 75 Agreement, SNH has advised that the proposed development will not adversely affect the integrity of the SPA / SSSI.

Planning Advice Notes

6.12 The proposed operations have also been designed to comply with the advice contained in Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D.

The Muirkirk Uplands Nature Conservation (No. 2) Order 2001

6.13 The proposed Grievehill Extension falls within an area affected by the Muirkirk Uplands Nature Conservation (No. 2) Order 2001 which prohibits the undertaking of specified operations cited within the Order itself. This Order was set in place to prevent certain agricultural / land management operations taking place in order to protect nature conservation interests within the

specified area, essentially prior to the formal designation of the SPA and SSSI. However this Order remains in force and clearly the opencast operations would be contrary to the aims of the Order. Should planning permission be granted for the proposed Grievehill Extension, the applicant would require to approach the Scottish Government to seek either an amendment to the Order, or for a revocation of it, in order to allow works to proceed. Under the provisions of the Nature Conservation (Scotland) Act 2004, the Scottish Ministers are required to review such Orders within a period of six years from the date of the Order being made. In this requirement, there is an obligation for the Scottish Ministers to review the Order by 27 November 2007.

The applicant has been made aware of the requirements in respect of this matter.

Economic Impact Report

6.14 The information provided by the applicant's consultants demonstrates the importance of the proposed Grievehill extension in socio-economic terms particularly given the relationship of all of the applicant's interests centred around the Garleffan / Grievehill complex. In addition to the 84 direct jobs that would be lost, the economic impact on East Ayrshire alone of not extending the Grievehill site would be:

- A total loss of 157 jobs to the local economy;
- A drop of income of £5.4 million;
- A loss of £30 million per annum in terms of wealth generated; and
- Expenditure on businesses in East Ayrshire would fall by £3.3 million.

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 amend the existing Section 75 Agreement for the Grievehill site as extended by this application, should the application be approved.

7.2 As the proposed development is EIA development as defined by Regulation 2 of the Environmental Impact Assessment (Scotland) Regulations 1999, should the Committee be minded to approve the application, it will require to be notified to the Scottish Ministers in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2007.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan but conflicts with the EAOCSP in respect of Policies MIN 3 (minor departure) and Policy MIN 27. 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 above, there are material considerations relevant to this application.

8.2 The proposals represent what would otherwise be a relatively small extension of an existing consented site at Grievehill and will involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts in terms of landscape and visual impact. It is considered that, given the relatively remote and sparsely populated area in which the Grievehill site is located, the proposal to extend the existing consented site will have no significant adverse effects on any local community. This is essentially borne out by the consultation process.

8.3 However, the greater part of the application site lies within the Muirkirk and North Lowther Uplands Special Protection Area and the Muirkirk Uplands Site of Special Scientific Interest and the proposed development is likely to have a significant effect on the qualifying interests of the site as advised by SNH, RSPB and by the applicant in terms of the Environmental Impact Assessment carried out in respect of the proposal. Since the submission of the planning application in December 2006, the applicant has sought to address issues of concern raised through the consultation process and has on three occasions provided supplementary Environmental Information to promote a scheme that would provide sufficient mitigation measures to compensate for the disturbance to the SPA and Qualifying Species and the loss of blanket bog.

8.4 As the proposal could have a significant effect on an SPA, and is not directly connected with or necessary for the management of the site, the Council as a Competent Authority, requires to make an appropriate assessment of the implications for the site in view of that site's conservation objectives before deciding whether to grant consent. The Competent Authority in this matter should take account of the advice provided by SNH in making its assessment. Article 6 of the Habitats Directive indicates that the Competent Authority shall agree to development proposals only after ascertaining that they will not adversely affect the integrity of the site concerned. Subject to the imposition of conditions and obligations secured through a Section 75 Agreement, SNH has advised that the proposed development will not adversely affect the integrity of the SPA / SSSI. In this case, SNH is of the opinion that the impacts on the SPA can be mitigated, whereas the view of RSPB is that it can not.

8.5 There will be a direct loss of 17.88 ha of blanket bog habitat which forms a notified feature of the Muirkirk Uplands SSSI and the potential for further indirect impacts on adjacent blanket bog habitat. SNH states that the indirect loss could be suitably protected through the imposition of appropriate conditions and through habitat management specified in a Section 75 Agreement. This direct loss of the SSSI habitat has been considered acceptable by SNH in terms of its balancing duty.

8.6 Notwithstanding the specific development plan provisions which generally presume against development that has significant impacts on sites of international and national importance, it is considered that the proposed development, subject to conditions and obligations in a Section 75 Agreement, can be undertaken in a manner that will not result in an adverse affect on the integrity of the SPA. Advance and proposed mitigation measures, together with environmental management proposals are considered to be beneficial to the management aims of the SPA and SSSI and are measures that would not otherwise be delivered in the absence of the proposed development.

8.7 In simplistic socio-economic terms, the proposed Grievehill extension will safeguard the jobs of 84 employees and maintain indirect employment through site servicing and use of local contractors. However, this is considered to be a significant material consideration as demonstrated by the level of support that the proposed development has attracted from the local community, local contractors and community organisations including New Cumnock Community Council. It is considered that the loss of this level of employment to the local community would have a severe damaging impact in an area that already has a high level of unemployment and is already economically depressed, as clearly demonstrated by the closure and loss of local facilities. Notwithstanding the qualified view that the proposed development will not have an adverse impact on the integrity of the SPA, there is a compelling argument for the proposed development on the basis of over-riding socio-economic benefits. In this regard, a departure from the development plan is considered to be justified.

8.8 In terms of the objections submitted, it is considered that while acknowledging the validity of points made in respect of conflicts with the development plan in relation to impacts on the SPA / SSSI, it is considered that the proposed development can be made acceptable with the imposition of appropriate conditions and by means of a Section 75 Agreement. The comments of RSPB in its objection are respected and reflect serious concerns regarding detrimental impact on the SPA and the uncertainty around the mitigation measures proposed. This is clearly at odds with the consultation response from SNH. However in this case the Planning Authority is required to take cognisance of the comments of SNH as a statutory consultee. SNH would also be a signatory to any Section 75 Agreement in respect of this matter and would clearly require to be satisfied by the provisions of such an Agreement to secure the necessary mitigation and management measures to prevent adverse impact on the integrity of the SPA.

8.9 In respect of all relevant matters and material considerations to be taken into account, it is considered that application should be approved subject to appropriate conditions and the securing of an amendment to the existing Section 75 Agreement to embrace the following matters:

Section 75 Agreement

(i) The undertaking of additional hydrological assessment works in the vicinity of the Glenmuir Fault including drilling of additional boreholes, non-intrusive survey works and the establishment of baseline groundwater monitoring network prior to excavations commencing. This shall include deep groundwater monitoring wells with response zones in the bedrock aquifer around the boundary of the development site outwith the excavation area (on both sides of the Glenmuir Fault) and shallow groundwater monitoring wells with response zones in the peat deposits. Following these additional works, the conceptual hydrogeological model for the Grievehill Extension shall be reviewed and refined as appropriate and water management and monitoring plans reviewed and amended as necessary. The assessment of risks to private water supplies shall also be updated in this regard. The results of the further investigations works, including all factual data, together with the updated hydrogeological conceptual model shall be submitted to the Planning Authority and SEPA for information.

(ii) The securing of a Water Monitoring Plan. The scope of this scheme shall be the subject of prior consultation with the Planning Authority and SEPA and shall include the installation of suitable water monitoring points, e.g. boreholes; the collection of baseline data and its interpretation; the on-going collection of data as appropriate and its interpretation; the reporting mechanism of this interpreted data; and a mechanism to secure mitigation of impacts should this prove necessary. Consideration shall be given to including off-site monitoring of nearby private water abstractions as appropriate in the Water Monitoring Plan.

(iii) The securing of the proposed mitigation measures including the production of a Habitat Management Plan as outlined in the consultation response from Scottish Natural Heritage dated 22 October 2007 and as detailed in Appendix 2 of that letter.

(iv) A requirement that the restored landform must mitigate the disruption of the SPA and SSSI. This will be through an agreed habitat management plan approved by the Planning Authority in consultation with the Garleffan / Grievehill Technical Working Group.

(v) The securing of contributions to the Minerals Trust Fund at the agreed Contribution Rate in respect of the coals won from the proposed Grievehill extension.

9. RECOMMENDATIONS

9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and subject to Notification of Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Direction 2007.

9.2 The issue of the decision notice should further be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant and Scottish Natural Heritage in respect of the matters detailed in Paragraph 8.9 of this report.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development the application will not require to be referred to the Principal Planning Committee because that would not be a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

08 November 2007
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
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 (1999).
7. Previous applications.
8. SPP16: Opencast Coal.
9. Finalised Draft Ayrshire Joint Structure Plan (2006).
10. The Habitats Directive and The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended 2007),

Any person wishing to inspect the background papers listed above should contact Mr Hugh Melvin on 01563 555481.

Implementation Officer: Dave Morris

Location	Grievehill OCCS, New Cumnock
Nature of Proposal:	Proposed extension of existing opencast site to allow the recovery of 920,000 tonnes of additional coal over two year followed by restoration over a further year
Name and Address of Applicant:	ATH Resources plc Aardvark House Sidings Court DONCASTER DN4 5NU
Name and Address of Agent	N/A

DPO's Ref: [Hugh Melvin]
PPO's Ref: []

The above FULL application should be granted subject to the following conditions:

1. An appropriate hydrological barrier shall be constructed to inhibit drainage from the Muirkirk and North Lowther Uplands SPA into the opencast site unless an alternative increase in the standoff distance between the excavation area and site boundary is agreed in writing with the Planning Authority in consultation with Scottish Natural Heritage, where the risk of adverse hydrological impact is potentially significant. A full method statement including details the construction method and materials to be used in the proposed barrier shall be submitted to and approved in writing by the Planning Authority, in consultation with Scottish Natural Heritage, prior to the commencement of development within the extended extraction area. The construction of the approved hydrological barrier shall be overseen by an Ecological Clerk of Works and undertaken to the satisfaction of the Planning Authority.

REASON: In the interests of protecting the Special Protection Area.

2. No ground stripping works shall take place within the main bird breeding season for ground nesting birds (March to August inclusive) unless with the prior written agreement of the Planning Authority in consultation with the Garleffan / Grievehill Technical Working group.

REASON: In the interests of safeguarding breeding birds.

3. Prior to the commencement of development on site, the applicant shall submit to, and have approved by the Planning Authority, in consultation with the Scottish Environment Protection Agency, details of a Water Management Plan for the site that shall include contingency plans to be implemented in the event of a significant influx of groundwater into the opencast void being encountered. The scope of the Water Management Plan shall be the subject of prior consultation with the Planning Authority and SEPA

REASON – In the interests of water management.

4. Prior to mineral extraction commencing in the Grievehill Extension, a method statement detailing the procedure for the identification, isolation and treatment of any substrate that poses a potential risk to groundwater quality, and a contingency plan for the isolation of any ferruginous discharges that may appear after restoration of the site, shall be submitted shall be submitted to the Planning Authority for approval, in consultation with SEPA. In the event of the appearance of any ferruginous discharges following the restoration of the site or significant changes to any existing local mine water discharges, the applicants, or their successors, shall carry out all necessary measures, as identified in the approved contingency plan.

REASON – In order to protect the water resource and in the interests of prevention of pollution.

5. 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 the 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 protect archaeological resources within the development site.

6. The proposed development hereby approved shall otherwise be undertaken in strict accordance with the plans and method of working hereby approved and in compliance with the conditions pertaining to planning consent 98/0452/FL dated 16 June 2005 and planning consent 06/0537/FL dated 19 February 2007 relating to the Grievehill Opencast Coal Site.

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

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