

## **EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 02 OCTOBER 2009**

**09/0364/FL: APPLICATION TO VARY THE APPROVED SCHEME OF  
WORKING, INCORPORATING A MINOR EXTENSION TO THE PERMITTED  
EXCAVATION AREA  
AT HOUSE OF WATER OCCS, NEW CUMNOCK**

**APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED**

### **EXECUTIVE SUMMARY**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 The variation, referred to as Craigmans South, relates to a total area of 6.28 hectares which is wholly located within the existing House of Water site boundary. Approximately 1.89 hectares falls within the current approved limit of excavation (consent reference 04/0397/FL), the remaining 4.39 hectares lies immediately adjacent to this excavation boundary and comprises the disused channel of the original River Nith diversion, which has been completely disturbed by previous engineering operations.

1.2 Permission is sought for the extension of the site excavation to allow the working of an estimated 80,000 tonnes of additional coal which will be worked over a period of 16 weeks. This additional working will not require an extension of the currently permitted timescales and will be undertaken in accordance with the planning conditions associated with the extant planning consent (Ref. No. 04/0397/FL).

#### **2. RECOMMENDATION**

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

#### **3. SUMMARY OF ANALYSIS**

3.1 As is indicated in Section 5 of this 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.

3.2 The proposals represent the extraction of additional coals within the existing consented site at House of Water, which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. There should be no additional impact as the extraction of the resource can be undertaken with minimum impact on the visual amenity of the area.

3.3 It is considered that, given the relatively remote area in which the House of Water site is located, the proposal to extract an additional 80,000 tonnes of coal over a 16 week period will have no 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 can be undertaken within acceptable environmental standards.

3.4 The principle of opencast development in this area has already been established through the existing consent for the House of Water site. It is considered that the proposals under the current application will have no significant additional impact on existing residential properties in the locality through noise, dust or vibration as this site is located in a remote location and the proposal is in general accordance with the existing permitted site operations.

3.5 The amendment to the current site phasing plan will allow Scottish Coal to work and extract an additional reserve of 80,000 tonnes of coal from a discrete area of 6.28ha and will assist with the continuing employment for 73 people directly plus 2 full time contractors in addition to the coal haulage and other sub-contractors.

3.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is 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.

## **CONTRARY DECISION NOTE**

Should the Committee decide to refuse the application contrary to the recommendation of the Head of Planning and Economic Development and for reasons other than the principle of the development, then there will be no requirement to refer the application to the full Council for consideration.

**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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SOUTHERN LOCAL PLANNING COMMITTEE: 02 OCTOBER 2009

### 09/0364/FL: APPLICATION TO VARY THE APPROVED SCHEME OF WORKING, INCORPORATING A MINOR EXTENSION TO THE PERMITTED EXCAVATION AREA AT HOUSE OF WATER OCCS, NEW CUMNOCK

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 is classed as a major development under the Town & Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 4.5 miles west of New Cumnock and lies within the River Nith valley to the south of Dalgig Road.

2.2 The variation, referred to as Craigmans South, relates to a total area of 6.28 hectares which is wholly located within the existing House of Water site boundary. Approximately 1.89 hectares falls within the current approved limit of excavation (consent reference 04/0397/FL), the remaining 4.39 hectares lies immediately adjacent to this excavation boundary and comprises the disused channel of the original River Nith diversion, which has been completely disturbed by previous engineering operations.

2.3 **Proposed Development:** Permission is sought for the extension of the site excavation to allow the working of an estimated 80,000 tonnes of additional coal which will be worked over a period of 16 weeks. This additional working will not require an extension of the currently permitted timescales and will be undertaken in accordance with the planning conditions associated with the extant planning consent (Ref. No. 04/0397/FL).

## 3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division has no objections to the proposed development and advise that under the House of

Water Section 75 Agreement, Scottish Coal are required to contribute to maintenance of the B741 and U720 upgrading of footways in Bankglen and Connel Park, plus the installation of traffic calming along the route. The Roads & Transportation Division will contact Scottish Coal in this regard under separate cover.

***Noted.***

3.2 The Scottish Environment Protection Agency has no objection to the proposal and advise that concerns at the site have been discussed with the applicant who has confirmed that:-

- The main watercourse (River Nith) was diverted in 2004 as part of the original permit;
- The two watercourses to the north of the site are outwith the boundaries of the proposed extension; and
- The proposed discharge from the extension site will be to the existing authorised system for the House of Water opencast coal site.

Various aspects of the proposal will be regulated by SEPA in accordance with the terms of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (as amended) (CAR). These issues do not affect the principle of the proposed development.

***Noted.***

3.3 Scottish Natural Heritage has no objection to the proposed development but recommends conditions to further minimise any adverse impacts to breeding birds:

- Vegetation clearance or other earth works are undertaken outwith the main bird breeding season (March to July inclusive) unless approved in writing by the planning authority.

***A condition can be attached to any consent granted for the proposal to meet the requirements of SNH.***

3.4 Scottish Power Energy Networks has no objection to the proposed development

***Noted.***

3.5 Scotland Gas Networks has no objection to the proposed development.

***Noted.***

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

***Noted.***

3.7 Scottish Water has no objections to the proposed development.

***Noted.***

3.8 The West of Scotland Archaeology Service has no archaeological issues with the application.

***Noted.***

3.9 The Nith District Salmon Fishery Board has no objection to the proposal and continue to look forward to working with Scottish Coal at the site.

***Noted.***

#### **4. REPRESENTATIONS**

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

***Noted.***

#### **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 specific policies with regard to opencast coal mining in the Ayrshire Joint Structure Plan (2007) although the plan states that the preferred areas for opencast coal extraction identified in the previous Structure Plan remain relevant.

***The area of land in question lies within a Preferred Area of Search in that document.***

## East Ayrshire Opencast Coal Subject Plan

5.3 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 variation and extension 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 variation and extension will not significantly prejudice plans for the restoration of the existing House of Water site as it will be progressively restored in full consultation with the House of Water Technical Working Group. Restoration is ongoing and progressive, in line with the consents granted for the proposed development.***

5.4 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 recently 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).***

5.5 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 and is a variation to the approved scheme of working incorporating a minor extension within the existing consented boundaries of the existing House of Water site. It is considered that the proposal would not conflict with the provisions of policy MIN 12 with respect to the stated criteria.***

5.6 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.

***Positive benefits to nature conservation interests are and will continue to be delivered. Restoration of the site 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 this variation and extension.***

5.7 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

***Coal from the proposed extension will be transported along the existing agreed transport route via the A70 to Killoch DP. The proposal is consistent with Policy MIN 18.***

5.8 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.***

5.9 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.***

5.10 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 variation and extension 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 13 years with operations having first commenced in 1996. However it is considered that the current proposal, with a coal extraction period of 16 weeks, 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 the fact that the period of operations fall within the consented life of the current House of Water site.***

- (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.***

5.11 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 extraction or operational areas of the site.***

5.12 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.***

5.13 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 this application.***

5.14 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.***

***It is therefore considered that the proposed development is 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, legislative provisions, national planning policy guidelines, planning advice notes and the relevant planning history of the site.

### Consultation Responses

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

### Scottish Planning Policy

6.3 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.

6.4 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 proposed extension lies within such an area.***

6.5 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?

***The consultation and policy assessment process indicates that the variation of the existing permitted excavation limits meets the first test.***

(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 variation and minor extension at Craigman South will provide local economic benefit through continuing employment on the House of Water site.***

***It is therefore considered that both tests are satisfied in assessing this proposal.***

#### Planning Advice Notes

6.6 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

6.7 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).

6.8 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).

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

6.10 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.

6.11 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 Burnston Extension to the House of Water site was considered by the former Development Services Committee on 27 March 2007 (Ref. No. 06/0548/FL) 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.

6.14 An application for the extraction of coal by surface mining methods with restoration to rough grazing and enhanced bio-diversity (Tappet Hill extension - Ref. No. 09/0286/FL) was considered by the Southern Local Planning Committee on 10 July 2009, at which time it was resolved to grant consent subject to the concluding of a Section 75 Agreement (not yet agreed).

6.15 An application for the winning and working of coal (Lanehead Extension), which would form part of the House of Water mining complex, has been submitted for consideration which will be presented to this Committee in due course (Ref. No. 09/0178/FL).

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

7.1 There are no financial or legal implications for the Council in the determination of this application. As the application site lies wholly within the existing consented House of Water site, approval of this application would not require any amendment to the existing Section 75 Agreement currently in force for the site. The proposed Craigman South extension would be bound by the same obligations contained within the existing Agreement.

## **8. CONCLUSIONS**

8.1 As is indicated in Section 5 of this 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.

8.2 The proposals represent the extraction of additional coals within the existing consented site at House of Water, which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. There should be no additional impact as the extraction of the resource can be undertaken with minimum impact on the visual amenity of the area.

8.3 It is considered that, given the relatively remote area in which the House of Water site is located, the proposal to extract an additional 80,000 tonnes of coal over a 16 week period will have no 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 can be undertaken within acceptable environmental standards.

8.4 The principle of opencast development in this area has already been established through the existing consent for the House of Water site. It is considered that the proposals under the current application will have no significant additional impact on existing residential properties in the locality through noise, dust or vibration as this site is located in a remote location and the proposal is in general accordance with the existing permitted site operations.

8.5 The amendment to the current site phasing plan will allow Scottish Coal to work and extract an additional reserve of 80,000 tonnes of coal from a discrete area of 6.28ha and will assist with the continuing employment for 73 people directly plus 2 full time contractors in addition to the coal haulage and other sub-contractors.

8.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is 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.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet.**

### **CONTRARY DECISION NOTE**

Should the Committee decide to refuse the application contrary to the recommendation of the Head of Planning and Economic Development and for reasons other than the principle of the development, then there will be no requirement to refer the application to the full Council for consideration.

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

22 September 2009  
CG/HM/CG  
FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Adopted East Ayrshire Opencast Subject Plan (2003)
5. Approved Ayrshire Joint Structure Plan (1999)
6. Finalised Ayrshire Joint Structure Plan (2006)
7. Previous applications CD/94/0072/MIN, 96/0400/FL, 96/0635/FL, 98/0844/FL, 03/0506/FL, 04/0397/FL, 06/0548/FL, 09/0286/FL and 09/0178/FL.
8. SPP16: Opencast Coal
9. PAN50 and Annexes.

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

**Implementation Officer: Dave Morris**

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Location	House of Water Opencast Coal Site Whitehill Farm Daleagles NEW CUMNOCK KA18 4QR
Nature of Proposal:	Variation of the Approved Scheme of Working incorporating a minor extension to the permitted excavation area (Craigman South).
Name and Address of Applicant:	The Scottish Coal Company Limited Castlebridge Business Park Gartlove By ALLOA FK10 3PZ
Name and Address of Agent	Philip Rayson (Planning & Development Manager) Scottish Coal - Ayrshire Office Garan House 28 Main Street MUIRKIRK KA18 3RA

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

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

- 1. The proposed variation to the approved scheme of working of the Craigman South extension shall be worked in complete accordance with the plans and supporting information received by the Council on 14 May 2009.**

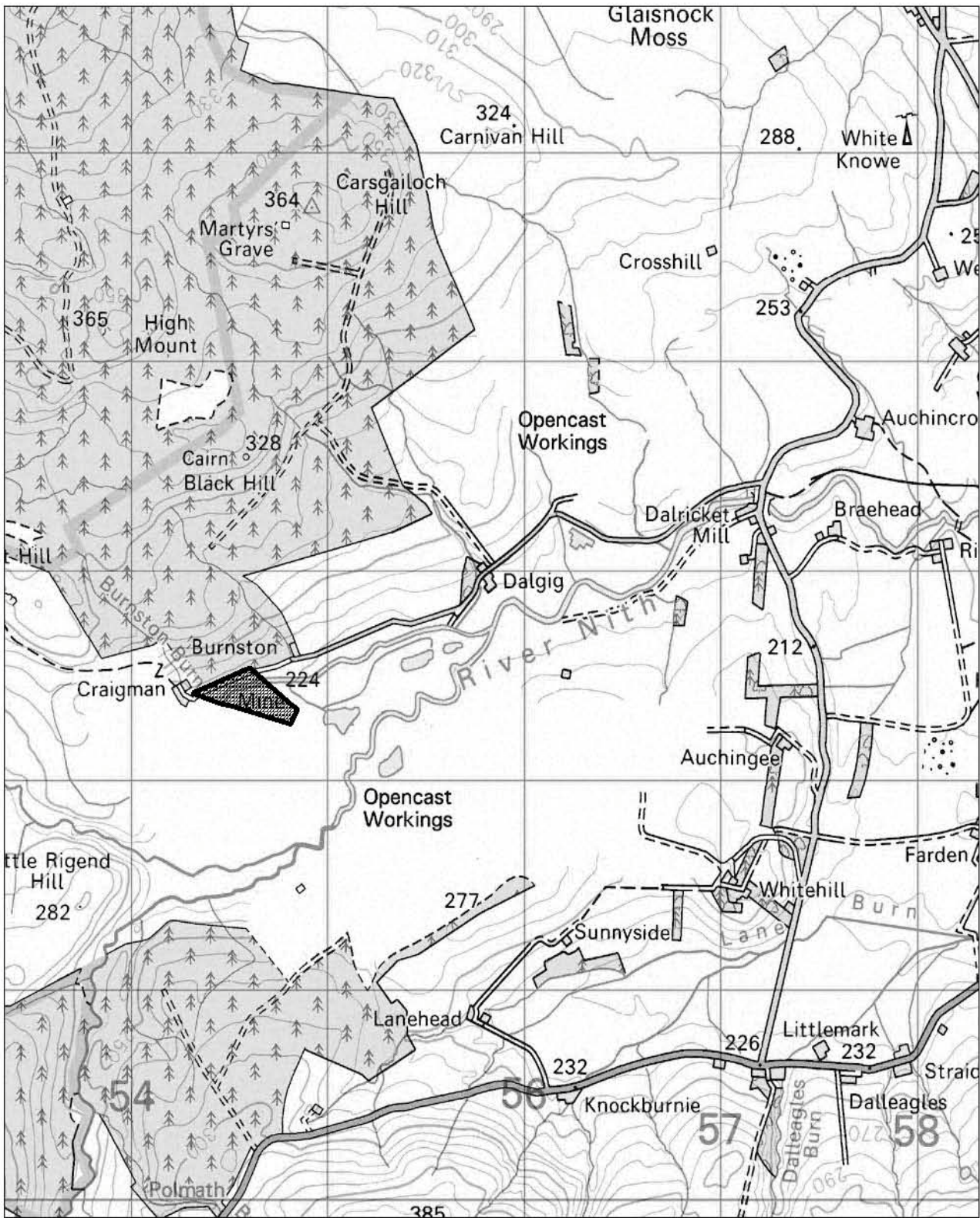
REASON – To ensure that the development is undertaken in accordance with the submitted plans and supporting information.

- 2. The proposed development hereby approved shall otherwise be undertaken in accordance with planning consent 04/0397/FL dated 05 November 2004.**

REASON – To ensure continuity and consistency in operations carried out on site in terms of the consents granted at the House of Water site.

- 3. No vegetation clearance or other earth works shall take place within the main bird breeding season (March to July inclusive) unless with the prior written agreement of the planning authority in consultation with the House of Water Technical Working Group.**


REASON – In the interests of safeguarding breeding birds.



Title/Location    **Extension to House of Water**  
**Opencast, New Cumnock**  
**Application No. 09/0364/FL**

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Key

 **Application Site**

**East Ayrshire Council**  
 Planning & Economic  
 Development Division.  
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**Com Date: 02/10/09    Checked By**



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