

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 27 MAY 2010

09/0511/PP: PROPOSED EXTENSION TO LAIGH GLENMUIR SURFACE MINE, LAND AT DUNCANZIEMERE, NEAR LUGAR, CUMNOCK

APPLICATION BY AARDVARK TMC

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning permission is sought for the extraction of coal by surface mining methods from an extraction area of 63 hectares within the overall 110 hectare site. The proposed operation at Duncanziemere is essentially an extension to the consented surface mining operations at Laigh Glenmuir. It is anticipated to yield some 800,000 tonnes of coal over an extraction period of 4 years. With site start up and final restoration periods of 18 months, this would give an overall operational life of 5.5 years. The existing Laigh Glenmuir farm buildings to the southwest of the existing Laigh Glenmuir excavation area, including the settlement lagoons, will continue to be utilised for the site offices, storage and water treatment and will form part of the site compound.

1.2 Excavation is proposed to take place in a series of 11 cuts over four phases, commencing to the north of the existing Laigh Glenmuir Site. Extraction in the next phase to the north east of the site will then continue eastwards. The direction of cuts 3 to 10 will then turn westwards across the north of the application site, finishing with cut 11 to the north west of the site. Prior to excavation commencing, an unnamed burn to the west of the existing Laigh Glenmuir site will be diverted to allow cut 1 to be excavated. It is proposed to divert the burn around the north of the extended site, then to divert it around Low Moss to the west to link the burn into the existing diverted route, along the north of Laigh Glenmuir. The burn will be reinstated along its existing route at the end of phase 2, and will be returned to its original route upon site restoration.

1.3 Topsoil and subsoil will be stripped and stored prior to each excavation and extraction phase, and stored in soil mounds and bunds according to best practice in designated storage areas to the east and north of the working area. Only the minimum area necessary will be stripped at any one time to minimise the duration of soil storage and to minimise land take. All soil mounds and bunds are to be grassed. Topsoil mounds will not exceed 5 metres AOD, and subsoil mounds will not exceed 10 metres AOD.

1.4 Initially, overburden from the new extraction areas which are the subject of this planning application will be used to fill the existing void at Laigh Glenmuir. Following the backfilling of this void, further overburden will be placed across the Laigh Glenmuir section of the application site, both in the west where the void currently is and also surcharging the existing overburden mound at Laigh Glenmuir, which is to be retained, on its northeast face. During the later phases of extraction, the worked area will be backfilled and then surcharged with overburden. The use of backfilled land for storage

is necessary to provide sufficient storage space for the anticipated overburden volume, whilst minimising as far as possible the footprint of the new area to be worked. The front faces of the overburden mounds will be developed and seeded as early as possible in order to minimise visual impact. Subsequent extension of the overburden areas will thus take place behind these front faces. The applicant has indicated that blasting operations will be required to fracture overburden prior to its removal.

1.5 Coal will be extracted and transported from the Duncanziemere extension area to the existing Laigh Glenmuir processing area for treatment. A haul road will be retained to the coal preparation area between the two overburden storage mounds on the Laigh Glenmuir land. Coal will then be removed from site via the existing conveyor at Laigh Glenmuir, transporting the coal to the Garleffan site from where the majority of the coal will then be transferred on to the Crowbandsgate Railhead (approximately 5.7 km to the south of the site) for onward transport by rail. There is therefore a consequential requirement to retain this existing conveyor facility at Laigh Glenmuir for an additional 5.5 years. This requirement is the subject of a further separate planning application (Ref. No. 09/0770/PP). Traffic generated by staff and deliveries will use the existing site entrance at Laigh Glenmuir.

1.6 It is envisaged that no more than 10% of the coal produced will access the road network by the consented Laigh Glenmuir conveyor and via the existing Garleffan haul road onto the A76T. This coal will supply local, industrial and special markets. The specific nature of the Duncanziemere coal means that at times however additional percentages rising up to 30% of the total production will be required to be delivered by road to service these markets.

1.7 The applicant intends to operate the site on a single shift pattern between 0700 and 1900 hours Monday to Friday and between 0700 and 1200 hours on Saturdays. With the exception of essential site and vehicle maintenance, no operations would take place on Sundays, Bank or Public Holidays. Blasting operations will be limited to Monday to Friday between 1000 to 1200 hours and 1400 to 1600hrs Mondays to Friday and between 1000 to 12:00 hours on Saturdays if required. Blasting will not be carried out on Sundays, on public holidays, during the hours of darkness or during periods of adverse visibility.

1.8 The Duncanziemere extension will result in the provision of 36 jobs representing an increase from the 29 jobs previously provided by the Laigh Glenmuir operations. On cessation of coaling operations in the consented Laigh Glenmuir site, personnel essentially transferred to the applicant's site near Kirkconnel. The Duncanziemere extension is anticipated to be manned with personnel that are currently working on the applicant's Glenmuckloch site near Kirkconnel and also from the Skares Road site near Cumnock. Indirect employment would also be supported in sectors that supply goods and services to the surface mining operations including mechanical, engineering and fleet support.

1.9 The proposed restoration has been informed by the EIA scoping responses from East Ayrshire Council and SNH, as well as landscape and ecological consultants involved in this project, and focuses on target species and habitats in accordance with the UK Biodiversity Action Plan (BAP) and Ayrshire Local BAP. It is anticipated that the proposed restoration will be refined following planning consent with input from the Laigh Glenmuir Liaison Committee, East Ayrshire Council, SNH and other interested parties. The proposed restoration contours are shown in Figure PS11. The proposed contours have been chosen to reflect the existing topography, with localised changes to ensure

the effective formation of the suggested habitats. It is anticipated that final restoration contours will be agreed with the Local Planning Authority prior to the commencement of restoration. The restoration proposals are in line with the Ayrshire Landscape Assessment aiming to replace lost characteristic features of the local landscape and strengthen the character. All of the site will be rehabilitated, as described below, within 18 months. The overall aims of the restoration concept are to:

- develop and enhance the visual amenity and setting of the site and the surrounding area;
- restore the site to agricultural pasture and improve the landscape value;
- create diversity of habitats such as wetlands, meadow areas and encourage wildlife;
- mitigate impacts from site workings and thereafter ensure rehabilitation of the site;
- reinstate hedgerow planting and provide green network corridors; and
- improve the woodland character by utilising current best practice guidance on woodland planting as directed by Forestry Commission Scotland and provide a framework that links with existing woodland belts and plantations within the surrounding area.

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

1.11 As part of the statutory requirements for this major application, the applicant has undertaken pre-application consultation with the local community with regard to the proposed development. The applicant has undertaken a full programme of engagement involving different sectors of the community in order to elicit views on the development proposals and issues which should be considered in the EIA process. Regard has been had to PAN81 and to the Scottish Government's Regulations on planning application consultation in respect of engaging with the community. As far as possible the applicant has taken community comments on board in bringing forward this planning application and this is documented in the Pre-Application Consultation Report which also accompanies the application. The main issues that the applicant has agreed to following the community engagement are:

- Develop a transport protocol to minimise impacts of vehicles entering and leaving the site on local minor roads;
- Consider the introduction of a bund or hedging adjacent to the roadway, or setting back the water treatment areas from the road to minimise visibility to horse riders;
- Incorporate an informal notification scheme for local residents of blasting proposals on site into the Blasting Management Plan;
- Continue fisheries monitoring of the surrounding watercourses; and
- Continue liaison with local residents individually, and via the Community Council and Liaison Committee to ensure operation of the site is proceeding with minimal loss of amenity to local residents.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet but that the issue of the decision notice should be withheld until:

- (i) 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 applicants in respect of the matters detailed in Paragraph 8.5 of this report; and**
- (ii) a Mining Waste Management Plan in compliance with the provisions of The Management of Waste from Extractive Industries (Scotland) Regulations 2009, has been formally approved by the Planning Authority in consultation with SEPA.**

3. CONCLUSIONS

3.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan, albeit it represents minor departures from Policies MIN1, MIN3(iv) and MIN30(iv) of the EAOCS. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

3.2 The proposal will involve the extraction of approximately 800,000 tonnes of coal which in environmental terms is considered to present no long term significant adverse impacts in relation to the proposed operations, and this is essentially borne out by the consultation process.

3.3 The proposed Duncanziemere development is essentially an extension to the consented Laigh Glenmuir surface mine and the proposal will provide or retain approximately 37 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. In landscape and visual amenity terms, the proposed development will have significant, albeit temporary adverse impacts. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term. Overall it is considered that the long-term landscape would be enhanced by restoration proposals through the introduction of more native tree planting.

3.4 It is acknowledged that there are genuine concerns raised in the letters of objection and in this regard, it is considered that with the imposition of appropriate conditions and delivery of proposed mitigation measures, the impact on local communities and properties in proximity to the site can be minimised to acceptable environmental standards. It is further noted that there has not been a significant level of objections to the proposed development in this case.

3.5 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is generally consistent with policy and that there are no significant environmental or community concerns regarding

the proposal. Consequently it is considered that the application should be approved but subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

Section 75 Agreement

- (i) The extension of the remit of the existing Technical Working Group for the Laigh Glenmuir site to embrace the proposed Duncanziemere extension with the provision that the group shall meet at least bi-annually.
- (ii) The establishment of additional noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Duncanziemere site following consultation with the Planning Authority and the Environmental Health Service, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (iii) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the East Ayrshire Opencast Coal Subject Plan 2003, including the establishment and implementation of an appropriate independent monitoring regime.
- (iv) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;
- (v) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site;
- (vi) The securing of a vehicle route for abnormal loads in terms of the recommendations of the consultation response from East Ayrshire Roads and Transportation Service.
- (vii) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.
- (viii) The undertaking of structural surveys of residential properties lying in close proximity to the proposed excavation areas, the identification of properties considered for survey being the subject of discussion and agreement with the Planning Authority, and shall only be required where the property owners give consent for such surveys. Copies of the requisite surveys shall be made available to the Planning Authority and to respective property owners.

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development then the application would not require to be referred to the Full Council as such a decision would not represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

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

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REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an application for planning permission which is to be considered by the Local Planning Committee under the scheme of delegation because it represents a major application in terms of the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 which is not significantly contrary to the Development Plan.

2. APPLICATION DETAILS

2.1 **Site Description:** The proposed application site relates to the farmland of the Duncanziemere farmstead and lies 3 km to the north-east of Cumnock, 1.2 km to the east of Lugar, 1.9 km to the north-east of Logan and 1.3 km south-east of Cronberry. The site is located north of the Glenmuir Water and approximately 700 metres to the south-east of the A70 Cumnock – Muirkirk Road. The application site is located west of the large Glenmuir woodland plantation, and comprises improved pasture and grazing land in agricultural use and mixed woodland, as well as the site of the existing surface mine at Laigh Glenmuir.

2.2 There are also two woodland shelterbelts crossing the site which are designated as semi natural Ancient Woodland. The area surrounding the application site is open, undulating moorland north of the Glenmuir Water which passes through the Glenmuir Valley. There are also some smaller areas of marshy grassland and blanket bog near the site, particularly that of Low Moss which lies along the western perimeter of the application site which is listed as a Provisional Wildlife Site.

2.3 In topographical terms, the north of the proposed application site is located on a small hill, falling away from approximately 242 metres Above Ordnance Datum (AOD) in the north-east of the site to approximately 190 metres AOD in the west and north-west.

2.4 The application site covers an area of approximately 110 hectares and incorporates the existing surface mine workings at Laigh Glenmuir. Only the northern part of the proposed application site, which covers an area of approximately 63 hectares, will be subject to new extraction operations. The existing workings at the Laigh Glenmuir site cover an area of approximately 47 hectares, of which less than half has been used for coal extraction.

2.5 The western portion of the application site, including part of the existing Laigh Glenmuir site, falls within an area of High Visual Amenity, as defined within the adopted East Ayrshire Local Plan. Approximately half of the consented Laigh Glenmuir site lies

within this HVA area. There is one Public Right of Way running through the site, running south of the A70, from Sunnyside to Hillhead, passing through Duncanziemere Farm.

2.6 Proposed Development: Planning permission is sought for the extraction of coal by surface mining methods from an extraction area of 63 hectares within the overall 110 hectare site. The proposed operation at Duncanziemere is essentially an extension to the consented surface mining operations at Laigh Glenmuir. It is anticipated to yield some 800,000 tonnes of coal over an extraction period of 4 years. With site start up and final restoration periods of 18 months, this would give an overall operational life of 5.5 years. The existing Laigh Glenmuir farm buildings to the southwest of the existing Laigh Glenmuir excavation area, including the settlement lagoons, will continue to be utilised for the site offices, storage and water treatment and will form part of the site compound.

2.7 Excavation is proposed to take place in a series of 11 cuts over four phases, commencing to the north of the existing Laigh Glenmuir Site. Extraction in the next phase to the north east of the site will then continue eastwards. The direction of cuts 3 to 10 will then turn westwards across the north of the application site, finishing with cut 11 to the north west of the site. Prior to excavation commencing, an unnamed burn to the west of the existing Laigh Glenmuir site will be diverted to allow cut 1 to be excavated. It is proposed to divert the burn around the north of the extended site, then to divert it around Low Moss to the west to link the burn into the existing diverted route, along the north of Laigh Glenmuir. The burn will be reinstated along its existing route at the end of phase 2, and will be returned to its original route upon site restoration.

2.8 Topsoil and subsoil will be stripped and stored prior to each excavation and extraction phase, and stored in soil mounds and bunds according to best practice in designated storage areas to the east and north of the working area. Only the minimum area necessary will be stripped at any one time to minimise the duration of soil storage and to minimise land take. All soil mounds and bunds are to be grassed. Topsoil mounds will not exceed 5 metres AOD, and subsoil mounds will not exceed 10 metres AOD.

2.9 Initially, overburden from the new extraction areas which are the subject of this planning application will be used to fill the existing void at Laigh Glenmuir. Following the backfilling of this void, further overburden will be placed across the Laigh Glenmuir section of the application site, both in the west where the void currently is and also surcharging the existing overburden mound at Laigh Glenmuir, which is to be retained, on its northeast face. During the later phases of extraction, the worked area will be backfilled and then surcharged with overburden. The use of backfilled land for storage is necessary to provide sufficient storage space for the anticipated overburden volume, whilst minimising as far as possible the footprint of the new area to be worked. The front faces of the overburden mounds will be developed and seeded as early as possible in order to minimise visual impact. Subsequent extension of the overburden areas will thus take place behind these front faces. The applicant has indicated that blasting operations will be required to fracture overburden prior to its removal.

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km to the south of the site) for onward transport by rail. There is therefore a consequential requirement to retain this existing conveyor facility at Laigh Glenmuir for an additional 5.5 years. This requirement is the subject of a further separate planning application (Ref. No. 09/0770/PP). Traffic generated by staff and deliveries will use the existing site entrance at Laigh Glenmuir.

2.11 It is envisaged that no more than 10% of the coal produced will access the road network by the consented Laigh Glenmuir conveyor and via the existing Garleffan haul road onto the A76T. This coal will supply local, industrial and special markets. The specific nature of the Duncanziemere coal means that at times however additional percentages rising up to 30% of the total production will be required to be delivered by road to service these markets.

2.12 The applicant intends to operate the site on a single shift pattern between 0700 and 1900 hours Monday to Friday and between 0700 and 1200 hours on Saturdays. With the exception of essential site and vehicle maintenance, no operations would take place on Sundays, Bank or Public Holidays. Blasting operations will be limited to Monday to Friday between 1000 to 1200 hours and 1400 to 1600hrs Mondays to Friday and between 1000 to 12:00 hours on Saturdays if required. Blasting will not be carried out on Sundays, on public holidays, during the hours of darkness or during periods of adverse visibility.

2.13 The Duncanziemere extension will result in the provision of 36 jobs representing an increase from the 29 jobs previously provided by the Laigh Glenmuir operations. On cessation of coaling operations in the consented Laigh Glenmuir site, personnel essentially transferred to the applicant's site near Kirkconnel. The Duncanziemere extension is anticipated to be manned with personnel that are currently working on the applicant's Glenmuckloch site near Kirkconnel and also from the Skares Road site near Cumnock. Indirect employment would also be supported in sectors that supply goods and services to the surface mining operations including mechanical, engineering and fleet support.

2.14 The proposed restoration has been informed by the EIA scoping responses from East Ayrshire Council and SNH, as well as landscape and ecological consultants involved in this project, and focuses on target species and habitats in accordance with the UK Biodiversity Action Plan (BAP) and Ayrshire Local BAP. It is anticipated that the proposed restoration will be refined following planning consent with input from the Laigh Glenmuir Liaison Committee, East Ayrshire Council, SNH and other interested parties. The proposed restoration contours are shown in Figure PS11. The proposed contours have been chosen to reflect the existing topography, with localised changes to ensure the effective formation of the suggested habitats. It is anticipated that final restoration contours will be agreed with the Local Planning Authority prior to the commencement of restoration. The restoration proposals are in line with the Ayrshire Landscape Assessment aiming to replace lost characteristic features of the local landscape and strengthen the character. All of the site will be rehabilitated, as described below, within 18 months. The overall aims of the restoration concept are to:

- develop and enhance the visual amenity and setting of the site and the surrounding area;
- restore the site to agricultural pasture and improve the landscape value;
- create diversity of habitats such as wetlands, meadow areas and encourage wildlife;

- mitigate impacts from site workings and thereafter ensure rehabilitation of the site;
- reinstate hedgerow planting and provide green network corridors; and
- improve the woodland character by utilising current best practice guidance on woodland planting as directed by Forestry Commission Scotland and provide a framework that links with existing woodland belts and plantations within the surrounding area.

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

2.16 As part of the statutory requirements for this major application, the applicant has undertaken pre-application consultation with the local community with regard to the proposed development. The applicant has undertaken a full programme of engagement involving different sectors of the community in order to elicit views on the development proposals and issues which should be considered in the EIA process. Regard has been had to PAN81 and to the Scottish Government's Regulations on planning application consultation in respect of engaging with the community. As far as possible the applicant has taken community comments on board in bringing forward this planning application and this is documented in the Pre-Application Consultation Report which also accompanies the application. The main issues that the applicant has agreed to following the community engagement are:

- Develop a transport protocol to minimise impacts of vehicles entering and leaving the site on local minor roads;
- Consider the introduction of a bund or hedging adjacent to the roadway, or setting back the water treatment areas from the road to minimise visibility to horse riders;
- Incorporate an informal notification scheme for local residents of blasting proposals on site into the Blasting Management Plan;
- Continue fisheries monitoring of the surrounding watercourses; and
- Continue liaison with local residents individually, and via the Community Council and Liaison Committee to ensure operation of the site is proceeding with minimal loss of amenity to local residents.

3. CONSULTATIONS AND ISSUES RAISED

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

3.2 East Ayrshire Council Roads and Transportation Service states that it has no objections to the development subject to the imposition of conditions. The U736 Loganhill Road has never been formally approved for abnormal load traffic. The Council structures on this route are satisfactory for abnormal load traffic, however, Network Rail do not normally allow abnormal load traffic to cross the 161/168 Borland Rail Bridge (258611, 617926). Nor do they allow abnormal load traffic across the 161/166 Craighends Rail Bridge (258767, 618802). Both these bridges have still to be load

assessed. EAC has signed an agreement with Network Rail to fund the assessment of these bridges. Network Rail has still to arrange for the assessments to be carried out. The junction of the U736 and the U729 is also not considered suitable for the right turn manoeuvre from the U736 into the U729. Abnormal load traffic that has used this route in the past, without permission, has had to turn left onto the U729 and drive into Logan village where it has carried out a reversing manoeuvre before heading back along the U729. The most appropriate route for abnormal load vehicles accessing Laigh Glenmuir is from the A70, turning onto the U729 Logan road and then turning left onto the U764 road over the Glenmuir Bridge which has already been load assessed as part of the original OCCS permissions. Thereafter, the U721 to the site entrance.

The abnormal loads routing requirement of the Roads and Transportation Service can be secured through obligations within a Section 75 Agreement associated with the Duncanziemere site.

3.3 The Scottish Environment Protection Agency **objects** to this planning application **unless** planning conditions in respect of the issues as noted below are attached to any consent.

(i) There are a number of hydrogeology issues which require further consideration prior to the commencement of any works at this site. In particular concerns relate to the impacts of dewatering on groundwater levels and base flow to surface waters, the potential for backfill material to generate acidic leachate, and altered groundwater flow regimes following backfill and contamination of groundwater during site operation. Any planning permission granted at this site should be subject to suitable conditions being attached addressing the following issues:

- As stated in the report, groundwater monitoring should start before operations begin and continue through to and during the aftercare period. The monitoring plan needs to take into consideration the on-going collection of data and its interpretation; decide on the reporting mechanism and detail the mechanisms to secure mitigation of impacts should this prove necessary.
- In view of the complex nature of groundwater flow and locations of the existing monitoring points, further monitoring points for level and quality are required. Groundwater level monitoring and quality monitoring should be carried out once an adequate monitoring network is installed. The network should be developed in consultation with SEPA.
- It is not clear whether the planned abstraction is in addition to the current one at Laigh Glenmuir or whether they will be combined, this should be clarified. The current assessment of the impact of dewatering should be refined, including the zone of influence recalculation. Following refinement of the dewatering calculation, the risk to the water features including private water supplies should be reassessed.
- The ES states that further detailed analysis of the risk from backfill at the site may be required. SEPA agrees that further analysis of the risk is needed as the ES has not demonstrated that the risk from the backfill is acceptable. The backfill risk assessment Level 3 should be progressed and a Level 4 evaluation undertaken, if required, to ensure that the backfill poses an acceptable risk to the groundwater.

- Step 6 of the backfill assessment should be completed whatever the outcome of the analysis of the risk from backfill at the site. This requires a contingency plan to be developed, and this should be done in consultation with SEPA.
- All appropriate permits must be in place prior to works commencing on site.

(ii) SEPA has no objection to the proposed development on flood risk grounds. It is noted that development within the site, apart from the proposed diversion of the unnamed burn, is located away from existing watercourses and the development is therefore likely to be at a low to medium risk of flooding. As such, it is also considered that the proposed development will not have an adverse effect on the functional floodplain.

(iii) In terms of surface water management, SEPA notes that it is proposed to install cut-off ditches around key areas to intercept clean water runoff from entering the operational site. The cut-off ditches will discharge this clean water to the surrounding watercourses. SEPA is concerned that clean surface water is going to be mixed with surface water which does require treatment, therefore unnecessarily increasing the treatment volumes. In the past we have experienced problems with the unsuitable profile of cut off ditches for clean water. Unless a suitably profiled ditch is installed, it can result in scour and erosion taking place in the clean water channels with resultant sediment releases. SEPA would recommend that any planning permission granted at this site should include a suitable condition requiring the applicant to submit details of proposals for a surface water management system for this site. The detailed proposals for surface water management should be discussed with SEPA's Ayrshire Regulatory Team.

The conditions proposed by SEPA, to secure its non-objection to the proposed development, can be attached to any consent granted and the applicant has indicated acceptance of the proposed conditions.

3.4 The Ayrshire Rivers Trust (ART) states that the proposed extension to the Laigh Glenmuir OCCS at Duncanziemere could potentially impact freshwater ecosystems, including fish populations in the burns and rivers draining the site. The proposed site is located within the upper River Ayr catchment. Two small tributaries drain the site, the largest being the Duncanziemere Burn which enters the Glenmuir Water upstream of Lugar. Previous survey work by ART in the Glenmuir Water for ATH and core electro-fishing surveys for the River Ayr District Salmon Fishery Board have shown that the Glenmuir Water is one of the most productive waters in Ayrshire for juvenile salmon production including the rare spring salmon. It is therefore essential that developments within the catchment are operated so that impacts on the river and the fish it supports are minimised. The Glenmuir Water also supports other fish species such as trout, eels and lampreys.

Duncanziemere Burn was surveyed at one location by ART recently and although no fish were recorded during the survey, the habitat was suitable and fish may be present. The topography downstream of the survey site indicated that salmon were unlikely to ascend this burn during migration but other species may. It is essential that ATH take every precaution to prevent contaminated surface water run-off and drainage water reaching this burn in an untreated state. The ability to maintain adequate pollution prevention even during extreme weather conditions is essential.

As indicated in the consultation response from SEPA, appropriate water management measures will require to be put in place, in consultation with SEPA, to ensure that impacts on water resources are minimised.

ART understands that the proposed development will require the diversion of at least one minor burn. ART consider all watercourses to be important parts of the River Ayr catchment therefore it is essential that effective planning and resources are dedicated to ensuring that the diversion of any watercourse is achieved without changing the long term drainage characteristics of the area. ART considers it essential, for a development of this size, nature and duration, that provision for ongoing monitoring of fish populations is included. For phase 1 of the Laigh Glenmuir OCCS, ART undertook a number of fully quantitative electro-fishing surveys at sites where pre and post works assessments can be made. ART recommends a continuance of this monitoring until completion.

Appropriate fish monitoring can be secured by obligations in a Section 75 Agreement.

ART are aware of water voles in the near vicinity to Duncanziemere and due to their potential for transient behaviour, ART recommend that a water vole survey is completed along potentially impacted watercourses to establish whether there are water voles present in or near the site.

The monitoring carried out by ART (commissioned by ATH) has shown that the Laigh Glenmuir site has had little impact on the ecology of the Glenmuir Water. It is essential that the same standards of operation are implemented at the proposed Duncanziemere site, if it receives the necessary approvals.

Noted.

The proposed Duncanziemere site is immediately uphill of a raised bog. Raised bogs of this nature are extremely rare in Ayrshire and it is essential that wetland features of this nature are protected.

Conditions can be attached to any consent granted to ensure that appropriate protection measures are put in place to maintain the integrity of Low Moss (see also consultation responses from SNH and RSPB Scotland).

3.5 Scottish Natural Heritage initially reserved its position in relation to the proposed development pending the clarification of a number of issues with the applicant. The final response from SNH indicates that, in accordance with SNH's new planning guidance, objections (including holding objections and conditioned objections) should only be considered where a proposal raises natural heritage issues of national interest. As the proposal does not raise issue of national interest, principally it does not affect national protected area , SSSI, Natura site etc., then SNH does not object.

The main concern SNH has with the development and one on which we would hope further clarification could be obtained is the commitment from the applicant to install the protective bund in advance of any other works on site which could affect Low Moss. In this regard SNH agrees that provided mitigation as discussed in the meeting of 11 February 2010 takes place then any damage to habitats on Annex 1 of the Habitats

Directive will be in accordance with the ES assessment. SNH wishes to be assured the bund to protect Low Moss would be installed before any work, which could impact on the hydrology of the neighbouring peatlands, takes place. Provided we have assurance that the bund will be installed prior to any damaging operations our concerns will be met.

The requirement of SNH can be secured through the imposition of an appropriate condition attached to any consent granted for the development. In this regard the applicant has accepted that the proposed bund shall be installed before any work which could impact on the hydrology of the neighbouring peatlands takes place

3.6 The Royal Society for the Protection of Birds (Scotland) does not believe that the development site itself holds significant habitats or bird populations of conservation importance but notes that the development is adjacent to Low Moss. This is a lowland raised bog, a priority habitat in the Ayrshire LBAP. The ES concludes that impacts on this habitat would be significant without certain mitigation measures and RSPB has some concerns about the mitigation measures proposed to prevent impact on this habitat. RSPB notes that similar measures were not installed at the Grievehill extension site, also operated by ATH Resources, despite being stipulated as a planning condition.

While RSPB therefore does not object to the development, it is advised that should your authority be minded to grant consent, detailed conditions will be required to mitigate effects on the ecology of the site and Low Moss. In particular, conditions or a legal agreement must be used to ensure that:

- (i) The applicant will agree specification of a bund to prevent dewatering of Low Moss with EAC, SNH and SEPA prior to commencement of the development.
- (ii) A bund to the specification agreed with EAC, SNH and SEPA will be constructed to the satisfaction of these bodies, before commencement of soil stripping and excavation of the area beyond the bund.
- (iii) A monitoring programme to monitor changes in water table, vegetation composition and breeding bird numbers on Low Moss will be agreed with SNH prior to commencement of the development and implemented by the applicant. The programme will ensure baseline monitoring before development commences.
- (iv) Soil stripping and vegetation removal shall only take place outwith the bird breeding season (March to July inclusive) unless with the prior written agreement of SNH, following checks for the presence of breeding birds by a suitably qualified ecologist.
- (v) Suitable replacement nest sites will be created for breeding barn owl, as proposed in the ES.
- (vi) The existing Technical Support Group for ATH sites will be given the role of approving the restoration and monitoring of this site.
- (vii) The applicant shall prepare and submit a restoration and aftercare plan to EAC, to be agreed with members of the Technical Support Group, prior to commencement of the development
- (viii) The applicant shall implement the agreed restoration and aftercare plan, subject to revisions by the Technical Support Group, to the satisfaction of the TSG.

RSPB is also disappointed to see that no commitment has been made to improve the status of the Low Moss raised bog. It is acknowledged that the ES concludes that the proposed mitigation measures mean there will be no impact on the Moss. However,

RSPB believes a commitment to delivering biodiversity enhancement at Low Moss would be a reasonable commitment from the operator of this development, would make an important contribution to the Ayrshire LBAP targets and would be a sensible precautionary approach, given the proposed operations beside the bog. RSPB therefore asks that your authority considers how delivery of such measures can be encouraged.

Conditions can be attached to any consent granted for the proposed development, or obligations secured through a Section 75 Agreement, to meet the requirements of RSPB. The establishment of a Technical Working Group for the site can be secured by means of an obligation within a Section 75 Agreement.

3.7 The West of Scotland Archaeology Service states that apart from the farmsteads which are mapped on Roy's map of circa 1755 and could be of importance, there would appear to be no impediment to the proposed development proceeding in this area as there are no recorded sites of proven significance affected by the proposals. Also, as the ground is improved, there is less of a chance of the development encountering remains so well preserved that refusal of the application would be warranted. However it is not at all unexpected to find that there are few or no recorded sites contained within areas of improved ground which have been ploughed in the past. It is entirely possible for there to be significant and extensive pre-historic remains contained within this large application area and the development stands a reasonable chance of unearthing such based on its size. It is therefore possible that buried remains could be found which would require to be excavated. WOSAS advises intrusive evaluation since it represents best practice and reflects Government guidance and this can be done under a condition placed on any planning consent. This evaluation should involve trial trenching an 8% sample of the full application area and should be targeted to recorded sites. WOSAS suggests the following condition:

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

The use of such a condition on any consent allows the potentially complex archaeological issues to be addressed in detail after the principle of development has been accepted, but of necessity, limits the opportunities to amend designs or operations to achieve the preferred preservation of remains in situ. This means that it is more likely that any important remains within the development boundary will have to be excavated under archaeological conditions prior to their destruction by the approved development.

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

3.8 East Ayrshire Council Environmental Health Service has no objections in principle to the proposed development but indicates that monitoring of noise levels at

sensitive receptors should be carried out by the applicant and results submitted on a quarterly basis for scrutiny. The noise levels predicted by the applicant would appear to be within acceptable limits. Any complaints received would however, require to be investigated by this office in terms of statutory noise nuisance procedures.

Should consent be granted for the proposed development, an appropriate noise monitoring scheme can be secured by means of a condition and an obligation within a Section 75 Agreement.

3.9 Historic Scotland confirms that it is broadly content that there will be no significant impacts on historic environment assets of national importance and, consequently, offers no objection to the proposed development.

3.10 The Scottish Government (Climate Change and Water Industry Directorate) notes that the site will be able to operate within advisory limits provided appropriate mitigation measures are adopted in relation to noise, vibration and air quality.

3.11 Transport Scotland (TRNMD) states that the proposed development represents an intensification of the use of this site; however the percentage increase in traffic on the trunk road is such that the proposed development is likely to have no impact on the trunk road network. On that basis, TRNMD has no comments to make.

3.12 Cronberry, Logan and Lugar Community Council has objected to the proposed development stating that the Glenmuir Valley has long been used by local residents, by walkers of all ages, by junior and novice cyclists and as a measured route for sponsored walks, so is nick-named “the fivey”. For the local community the Glenmuir Valley is a cherished recreational area. The East Ayrshire Opencast Coal Subject Plan in paragraph 6.31 describes the Glenmuir Valley as having high landscape and visual quality, and that opencast development would be highly intrusive and visually damaging in both environmental and recreational terms. During operations at Laigh Glenmuir, screening of the site from roads within the area has proved very unsuccessful. It is expected that the measures being proposed in this application will have no greater success, once again serious visual disruption.

It is considered that physical setting, operational viability or recreational quality of any specific tourism or recreation sites or resources will not be adversely affected. Similarly visual amenity, landscape character and setting will not be adversely affected to any significant extent by the proposed development in the long-term and, the mitigation methods proposed would minimise any temporary adverse landscape and visual impacts that may potentially be experienced. Given the proposed restoration, it is considered that the long term impact on the landscape and on visual receptors will be positive. It is noted that SNH has not objected to the proposed development in landscape terms.

Policies MIN 4 (iv), (vi) & 7 & 22: these policies balance the potential improvements brought to an area against the damage that may ensue on approval. There are no sites of dereliction within the Glenmuir Valley; therefore no benefits to the visual amenity will be gained by approving this application. Indeed, the scale of potential damage to the area by the proposed development represents the major threat.

Policy MIN4 considers assessment of applications, Policy MIN7 indicates supporting information to be provided and Policy MIN22 relates to

protection of amenity. The criteria listed in Policy MIN4 against which extensions will be assessed are considered in the Planning Statement which accompanies the application. In particular, in relation to community benefits, there are many positive benefits of the proposal as indicated both in the ES and the Planning Statement. These include retention of current employment and increased public use of the area in the future, as well as environmental benefits through increase of biodiversity and nature conservation value of the site through the proposed restoration measures.

Policy MIN7 addresses the requirement to ensure that proposals will not have any significant adverse effect on the community or create any permanent adverse effect on the environment. The Planning Authority must therefore determine whether the proposal is acceptable in planning terms with the use of planning conditions or legal agreements, or whether there is benefit to the community or environment which outweighs any adverse effects. The conclusions of the ES indicate that the site design and proposed mitigation measures will make the proposal acceptable in planning terms.

Policy MIN22 requires that consideration is given to mitigating the likely impact of the proposed development on local communities and nearby properties. In relation to visual impact, noise, air quality, transportation, restoration and cumulative impacts, these matters are fully covered within the ES that accompanies the application.

Policy MIN30: The Glenmuir Valley is specifically mentioned in this policy and developments will not be considered acceptable where these would be detrimental to the landscape and scenic quality of...the Glenmuir valley. Like the OCS sites at Laigh Glenmuir and Garleffan, the issue is not screening the development from the settlements, this development will probably not be seen directly from the local villages. It is specifically the secluded rural nature of the valley that sets it apart and resulted in its inclusion in this Policy. It is the conclusion in Policy Min 30 that must be upheld.

Policy MIN30 aims to protect the visual amenity and appearance of areas, and to protect landscapes. It is considered that the visual amenity of the area will not be permanently affected by the proposed development and communities are unlikely to view the proposed development. Given that the landscape and visual impacts will largely be confined to the immediate vicinity of the site due to the surrounding topography and vegetation (existing and advance planting), the temporary nature of the proposals, and the fact that the site would be restored and enhanced once surface mining operations have been completed, the proposed development will not have an unacceptable long term impact on the character and quality of the landscape. Any potential impacts on landscape character will be temporary in nature and mitigated by proposed screening and planting and retention of trees adjacent to the site. Given the proposed restoration, it is considered that the long term impact on the landscape will be positive.

Policy MIN12: applications will be refused where the proximity results in a "third operative site within 3kms of each other or within a radius of 3kms of any particular community; or...adverse...environmental disruption over a total extraction period in excess of 10 years". The Community Council (is) regretfully aware that the Glenmuir valley scenic area has been blighted since the opening of the OCS at Garleffan in 2000,

a site which still awaits complete restoration. Since then there has been the very intrusive Laigh Glenmuir and the industrial coal conveyor cutting directly across the valley. Accepting this application would mean subjecting the Glenmuir Valley to thirteen years of serious environmental damage. It is also possible that there may be further applications for opencast extensions.

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

The applicant has indicated, insofar as they are aware, that the current proposal will extract the last significant economic coal reserve in the Glenmuir Valley other than that which underlies habitat of a value which has been safeguarded. Testing in surrounding areas has not resulted in substantial additional reserves being identified. Therefore it is unlikely that additional extensions will take place.

Policy MIN17 requires a detailed phased programme of the restoration. The community regrets that the original phased-restoration at the Laigh Glenmuir site and removal of the coal conveyor has now been linked to the present application. This did not form part of the initial approval, and is regarded as untrustworthy practice by the operator.

An indicative Restoration Plan accompanies the application which is intended to be developed and finalised as part of the detailed site design process. This would be the subject of discussion and agreement with the Technical Working Group for the site. The restoration plan incorporates progressive restoration of the site through backfilling to the final proposed restoration contours. The proposed restoration scheme for the combined Laigh Glenmuir/Duncanziemere site will result in a coherent and environmentally sensitive scheme for the area covered by both sites. The concept of this scheme will deliver a wider range of habitats than at present for bats and bird species in the area, and enhancing the mire habitats of Low Moss and Hillhead Moss. Given the greater size of the combined site, the extent of this improvement will be of more ecological benefit than restoration of Laigh Glenmuir alone. Although it is acknowledged that working Duncanziemere will delay final restoration of

Laigh Glenmuir by approximately 5 years, both sites will be progressively restored throughout operations.

Policy MIN28 states that the Council will ensure that any opencast development proposal respects, in terms of design and restoration, the distinctive local landscape characteristics...(i)...setting of buildings within the landscape; (ii) existing woodlands shelterbelts hedgerows and tree features. The community were outraged at the loss of the Glenmuir Schoolhouse in the course of the operations at Laigh Glenmuir. This was regarded as a “heritage landmark” in the Glenmuir valley. The farmhouse at Hillhead with its attendant ancient, broad-leafed, hedgerows and shelterbelts form a very significant, prominent, heritage feature of the landscape. There has been a farmhouse here for at least three centuries so loss of this feature would represent major irreparable damage to the landscape.

With respect to the proposed demolition of Hillhead, although this building has been present since the 19th Century, it is currently derelict and uninhabited. It is proposed that a programme of historic building recording takes place prior to its demolition to recognise its historic interest, and an archaeological survey of 5% of the remainder of the site will take place to establish any further archaeological features associated with pre-improvement buildings on site. Loss of the woodland shelterbelts on site is also acknowledged. However, it is considered that many better quality shelterbelts in the area will be retained to act as wildlife corridors and habitat for birds and bats (in addition to the specific habitat boxes and lofts to be created for these species that the applicant proposes in mitigation). The proposed restoration of the site will result in the replacement of the shelterbelts and hedgerows on site, although it is acknowledged these will take several years to mature. Policy MIN28 states that developers will be expected to reinstate or replace valuable landscape features where appropriate and the applicant’s restoration proposals would not present conflict with this policy.

Policy MIN11 states that all areas of active peat bog within the site boundary shall be conserved. The community questions the efficacy of opencast coal working in the proximity of peat bog in the light of the bog burst which occurred at an ATH site in 2008. With this in mind the hydrology of the Low Moss will possibly be affected by isolating deep through-flow from the raised ground at Hillhead adversely affecting the Low Moss.

There are no areas of active peat bog within the proposed development boundary. The proposed site design takes account of the location of Low Moss and its typical lowland raised bog vegetation is outwith the proposed Duncanziemere site boundary to the west. All peat required to be removed from the site prior to extraction (although minimal) will be appropriately stored for use in the proposed restoration scheme, to extend and improve the existing bog. Peat extracted from the existing Laigh Glenmuir is currently in such storage for use in restoration. No peat will be exported from the site.

The risk of the proposed development impacting upon Low Moss, and at Hillhead Moss to the north-east, has been considered in-depth throughout the site design. In addition, several detailed mitigation measures and proposals to ensure the ecological and hydrological integrity of Low Moss

and Hillhead Moss are proposed in the ES, including a comprehensive monitoring programme.

It should be noted that the mitigation measures proposed adjacent to Low Moss generally replicate those implemented successfully at the existing Laigh Glenmuir site which is also located adjacent to Low Moss. This mitigation was successful in protecting the geotechnical and hydrological integrity of Low Moss and this has been demonstrated through independent annual inspections of the peat protection bund and surrounding area.

The risk of cutting off groundwater flow from Hillhead Moss is highly unlikely to impact on the hydrology of Low Moss, given that raised bogs are fed by rainfall rather than ground water or streams. Therefore, as long as the bog is prevented from draining, as proposed by the mitigation measures to be implemented, the hydrological input to the bog will not be impacted.

3.13 Scottish Water, The Health and Safety Executive, and the River Ayr Salmon Fishery Board have not responded to the consultation letters.

4. REPRESENTATIONS

4.1 In addition to the objection received from Cronberry, Logan and Lugar Community Council, two letters of representation have been received regarding the proposed development. One of the letters does not raise any points of objection but offers comment about heavy machinery accessing the site across the Glenmuir Bridge. The other letter raises a number of points of objection to the proposed development which can be summarised as follows:

4.2 The size and length of the operational life of the proposed extension mean that it does not fall within the Subject Plan's definition of small-scale, short term development: it is therefore contrary to Policies MIN1 and MIN2 of the East Ayrshire (Opencast Coal) Subject Plan.

The principal criterion in determining whether or not the proposed development is in accordance with policies MIN1, MIN2 and MIN3 is whether or not the site lies within a Potential Coal Extraction Area (PCEA), as defined in the East Ayrshire Opencast Coal Subject Plan (OCSP). Part of the Duncanziemere application site does fall within a PCEA and since part falls outwith, the proposal would represent a potential departure from Policy MIN1. It is acknowledged that the proposal does not meet the requirements of being "short term" (less than 2 years) or "small scale" (less than 25ha) in Policy MIN2. However, as the proposed development represents an extension to the existing Laigh Glenmuir site, the application is more appropriately assessed against Policy MIN3.

4.3 The development will have a significant adverse (cumulative) environmental impact on the Glenmuir Valley, in terms of its value to local communities as a recreational resource; and in terms of its wider landscape character & visual amenity. It is therefore contrary to MIN9 and MIN30 that specifically seek to protect the high amenity value and recreational resources of the Glenmuir Valley

Policy MIN9 addresses the issue of sterilisation of coal resources, and as such is not relevant to the proposed development. It is possible that the objector is referring to Policy MIN29, relating to protection of tourism and recreational resources. Policy MIN 30 aims to protect the visual amenity and appearance of areas, and to protect landscapes. It is considered that the physical setting, operational viability or recreational quality of any specific tourism or recreation sites or resources will not be adversely affected. Similarly visual amenity, landscape character and setting will not be adversely affected to any significant extent by the proposed development in the long term, and the mitigation methods proposed would minimise any temporary adverse landscape and visual impacts that may potentially be experienced. Given the proposed restoration, it is considered that the long term impact on the landscape and on visual receptors will be positive.

4.4 Permitting “an extension” when the developer proposes more vehicular movements; when the extension would significantly prejudice (prevent) restoration of Laigh Glenmuir OCCS, is contrary to MIN3 iii & iv.

Policy MIN3(iii) relates to maintaining the scale and rate of operations in extension sites. These will remain at similar to the existing Laigh Glenmuir and the proposed extension will not result in significantly more vehicle movements than the original Laigh Glenmuir site. Any potential increase will be minimal and will result from the increased employment provided by the extension compared to the original site, an additional 7 staff. Coals won from the Duncanziemere extension, like those from the existing Laigh Glenmuir site, will be taken to the applicant’s coal processing area at Garleffan and onward to the Crowbandsgate railhead via overland conveyors.

Policy MIN3(iv) relates to ensuring restoration of the original site. It is acknowledged that working Duncanziemere will delay final restoration of Laigh Glenmuir by approximately 5 years although both sites will be progressively restored throughout operations. However, there is merit both operationally and environmentally to utilise the existing site infrastructure / opencast void to minimise land take and disturbance through the retention of the existing overburden mound.

The proposed restoration scheme for the combined Laigh Glenmuir/ Duncanziemere site will result in a coherent and environmentally sensitive scheme for the area covered by both sites and will provide a wider range of habitats than at present for bats and bird species in the area, and enhancing the mire habitats of Low Moss and Hillhead Moss. Given the greater size of the combined site, the extent of this improvement will be of more ecological benefit than restoration of Laigh Glenmuir alone.

4.5 As much of the proposed extension is outwith a Potential Open-Cast Area, the Council should also reject the proposal in terms of the remaining criteria; -(termed ‘iv, v & vi’) as there is no dereliction to remove, only that which ATH have created at Laigh Glenmuir OCCS. There is no overall community benefit. The development conflicts with Local Plan, Subject Plan and Structure Plan Policies.

Policy MIN3 states that the Council will consider extension proposals on their own merits and against the rest of the OCSP policies. Considerations include environmental benefit, such as proposed as a result of the restoration scheme and advance planting, and creating community benefit for example through increasing and retaining local employment. With the creation / retention of direct 37 jobs and indirect employment through site servicing, there will be overall and significant community benefit.

4.6 Any approval would create an undesirable precedent for further exploitation of coal reserves in areas of known environmental constraint, outwith areas identified for open-cast coal extraction in East Ayrshire's Subject Plan. MIN6 was contravened in 2005, when ATH did not disclose future interests at Hillhead/Duncanziemere.

The applicant has indicated, insofar as they are aware, that the current proposal will extract the last significant economic coal reserve in the Glenmuir Valley other than that which underlies habitat of a value which has been safeguarded. Testing in surrounding areas has not resulted in substantial additional reserves being identified. Therefore it is unlikely that additional extensions will take place. At the time of submission of the Laigh Glenmuir application, the applicant has stated that there was no intention to extend the site northwards and no contact had been made with the relevant adjacent landowners and the applicant therefore at that time had no future interests to disclose.

4.7 The Duncanziemere extension is also contrary to MIN29 as it is a third operative site within 3km. Sites being operative until they are fully restored.

Policy MIN29 relates to protection of Tourism and Recreational Resources and does not refer to cumulative impact. It is assumed the objector intended to refer to Policy MIN12, relating to Cumulative Effects of Development. Policy MIN12 seeks to ensure that the cumulative effects of opencast developments are not unacceptable. Any proposed new development may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where it is the 3rd site within 3km, or exacerbate disruption experienced by a group of dwellings from successive operations over an extraction period in excess of 10 years (as well as other potential causes). Where a concentration of workings is likely to occur, an assessment of the likely cumulative impacts of additional workings on local communities and the local environment is required. This assessment is presented within the ES and concludes that cumulative impacts on communities and the environment as a result of the Duncanziemere extension are not likely to be significant. Impacts on many communities are reduced by local topography, intervening vegetation (including coniferous plantations), the distance between sites, and the fact that the adjacent sites are under restoration. Transport of the vast majority of coal by rail will reduce cumulative impacts on the local road network. Mitigation and control measures put into place at Duncanziemere will reduce other environmental impacts to acceptable levels, meaning that operational effects from other sites will not be cumulatively significant.

It is further noted that the existing Laigh Glenmuir site, when approved, constituted a third operational site and prior to the issues of any planning consent for the site, the application was formally notified to the Scottish

Ministers for that reason. The Scottish Ministers subsequently cleared the application to allow consent to be granted.

4.8 With regard to the approved Ayrshire Joint Structure Plan, it is within a Sensitive Landscape Area, which should be protected and enhanced in terms of ENV2B; and in terms of ENV1 A-E, open-casting even if restored, will not maintain, nor enhance the quality of this historic landscape pattern; and would remove a farmhouse and its environs which have been there for three centuries.

Section 11.4 of The Ayrshire Joint Structure Plan (AJSP) identifies that individual coal development proposals will be assessed against the East Ayrshire Opencast Coal Subject Plan. Policy ENV2 (there is no ENV2B) in the AJSP is concerned with Landscape Protection and Policy ENV1 seeks to protect and enhance the landscape features that contribute to local distinctiveness. These issues require to be assessed in terms of the OCSP, in particular Policies MIN 28 and MIN30. In relation to Policy MIN30 of the OCSP, the proposed development has regard to the scenic nature of the landscape and has been designed to prevent adverse and unacceptable impacts on it. Restoration of the site will recreate its original landform, and tree planting will replace the trees to be lost to development. Mitigation during the operational phase of development including advanced planting and bunding will minimise the impact on visual receptors of changes in the landscape.

With respect to the loss of Hillhead, although this building has been present since the 19th Century, it is currently derelict and uninhabited. It is proposed that a programme of historic building recording takes place prior to its demolition to recognise its historic interest, and an archaeological survey of 5% of the remainder of the site will take place to establish any further archaeological features associated with pre-improvement buildings on site.

4.9 In terms of the emerging Altered (East Ayrshire) Local Plan, open-casting round Hillhead which involves demolishing the farmhouse, trees, hedgerows etc would contravene ENV1. These contribute greatly to a rural landscape which has changed little for centuries.

The Alteration to the East Ayrshire Local Plan (AEALP) identifies that Opencast Coal Extraction is addressed separately in the Adopted East Ayrshire OCSP and therefore deals specifically with only minerals other than coal. There are no Cultural heritage designations on site or in the vicinity of the site. Outwith the application site there are no listed buildings, designated conservation areas, historic gardens and designed landscapes or archaeological sites which would be adversely affected by the proposed development. Therefore, the proposed development is not considered to be contrary to this policy.

4.10 ENV2 states that the Council will give priority & prime consideration to the protection of such a sensitive landscape area; not allow it to be destroyed and inadequately reinstated, as proposed.

Strategic Policy ENV2 of the AEALP refers to natural heritage designations rather than landscape designations and does not state what is suggested in this point of objection.

4.11 ENV4 indicates that the Council will actively encourage the restoration of locally important traditional buildings (whether listed or not). Hillhead on its wooded elevated site is such a building; many of which have already been lost due to opencasting, in particular Glenmuir School nearby, owned by ATH, but demolished, despite being shown as retained on the approved restoration plan for the Laigh Glenmuir site.

The proposed development will not impact upon any listed buildings or unlisted buildings in conservation areas. Hillhead is considered to be of local importance from a cultural heritage viewpoint. However, there has never been any intention to develop this derelict building as intended in this policy, which is intended to promote restoration or renovation for future use, to preserve buildings of historic importance, rather than their demolition and rebuilding.

With regard to the loss of Glenmuir Schoolhouse, this was always a feature of the consented Laigh Glenmuir application. The Restoration Concept Plan for Laigh Glenmuir, submitted as part of the ES contained a new dwelling in the location of the demolished schoolhouse.

4.12 ENV13 requires protection of areas of nature conservation interest. Two of these adjoin this site at Low Moss and Hillhead Moss. Diverting a burn will adversely alter the hydrology.

The unnamed burn has been diverted as part of the consented operations at Laigh Glenmuir. This will require temporary rediversion during proposed workings at Duncanziemere. The route of the proposed rediversion has been discussed and agreed with SEPA and will feed the burn into its current watercourse leading to the Glenmuir Water. A Provisional Wildlife Site (lowland raised bog associated with Low Moss) lies adjacent to the western site boundary. The risk of the proposed development impacting upon Low Moss and Hillhead Moss has been considered in-depth throughout the site design. In addition, several detailed mitigation measures and proposals to ensure the ecological and hydrological integrity of Low Moss and Hillhead Moss have been proposed in the ES, including a comprehensive monitoring programme.

It should be noted that the mitigation measures proposed adjacent to Low Moss generally replicate those implemented successfully at the Laigh Glenmuir site which is also located adjacent to Low Moss. This mitigation was successful in protecting the geotechnical and hydrological integrity of Low Moss and this has been demonstrated through independent annual inspections of the peat protection bund and surrounding area.

4.13 MEGA notes that when Laigh Glenmuir OCCS was under consideration, one statutory consultee, SNH objected, unless several conditions were satisfied. Apparently some were not, particularly the approved detailed progressive restoration. Accordingly this developer has misled the Council and those entrusted with protecting our environment; so this application should be refused, as the developer has yet to comply with previous conditions/ agreements on the adjacent site at Laigh Glenmuir.

SNH, as a participant in the Technical Working Group, has been involved at all stages in the working of Laigh Glenmuir and is understood to be content with the discharge of relevant conditions. The applicant has also stated that SNH has also been consulted throughout the design of the Duncanziemere extension and their initial concerns have been addressed and built into the final design. Similarly, the Planning Authority is not aware of any significant breaches of conditions associated with the existing Laigh Glenmuir site, albeit that restoration of the Laigh Glenmuir site has been delayed pending the determination of this present application.

4.14 The proposed restoration plan does not reflect existing topography or vegetation. It is notable that there is now quite a different & unacceptable restoration plan proposed for Laigh Glenmuir, where previously, 1/3rd of that site was to be planted with trees.

The proposed indicative restoration plan has been designed to recreate the pre-development contours over Duncanziemere and Laigh Glenmuir as far as possible, to reinstate pre-development land use and field boundaries, as well as improving habitats and habitat linkages around the site. The unnamed burn will be taken along its original course, with the steep sided banks typical of burns in the area. The indicative scheme presented in the ES has been informed by discussions with SNH and local people at the Public Information Exhibition held in Lugar. The scheme will deliver a wider range of habitats than at present for bats and bird species in the area, and enhancing the mire habitats of Low Moss and Hillhead Moss. Given the greater size of the combined site, the extent of this improvement will be of more ecological benefit than restoration of Laigh Glenmuir alone.

4.15 There seems to be a suggestion that excavated material from the new o/c site is required to infill Laigh Glenmuir OCCS. There was no such proposal previously to import material into Laigh Glenmuir for restoration purposes. MEGA envisages that there will be a subsequent planning application to extend Duncanziemere on the basis that spoil from Phase 3 will then be out back into phase 2, and so on.

There is no necessity for Duncanziemere to proceed in order for Laigh Glenmuir to be restored as the existing overburden at Laigh Glenmuir could be backfilled into the void to create the restoration contours proposed in the ES for that site. However, use of overburden from Duncanziemere to backfill Laigh Glenmuir will reduce the overall environmental impact and footprint of both sites, as there will be no requirement to set aside additional space for overburden storage. It will also allow the overall development to proceed more efficiently, over a shorter timescale. The applicant has stated that there are no plans to extend Duncanziemere further.

4.16 This anticipated approach is rather like pleas for continuity of employment: These are spurious, when the developer has so many local sites within a 10 mile radius, so has a mobile workforce, as sites finish. Restoration also retains jobs.

Although at present the applicant has several sites in East Ayrshire and beyond, the temporary nature of sites means that eventually they will come to an end. New sites are therefore needed to ensure continuity of

employment for the local workforce. Although restoration does create some jobs, the workforce required is substantially lower than for full operation of the sites, with a different skills base needed.

4.17 MEGA objects to a development for which up to 30% of coal could be transported by road. Glenmuir is a local amenity used by walkers, cyclists/ birdwatchers. Increased traffic, particularly large, noisy HGVs will disturb them all.

The proposal will not generally result in coal being transported through the Glenmuir Valley by road. All coal will be transported by conveyor to Garleffan, as was the case at Laigh Glenmuir. No additional access from the surrounding road network will be required for coal transportation. From Garleffan the majority of the coal will be transferred to Crowbandsgate either by a further overland conveyor or the existing haul road, for onward transport by rail. This coal will not require to be transported on the public road network. It is envisaged that no more than 10% of the coal produced will access the road network by the consented Laigh Glenmuir conveyor and via the existing Garleffan haul road onto the A76T (near Crowbandsgate). This coal will supply local, industrial and special markets. The specific nature of the Duncanziemere coal means that at times additional percentages rising up to 30% of the total production will be required to be delivered by road to service these markets.

4.18 There is particular concern about environmental impact of open-casting, on adjacent raised bog, mosses etc. Apart from affecting wildlife, the hydrology should not be disturbed, especially where headwater areas of the Glenmuir Burn at Dornal Moss are still subject to Prohibition Order re sheep movement, because the ground absorbed radioactive particles from Chernobyl.

It is considered that the proposed development will not impact upon the hydrology of nearby mires and bogs, in particular Low Moss or Hillhead Moss. The ES addresses such hydrological impacts and a programme of mitigation measures and hydrological and ecological monitoring is proposed to ensure their integrity. The Glenmuir Burn, to the south of the Laigh Glenmuir extraction will not be affected by the proposed development, being over 100 metres from the proposed site boundary, and over 800 metres from the new extraction area. There is no requirement to divert this Burn or affect its hydrology, or the hydrology of its catchment. Mitigation measures provided in detail in the ES should prevent any impact on the hydrology or hydrogeology of the area surrounding the site.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

Ayrshire Joint Structure Plan

5.2 There are no policy changes with regard to opencast coal mining being promoted in the new joint structure plan 2007 and the current provisions of the 1999 approved structure plan remain relevant to this application. The Approved Ayrshire Joint Structure

Plan 1999 indicated in its Key Diagram that the Duncanziemere development 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. 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 Duncanziemere extension site falls within a Preferred Area of Search.

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

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

The Duncanziemere application has been assessed and determined against the stated criteria. The proposals promoted by the application, if approved, can be implemented under appropriate planning controls or under obligations secured by means of Section 75 Agreement for the site and subject to requirements referred to elsewhere in this report. It is considered that the proposed development would not conflict with the stated criteria in terms of its operational conduct.

The current application is therefore considered to be in accordance with the approved Structure Plan.

East Ayrshire Opencast Coal Subject Plan

5.4 Policy MIN1 is pertinent to the application, the policy stating that all future opencast developments will be directed towards the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

Part of the proposed Duncanziemere development falls within a PCEA (some 42%) with the greater part falling outwith. This is due primarily to the fact that part of the site falls within the identified High Visual Amenity area of the Glenmuir Valley. Nonetheless the proposed development represents a minor departure from Policy MIN1 although in light of the previous site history, the departure is not considered to be significant and in this case Policy MIN3 is more relevant to this proposal.

5.5 Policy MIN2: There will be a presumption of refusal of applications for new opencast coal development outwith the potential coal extraction areas with the exception of small scale, short term extraction proposals which meet certain criteria.

The proposed Duncanziemere development is not a small scale, short term proposal and assessment against the criteria is not applicable in this case.

5.6 Policy MIN3 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.

The Duncanziemere extension will be carried out as a sequential phase of development following on from consented operations at the existing Laigh Glenmuir site.

- (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.

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

The scale of operations, rate of extraction and number of vehicle movements generated by the Duncanziemere development will not result in any significant increase in the rate of output from the site or number of vehicle trips generated in comparison to that of the existing Laigh Glenmuir site, albeit that coal will be taken via overland conveyor to Garleffan.

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

It is acknowledged that working Duncanziemere will delay final restoration of Laigh Glenmuir by approximately 5 years although both sites will be progressively restored throughout operations. However, there is merit both operationally and environmentally to utilise the existing site infrastructure / opencast void to minimise land take and disturbance through the retention of the existing overburden mound. Nonetheless, the proposed development represents a minor departure from Policy MIN3(iv).

5.7 However, part of the Duncanziemere site does not fall within a Potential Coal Extraction Area. Policy MIN3 further states that outwith the Potential Coal Extraction Areas, the Council will assess any extension on its own merits against the above criteria, and will not generally be supportive of such developments except where:

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

There are no existing areas of dereliction removed as a result of the proposed extension.

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

The working of the proposed Duncanziemere extension will result in the creation or retention of 37 jobs being provided at the House of Water site for a further period of 5.5 years.

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

See comments 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.

It is considered that the current proposal will not result in any perpetuation of disturbance to a local community given the location of the site. As indicated within this report there are significant local and community benefits to be accrued from the proposed development in socio-economic terms.

Nonetheless, the proposed development represents a minor departure from Policy MIN3(iv).

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

The applicant has indicated, insofar as they are aware, that the current proposal will extract the last significant economic coal reserve in the Glenmuir Valley other than that which underlies habitat of a value which has been safeguarded. Testing in surrounding areas has not resulted in substantial additional reserves being identified. Therefore it is unlikely that additional extensions will take place.

5.9 Policy MIN 7: All applicants for opencast coal developments will be required to demonstrate conclusively to the Council that their proposals will not pose a potential risk to the amenity of communities or to the local environment. In order to protect communities and the local environment from the unacceptable consequences of opencast working, the Council will assess all new applications for opencast developments against the following criteria:

- (i) whether the proposal is environmentally acceptable or can be made so by the use of appropriate planning conditions and/or agreements designed to mitigate any adverse impacts, and if not:
- (ii) whether the proposal provides any local or community benefits related to the proposal which sufficiently outweigh any material risk of disturbance or environmental damage.

See conclusions stated in Section 8 of this report.

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

There are no areas of active peat bog within the proposed development boundary. The proposed site design takes account of the location of Low Moss and its typical lowland raised bog vegetation is outwith the proposed Duncanziemere site boundary to the west. All peat required to be removed from the site prior to extraction (although minimal) will be appropriately stored for use in the proposed restoration scheme, to extend and improve the existing bog. SNH does not object to the proposed development subject to appropriate conditions.

5.11 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

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

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

The closest community (or group of dwellings) to the Duncanziemere development is Lugar, located approximately 1.2 km from the closest part of the application site. The proposed development would not continue the Laigh Glenmuir operation beyond a period of 10 years.

- (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 proposal will not generally result in coal being transported through the Glenmuir Valley by road. All coal will be transported by conveyor to Garleffan, as was the case at Laigh Glenmuir. No additional access from the surrounding road network will be required for coal transportation. From Garleffan the majority of the coal will be transferred to Crowbandsgate either by a further overland conveyor or the existing haul road, for onward transport by rail.

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

The proposed development will not result in the any significant adverse impacts upon international or national designated sites of nature conservation interest, as borne out by the consultation process.

5.12 Policy MIN13: Planning applications to contain details of operational procedures including restoration proposals and aftercare.

Full details of the method of working and restoration are contained within the application and supporting documents submission, albeit that it is proposed that the fine detail of the restoration proposals will be developed through the establishment of a Technical Working Group for the site.

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

The restoration strategy for the proposed Duncanziemere site, including the Laigh Glenmuir site, is aimed at developing and enhancing the visual amenity and setting of the site and the surrounding area, restoring the landscape to a character appropriate to its setting, creating a diversity of habitats to encourage wildlife and enhance the conservation value of the site and the local area. It is recognised that the strategy will be the subject of discussion and agreement with the Technical Working Group for the site

5.14 Policy MIN16: Requirement to re-instate rights of way and provide improved access to restored sites for local communities.

There is one Public Right of Way running through the site, running south of the A70, from Sunnyside to Hillhead, passing through Duncanziemere Farm. This is to be temporarily diverted during the course of operations and is to be re-instated on restoration of the site.

5.15 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. The Council will also encourage the provision of a network of off-road haulage routes and covered conveyors linking opencast sites with any existing or proposed railhead for the transportation of extracted materials

The applicant operates the existing railhead facility at Crowbandsgate near New Cumnock where coals destined for power generation markets will be dispatched by rail.

5.16 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 Duncanziemere site will be taken to the proposed coal transfer area via the existing Laigh Glenmuir to Garleffan overland conveyor system.

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

5.18 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 Duncanziemere site does not encroach within 500 metres of any settlement.

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

The combined life of the Duncanziemere extension when taken with the life of the consented Laigh Glenmuir site does not extend in excess of 10 years.

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

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

5.19 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 control of the applicant that lie within 500 metres of the working faces of the proposed Duncanziemere site with the exception of the farmhouse at Sunnyside Farm which lies approximately 330 metres west of the excavation limit. There have been no objections from the residents of this property and it is considered that with the imposition of appropriate planning conditions and / or legal agreement that the potential impacts on this property can be minimised.

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

The Duncanziemere development will result in operations being carried out within 500 metres of Sunnyside Farm for a period of approximately 30 months. Again, it is considered that with the imposition of appropriate planning conditions and / or legal agreement that the potential impacts on this property can be minimised.

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

Again, the only dwelling potentially affected by this issue is Sunnyside Farmhouse. In this regard it is considered necessary to impose a condition restricting blasting operations within 500 metres of this property, unless the applicant can demonstrate a legal control over this property or enter into a legal agreement with the owners in respect of this issue.

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

There are no residential properties outwith the control of the applicant that lie within 100 metres of the operational areas of the Duncanziemere site.

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

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

The proposed development does not impact directly on heritage resources requiring conservation.

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

There are no areas of peat within the site considered to be of significant ecological value.

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

It is considered that the physical setting, operational viability or recreational quality of any specific tourism or recreation sites or resources will not be adversely affected. Similarly visual amenity, landscape character and setting will not be adversely affected to any significant extent by the proposed development in the long-term, and that the mitigation methods proposed would minimise any temporary adverse landscape and visual impacts that may potentially be experienced. Given the proposed restoration, it is considered that the long term impact on the landscape and on visual receptors will be positive. It is noted that SNH has not objected to the proposed development in landscape terms.

5.22 Policy MIN30: Protection of Landscape and Visual Amenity: the Council will not be supportive of proposals which could be considered to be detrimental to the visual amenity and appearance of an area or which would be visually prominent or create visual intrusion on the skyline when viewed from the area communities or from the main A class road network. In particular, developments will not be acceptable where these would be detrimental to the landscape and scenic quality of...the Glenmuir Valley.

As indicated above, the part of the Duncanziemere site that falls outwith the identified Potential Coal Extraction areas is excluded primarily as a result of the High Amenity Value “designation” associated with the Glenmuir Valley. The ES states that although there would be temporary adverse effects on this area, it is considered there would be overall benefit and enhancement of the landscape in the longer term. The restoration of the site would contribute positively to the landscape and visual quality of the area. While the proposal is considered to be a departure from policy, this is not considered to be significant given the short term and temporary impacts and the longer term benefits that would be achieved through the restoration strategy.

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

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

5.24 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 and would contribute in respect of the Laigh Glenmuir development.

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

The applicant already provides Restoration Bonds for existing operations in East Ayrshire and it is proposed that should planning permission be granted for this development that a suitable bond will be provided to cover restoration liabilities on the Duncanziemere development.

5.26 Policy MIN38: Establishment of liaison committees.

The applicant already operates Local Liaison Committees, when required, at existing operational sites. Should planning permission be granted for the Duncanziemere development it is proposed to continue the existing site liaison committee drawing membership from the local community.

It is therefore considered that the proposed Duncanziemere development is generally consistent with the relevant EAOCSP policies pertinent to this

application with the exception of the minor departures from Policies MIN1, MIN3(iv) and MIN30(iv)

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, Opencast Coal, relevant planning history, Scottish Planning Policy and the associated PAN50.

Consultation Responses

6.2 There are no consultation responses that would indicate that the application should be refused from an infrastructure perspective.

Representations

6.3 It is considered that the points of objection are not of sufficient weight to merit refusal of the application, on the basis that the points of objection have not been substantiated through the comprehensive consultation process with statutory and non-statutory consultees or can be addressed through the imposition of appropriate planning conditions or by means of a Section 75 Agreement, or are, on balance, not of sufficient weight to justify refusal of the application.

Scottish Planning Policy

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

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

Part of the proposed Duncanziemere development site does not fall within a Potential Coal Extraction Area and although there would be temporary adverse effects on this area, it is considered there would be overall benefit and enhancement of the landscape in the longer term. While the proposal is considered to be a departure from policy, this is not considered to be significant given the short / medium term and temporary impacts in the context of the longer term benefits that would be achieved through the restoration strategy.

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

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

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

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

Test 2 is also considered to be met as the proposed Duncanziemere development will result in the creation or continuation of 37 direct jobs, which is particularly beneficial in those areas where the extraction takes place.

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

Planning Advice Notes

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

Planning History

6.8 The relevant planning history is as follows:

(i) 05/0232/FL: Proposed extraction of coal by opencast methods at Laigh Glenmuir: Approved on 05 September 2006 following notification of the application to the Scottish Ministers.

(ii) 06/0291/FL: Construction of an overland conveyor between the existing Garleffan OOCSS and the approved Laigh Glenmuir OCCS: Approved 18 April 2007.

(iii) 09/0770/PP: Continuation of use of the existing temporary overland conveyor between Garleffan Surface Mine and Laigh Glenmuir Surface Mine: Application not yet determined pending the outcome of the present application for the Duncanziemere extension.

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

6.9 As indicated in the consultation response from SNH, there may be the possibility of bats being present in the Hillhead steading which will be demolished as part of the proposed development. The proposed development even with the inclusion of the proposed mitigation may therefore result in one or more actions which are contrary to the species protection elements of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) and therefore cannot proceed unless a licence is obtained from Scottish Government. SNH therefore advises that an application for a licence be obtained in this case.

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

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

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

Test 2: "that there is no satisfactory alternative"

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

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

The interim guidance issued to planning authorities indicates that SNH is the main body to advise on whether the granting of a licence would be "detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range" and so be capable of meeting Test 3. In its consultation response to the Supplementary Environmental Information, SNH states that, subject to matters to mitigate the impacts of the proposed development being addressed by conditions or by planning legal agreement, the proposed development would not be detrimental to the maintenance of the population of the species concerned at a Favourable Conservation Status in their natural range and, therefore, satisfies the third test as described in the document "European Protected Species, Development Sites and the Planning System: Interim Guidance for Local Authorities on Licensing Arrangements, (October 2001)".

In this regard it is considered that for the reasons and justifications set out above it is a reasonable expectation that a licence would be granted and that in arriving at this conclusion the Council, as Planning Authority, has fulfilled the general requirement established under Regulation 3(4) to have regard to the provisions of

the Habitats Directive, and in particular to the provisions of Articles 12 and 13 of the Directive and Regulations 39 and 43 of the 1994 Regulations.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement to conclude an amendment to the existing Section 75 Agreement for the Laigh Glenmuir to embrace the Duncanziemere extension as required by the terms of this report.

7.2 The Management of Waste from Extractive Industries (Scotland) Regulations 2009 came into force on 01 April 2010. The proposed Duncanziemere development falls within the scope of these Regulations which require applications for planning permission for developments comprising extractive waste to be accompanied by a Waste Management Plan (WMP). Regulation 13 precludes a Planning Authority from granting planning permission until it is satisfied that the WMP is appropriate and fulfils the requirements of the Regulations. In order to comply with the provisions of the regulations, should the Committee be minded to approve this application, the issue of a decision notice should be formally withheld until the WMP has been formally submitted and accepted by the Planning Authority.

7.3 Further legal implications will arise through the requirement to temporarily suspend the existing Right of Way that runs through the site with the provision of a temporary alternative route. This will require to be promoted under the Town and Country Planning (Scotland) Act 1997.

7.4 As the proposed Duncanziemere development does not encroach within 500 metres of the edge of any existing community or sensitive establishment, the application will not require to be notified to the Scottish Ministers in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

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, albeit it represents minor departures from Policies MIN1, MIN3(iv) and MIN30(iv) of the EAOCS. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

8.2 The proposal will involve the extraction of approximately 800,000 tonnes of coal which in environmental terms is considered to present no long term significant adverse impacts in relation to the proposed operations, and this is essentially borne out by the consultation process.

8.3 The proposed Duncanziemere development is essentially an extension to the consented Laigh Glenmuir surface mine and the proposal will provide or retain approximately 37 jobs for directly employed staff, and businesses in the local area will

also continue to be supported through its presence. In landscape and visual amenity terms, the proposed development will have significant, albeit temporary adverse impacts. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term. Overall it is considered that the long-term landscape would be enhanced by restoration proposals through the introduction of more native tree planting.

8.4 It is acknowledged that there are genuine concerns raised in the letters of objection and in this regard, it is considered that with the imposition of appropriate conditions and delivery of proposed mitigation measures, the impact on local communities and properties in proximity to the site can be minimised to acceptable environmental standards. It is further noted that there has not been a significant level of objections to the proposed development in this case.

8.5 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is generally consistent with policy and that there are no significant environmental or community concerns regarding the proposal. Consequently it is considered that the application should be approved but subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

Section 75 Agreement

- (i) The extension of the remit of the existing Technical Working Group for the Laigh Glenmuir site to embrace the proposed Duncanziemere extension with the provision that the group shall meet at least bi-annually.
- (ii) The establishment of additional noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Duncanziemere site following consultation with the Planning Authority and the Environmental Health Service, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (iii) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the East Ayrshire Opencast Coal Subject Plan 2003, including the establishment and implementation of an appropriate independent monitoring regime.
- (iv) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;
- (v) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site;
- (vi) The securing of a vehicle route for abnormal loads in terms of the recommendations of the consultation response from East Ayrshire Roads and Transportation Service.
- (vii) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.

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

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet but that the issue of the decision notice should be withheld until:

- (iii) 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 applicants in respect of the matters detailed in Paragraph 8.5 of this report; and**
- (iv) a Mining Waste Management Plan in compliance with the provisions of The Management of Waste from Extractive Industries (Scotland) Regulations 2009, has been formally approved by the Planning Authority in consultation with SEPA.**

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development then the application would not require to be referred to the Full Council as such a decision would not represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development
21 April 2010
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Environmental Statement and Supplementary Environmental information
3. Statutory Notices and Certificates.
4. Consultation Responses.
5. Letters of representation
6. Adopted East Ayrshire Opencast Subject Plan (2003)
7. Approved Ayrshire Joint Structure Plan (2007)
8. Scottish Planning Policy (SPP)
9. PAN50 and Annexes.
10. Previous planning applications as indicated in Section 6.8 of the report.
11. Pre Application Consultation Report.

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

Implementation Officer: Dave Morris

Location	Land at Duncanziemere, near Lugar, Cumnock
Nature of Proposal:	Proposed extension to Laigh Glenmuir Surface Mine
Name and Address of Applicant:	Aardvark TMC Aardvark House Sidings Court Doncaster DN4 5NU
Name and Address of Agent	RPS Planning and Development Ocean Point One 4 th Floor 94 Ocean Drive EDINBURGH EH6 6JH

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

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

1. The development hereby permitted shall enure for the benefit of the applicant only, and the approved operations shall be completed within 5.5 years of the date of commencement of operations on the Duncanziemere site, or by such other time as may be formally agreed in writing with the Planning Authority.

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

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

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

3. Prior to any works commencing on site, the applicant shall prepare a groundwater monitoring plan developed through prior discussion and agreement with SEPA and submitted to the Planning Authority for approval in consultation with SEPA. The scope of the plan shall include:
 - The collection and interpretation of baseline data; the on-going collection and interpretation of data; the reporting mechanism of this interpreted data; and an on-going mechanism to secure appropriate mitigation of impacts to ensure protection of the water environment in perpetuity;
 - The commencement of groundwater monitoring should start before operations begin and continue through to and during the aftercare period. The monitoring plan requires to take into consideration the on-going collection of data and its interpretation; decide on the reporting mechanism and detail the mechanisms to secure mitigation of impacts should this prove necessary.
 - The provision of further monitoring points for level and quality. Groundwater level monitoring and quality monitoring should be carried out once an adequate monitoring network is installed. The network should be developed in consultation with SEPA.
 - The current assessment of the impact of dewatering should be refined, including the zone of influence recalculation. Following refinement of the dewatering calculation, the risk to the water features including private water supplies should be reassessed.

- Further detailed analysis of the risk from backfill at the site.

REASON – In the interests of environmental protection.

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

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

5. Prior to the commencement of development, the applicant shall submit details and specifications of a bund to prevent dewatering of Low Moss Provisional Wildlife Site, for the approval of the Planning Authority in consultation with SNH and SEPA. The bund to the specification agreed shall be constructed to the satisfaction of the Planning Authority before commencement of soil stripping and excavation adjacent to the bund. Monitoring of changes in the water table and vegetation composition including baseline monitoring prior to the development, shall be agreed with SNH prior to commencement of development and implemented by the applicant.

REASON – To prevent dewatering of the Low Moss Provisional Wildlife Site in the interests of Environmental Protection.

6. The range of mitigation measures with respect to bats as identified in the Environmental Statement shall be adopted and implemented in full to the satisfaction of the Planning Authority.

REASON – In the interests of environmental protection.

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

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

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

REASON – In the interests of environmental protection.

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

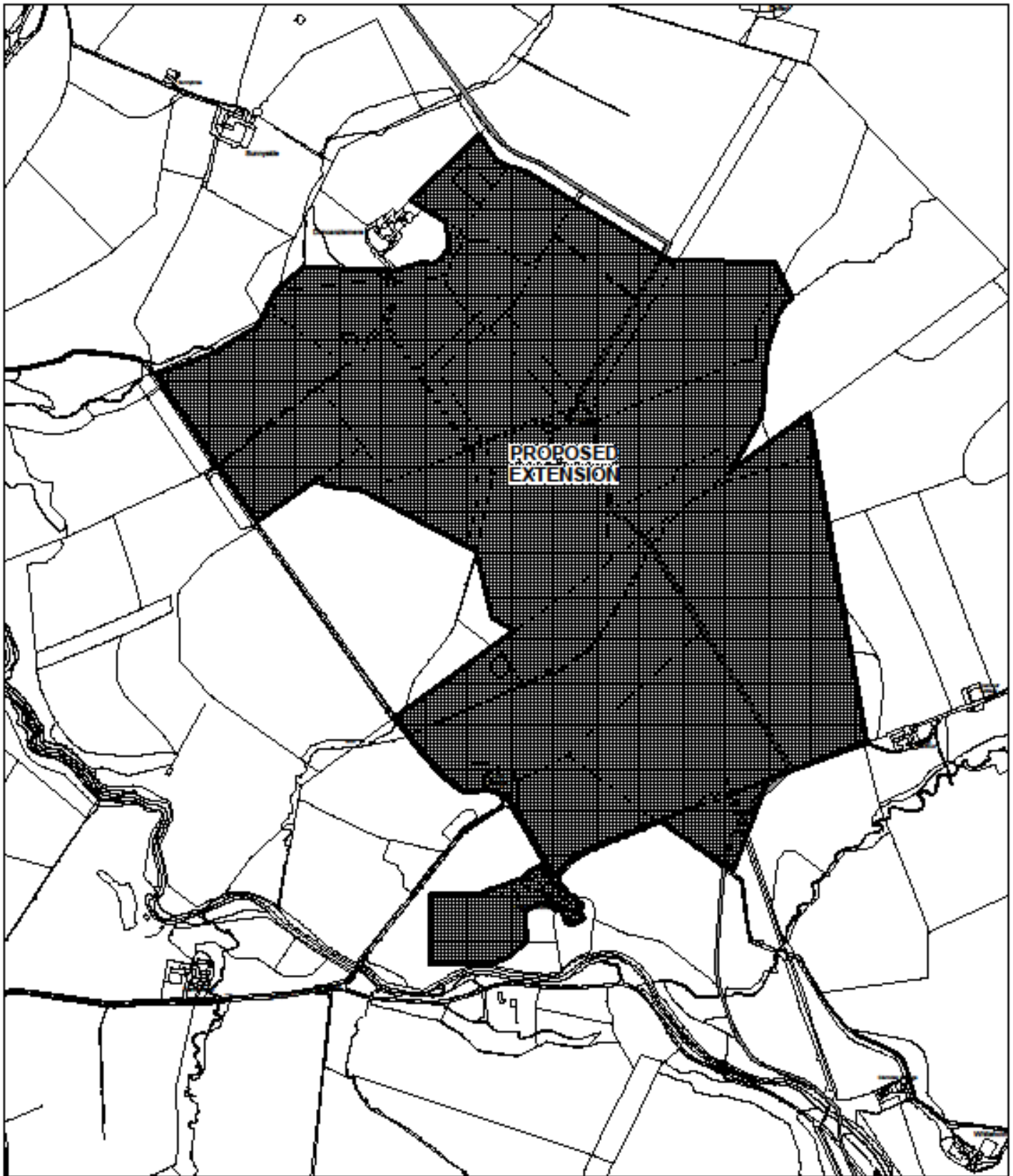
REASON – In order to identify and record any archaeological resource that may be present on site, prior to disturbance or destruction by the proposed operations.

10. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 05/0232/FL dated 05 September 2006.

REASON - To retain effective planning control over the proposed development in accordance with current consent relating to the Laigh Glenmuir opencast site.

The Council has granted this consent for the following reasons:

The proposal is generally consistent with the Development Plan and the material considerations relevant to this application also indicate that the application should be approved subject to the imposition of appropriate conditions and subject to the concluding of a Section 75 Agreement in terms of the Town and Country Planning (Scotland) Act 1997.



Title/Location **Land at Duncanziemere, Near Lugar**
Cumnock
Application No. 09/0511/PP

East Ayrshire Council
 Planning & Economic
 Development Division.
 6 Croft Street
 Kilmarnock KA1 1JB
 Tel: (01563) 576790 Fax: (01563) 576774
 E-Mail : Planning@east-ayrshire.gov.uk
 Com Date: 27/5/2010 Checked By

Key



Application Site

