

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 22 JANUARY 2010

**09/0371/FL: EXTRACTION OF COAL BY SURFACE MINING METHODS
WITH RESTORATION TO ROUGH GRAZING
(BURNSTON FIELDS EXTENSION)
AT HOUSE OF WATER OCCS, NEW CUMNOCK**

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning Permission is sought for a limited extension to the existing House of Water Surface Mine to enable the extraction of an additional 560,000 tonnes of coal by surface mining methods over a three year period (two years coaling followed by one year restoration) from 45.8 hectares of rough grazing land (a mix of improved and unimproved grassland) at Burnston Fields.

1.2 The proposed extension will assist in maintaining continuity of existing employment in the area as coaling within the main House of Water site approaches completion. Ultimately, the site would operate concurrently with the proposed Lanehead extension area, the working of which will generate employment for an additional 40 site staff. Coal from the site will be used principally for electricity generation.

1.3 Up to 7,000 tonnes of coal per week will be extracted from the Burnston Fields extension area, which equates to an average of 5 loaded coal carrying HGV's per hour leaving the site. A summary of the total proposed coal haulage movements from the House of Water complex is set out below:

Burnston Fields	7,000 tonnes per week per hour)	250 loads per week (5
Lanehead (proposed)	4,000 tonnes per week per hour)	150 loads per week (3
<u>TOTAL:</u>	11,000 tonnes per week	400 loads per week (8 per hour)

NOTE: The figures in the above table have been calculated on the basis of a 48-week operational year, with a 50 hour working week, Monday to Friday 08:00 to 18:00 (for coal haulage).

1.4 However, all coal from the Burnston Fields extension area will be processed within the existing House of Water site and will be transported off

site via the proposed Kyle Forest haul road to the B7046 and onwards to the Killoch Rail Disposal Point via the A70. The proposed coal transport arrangements represent a significant environmental improvement to the current approved coal haulage route from the House of Water site, in so far as removing the requirement for any coal carrying HGV's from the site to travel along the B741 through the settlements of Dalleagles, Burnside, Bankglen, Connel Park, the Leggate and the Castle in New Cumnock. The existing vehicular access to the House of Water site would continue to be used as the primary access for site staff, visitors and deliveries.

1.5 A similar technique to those employed on Scottish Coal's other operational sites in East Ayrshire and Central Scotland will be used to mine the coal within the Burnston Field extension area. The principle operational phases comprise:

- The progressive removal of the overlying soils and their placement either in storage bunds or for restoration of previously excavated backfilled areas;
- The progressive removal of overburden and placement initially in the aboveground storage mound or into previously excavated areas. Overburden mounds will be constructed to a maximum height of 30 metres above the original ground level; and
- The extraction of coal and its processing within the site support area. Maximum excavation depth will be approximately 100 metres. The winning of the coal reserves will involve limited blasting.

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 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.

3. CONCLUSIONS

3.1 This report has set out details of the development proposal for the mining of coal from the Burnston Fields extension to House of Water Surface Mine. This represents one element of the larger Burnston extension (which was accompanied by a comprehensive Environmental Statement which addressed the potential effects of the development in some detail).

3.2 In designing the development proposal, regard has been had to a number of matters relevant to the location and physical extent of the extension area, the presence of surrounding dwellings, the hours of operation and the relationship in timing and spatial terms with other mining sites in the wider area, having particular regard to the total House of Water complex.

3.3 The project design has been tailored to ensure that any effects from the development are short term, temporary and limited to scale.

3.4 In summary:-

- The extension area lies within a Potential Opencast Coal Extraction Area as defined in the Ayrshire Joint Structure Plan and East Ayrshire Opencast Coal Subject Plan;
- Existing jobs at the House of Water site will be safeguarded in an area where the mining industry is a significant local employer;
- The original Environmental Statement concluded that the operations on the much larger site could be undertaken within acceptable environmental limits, ensuring that there will be no significant adverse impacts upon the surrounding environment;
- The extension area will see coal reserves in the House of Water complex recovered in a logical and structured fashion, within acceptable environmental limits, and see the entire House of Water site restored within an acceptable timeframe;
- The co-ordinated restoration approach developed will ensure that the overall House of Water area is restored to its optimum potential; and
- In overall terms the development is compliant with policies in the Council's Development Plan and meets the test of environmental acceptability as set out in national planning policy on opencast coal.

3.5 It is considered that the application should be approved but that the following matters should be secured as obligations within an amendment to the existing Section 75 Agreement for the House of Water site:

Section 75 Agreement

- (i) The extension of the remit of the existing House of Water Technical Working Group to embrace the proposed Burnston Fields extension.
- (ii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement that accompanied the Burnston extension planning application (Ref. No. 06/0548/FL) insofar as it relates to the proposed Burnston Fields extension. The applicant shall provide a Mitigation Plan for the site that shall be the subject of an annual audit with a monitoring report provided to the Planning Authority assessing the effectiveness of mitigation measures. This monitoring report shall also be the subject of consultation with the House of Water Technical Working Group. Mitigation as described in the Supporting Statement (Table 4.10) shall be undertaken and items such as wetland restoration, restoration for habitat enhancement including top soil placement and management for protected species such as badgers, otters and black grouse will be guided by the House of Water Technical Working Group and work on the ground for is overseen by a suitably qualified Ecological Clerk of Works.

- (iii) The production of a Protected Mammals Management Plan in respect of mitigation for otters including proposals for monitoring and reporting. The PMMP shall be produced in accordance with the requirements of SNH and shall be overseen by a suitably qualified Ecological Clerk of Works.
- (iv) The undertaking and establishment of baseline conditions in respect of the water environment and water quality on the site. Appropriate monitoring systems shall be put in place together with appropriate management measures to address any water quality issues arising from operations on site, which shall be the subject of agreement with the Planning Authority in consultation with SEPA.
- (v) The establishment of noise, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Burnston Fields extension site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (vi) The undertaking of an assessment of the fish population in the burns proposed for diversion with an appropriate fish rescue plan implemented if necessary, to be undertaken prior to diversion of the burns.
- (vii) 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.
- (viii) 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;
- (ix) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.
- (x) The securing of agreed road maintenance contributions, towards repair works to be carried out on the A70, B7046 and U728 public road haulage route between the Piperhill site access and Killoch DP, with the Roads Authority under section 96 of the Roads (Scotland) Act 1984 incorporated into a Section 75 agreement. This shall also take into account any extraordinary maintenance costs or damage to the U719 public road that may arise due to the proposed road closure works.
- (xi) 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.

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development in terms of the principle of the development, the application would require to be referred to Full Council as such a decision would represent a significant departure from the development plan and would conflict with the previous decision by the former Development Services Committee to resolve to approve the larger Burnston scheme, of which this development site forms a part.

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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1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation because the application relates to a Major Development in terms of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

2. APPLICATION DETAILS

2.1 **Background:** On 27 March 2007, the former Development Services Committee resolved to grant full planning permission for a large extension to the House of Water opencast site, near New Cumnock (Ref. No.06/0548/FL). The Burnston Extension site, covering some 210 hectares, was also the subject of formal notification procedures to, and subsequently cleared by, the Scottish Ministers. The approval of this proposed extension, for the extraction of 1.5 million tonnes of coal, was also subject to the concluding of a Section 75 Agreement, under the Town and Country Planning (Scotland) Act 1997, between the applicant and the Council.

2.2 However, the land subject to the extension was in three separate ownerships and, for various reasons, the necessary agreement with one of the landowners has, to date, not been finalised. Consequently it has not been possible to conclude the requisite Section 75 Agreement to allow the planning consent to be formally issued. The applicant has indicated that operations on the existing site have now reached a critical position whereby it will be necessary to enter the proposed extension area in the very near future in order that coal production can continue uninterrupted.

2.3 The Burnston Extension scheme envisaged entry onto the Burnston Fields land (the subject of this current application) during the course of the overall operations and all of that land is in the control of the applicant. It is therefore proposed that separate planning permission be secured specifically for that area to ensure that coaling operations are able to continue uninterrupted.

2.4 **Site Description:** The application site is located approximately 8 km to the west of New Cumnock and 6km south west of Cumnock. The Burnston

Fields extension area adjoins the existing House of Water site boundary to the north and covers approximately 45.8 hectares of land.

2.5 The site occupies land on both sides of Dalgig Road, for which a temporary stopping-up order will be required. The land to the north of the road rises generally from south to north from an approximate elevation of 220m AOD at its most southerly point, to 270m AOD. The land to the south, within the existing House of Water site, consists of the area formerly occupied by part of the original (2000) River Nith diversion, now defunct. Both areas comprise rough grazing land.

2.6 The site is located within a relatively remote area, enclosed by areas of coniferous plantation to the north and west, with further rough grazing land to the east and the existing House of Water site to the south.

2.7 The closest occupied residential properties to the extension area are:

Dalgig	-	300m to the east
Lanehead	-	1500m to the south-east
Auchingee	-	1700m to the east
Upper Beoch	-	3300m to the south-west, and
Nith Lodge	-	3300m to the south

2.8 **Proposed Development:** Planning Permission is sought for a limited extension to the existing House of Water Surface Mine to enable the extraction of an additional 560,000 tonnes of coal by surface mining methods over a three year period (two years coaling followed by one year restoration) from 45.8 hectares of rough grazing land (a mix of improved and unimproved grassland) at Burnston Fields.

2.9 The proposed extension will assist in maintaining continuity of existing employment in the area as coaling within the main House of Water site approaches completion. Ultimately, the site would operate concurrently with the proposed Lanehead extension area, the working of which will generate employment for an additional 40 site staff. Coal from the site will be used principally for electricity generation.

2.10 Up to 7,000 tonnes of coal per week will be extracted from the Burnston Fields extension area, which equates to an average of 5 loaded coal carrying HGV's per hour leaving the site. A summary of the total proposed coal haulage movements from the House of Water complex is set out below:

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2.11 However, all coal from the Burnston Fields extension area will be processed within the existing House of Water site and will be transported off site via the proposed Kyle Forest haul road to the B7046 and onwards to the Killoch Rail Disposal Point via the A70. The proposed coal transport arrangements represent a significant environmental improvement to the current approved coal haulage route from the House of Water site, in so far as removing the requirement for any coal carrying HGV's from the site to travel along the B741 through the settlements of Dalleagles, Burnside, Bankglen, Connel Park, the Leggate and the Castle in New Cumnock. The existing vehicular access to the House of Water site would continue to be used as the primary access for site staff, visitors and deliveries.

2.12 A similar technique to those employed on Scottish Coal's other operational sites in East Ayrshire and Central Scotland will be used to mine the coal within the Burnston Field extension area. The principle operational phases comprise:

- The progressive removal of the overlying soils and their placement either in storage bunds or for restoration of previously excavated backfilled areas;
- The progressive removal of overburden and placement initially in the aboveground storage mound or into previously excavated areas. Overburden mounds will be constructed to a maximum height of 30 metres above the original ground level; and
- The extraction of coal and its processing within the site support area. Maximum excavation depth will be approximately 100 metres. The winning of the coal reserves will involve limited blasting.

3. CONSULTATIONS AND ISSUES RAISED

3.1 While further consultations have been carried out in respect of this reduced alternative scheme, many of the issues raised in the original Burnston extension proposal remain pertinent to the current application under consideration as indicated by consultees. In some instances these consultation responses are repeated below for information and clarity, and have been updated with additional responses received.

3.2 East Ayrshire Council Roads and Transportation Division has no objections to the development subject to conditions covering the following issues:-

- Roads Conditions and Section 75 agreement as applied to the Kyle Forest haul road (PA 98/0844/FL) will apply to this proposal.
- The section of the U719 public road affected by the operation will require to be stopped up.
- The remaining section of the U719 public road will require a turning head to be formed by Scottish Coal to specifications required by East Ayrshire Council Roads and Transportation Division.

- Any damage caused by the applicant to the U719 public road outwith the closure area as a result of their operations will require to be repaired by or at the expense of the applicant.
- Further discussion will be required with the applicant regarding the construction and status of any proposed roads forming part of the restoration scheme.
- The applicant will require to agree road maintenance contributions, towards repair works to be carried out on the A70, B7046 and U728 public road haulage route between the Piperhill site access and Killoch DP, with the Roads Authority under Section 96 of the Roads (Scotland) Act 1984 and in line with the original Section 75 agreement for Kyle Forest overland route. The simplest method to attribute maintenance costs is by a contribution under Section 96 of the Roads (Scotland) Act 1984 incorporated into a Section 75 Agreement. Scottish Coal's contribution on this route is expected to be between £0.05 and £0.10 pence per tonne of coal or other minerals extracted by road haulage and will vary depending on the repairs required per annum, determined by the Roads Authority, to maintain the route in a safe and serviceable condition.
- Scottish Coal has indicated that 'all coal from the extension will be dispatched from site via the permitted Kyle Forest haul route'. Roads would support this and would require the conditions applied to the Kyle Forest haul route to apply to this application. In the previous Burnston submission no discussions took place with Roads regarding closure of the public road which is assumed to be being done through the Town & Country Planning Act. This would require a turning head being formed by Scottish Coal at the end of the public section. Further discussions are required re the status of proposed access roads to premises that are being restored.

Conditions can be attached to any consent granted for the proposal or obligations can be secured through a Section 75 Agreement to meet the requirements of the Roads and Transportation Division.

3.3 The Scottish Environment Protection Agency has reviewed this proposal and Environmental Statement (ES) and would provide the following comments and recommendations:-

As stated in the ES, there are still some outstanding issues and information gaps regarding some aspects of the proposed works. SEPA considers that these issues could be addressed through planning conditions. These issues are important and require further consideration prior to the commencement of any works at this site. The recommendations in the ES and in this letter should be taken into consideration during the detailed design of the proposal. Therefore, SEPA does not have any objection in principle to this proposal provided that any planning permission granted at this site includes suitable conditions to address the outstanding issues at this site. The main issues focus on hydrogeology and hydrology; surface water management and river engineering works. SEPA also recommends that any planning permission

granted at this site should be subject to a condition requiring implementation of the proposed Environmental Commitments.

Hydrogeology and Hydrology:

Comments on hydrogeology and hydrology are based on section 9 of the ES. SEPA agrees that further hydrogeological investigations should be carried out in order to inform the detailed design of this site. The ES recommends that:-

- A detailed hydro-geological investigation should be prepared prior to the commencement of any activities at this site; and
- Baseline groundwater and future groundwater monitoring should be undertaken in order to assess the potential impacts on groundwater.

Abstraction/dewatering activities are proposed for this site. Details should be provided of how the dewatering / abstraction will be managed and the amount of groundwater proposed to be abstracted for dewatering purposes and the timescale. Consideration should be given to the possible effect the dewatering activity will have on all identified receptors including any nearby wells, wetlands and surface waters. Abstraction and dewatering activities are regulated by SEPA under the terms of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (as amended) (CAR). The developer should ensure that the requirements of these regulations are met and if necessary discuss these requirements directly with the SEPA's Ayrshire Regulatory Team.

Therefore, we recommend that any planning permission granted at this site should include suitable conditions to ensure that the recommendations and proposed mitigation measures in the ES are followed/implemented and taken into consideration during the design of the site. In particular, we would require the applicant to submit:

- a detailed hydro-geological investigation to assess the risks to the water environment (including groundwater), as identified in the ES, and propose suitable mitigation measures to address these issues/risks;
- proposals for surface and ground water sampling to establish the baseline conditions and proposals for subsequent sampling/monitoring during site preparation and operation;
- details of the proposed dewatering and abstraction activities at this site, including the amount and quality of water to be abstracted, an assessment of the likely impacts of these activities on sensitive receptors in the area and detailed proposals for mitigation;
- suitable drawings showing that the overburden storage mounds and peat storage areas (if any) will be located away from sensitive receptors (e.g. watercourses) and that suitable measures will be adopted in order to prevent risks to the water environment; and
- proposals for pollution prevention in respect of both surface and ground waters, taking also into consideration the advice in SEPA's Pollution Prevention Guide Notes as required.

Proposals addressing the above issues should be acceptable to the Planning Authority and SEPA.

Surface Water Management:

The ES recommends that suitable measures should be adopted in order to prevent contamination of surface water and that on-site treatment will be required prior to any discharge to existing surface watercourses. The ES also recommends adoption of good site management practices in order to minimise sediment erosion. At this stage, we would note that discharges to the water environment (ground and/or surface waters) will require authorisation from SEPA under CAR. The applicant is advised to discuss these matters directly with SEPA's Ayrshire Regulatory Team.

SEPA recommends that any planning permission granted at this site should include a suitable condition requiring the applicant to submit details of proposals for an integrated surface water management system including detailed Method Statements for the approval of the Planning Authority in consultation with SEPA. The proposed discharge of surface water to the water environment should be in accordance with the approved surface water management system and Method Statements which should ensure compliance with the terms of CAR. Contaminated site drainage should be collected, contained and treated to ensure that adjacent surface waters and groundwater are not polluted. As part of the water management system at this site, the applicant should also identify the location of the discharge point/s for the treatment lagoons. The detailed proposals for surface water management at this site should be discussed directly with SEPA's Ayrshire Regulatory Team.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of SEPA. The Environmental Statement does indicate that SEPA will be consulted on these matters and working methods agreed prior to any works commencing on site. A condition can also be attached to any consent granted to ensure that the detailed water management and treatment proposals include the provisions to collect, store and return intercepted waters to the natural environment in a manner that is acceptable to the Planning Authority and SEPA.

Ecology and River Engineering:

SEPA notes that the proposal will also include attenuation of surface water runoff. The Council, as the Flood Prevention Authority, should be satisfied that the post development runoff and management are appropriate for flood control purposes.

SEPA notes that the proposed development will also involve temporary diversion of Craigman, Burnston and Linn burns. The details of these proposals have not been provided in the ES and therefore it is not possible to provide detailed comments at this stage. Proposed river engineering works will require authorisation from SEPA under CAR. In this regard, we would advise the applicant to discuss the proposed details, including the proposals for restoration, directly with SEPA's Ayrshire Regulatory Team. The applicant

should note that as part of the CAR authorisation process, SEPA will also take consideration of other river engineering works in the area in order to assess the potential cumulative impact on the water environment and the likely effects of such proposals on flood risks at this site and elsewhere. Therefore, the proposed watercourse diversions may require additional ecological surveys and flood risk information at the CAR authorisation stage.

SEPA recommends that any planning permission granted at this site should include a suitable condition requiring the applicant to submit detailed ecological surveys of the affected watercourses and their banks; details of the proposed diversions and other engineering works; detailed restoration plans to reinstate the affected watercourses and their banks to their current or improved status; and detailed Method Statements for the implementation of all proposed works. These proposals should be submitted prior to the commencement of works at this site and these should be acceptable to the Planning Authority and SEPA. The applicant should discuss these requirements directly with SEPA's Ayrshire Regulatory Team and our Ecology department in the East Kilbride office. SEPA's Ayrshire Regulatory Team should also be able to advise the applicant whether additional flood risk information will be required at the CAR authorisation stage.

A condition can be attached to any consent granted for the proposed development to require River Habitat Surveys to be undertaken prior to the commencement of development on site. This information can subsequently be used to inform watercourse recreation that will be overseen by the Technical Working Group for the House of Water site.

3.4 Scottish Natural Heritage states that the 45.8 ha area identified in this application is part of the earlier application for a 210 ha application known as the Burnston extension to which SNH responded on 25 August 2006. The current application is part of application ref 06/0584/FL which received approval subject to conditions on 27 March 2007. SNH objected to the original application on the grounds of:

- Significant adverse impacts on landscape and visual amenity, for the most part the cumulative impact with other developments particularly the proposed extension to Greenburn OCCS.
- Significant adverse impacts on an area of blanket bog to the north of Tappet Hill.

The current application is for 45.8 ha in the south eastern portion of the original 210 ha site and, being a much smaller area, the cumulative impacts are likely to be much less significant than with the original extension application. The habitat at present consists of agricultural rough grazing and the Supporting Statement states that the restoration process will return it to rough grazing once the coal extraction operation ends. The Supporting Statement also confirms that a detailed restoration and aftercare management scheme for the entire House of Water complex will be developed fully with relevant bodies to ensure that the site is returned to its best possible condition and use. The Supporting Statement confirms that a surface and ground water monitoring scheme, including river habitat surveys, designed with SEPA, will be implemented partly to inform the restoration of

the water courses affected by the proposal. The Supporting Statement confirms that no evidence was found of badgers utilising the Burnston Fields area. It also confirms that development should take place outwith the bird breeding season (i.e. outwith the period March to August inclusive).

Noted.

SNH reserves its position with regard to the proposed development as submitted with regard to European Protected Species as there is insufficient information for SNH to assess either the importance of the natural heritage interests affected or the potential impacts of the proposal. To enable SNH to advise the Council on impacts, SNH recommends strongly that a survey of otters be undertaken at the earliest opportunity prior to determining whether planning permission should be given.

Since receipt of the consultation response from SNH, the applicant has undertaken the otter survey work requested and some of this work is still ongoing. However, further advice has been received from SNH which states that, as a result of this survey information, an otter management or protection plan should be requested from the applicant. This Plan will be based on the outcome of current camera monitoring work being undertaken at the site of an otter holt in the proposed development areas. SNH is working with the applicant to analyse the information being obtained from the camera and would be pleased to advise further on this proposal if required once this information is available. SNH reminds the Council that if this application is approved without consideration of this information, the development could result in an offence under Regulations 39 and 43 of the Habitats Regulations 1994 and therefore SNH recommends that this issue is addressed in conditions of any planning consent.

It is considered that in order to address the comments made by SNH and indeed to ensure the Council's responsibilities under the Habitats Directive are met, then it is necessary to impose such conditions in the event that the application be approved. Failure to do so would result in a notification requirement to the Scottish Ministers, should the Committee be minded to approve the application in the absence of such conditions.

SNH objects to the proposed development as submitted. SNH's objection could be overcome subject to the following matters being addressed in conditions or legal agreements:

(i) Mitigation as described in the Supporting Information Table 4.10 is undertaken and items such as wetland creation and other management for protected species such as badgers, otters and black grouse will be guided by the Technical Working Group and work on the ground for is overseen by a suitably qualified Ecological Clerk of Works.

Notwithstanding the above conditioned objection, if the Council is minded to approve this project as submitted SNH further recommends the following matters are contained in conditions:

- Final management works must be agreed by the competent authority under a S75 for incorporation into a management plan for review by the existing House of Water Technical Working Group. This plan should include the establishment of habitat suitable for use by legally protected or other important species affected or displaced by the proposals such as peregrine falcon, black grouse badger and otter.

Conditions can be attached to any consent granted for the proposal to meet the requirements of SNH.

3.5 Scottish Power Energy Networks and Scotland Gas Networks have no objections to the proposed development

3.6 New Cumnock Community Council has not responded to the consultation letter.

3.7 The West of Scotland Archaeology Service states that, in order to achieve the relevant archaeological investigations, a condition relating to the archaeological issue should be placed on any consent granted for these or future proposals. This condition, which is based on PAN 42 but is worded to reflect current circumstances and in light of experience elsewhere, is as follows:

'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.'

WOSAS further states that the applicant will need to retain the services of a professional archaeologist to carry out the required works. Any significant discoveries made will require to be excavated before their destruction through a staged series of further works including any post excavation analyses and publication, as required.

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

3.8 The Ayrshire Rivers Trust has no concerns regarding the proposed mine extension but consider that the proposal to transport over 70,000 HGV loads of coal through a forest haul road has major potential for environmental damage to the Burnock Water and its tributaries. Further details are required before Ayrshire Rivers Trust would be of the opinion that the proposal could proceed without significant environmental harm.

An application for the construction of an overland haul route at Green Hill / Kyle Forest has already been approved on 07

February 2003 (Ref. No. 98/0844/FL) and works on the proposed haul road have since commenced on site.

3.9 East Ayrshire Council Environmental Health Division has no objection to the proposed development but offer the following comments:

(i) The Developer should be required to carry out routine noise monitoring at the site to determine actual levels of exposure at the nearest noise-sensitive locations, and should provide copies of these results to this office for scrutiny. The Developer should also, in the event of complaint regarding noise, be requested to cease operations until the cause of the complaint has been abated

(ii) Any private water supplies in the area of the development, or which may be affected by the development, should be identified and protection measures introduced to ensure integrity of these supplies.

Conditions can be attached to any consent granted for the proposal to meet the requirements of the Environmental Health Division.

3.10 Historic Scotland is content to accept the findings of the Environmental Statement as the proposed development is unlikely to have a significantly adverse impact on the site and setting of any historic environment assets of national importance. Consequently, HS offers no objection to the proposed development.

3.11 The Scottish Government Climate Change and Water Industry Directorate offer the following comments on the Environmental Statement:

- Air Quality – We note that providing the proposed control schemes and mitigation measures are undertaken, the likelihood of dust nuisance is low and whilst there may be a small decrease in local air quality, it is likely to be of short duration and should at no time result in air quality criteria levels being exceeded.
- Noise/Vibration – We note that with the exercise of reasonable engineering control over general operations and positive mitigation measures, all working at the site should be carried out within the PAN 50 noise criteria and without undue annoyance to local residents.

3.12 The Scottish Wildlife Trust has no objections to the proposed development as the controls, objectives and guidelines described in the 'Non-Technical Summary' appear to be appropriate to the site and development.

3.13 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 cause minimal environmental impact on the trunk road network. On that basis, TRNMD has no comments to make.

3.14 Forestry Commission Scotland has no comment or objections to the proposed development.

4. REPRESENTATIONS

4.1 There were no third party representations received in relation to this application.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (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 indicates in its Key Diagram that the House of Water 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 Burnston Field 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 proposed Burnston Fields extension application has been assessed and determined against the stated criteria. The proposals promoted by the current application will be implemented under the existing planning controls within the existing consent and Section 75 Agreement (as may be amended

by the terms of this report) for the existing House of Water site and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed extension would not conflict with the stated criteria in terms of its operational conduct.

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

East Ayrshire Opencast Coal Subject Plan

5.4 Policies MIN1 and MIN2: All future opencast coal developments will be directed towards and limited to 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:

The proposed extension area lies within a Potential Coal Extraction Area. The original ES for the larger Burnston site concluded that the proposal in its entirety would be environmentally acceptable; would not result in unacceptable disturbance to local communities or individual receptors; would ensure the recovery of all available mineral reserves within the Company's landholding in a logical and structured fashion; would ensure that the total House of Water complex is worked and restored within an acceptable timeframe; and ensure continuity of employment and require the recruitment of an additional 40 site operatives.

5.5 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 Burnston Fields operation is capable of being a stand-alone excavation area, however, detailed consideration has been given to the phasing of operations in the total House of Water and Burnston extension complex to ensure that the whole site is worked and restored in a logical and structured manner.

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

The operation will utilise all existing infrastructure within the main House of Water site.

- (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*

There will be no net increase in the rate of output from the site or number of vehicle trips generated by the Burnston Fields and Lanehead areas working concurrently in comparison to that of the House of Water site when working at full production.

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

The proposed extension does not prejudice plans for the extension of the main site, and a co-ordinated restoration approach for the wider House of Water complex has been adopted and will be overseen by the existing Technical Working Group for the site.

5.6 Policy MIN4: Any opencast coal developments, including extensions to existing workings detailed in policy MIN3, which relate to areas outwith the Potential Coal Extraction Areas are to be assessed against a range of criteria.

In respect of the various criteria contained within policy MIN4:

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

The original ES fully assessed the impact of the proposal upon the agricultural land quality, landscape character and visual amenity of the area and the natural and built environment, and concluded that the proposal is environmentally acceptable in respect of its potential impact upon all of these resources.

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

The original ES concluded that the proposal is acceptable in terms of potential impacts upon water resources, air quality and human receptors in terms of noise.

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

Detailed assessment of the proposal against the provisions contained within SPP16 concludes that the proposal will not have any adverse impacts upon local communities, groups of dwellings or individual houses.

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

The proposal will provide community benefits in respect of employment opportunities and contributions to the minerals trust fund.

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

All coal from the site will be transported to market by rail following a short road transfer.

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

The original ES concluded that there are no significant cumulative impacts which could arise from the proposed phasing of operations. This is largely due to the construction of the purpose built Kyle Forest haul road which will remove coal traffic from the B741. The extension area will not prejudice the existing restoration proposals for the main House of Water site.

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

It is considered that the proposal will not have any detrimental impact upon inward investment opportunities in the area.

(viii) the period of extraction.

Pre-application discussions with the local community relating to the associated Lanehead extension area confirmed that there was a preference for the Lanehead extension area to be worked concurrently with the Burnston (Burnston Fields) extension in order to ensure that the total House of Water complex was worked and restored within the shortest possible timeframe. This application has been predicated on the basis of the two extension areas working concurrently and the Lanehead EIA assessed the potential impacts of this development phasing. That ES concluded that there would be no significant environmental impacts arising from working these two areas concurrently.

5.7 Policy MIN7: All applicants for opencast 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.

It is considered that the proposal is acceptable in planning terms and site operations can be satisfactorily controlled through the imposition of appropriate planning conditions, ensuring that the site operates within acceptable environmental standards.

5.8 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 3km of each other or within a 3km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or

The proposed development will not result in a third operative site within a 3km radius of any particular community.

(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 operations at House of Water are located a considerable distance from the nearest community of New Cumnock, which lies some 4.4km away. The site operations are well managed and disturbance to groups of individual dwelling houses has been minimised throughout operations and this is reflected in the very few number of complaints received at the site in relation to its operations. As set out above, upon the cessation of coaling within the main House of Water site, all coal will be transported off site via the approved Kyle Forest haul road removing the requirement for any coal haulage vehicles to travel through the settlements along the B741. It is therefore concluded that whilst the operations at the House of Water complex have been ongoing for a period in excess of 10 years, the Burnston Fields extension operations do not give rise to significant environmental effects and will secure an environmental improvement in removing all coal traffic from passing through the closest community of New Cumnock.

(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

Refer to response to point (ii) above.

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

The proposed development will not result in any significant adverse impacts upon international or national designated sites of nature conservation interest.

5.9 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 proposals have been developed to ensure a coordinated approach to the restoration of the entire House of Water complex. A detailed restoration scheme will be prepared in consultation with a Technical Working Group should permission be granted.

5.10 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 proposed development will continue to utilise the Company's existing railhead at Killoch for transportation of coal.

5.11 Policy MIN22: Consideration of impact of proposed opencast development on local communities and nearby properties to be given by developers.

The potential impacts of the proposed development upon local communities and individual receptors have been fully considered in both the original ES and the planning assessment which forms part of this planning application.

5.12 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.

There are no communities within 500m of the application site.

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

The Burnston Fields extension operations will be completed and the extension area restored within a three year timescale.

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

The site is intended to represent one element of the larger Burnston extension, already subject of a Council resolution to

approve. There are no plans to extend the operations beyond the Burnston extension.

5.13 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 permitted where development can meet a series of criteria.

There are no extraction operations or operational areas relating to the storage, processing or dispatch of coal within 500m of any sensitive establishment, local community, group of dwellings or individual dwelling-houses not in the ownership of Scottish Coal.

5.14 Policy MIN26: In order to ensure that areas of nature conservation interest are adequately protected a series of criteria must be met.

The proposal is consistent with the criteria set out by policy MIN26 and will not adversely impact upon any areas of nature conservation interest.

5.15 Policy MIN27: the Council will ensure that opencast coal proposals do not have unacceptable adverse impact on the natural and built environment and set out a number of criteria to be met in this regard.

The proposal satisfies the criteria laid out by policy MIN27.

5.16 Policy MIN28 and MIN30: These policies concern the protection of the landscape resource and visual amenity of an area, and developers are required to preserve, maintain, enhance and reinstate features which contribute to the intrinsic landscape value and quality of the area.

The original ES contained a Landscape and Visual Assessment of the impact of the proposals, including restoration, upon the landscape resource and visual amenity of the area. This assessment concluded that inevitably there will be a period of disturbance to the existing landscape; however, the restoration proposals have been suitably designed to ensure that the original landscape character of the area is reinstated and that there will be no detrimental impact upon the landscape and visual amenity of the area in the longer term.

5.17 Policy MIN29: Protection of Tourism and recreational resources. The Council will seek to ensure that opencast proposals do not have an adverse impact upon existing rural tourism, leisure and recreational facilities.

There is no existing tourism, leisure or recreational facilities impacted upon by the proposal.

5.18 Policy MIN32: The Council will require applicants to enter into a Section75 agreement to regulate such matters that cannot be controlled by planning conditions.

Any planning permission for the site would be subject to a Section 75 agreement to secure various matters where this is considered to be necessary.

5.19 Policies MIN34 and MIN35: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

The applicant is currently a contributor to the Mineral Trust Fund in respect of the existing House of Water opencast site and would contribute in respect of the Burnston Fields Extension.

5.20 Policies MIN36 and MIN37: Requirement for operators to lodge restoration bonds and requirement to fund aftercare schemes.

The existing House of Water opencast site is subject to a Section 75 Agreement encompassing the above matters and appropriate amendments to this Agreement would ensure that safeguards to site restoration and aftercare would be in place for the Burnston Fields extension.

5.21 Policy MIN38: Establishment of Liaison Committees.

Scottish Coal already operates a local Liaison Committee at the House of Water site.

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

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

Consultation Responses

6.1 There are no consultation responses that would indicate that the application should be refused.

Scottish Planning Policy

6.2 SPP2 – Economic Development: SPP2 sets out the Scottish Executive's policy for economic development on the basis of the planning system providing strong support for new and expanding businesses consistent with other national policies and social justice and sustainable development. The proposal will have economic benefits to the area; will offer longer-term environmental enhancement and the prudent and efficient use of the available coal resources. The proposal is also consistent with the principles of sustainable development.

6.3 NPPG14 – Natural Heritage: NPPG14 gives guidance on how policies for the conservation and enhancement of Scotland's natural heritage should be reflected in land use planning. Further advice is given in Planning Advice Note 60: Planning for Natural Heritage (PAN60) on how development and the

planning system can contribute to the conservation, enhancement, enjoyment and understanding of Scotland's natural environment; it encourages developers and planning authorities to be positive and creative in addressing natural heritage issues; and gives examples of good planning practice. Both the policy guidance and advice have been taken in account in the design of the proposed development, proposed mitigation measures, monitoring and safeguarding proposals and arrangements, and restoration provisions.

6.4 SPP15 – Planning for Rural Development: SPP15 encourages a more supportive attitude towards appropriate development within rural areas and seeks to have vigorous and prosperous rural communities. It is evident that the certain parts of East Ayrshire have been identified through the development plans as appropriate general locations within which proposals for opencast coal extraction are likely to be acceptable (subject to site specific criteria being met) and the coal industry has an important role in the local rural economy. Accordingly, it is submitted that the proposals are consistent with the policy objectives of SPP15.

6.5 Guidance on opencast coal extraction has been given in Scottish Planning Policy 16: Opencast Coal. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coaling may take place.

6.6 Many of the provisions of SPP16 are already addressed within the adopted East Ayrshire Opencast Coal Subject Plan with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. Nonetheless SPP16 indicates that Planning Authorities should use their development plans to identify areas where opencast coal extraction may be acceptable. There should be a presumption against development outwith these areas.

The adopted East Ayrshire Opencast Coal Subject Plan has identified Potential Coal Extraction Areas and in this regard the Burnston Fields extension lies within such an area.

6.7 SPP16 also indicates that in applying the principles of sustainable development and environmental justice to opencast coal extraction, there should be a presumption against development unless the proposal would meet either one of two tests; these tests are, to all intents and purposes, the same as the equivalent tests found in the former NPPG16:-

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

It is considered that the development does not contravene the principles and approach in SPP16 in that it would satisfy Test 1, namely that is environmentally acceptable having regard to mitigation measures which can be secured through planning conditions.

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

It is considered that Test 2 is also met as the proposed Burnston Fields extension will allow continuation and expansion of employment which is particularly beneficial in those areas where the extraction takes place; and there will be continued contributions to the Community Trust Fund. It is therefore considered that both tests are satisfied in assessing this application.

Planning Advice Notes

6.8 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

6.9 The more relevant planning history relates to the original House of Water application for the winning and working of 4.5 million tonnes of coal which was approved on 17 April 1996 (Ref. No. CD/94/0072/MIN).

6.10 An application for an extension to the House of Water site and Diversion of the River Nith was approved on 19 June 1998 (Ref. No. 96/0400/FL).

6.11 An application for a modification to the working hours at House of Water was approved on 09 January 1997 (Ref. No. 96/0635/FL).

6.12 An application for the construction of an overland haul route at Green Hill / Kyle Forest was approved on 07 February 2003 (Ref. No. 98/0844/FL). Works on the proposed haul road have since commenced on site.

6.13 An application for a proposed variation and extension to the House of Water site was approved on 05 December 2003 (Ref. No. 03/0506/FL).

6.14 An application for a proposed variation to the approved scheme and extension to the extraction area and a re-diversion of the River Nith was approved on 05 November 2004 (Ref. No. 04/0397/FL).

6.15 An application for the Burnston Extension to the House of Water site was considered by the former Development Services Committee on 27 March 2007 at which time it was resolved to grant consent subject to the concluding of a Section 75 Agreement and subject to notification to the Scottish Ministers. While the application was subsequently cleared by the Scottish Ministers, the Section 75 Agreement has not yet been formally concluded due to land ownership issues (Ref. No. 06/0548/FL).

6.16 An application for the extraction of coal by surface mining methods with restoration to rough grazing with enhanced biodiversity (Tappet Hill extension) was approved on 29 September 2009 (Ref. No. 09/0286/FL).

6.17 An application to vary the approved scheme of working, incorporating a minor extension to the permitted excavation area (Craigman South) was approved on 2 October 2009 (Ref. No. 09/0364/FL).

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

6.18 As indicated in the consultation response from SNH, concerns were raised regarding potential impacts on otters. Since the original consultation response SNH has undertaken discussions with the applicant in relation to ongoing survey work associated with the potential disturbance of otters and their habitat. In this regard SNH has, as a result of survey work to date, advised the Council that subject to conditions being imposed on any planning consent granted, it is able to move from its reserved position on the otter issue.

Scottish Government interim guidance to planning authority's states that no planning decision may be made until the planning authority can assure itself that a licence may be forthcoming.

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". SNH, in withdrawing its objection, suggests that 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.

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 amend the existing Section 75 Agreement for the site to include the Burnston Fields extension and as required to be amended by the terms of this report.

7.2 Further legal implications will arise through the requirement to stop up the section of the U719 Dalgig Road that is affected by the proposed excavations.

8. CONCLUSIONS

8.1 This report has set out details of the development proposal for the mining of coal from the Burnston Fields extension to House of Water Surface Mine. This represents one element of the larger Burnston extension (which

was accompanied by a comprehensive Environmental Statement which addressed the potential effects of the development in some detail).

8.2 In designing the development proposal, regard has been had to a number of matters relevant to the location and physical extent of the extension area, the presence of surrounding dwellings, the hours of operation and the relationship in timing and spatial terms with other mining sites in the wider area, having particular regard to the total House of Water complex.

8.3 The project design has been tailored to ensure that any effects from the development are short term, temporary and limited to scale.

8.4 In summary:-

- The extension area lies within a Potential Opencast Coal Extraction Area as defined in the Ayrshire Joint Structure Plan and East Ayrshire Opencast Coal Subject Plan;
- Existing jobs at the House of Water site will be safeguarded in an area where the mining industry is a significant local employer;
- The original Environmental Statement concluded that the operations on the much larger site could be undertaken within acceptable environmental limits, ensuring that there will be no significant adverse impacts upon the surrounding environment;
- The extension area will see coal reserves in the House of Water complex recovered in a logical and structured fashion, within acceptable environmental limits, and see the entire House of Water site restored within an acceptable timeframe;
- The co-ordinated restoration approach developed will ensure that the overall House of Water area is restored to its optimum potential; and
- In overall terms the development is compliant with policies in the Council's Development Plan and meets the test of environmental acceptability as set out in national planning policy on opencast coal.

8.5 It is considered that the application should be approved but that the following matters should be secured as obligations within an amendment to the existing Section 75 Agreement for the House of Water site:

Section 75 Agreement

- (i) The extension of the remit of the existing House of Water Technical Working Group to embrace the proposed Burnston Fields extension.
- (ii) The implementation in full of the mitigation and restoration recommendations contained within the Environmental Statement that accompanied the Burnston extension planning application (Ref. No. 06/0548/FL) insofar as it relates to the proposed Burnston Fields extension. The applicant shall provide a Mitigation Plan for the site that shall be the subject of an annual audit with a monitoring report provided to the Planning Authority assessing the effectiveness of

mitigation measures. This monitoring report shall also be the subject of consultation with the House of Water Technical Working Group. Mitigation as described in the Supporting Statement (Table 4.10) shall be undertaken and items such as wetland restoration, restoration for habitat enhancement including top soil placement and management for protected species such as badgers, otters and black grouse will be guided by the House of Water Technical Working Group and work on the ground for is overseen by a suitably qualified Ecological Clerk of Works.

- (iii) The production of a Protected Mammals Management Plan in respect of mitigation for otters including proposals for monitoring and reporting. The PMMP shall be produced in accordance with the requirements of SNH and shall be overseen by a suitably qualified Ecological Clerk of Works.
- (iv) The undertaking and establishment of baseline conditions in respect of the water environment and water quality on the site. Appropriate monitoring systems shall be put in place together with appropriate management measures to address any water quality issues arising from operations on site, which shall be the subject of agreement with the Planning Authority in consultation with SEPA.
- (v) The establishment of noise, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Burnston Fields extension site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (vi) The undertaking of an assessment of the fish population in the burns proposed for diversion with an appropriate fish rescue plan implemented if necessary, to be undertaken prior to diversion of the burns.
- (vii) 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.
- (viii) 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;
- (ix) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.
- (x) The securing of agreed road maintenance contributions, towards repair works to be carried out on the A70, B7046 and U728 public road haulage route between the Piperhill site access and Killoch DP, with the Roads Authority under section 96 of the Roads (Scotland) Act 1984 incorporated into a Section 75 agreement. This shall also take into account any extraordinary maintenance costs or damage to the U719 public road that may arise due to the proposed road closure works.

- (xi) 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.

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 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.

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development in terms of the principle of the development, the application would require to be referred to Full Council as such a decision would represent a significant departure from the development plan and would conflict with the previous decision by the former Development Services Committee to resolve to approve the larger Burnston scheme, of which this development site forms a part.

Alan Neish
Head of Planning and Economic Development

January 2010
CG/HM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Adopted East Ayrshire Opencast Subject Plan (2003)
5. Approved Ayrshire Joint Structure Plan (1999)
6. Finalised Ayrshire Joint Structure Plan (2006)
7. Previous applications CD/94/0072/MIN, 96/0400/FL, 96/0635/FL, 98/0844/FL, 03/0506/FL, 04/0397/FL, 06/0548/FL, 09/0286/FL and 09/0364/FL.
8. SPP16: Opencast Coal
9. PAN50 and Annexes.
10. Burnston Extension Environmental Statement

Any person wishing to inspect the background papers listed above should contact Mr Colin Graham on 01563 555482.

Implementation Officer: Dave Morris

Application No: 09/0371/FL

Location	House of Water Opencast Coal Site (Burnston Fields Extension) Whitehill Farm New Cumnock
Nature of Proposal:	Extraction of coal by surface mining methods with restoration to rough grazing.
Name and Address of Applicant:	The Scottish Coal Company Limited Castlebridge Business Park Gartlove ALLOA FK10 3PZ
Name and Address of Agent	Matt Ferguson (Planning Manager) The Scottish Coal Company Limited Castlebridge Business Park Gartlove ALLOA FK10 3PZ

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

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

1. The development hereby permitted shall enure for the benefit of the applicant only, and the approved operations shall be completed within 3 years of the date of commencement of operations on the Burnston Fields Extension site, or at such other time as may be 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. Within six months of the commencement of operations on site, the applicant shall establish a restoration programme and management plan for the proposed Burnston Fields extension and the wider House of Water area 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 House of Water Technical Working Group. This plan should include the establishment of habitat suitable for use by legally protected or other important species affected or displaced by the proposals such as peregrine falcon, black grouse, breeding waders, badger and otter.

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

4. Prior to the commencement of operations on site, the applicant shall submit to, and have had approved by the Planning Authority in consultation with the Scottish Environment Protection Agency, details of proposals for the proposed water management system for the site including a detailed Work Method Statement. The detailed water management and treatment proposals shall include provisions to collect, store and return intercepted waters to the natural environment in a manner that is acceptable to the Planning Authority and SEPA.

REASON – To prevent pollution of watercourses and minimise risk of flooding.

5. Prior to the commencement of operations on the Burnston Fields extension area, the applicant shall undertake hydrogeological and hydrological investigations where appropriate, the details of which shall inform the process of restoration of watercourses affected by the proposed development. In particular the following information shall be submitted for the approval of the Planning Authority, in consultation with the Scottish Environment Protection Agency:
 - hydro-geological investigations to assess the risks to the water environment as a result of acid mine drainage, contamination from backfilling, alterations to the groundwater recharge regime and the potential impacts on groundwater quality, and to propose suitable mitigation measures to address these issues/risks;
 - proposals for surface and ground water sampling to establish the baseline conditions and proposals for subsequent sampling/monitoring during site preparation and operation;
 - details of the proposed dewatering and abstraction activities at this site, including the amount and quality of water to be abstracted, an assessment of the likely impacts of these activities on sensitive receptors in the area and detailed proposals for mitigation;

- suitable drawings showing that the overburden storage mounds and peat storage areas will be located away from sensitive receptors (e.g. watercourses) and that suitable measures will be adopted in order to prevent risks to the water environment; and
- proposals for pollution prevention in respect of both surface and ground waters, taking also into consideration the advice in SEPA's Pollution Prevention Guide Notes as required.

REASON – In the interests of pollution prevention and to ensure a high standard of restoration of watercourses.

6. Prior to the commencement of operations on the Burnston Fields extension area, the applicant will be required to submit for the approval of the Planning Authority, in consultation with the Scottish Environment Protection Agency:

- detailed ecological surveys of the affected water-courses and their banks;
- details of the proposed diversions and other engineering works;
- detailed restoration plans to reinstate the affected water-courses and their banks to their current or improved status; and
- detailed method statements for the implementation of all proposed works.

REASON – To ensure a high standard of restoration of watercourses.

7. No development shall take place within the development site as outlined in red on the approved plan until the applicant 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 applicant shall retain the services of a professional Archaeologist to carry out the above works and any significant discoveries made will require to be excavated before their destruction through a staged series of further works including any post excavation analysis and publication, as required.

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.

8. Except in the case of emergency and with the prior agreement of the Planning Authority minerals extracted from the Burnston Fields extension shall be transported off site via the consented Kyle Forest overland haul route to Piperhill and thereafter by the public road system to Killoch railhead for dispatch to markets.

REASON – In the interest of residential amenity.

9. Except in the case of emergency and with the prior agreement of the Planning Authority, the dispatch of coal from the site by road, including via the Kyle Forest overland haul route, shall be confined to between the hours of 0800 and 1800 hours Mondays to Fridays inclusive. No transportation of coal by road shall take place on Saturdays or Sundays except in cases of emergency as indicated.

REASON – In the interest of residential amenity.

10. All vegetation clearance, 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 House of Water Technical Working Group.

REASON – In the interests of environmental protection.

11. The existing noise monitoring programme shall continue on site using appropriate equipment and recording devices to determine actual levels of exposure at the nearest noise sensitive locations, the results and records of which are to be made available to the Planning Authority throughout the operational life of the site.

REASON - To monitor noise levels and ensure that appropriate environmental standards are maintained throughout the life of the site.

12. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consents CD/94/0072/MIN dated 17 April 1996, as amended by application 94/0400/FL dated 19 June 1998, as amended by application 96/0635/FL dated 09 January 1997, as amended by application 03/0506/FL dated 05 December 2003, as amended by application 04/0397/FL dated 05 November 2004, as amended by application 09/0286/FL dated 29 September 2009 and as amended by application 09/0364/FL dated 2 October 2009.

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

13. Prior to the stopping up of the U719 public road, the applicant shall submit to, and have approved by the planning Authority in consultation with the Roads Authority, details of the provision of a turn head to be provided at the point of closure.

REASON – In the interests of public road safety.

Note to Applicant

1. The applicant is advised to make early contact with the Scottish Environment Protection Agency with regard to any amendments to existing authorisations in place for the House of Water site in respect of legislation administered by that body.