

EAST AYRSHIRE COUNCIL

SPECIAL SOUTHERN LOCAL PLANNING COMMITTEE: 10 JULY 2009

**09/0286/FL: EXTRACTION OF COAL BY SURFACE MINING METHODS
WITH RESTORATION TO ROUGH GRAZING WITH ENHANCED
BIODIVERSITY (TAPPET HILL EXTENSION)
AT HOUSE OF WATER OCCS, NEW CUMNOCK**

EXECUTIVE SUMMARY

1. DEVELOPMENT DESCRIPTION

1.1 Planning Permission is sought for an extension of the existing House of Water site for the winning and working of coal by opencast method. Fireclay, where encountered, will also be won in conjunction with coaling operations. The proposed Tappet Hill extension will be developed as a sequential phase of the existing operational site using the same plant and infrastructure that is in operation at the existing House of Water site. In particular the existing coal treatment area will be used to process coals extracted from the proposed extension.

1.2 This proposal will allow the recovery of approximately 425,000 tonnes of coal mainly for the power generation industry. Production will be at a rate of approximately 7,000 tonnes per week. The seams of coal that outcrop in the vicinity of the Tappet Hill Extension will be extracted to a maximum depth of 100 metres below original ground level. The coals will be worked commencing in the south-east part of the site, contiguous with the existing Area B excavations, then proceeding in a north-west direction, stripping soils and storing them in separate topsoil and subsoil storage mounds.

1.3 As extraction progresses north-westwards, overburden will be used as backfill. The proposal will involve limited blasting operations to fracture overburden. Initially, overburden material will be taken to the overburden storage mound or to previously excavated areas. Overburden mounds will be constructed to a maximum height of 30 metres above original ground levels.

1.4 In terms of timescale, following commencement of operations on the Tappet Hill Extension, extraction of minerals and backfilling operations are estimated to take 18 months to complete and this will be followed by approximately 12 months of final site restoration works i.e. a total operational life of 2.5 years. The final timescale will be dependent on a number of factors including the exact rate of production, the coal tonnage recovered and weather experienced during the life of the site.

1.5 It is proposed to use the same hours of operation and shift system as the consented House of Water site i.e. between 0700 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No operations are to

be undertaken on Sundays or local or Public Holidays with the exception of routine maintenance and emergency works.

1.6 Access to the site is via the existing main access off the Uc20 Dalrickett Road at Whitehill Farm (then by overland haul routes). In terms of dispatch of coal from the site, the applicant has indicated that coals won from the Tappet Hill Extension shall be taken via the consented Kyle Forest overland haul route, via the former Piperhill opencast site towards the Killoch rail disposal point. This would avoid significant HGV movements through both New Cumnock and Ochiltree and would involve only a short haul on public roads which have only a few residential properties located along the route.

1.7 The dispatch of minerals by public road (and along the Kyle Forest overland haul route) will be confined to between 0800 and 1800 hours Mondays to Fridays with no dispatch on Saturdays or Sundays. The number of HGV movements along this transportation route associated with the Tappet Hill Extension will be approximately 10 per hour (5 laden and 5 unladen). Water treatment areas will be provided for the settling of solids and interception of potential contaminated surface water run-off. The water management has also taken into account that water from existing underground mine workings entering the working void may require treatment.

1.8 The House of Water operation and proposed Tappet Hill Extension will provide continuity of employment for 77 personnel with 16 additional jobs being created as a result of the proposed extension. Employment will also be generated / sustained within nearby businesses in the supply of site services and coal transportation. These jobs will be maintained throughout the working life of the Tappet Hill Extension. From the experience gained at the current site, approximately 70% of employees reside within a 10 km radius of the site, with remaining employees coming from Muirkirk, Patna, Kirkconnel and Sanquhar.

1.9 Progressive restoration will be integral to the proposed development, with worked areas being backfilled with newly excavated overburden, and re-vegetated as work progresses. Restoration operations and replanting of the site are weather dependent but are expected to take approximately 12 months. The restoration plan submitted by the applicant indicates that the majority of the site will be reinstated to its current rough grazing use on acid grassland, but will also incorporate an element of habitat enhancement and biodiversity through the creation of small ponds and the establishment of a woodland heath mosaic with native woodland planting, especially adjacent to the existing forestry plantation. This restoration will compliment the wider restoration strategy for the House of Water site. The restoration works will be completed in consultation with the existing Technical Working Group established for the House of Water site which includes representatives from SEPA, the Nith District Salmon Fishery Board, SNH, RSPB and New Cumnock Angling Club.

1.10 The Tappet Hill Extension application has been accompanied by the Environmental Statement submitted along with the larger Burnston Extension

application. This is amended to reflect the position of working the smaller Tappet Hill Extension by the submission of a reconciliatory Planning Supporting Statement. Notwithstanding this, the information provided in both documents suggests that the revised proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology; indeed the working of the smaller scheme will present less adverse impacts overall. The existing operations at the House of Water site are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the Section 75 Agreement.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet 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 the main report.

3. SUMMARY OF ANALYSIS

3.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan. 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 objection raised is not of sufficient weight to justify refusal of the application.

3.2 The proposals represent a more modest extension to the existing consented site at House of Water than originally proposed under the previous Burnston Extension scheme, but will still involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts, and this is essentially borne out by the consultation process. In this case the proposed development has not attracted a significant body of objection to the proposal.

3.3 It is considered that, given the relatively remote and sparsely populated area in which the proposed Tappet Hill Extension site is located, this proposal will not result in any significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject

Plan and it is considered that the extended operations proposed can be undertaken within acceptable environmental standards.

3.4 The existing House of Water operation provides full time employment for approximately 77 staff, operatives and contractors. These jobs will be maintained throughout the additional 2.5 years working life of the proposed Tappet Hill Extension, with a further 16 additional jobs being created. This is considered to be of significant ongoing community benefit.

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 House of Water Technical Working Group to embrace the proposed Tappet Hill Extension.
- (ii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement that accompanied the planning application. 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 Information 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 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.
- (iv) The establishment of noise, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Tappet Hill 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;

- (v) 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.
- (vi) 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.
- (vii) 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;
- (viii) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.
- (ix) 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.
- (x) 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.
- (xi) The relocation of the site haul road to minimise loss of peatland habitat and the restoration of forestry within the site to peatland habitat, as agreed with SNH and RSPB and agreement of a plan for achieving this as part of the House of Water Conservation Management Plan, prior to operations commencing.
- (xii) A Comprehensive Habitat Management Plan shall be agreed with the planning authority and any other relevant party in consultation with SNH for the management of an area of land within Kyle forest north of this proposed open cast extension prior to work starting on this site. The aims of the Habitat Management Plan will be the restoration of forestry area to blanket bog and the implementation of this plan will be undertaken by the applicant and guided by an appropriately qualified specialist.

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development, the application would require to be referred to the Principal Planning Committee as such a decision would 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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APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation because it represents an extension of working for an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan and is the subject of objections.

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 it is anticipated that such an agreement will eventually be concluded, 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. The alternative to this would be to close the House of Water site for a period of time with consequential loss of production and jobs.

2.3 The proposed Burnston Extension scheme promoted entry into land around Tappet Hill as a first phase of operations and that land within the control of the applicant. The applicant therefore at this time is promoting a

separate planning application specifically for that area to enable continuous coaling operations and continuity of employment on site.

2.4 Site Description: The site is located approximately 8 km to the west of New Cumnock and lies immediately northwest of the existing operational House of Water Opencast Coal Site. The application site represents an extension to the existing House of Water site, which the applicant has termed the Tappet Hill Extension, and extends to approximately 53 hectares. The site comprises an extensive commercial coniferous plantation (Sitka Spruce), rough grazing land and a former hard rock quarry at Tappet Hill.

2.5 The site lies between approximately 250 metres and 320 metres Above Ordnance Datum, with the land rising from south to north to the summit of Tappet Hill. The greater part of this land comprises rough grazing land and contains the small, worked out Tappet Hill stone quarry. The extension site is located in a relatively remote area, enclosed by areas of commercial coniferous plantations to the north and east, and by the existing House of Water site to the south.

2.6 The area is sparsely populated, with the nearest properties being Dalgig (2.0 km to the east), Upper Beoch (2.1 km to the southwest) and Lanehead (2.5 km to the southeast).

2.7 Proposed Development: Planning Permission is sought for an extension of the existing House of Water site for the winning and working of coal by opencast method. Fireclay, where encountered, will also be won in conjunction with coaling operations. The proposed Tappet Hill extension will be developed as a sequential phase of the existing operational site using the same plant and infrastructure that is in operation at the existing House of Water site. In particular the existing coal treatment area will be used to process coals extracted from the proposed extension.

2.8 This proposal will allow the recovery of approximately 425,000 tonnes of coal mainly for the power generation industry. Production will be at a rate of approximately 7,000 tonnes per week. The seams of coal that outcrop in the vicinity of the Tappet Hill Extension will be extracted to a maximum depth of 100 metres below original ground level. The coals will be worked commencing in the south-east part of the site, contiguous with the existing Area B excavations, then proceeding in a north-west direction, stripping soils and storing them in separate topsoil and subsoil storage mounds.

2.9 As extraction progresses north-westwards, overburden will be used as backfill. The proposal will involve limited blasting operations to fracture overburden. Initially, overburden material will be taken to the overburden storage mound or to previously excavated areas. Overburden mounds will be constructed to a maximum height of 30 metres above original ground levels.

2.10 In terms of timescale, following commencement of operations on the Tappet Hill Extension, extraction of minerals and backfilling operations are estimated to take 18 months to complete and this will be followed by

approximately 12 months of final site restoration works i.e. a total operational life of 2.5 years. The final timescale will be dependent on a number of factors including the exact rate of production, the coal tonnage recovered and weather experienced during the life of the site.

2.11 It is proposed to use the same hours of operation and shift system as the consented House of Water site i.e. between 0700 hours on a Monday through to 1600 hours on a Saturday (24 hour working). No operations are to be undertaken on Sundays or local or Public Holidays with the exception of routine maintenance and emergency works.

2.12 Access to the site is via the existing main access off the Uc20 Dalrickett Road at Whitehill Farm (then by overland haul routes). In terms of dispatch of coal from the site, the applicant has indicated that coals won from the Tappet Hill Extension shall be taken via the consented Kyle Forest overland haul route, via the former Piperhill opencast site towards the Killoch rail disposal point. This would avoid significant HGV movements through both New Cumnock and Ochiltree and would involve only a short haul on public roads which have only a few residential properties located along the route.

2.13 The dispatch of minerals by public road (and along the Kyle Forest overland haul route) will be confined to between 0800 and 1800 hours Mondays to Fridays with no dispatch on Saturdays or Sundays. The number of HGV movements along this transportation route associated with the Tappet Hill Extension will be approximately 10 per hour (5 laden and 5 unladen). Water treatment areas will be provided for the settling of solids and interception of potential contaminated surface water run-off. The water management has also taken into account that water from existing underground mine workings entering the working void may require treatment.

2.14 The House of Water operation and proposed Tappet Hill Extension will provide continuity of employment for 77 personnel with 16 additional jobs being created as a result of the proposed extension. Employment will also be generated / sustained within nearby businesses in the supply of site services and coal transportation. These jobs will be maintained throughout the working life of the Tappet Hill Extension. From the experience gained at the current site, approximately 70% of employees reside within a 10 km radius of the site, with remaining employees coming from Muirkirk, Patna, Kirkconnel and Sanquhar.

2.15 Progressive restoration will be integral to the proposed development, with worked areas being backfilled with newly excavated overburden, and re-vegetated as work progresses. Restoration operations and replanting of the site are weather dependent but are expected to take approximately 12 months. The restoration plan submitted by the applicant indicates that the majority of the site will be reinstated to its current rough grazing use on acid grassland, but will also incorporate an element of habitat enhancement and biodiversity through the creation of small ponds and the establishment of a woodland heath mosaic with native woodland planting, especially adjacent to the existing forestry plantation. This restoration will compliment the wider

restoration strategy for the House of Water site. The restoration works will be completed in consultation with the existing Technical Working Group established for the House of Water site which includes representatives from SEPA, the Nith District Salmon Fishery Board, SNH, RSPB and New Cumnock Angling Club.

2.16 The Tappet Hill Extension application has been accompanied by the Environmental Statement submitted along with the larger Burnston Extension application. This is amended to reflect the position of working the smaller Tappet Hill Extension by the submission of a reconciliatory Planning Supporting Statement. Notwithstanding this, the information provided in both documents suggests that the revised proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology; indeed the working of the smaller scheme will present less adverse impacts overall. The existing operations at the House of Water site are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the Section 75 Agreement.

3. CONSULTATIONS AND ISSUES RAISED

3.1 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 indicates that there are no objections to the proposed development. The Roads and Transportation Division supports the proposal to transport coal to the Killoch railhead via the consented Kyle Forest overland haul road. 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.

Noted.

The applicant's contribution on this route is expected to be between £0.05p and £0.10p 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.

The requirements of the Roads and Transportation Division can be secured through an obligation within an amendment to the existing Section 75 Agreement associated with the House of Water site.

3.3 The Scottish Environment Protection Agency notes that this proposal formed part of a larger site which was subject to a previous planning application (ref: 06/0548/FL) for the same type of land use. The previous application was approved by the Planning Authority subject to various conditions and a s.75 Agreement. We note that the s.75 Agreement was never concluded and therefore, Scottish Coal is progressing its proposals through this separate planning application. In this regard, the submitted Planning Application Supporting Statement (April 2009) states that the current proposals are the same as those proposed in the previous planning application at this site. As stated in the ES, there are still outstanding issues at this site and information gaps regarding some aspects of the development, the impacts on the water environment and the proposed mitigation measures. We consider 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 also be taken into consideration during the detailed design of the site. 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 ecology and river engineering. SEPA also recommends that any planning permission granted at this site should be subject to a condition requiring implementation of the proposed Environmental Commitments.

Noted.

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 understand the site conditions and environmental risks associated with the proposed operations at this site in view of acid mine drainage, contamination from backfilling, alterations to the groundwater recharge regime and the potential impacts on groundwater quality. SEPA also agrees that groundwater sampling should be carried out to establish the baseline conditions against which future groundwater sampling results could be compared. Moreover, the ES states that dewatering will be required at this site. Details of how dewatering will be managed and the amount of groundwater proposed to be abstracted should be provided. The applicant should also provide an assessment of the likely impacts of the proposed dewatering activity on sensitive receptors in the area, such as SSSIs, wetlands, watercourses, etc.

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 as part of the detailed design of the site. In particular, we would require the applicant to submit:

- hydrogeological 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.

Proposals addressing the above issues should be acceptable to the Planning Authority and SEPA. The applicant should note that dewatering and abstraction activities will require authorisation from SEPA in accordance with the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (as amended) (CAR). The requirements of CAR should be satisfied at all times and the applicant should 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 a water management system for this site 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 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 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.

SEPA notes that the proposed development will also involve temporary diversion of watercourses. 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 into consideration other authorised river engineering works in the area. In particular, we would note that parts of the River Nith have already been subject to extensive engineering works and these will be taken into consideration during our assessment of cumulative impacts on the River Nith environment. Therefore, the proposed watercourse diversions will require more detail ecological surveys and information.

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.

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.

SEPA has no objection to the proposed development on flood risk grounds. Notwithstanding this, SEPA would expect East Ayrshire Council to undertake its responsibilities as the Flood Prevention Authority (FPA).

Noted.

3.4 Scottish Natural Heritage states that The 53 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.

Amongst the conditions of consent for the Burnston application is a requirement for the applicant for further submissions relating to:

1. Assessment of the blanket bog area around Tappet Hill to establish the value of this peat resource;
2. Hydrological assessment to ascertain any hydrological link between the proposed development and Martyr's Moss.
3. Method statement for the construction of the retaining wall to protect the peatland resource outside excavation areas.

The current application is for 53 ha at the westerly most part of the original 210ha site and cumulative impacts are not seen to be as severe as likely to arise from the original extension application. The location of the area in the current application is still likely to have a significant adverse impact on blanket bog as this is the part of the site SNH advised should be excluded from the application area. However SNH notes the conditions imposed on this planning application and can confirm that provided these conditions are met the impact on blanket bog in the surrounding area may be limited. However there remains an area of blanket bog which will be removed by the proposed development and from its experience SNH does not believe it is possible to restore blanket bog habitat following excavation. The supporting information with this application confirms that a detailed assessment has been undertaken of the peatland resource within the proposed excavation area and that a full report will be forwarded to the Council once complete. The supporting information also confirms an assessment of hydrological linkage from the development site to Martyr's moss has been undertaken and states that this concludes there is no interaction between these areas. This report is also to be forwarded once complete. Information on the construction of the protective bund is also contained in the Supporting Information and SNH is content with this method statement. It is the case that the applicant has held discussions with SNH about possible compensation for this loss of blanket bog by re-routing of the link in the haul road from the existing open cast to the edge of Kyle forest and by undertaking management within the forest immediately north of the site boundary at Tappet Hill.

Noted.

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,

With respect to the area of blanket bog at Tappet Hill, further discussions have taken place with both SNH and the applicant. In order to address the outstanding concerns raised by SNH agreement has been reached on suspensive conditions. SNH objects unless these conditions are attached to any consent granted for the Tappet Hill Extension. The agreed suspensive conditions are as follows:

- ***Prior to consent for the works, a report on the blanket bog area around Tappet Hill to establish the value of this peat resource is submitted to the Planning Authority and SNH is afforded opportunity to view and comment on this.***
- ***Prior to consent for the works a detailed hydrological assessment to ascertain if there is any hydrological link between the proposed development and Martyr's Moss is submitted to the Planning Authority for agreement in consultation with SNH.***
- ***Prior to work starting on this site, a further survey should be undertaken for the presence of otters along the water courses should there be no up to date information on this since the work done for the original Environmental Statement in 2006.***
- ***The installation of a protective bund is undertaken as described in the Supporting Information with this application at para 4.11 item C.***
- ***The haul road over this part of the extension is re-routed to avoid deepest peat, the route to be agreed with the Planning Authority in consultation with SNH.***
- ***Habitat Management Plan is agreed with the planning authority and any other relevant party in consultation with SNH for the management of an area of land within Kyle forest north of this proposed open cast extension prior to work starting on this site. The aims of the Habitat Management Plan will be the restoration of forestry area to blanket bog and the implementation of this plan will be undertaken by the applicant and guided by an appropriately qualified specialist.***
- ***Mitigation as described in the Supporting Information Table 4.10 is 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 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 SEPA further recommends the following matters are contained in conditions:

- The peatland adjacent to Martyrs Moss should be protected by the installation of a clay bund to prevent seepage of water as recommended in the ES.
- 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.

SNH believes the significant landscape and visual adverse impacts may be reduced as this is a more limited scheme than envisaged in the Burnston application. The impact blanket and raised bog habitat remain significant, but may be reduced from extending beyond the excavated area by the use of protective bunds and compensation is possible to offset the impact through restoration of afforested blanket bog, a practice which has some record of success and SNH will be pleased to advise further on this.

Noted.

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

Noted.

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

Noted.

3.7 The Royal Society for the Protection of Birds notes that this application is for an area within the Burnston Extension site, an application for which was submitted in 2006. RSPB does not object to this development, subject to the use of appropriate planning conditions or legal agreement to mitigate for the impacts of the development. While some additional survey work has been completed since submission of the Burnston Extension application, we are disappointed that the results have not been fully presented in this application. However, the available survey work, consultation responses from the RSG and our knowledge of the area suggests that there are unlikely to be any significant ornithological issues. We are therefore satisfied that ornithological impacts will not be significant, subject to the following measures being secured through appropriate conditions:

1. Soil strip and vegetation clearance to be carried out outwith the bird breeding season (March to July inclusive)
2. Survey of Tappet Hill for breeding Schedule 1 species if excavation does not start until after the start of the breeding season 2010. If these

surveys reveal any additional bird interest, appropriate mitigation must be put in place, as agreed with SNH and RSPB.

3. Restoration being targeted to benefit black grouse and breeding waders.

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

The extent of blanket bog that will be lost from Tappethill Moss is of serious concern and RSPB has some concerns that excavation in this area could have negative impacts on the neighbouring Martyrs' Moss. We understand that discussions have been held between the applicant and SNH regarding the restoration of forestry within the site boundary to bog habitat as mitigation for this loss. We therefore do not object, subject to the following measures being secured through appropriate conditions:

4. Storage and spreading of all peat soils, according to best practice, to maximise habitat recreation potential.
5. Installation of a clay bund to prevent dewatering of the Moss, to a specification agreed by SNH.
6. Relocation of the site haul road to minimise loss of peatland habitat.
7. Restoration of forestry within the site to peatland habitat, as agreed with SNH and RSPB and agreement of a plan for achieving this as part of the House of Water Conservation Management Plan, prior to operations commencing.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of RSPB. The proposed suspensive conditions referred to above in relation to the similar concerns raised by SNH are considered appropriate to address the concerns of RSPB.

RSPB is pleased to see the restoration plan includes creation of native woodland and heath that will benefit black grouse and restoration of peatland habitats. The acid grassland habitats, with appropriate management will be of benefit to breeding waders, as will the wet grassland within the existing site. Provision of replacement nest sites for Schedule 1 species at Tappet Hill is welcome as part of the restoration plan. While the small ponds and water shallows will benefit breeding waders, the main water body is located in a very steep sided bowl. As far as soils allow, effort should be made to reduce the steepness of this hillside. We request that the following measures be secured through appropriate conditions:

- The House of Water Technical Working Group will oversee finalisation and implementation of the restoration plan
- A Conservation Management Plan for the whole House of Water site will be agreed with the Technical Working Group prior to operations at the Tappet Hill extension commencing
- Development of a revised monitoring plan for the site in consultation with the Technical Working Group. This should include

black grouse surveys and include extension areas within ongoing breeding bird surveys.

- Annual reporting of surveys to the Technical Working Group.

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

3.8 Scottish Water has no objections to the proposed development.

Noted.

3.9 The West of Scotland Archaeology Service states that in order to achieve the relevant archaeological investigations, it advises that 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.

3.10 The Health and Safety Executive has no comments to make on the Environmental Statement.

Noted.

3.11 East Ayrshire Council Environmental Health Division has no objections in principle to the proposed development but has the following comments to offer:

- (i) Having considered the ES accompanying the application, this Division is satisfied that the proposed development is unlikely to have a significant impact on the surrounding environment.

(ii) It would be of use to this Division if the results of noise, dust and vibration monitoring could be forwarded to this Division as a matter of routine to ensure that any conditions attached to the consent regarding noise, vibration and dust emissions are being complied with.

(iii) In relation to noise from the development, it is suggested that the daytime and night time noise limits of 55 dBA and 42 dBA respectively should be stipulated as maximum permitted noise levels at any of the noise-sensitive receptors identified in the ES.

Noted. Where appropriate conditions can be attached to any consent granted for the proposed development to meet the requirements of the Environmental Health Division.

3.12 Historic Scotland is content that the Environmental Statement is an acceptable assessment of the impacts on the historic environment and has no further comments to offer on the content of the ES or the proposal.

Noted.

3.13 The Scottish Executive Environment and Rural Affairs Division states that care should be taken that the proposals do not damage existing drainage of the small remaining areas of land used for agriculture which surround the proposed site and therefore jeopardising their continued agricultural use. At restoration, all ditches, watercourses and arterial drainage must be re-instead and the land returned to agriculture / forestry use as described in the Environmental Statement.

Noted.

3.14 The Scottish Wildlife Trust has no objections to the proposed development.

Noted.

3.15 The Scottish Executive Environment Group has no comments to make on the Environmental Statement in respect of the responsibilities for water supply, water protection, sewerage, flood prevention, waste disposal and air quality.

Noted.

3.16 The Nith District Salmon Fishery Board states that the Board conducts annual electro-fishing surveys to monitor populations of fish in the vicinity of the House of Water site. These annual surveys will be sufficient to monitor the additional mining operation proposed in the Tappet Hill area. The Board will continue to support mitigation initiatives instigated to protect the environment by Scottish Coal via the mechanism of the Technical Working Group.

Noted.

3.17 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.

Noted.

3.18 East Ayrshire Economic Development Section states that the coaling operations will ensure continued employment for personnel at the House of Water site and this continuity of employment is to be welcomed. Further, as the Council is working to develop and promote tourism in the southern area, the commitment to enhance wildlife and ecology conservation interests within the restoration programme, is also to be welcomed.

Noted.

4. REPRESENTATIONS

4.1 One letter of objection has been received objecting to the proposed development. The main points of objection are summarised as follows:

4.2 The large increase in road traffic on the U754 road: There has been a huge increase on traffic on this single track road including opencast vehicles i.e. tractors, low loader heavy trucks etc. most if not all going to the House of Water site. I class this complaint as a valid public safety issue.

The proposed Tappet Hill Extension promotes the use of the Kyle Forest overland haul route for the dispatch of coal through the Killoch rail depot. Notwithstanding this, there is the requirement for employees, service vehicles and some plant to access the existing House of Water site and the proposed Tappet Hill extension via the U719 Dalgig Road which may have resulted in the objector experiencing increased traffic adjacent to his property. This road however is still a public road but the applicant is willing to work with local residents and communities, through the Local Liaison Committees, to minimise such disturbances.

4.3 I regularly lift litter off the road side and after monitoring, I would point the finger at coal company employees discharging empty cans, food wrappers etc. to and from work. If you insist on giving these companies planning to opencast the landscape, you should hold them accountable for the cleaning of the roads leading to their sites.

As indicated above, the applicant is willing to work with local residents and communities, through the Local Liaison Committees, to address such matters.

4.4 I go rock climbing in Tappet Hill quarry as do lots of other people and have done so for many years. This quarry is recommended in rock climbing books for keen amateurs / climbers. Are people going to be deprived of this pleasure?

The site of the Tappet Hill quarry is the subject of an existing planning consent for the formation of the Kyle Forest overland haul route (Ref no. 98/0844/FL dated 07 February 2003) and this consent allows the reworking of the quarry to provide stone for the construction of the overland road. The quarry also falls within the application site for the larger Burnston Extension for which a resolution to grant planning consent for opencast coal operations was made on 27 March 2007, subject to a Section 75 Agreement. Such recreational use of the quarry has not been identified previously but given the planning history referred to above, its continued use in this regard would not appear to be viable or sustainable.

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 Tappet 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 Tappet Hill 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) 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 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.*

Extraction will be carried out as a sequential phase of development of the overall House of Water 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 Tappet Hill Extension site are commensurate with those of the original House of Water site.

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

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

However, a small part of the proposed Tappet Hill Extension area does not fall within a Potential Coal Extraction Area. It should be noted that the areas that are not subject to the PCEA designation are excluded in this case simply because no coal reserves were identified in these areas by British Geological Survey. They have not been excluded for any specific environmental reasons. While this does represent a minor technical departure from policy, it is not significant in landscape, ecological or environmental terms. However reference is made to the issues raised in section 5.14 below.

5.5 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 will be a small former quarry area associated with Tappet Hill that will be 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 northern extension area could safeguard the continued direct employment of up to 77 together with 16 additional jobs provided at the House of Water site for a further period of 2.5 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.

Operations at the House of Water site have been carried out over a period of some 11 years with operations having first commenced in 1996. However 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 and its relative remoteness from local communities. With the proposal to direct all minerals from the Tappet Hill Extension via the consented Kyle Forest overland haul route to the Killoch rail disposal point, the potential for perpetuation of disturbance to local communities through the transportation of coal by road through local communities has essentially been avoided. In addition as indicated within this report there are significant local and community benefits to be accrued from the proposed development in socio-economic terms.

5.6 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 provided information based on current knowledge of the geology of the area. In this regard, the applicant has not indicated any additional interest in land in the vicinity of the House of Water site with the exception of the proposed Lanehead Extension which is the subject of a separate detailed planning application which will be considered by this Committee in due course (Ref. No. 09/0178/FL).

5.7 Policy MIN 12: The Council will seek to ensure that a proliferation of opencast coal sites within close proximity to any one community or within one particular area does not occur. In this context, any proposed new opencast developments may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where that development would:

- (i) constitute a third approved or operative site within 3 Kms of each other or within a 3 Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or*
- (ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or*

(iii) generate volumes of heavy traffic which taken together with the volumes of coal haulage vehicles already using the routes concerned, would cause unacceptable detriment to the amenity of any community or group of dwellings located along proposed haulage routes; or

(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 is not a new site but an extension to the existing House of Water site, albeit a significant area of 53 hectares. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12 with respect to the stated criteria, also for the reasons stated in paragraph 5.5 above

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

The restoration of the existing House of Water site and the proposed Tappet Hill Extension is designed to deliver some improvements to the wildlife conservation value of the land that would provide for greater benefits to the area both in bio-diversity terms and also in general amenity terms. It is accepted that in the main the Tappet Hill Extension site will be restored to rough grazing land, but overall within the House of Water site, positive benefits to nature conservation interests are and will continue to be delivered. Restoration to high standards will be overseen by the Technical Working Group which has been set up, and is operational, as part of the existing Section 75 Agreement for the existing House of Water site. The remit of the TWG can be extended to include overseeing of the Tappet Hill Extension as indicated in the consultation responses from SEPA, SNH and RSPB.

5.9 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 is now implementing an extant planning consent for an overland haul route from the House of Water site through the Kyle Forest to the former Piperhill opencast site. Access to the

public road system would then be made taking coal along an agreed transport route via the A70 to the Killoch coal disposal point. This proposal is consistent with Policy MIN18.

5.10 Policy MIN 19: All haulage of extracted materials between the area of excavation and the point of dispatch from the opencast site should be via internal haul roads only.

All coals won from the proposed extension area will be taken to the coal preparation area via internal haul roads.

5.11 Policy MIN 21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

(i) to ensure the highest possible operational standards for the transportation of extracted minerals;

(ii) to ensure best operational practice regarding road safety and operational matters;

(iii) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes

(iv) to audit and record operational details of the transportation of coal on a regular basis; and

(v) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

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

The existing Section 75 Agreement for the House of Water site contains an obligation in respect of this matter which will be amended to encompass the Tappet Hill Extension.

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.

The proposed Tappet Hill Extension area does not encroach within 500 metres of any settlement.

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

Operations at House of Water have been carried out over a period of some 12 years with operations having first commenced in 1996. However 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 and its relative remoteness from local communities and in light of the amended coal transportation arrangements. In addition as indicated within this report there are significant local and community benefits to be accrued from the proposed development.

(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.

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 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 extension site.

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

There are no residential properties outwith the control of the applicant that lie within 100 metres of the working faces of the site.

5.14 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:

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

Objection and concerns have previously been made with regard to the area of blanket bog around Tappet Hill, from SNH and RSPB as part of the assessment on the larger Burnston Extension scheme. However, it is considered that the proposed suspensive conditions as agreed with SNH and the applicant, as described in section 3.4 above, will provide sufficient safeguards to ensure appropriate protection of the ecological interest.

5.15 Policy MIN33: The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an applicant to enter into an agreement with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997 in order to regulate, by agreement, such matters as cannot adequately be regulated by the imposition of planning conditions.

The existing House of Water opencast site is the subject of a current Section 75 Agreement that would be extended and amended to encompass the proposed Tappet Hill Extension.

5.16 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 Tappet Hill Extension.

5.17 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 Tappet Hill Extension.

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

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

SPP16 on Opencast Coal and associated PAN50 and the relevant planning history.

Consultation Responses

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

Representations

6.3 It is considered that the points of objection are not of sufficient weight to merit refusal of the application. The points raised by the objectors are considered to be matters which, if proved to be founded, are more appropriately addressed through the existing House of Water Community Liaison Committee.

Scottish Planning Policy

6.4 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.

6.5 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 greater part of the Tappet Hill Extension development lies within such an area.

6.6 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 one of two tests:

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

The consultation and policy assessment process indicates that the Tappet Hill Extension does meet this first test, not surprisingly since the greater part of the application site lies within a PCEA as identified in the EAOCSP, which seeks to guide developers to those areas of least environmental constraints.

(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 Tappet Hill Extension will allow continuation and expansion of employment which is particularly beneficial in those areas where the extraction takes place. It is therefore considered that both tests are satisfied in assessing the Tappet Hill Extension.

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.

Noted.

Planning History

6.8 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).

6.9 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).

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

6.11 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).

6.12 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).

6.13 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.

6.14 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. The Tappet Hill Extension site, the subject of this present application, lies wholly within the Burnston Extension site.

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 Tappet Hill Extension and as required to be amended by the terms of this report.

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. 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 objection raised is not of sufficient weight to justify refusal of the application.

8.2 The proposals represent a more modest extension to the existing consented site at House of Water than originally proposed under the previous Burnston Extension scheme, but will still involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts, and this is essentially borne out by the consultation process. In this case the proposed development has not attracted a significant body of objection to the proposal.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the proposed Tappet Hill Extension site is located, this proposal will not result in any significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it is considered that the extended operations proposed can be undertaken within acceptable environmental standards.

8.4 The existing House of Water operation provides full time employment for approximately 77 staff, operatives and contractors. These jobs will be maintained throughout the additional 2.5 years working life of the proposed Tappet Hill Extension, with a further 16 additional jobs being created. This is considered to be of significant ongoing community benefit.

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 House of Water Technical Working Group to embrace the proposed Tappet Hill Extension.
- (ii) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement that accompanied the planning application. 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 Information 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 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.
- (iv) The establishment of noise, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Tappet Hill 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;
- (v) 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.
- (vi) 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.
- (vii) 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;

- (viii) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.
- (ix) 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.
- (x) 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.
- (xi) The relocation of the site haul road to minimise loss of peatland habitat and the restoration of forestry within the site to peatland habitat, as agreed with SNH and RSPB and agreement of a plan for achieving this as part of the House of Water Conservation Management Plan, prior to operations commencing.
- (xii) A Comprehensive Habitat Management Plan shall agreed with the planning authority and any other relevant party in consultation with SNH for the management of an area of land within Kyle forest north of this proposed open cast extension prior to work starting on this site. The aims of the Habitat Management Plan will be the restoration of forestry area to blanket bog and the implementation of this plan will be undertaken by the applicant and guided by an appropriately qualified specialist.

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, the application would require to be referred to the Principal Planning Committee as such a decision would represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

22 June 2009
HM/HM
FV/AN

LIST OF BACKGROUND PAPERS

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

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

Implementation Officer: Dave Morris

Location	House of Water Opencast Coal Site Whitehill Farm New Cumnock
Nature of Proposal:	Extraction of coal by opencast methods with restoration to rough grazing with enhanced biodiversity.
Name and Address of Applicant:	The Scottish Coal Company Limited Castlebridge Business Park Gartlove ALLOA
Name and Address of Agent	Matt Ferguson The Scottish Coal Company Limited Castlebridge Business Park Gartlove ALLOA

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

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 Tappet Hill 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. Prior to any works commencing on site, the applicant shall submit a comprehensive assessment of the blanket bog area around Tappet Hill to establish the value and quality of the peat bog resource. This assessment shall be the subject of prior consultation with Scottish Natural Heritage.

REASON – In the interests of environmental protection.

4. Prior to any works commencing on site, the applicant shall submit a further survey regarding the presence of otters along the water courses. The survey shall be the subject of prior consultation with Scottish Natural Heritage and shall include, if

appropriate, any further mitigation measures to minimise impact on otters for the approval of the Planning Authority.

REASON – In the interests of environmental protection.

5. Prior to any works commencing on site, the applicant shall undertake a hydrological assessment to ascertain any hydrological link between the development site and the Martyr's Moss. The assessment shall, if shown to be necessary, inform the mitigation measures to be taken to hydrologically isolate the Martyr's Moss from the development site. The proposed mitigation measures, if required, shall be submitted to, and approved by the Planning Authority in consultation with Scottish Natural Heritage.

REASON – In the interests of environmental protection.

6. 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.

7. Prior to the commencement of operations a method statement regarding the construction of the retaining wall to protect the peat bog area shall be provided detailing the location, construction method and materials for the wall / bund. The details provided shall also be accompanied by a Risk Assessment relating to the potential failure of the hydraulic isolation measures proposed for protection of the mire.

REASON – In the interests of environmental protection.

8. Within six months of the commencement of operations on site, the applicant shall establish a restoration programme and plan for the proposed Tappet Hill 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.

9. Prior to the commencement of operations on the Tappet Hill Extension area, the applicant shall undertake River Habitat Surveys and hydrological investigations where appropriate, the details of which shall inform the process of restoration of watercourses affected by the proposed development. The required surveys shall be submitted to the Planning Authority and the House of Water Technical Working Group for information and consideration in respect of the restoration of the site. In particular the following information shall be submitted for the approval of the Planning Authority, in consultation with the Scottish Environment Protection Agency:

- hydrogeological 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.

10. 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.

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.

11. Except in the case of emergency and with the prior agreement of the Planning Authority minerals extracted from the Tappet Hill 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.

12. 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.

13. All vegetation clearance, forest felling and soil stripping shall be carried out outwith the bird breeding season. 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.

14. Prior to any works commencing on site, the applicant shall undertake the following surveys:

- (i) Survey of the forest for Schedule 1 bird species before tree felling;
- (ii) Survey of Tappet Hill for breeding Schedule 1 species if excavation does not start until after the start of the bird breeding season 2010.

The results of these surveys shall be submitted to the Planning Authority for assessment and consultation. If these surveys reveal any additional bird interest, appropriate mitigation shall be put in place as agreed with RSPB and SNH.

REASON – In the interests of environmental protection.

15. 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, and as amended by application 04/0397/FL dated 05 November 2004.

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

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.