

## **EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE: 27 MARCH 2007**

**06/0548/FL: EXTRACTION OF COAL BY OPENCAST METHODS WITH  
RESTORATION TO FORESTRY, FARMLAND AND NATURE  
CONSERVATION, AND RETENTION AND REPHASING OF EXISTING SITE  
OPERATIONS (BURNSTON EXTENSION)  
AT HOUSE OF WATER OCCS, NEW CUMNOCK**

**APPLICATION BY SCOTTISH COAL COMPANY LIMITED  
(SCOTTISH RESOURCES GROUP)**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 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 northern extension will be developed as a sequential phase of the existing operational site using the same plant and infrastructure that was 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 Burnston Extension. With the new extension (210 hectares) and the existing operational site (487.8 hectares) the total House of Water development site will extend to 697.8 hectares.

1.2 This proposal will allow the recovery of approximately 1.5 million tonnes of coal (and associated fireclay) mainly for the power generation industry. Production will be at a rate of 480,000 tonnes per annum (or 10,000 tonnes per week), similar to the normal production rates of the existing site. There are 15 seams of coal that outcrop in the vicinity of the Burnston Extension which will be extracted to a maximum depth of 80 metres below original ground level. The coals will be worked in a series of 11 proposed phases commencing in the north-west corner and proceeding initially in a north-west direction, stripping soils and storing them in separate topsoil and subsoil storage mounds to the west of the existing overburden storage mound at House of Water (Area B). As extraction progresses north-westwards, overburden will be used as backfill for land regrading in the base of the site. Once the north-westerly extent has been reached, the working direction will change to a north-easterly then easterly direction. Additional topsoil and subsoil storage mounds will be located to the north of the proposed extraction area. As the site already has an existing operational void, or box cut, there will be no additional requirement to store overburden above ground and all excavated overburden will be backfilled immediately.

1.3 Backfilling with overburden will continue in the base of the extraction areas, including the initial phases in the Burnston Extension. The first area to

be restored in the extension area will be complete within two years of the commencement of coal extraction. Extraction will continue eastwards towards the consented Greenburn opencast site, with progressive soil stripping and backfilling operations taking place to minimise the area of disturbance at any particular time during the life of the extension operations and reduce potential impacts on visual and general amenity and wildlife aspects.

1.4 In terms of timescale, following commencement of operations on the Burnston Extension, extraction of minerals and backfilling operations are estimated to take 60 months to complete and this will be followed by approximately 12 months of final site restoration works i.e. a total operational life of 6 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 originally intended to continue to use the approved haulage route for the house of Water site i.e. via the Dalrickett Road to the B741 New Cumnock – Dalmellington Road to the rail disposal point at Knockshinnoch at The legate in New Cumnock and also continuing via the A76 and then A70 through Ochiltree to the rail disposal point at Killoch. However, in an amendment to the proposed transportation route, the applicant has indicated that coals won from the Burnston Extension shall now 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 between 0800 and 1800 hours Mondays to Fridays with no dispatch on Saturdays or Sundays. The number of HGV movements along the revised transportation route will be approximately 14 per hour (7 laden and 7 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. The March, Burnston and Linn Burns will require to be diverted during the course of the operations in the Burnston Extension.

1.8 The House of Water operation and proposed Burnston Extension will provide full time employment for 65 personnel with a further 10 persons employed in off-site coal transportation. Additional employment will also be

generated / sustained within nearby businesses in the supply of site services. These jobs will be maintained throughout the working life of the Burnston Extension. The projected annual wage bill during the life of the proposed development is some £1.95 million, a large proportion of which will contribute towards the local economy. In addition £2.02 million per year will be expended on fuel from local suppliers and £145,000 per annum to public finances. From the experience gained at the current site, approximately 85% of employees reside within a 10 km radius of the site.

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 between 18 and 24 months. The restoration plan submitted by the applicant indicates that the majority of the site will be returned to commercial forestry along with native woodland planting, river restoration and wetland features and public access. Watercourses will be re-instated and restored as wildlife corridors. The applicant also envisages the re-establishment of the various farm units associated with the House of Water complex. 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 An Environmental Statement has been provided by the applicant which suggests that the proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology. The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the Section 75 Agreement.

## **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and subject to Notification of Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No 2) Direction 1998. The issue of the decision notice should be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 8.5 of this report.**

### **3. CONCLUSIONS**

3.1 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 objections raised are either not of sufficient weight to justify refusal of the application or can be addressed by conditions or by legal agreement.

3.2 The proposals represent a significant extension to the existing consented site at House of Water and will 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 attracted a significant body of objection to the proposal but these in the main relate to issues of coal transportation by HGV movements through local communities. However, the amended coal transportation to the Killoch coal disposal point and associated railhead, by the implementation of the consented Kyle Forest overland haul route, has addressed the significant proportion of objections received.

3.3 It is considered that, given the relatively remote and sparsely populated area in which the proposed Burnston Extension site is located, this proposal will now 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 proposed can be undertaken within acceptable environmental standards. The present use of the site as a commercial forest also means that in landscape and ecological terms, the greater part of the application site is of low value.

3.4 The existing House of Water operation, albeit on a partial operation at this time, will provide full time employment for approximately 65 staff, operatives and contractors. These jobs will be maintained throughout the additional 6 year working life of the proposed Burnston Extension. 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 is acceptable 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 Burnston 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.
- (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 Burnston 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) An obligation that areas to the south of the Pow Burn shall be fully restored before commencement of operations to the Burnston Extension area.
- (ix) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.

- (x) The 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.

**Alan Neish**  
**Head of Planning, Development and Building Standards**

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

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**APPLICATION BY SCOTTISH COAL COMPANY LIMITED  
(SCOTTISH RESOURCES GROUP)**

**Report by Head of Planning, Development and Building Standards**

### **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 Development Services 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 will require to be notified to the Scottish Ministers.

### **2. APPLICATION DETAILS**

2.1 **Site Description:** The site is located approximately 7 km to the west of New Cumnock and lies immediately north of the existing House of Water Opencast Coal Site. This existing opencast site is being maintained on a care and maintenance basis pending recommencement of operations which were suspended on 20 April 2006, although works were recommenced in September 2006 for a short period. The application site represents an extension to the existing House of Water site.

2.2 The current application site which the applicant has termed the Burnston Extension extends to approximately 210 hectares and lies on the northern boundary of the House of Water site. The site comprises an extensive commercial coniferous plantation (Sitka Spruce), rough grazing land and a former hard rock quarry at Tappet Hill.

2.3 The site lies between approximately 220 metres and 320 metres Above Ordnance Datum, with higher ground to the north near Tappet Hill quarry and Black Hill, falling generally in a southerly direction towards the River Nith, sloping down generally to the south towards the Head Mark Lane Burn and south-east to the Black Water.

2.4 Although the area is sparsely populated, there are three isolated steadings located in the immediate vicinity of the application site. Both Craigman Farm and Burnston Cottage are located within the application site and will be demolished as part of the proposed development. These two properties are in the ownership of the applicant. The third property at Dalgig is situated some 550 metres to the east of the proposed operational site.

2.5 **Proposed Development:** 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 northern extension will be developed as a sequential phase of the existing operational site using the same plant and infrastructure that was 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 Burnston Extension. With the new extension (210 hectares) and the existing operational site (487.8 hectares) the total House of Water development site will extend to 697.8 hectares.

2.6 This proposal will allow the recovery of approximately 1.5 million tonnes of coal (and associated fireclay) mainly for the power generation industry. Production will be at a rate of 480,000 tonnes per annum (or 10,000 tonnes per week), similar to the normal production rates of the existing site. There are 15 seams of coal that outcrop in the vicinity of the Burnston Extension which will be extracted to a maximum depth of 80 metres below original ground level. The coals will be worked in a series of 11 proposed phases commencing in the north-west corner and proceeding initially in a north-west direction, stripping soils and storing them in separate topsoil and subsoil storage mounds to the west of the existing overburden storage mound at House of Water (Area B). As extraction progresses north-westwards, overburden will be used as backfill for land regrading in the base of the site. Once the north-westerly extent has been reached, the working direction will change to a north-easterly then easterly direction. Additional topsoil and subsoil storage mounds will be located to the north of the proposed extraction area. As the site already has an existing operational void, or box cut, there will be no additional requirement to store overburden above ground and all excavated overburden will be backfilled immediately.

2.7 Backfilling with overburden will continue in the base of the extraction areas, including the initial phases in the Burnston Extension. The first area to be restored in the extension area will be complete within two years of the commencement of coal extraction. Extraction will continue eastwards towards the consented Greenburn opencast site, with progressive soil stripping and backfilling operations taking place to minimise the area of disturbance at any particular time during the life of the extension operations and reduce potential impacts on visual and general amenity and wildlife aspects.

2.8 In terms of timescale, following commencement of operations on the Burnston Extension, extraction of minerals and backfilling operations are estimated to take 60 months to complete and this will be followed by approximately 12 months of final site restoration works i.e. a total operational

life of 6 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.

2.9 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.

2.10 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 originally intended to continue to use the approved haulage route for the house of Water site i.e. via the Dalrickett Road to the B741 New Cumnock – Dalmellington Road to the rail disposal point at Knockshinnoch at The legate in New Cumnock and also continuing via the A76 and then A70 through Ochiltree to the rail disposal point at Killoch. However, in an amendment to the proposed transportation route, the applicant has indicated that coals won from the Burnston Extension shall now 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.

2.11 The dispatch of minerals by public road (and along the Kyle Forest overland haul route) will be confined between 0800 and 1800 hours Mondays to Fridays with no dispatch on Saturdays or Sundays. The number of HGV movements along the revised transportation route will be approximately 14 per hour (7 laden and 7 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. The March, Burnston and Linn Burns will require to be diverted during the course of the operations in the Burnston Extension.

2.12 The House of Water operation and proposed Burnston Extension will provide full time employment for 65 personnel with a further 10 persons employed in off-site coal transportation. Additional employment will also be generated / sustained within nearby businesses in the supply of site services. These jobs will be maintained throughout the working life of the Burnston Extension. The projected annual wage bill during the life of the proposed development is some £1.95 million, a large proportion of which will contribute towards the local economy. In addition £2.02 million per year will be expended on fuel from local suppliers and £145,000 per annum to public finances. From the experience gained at the current site, approximately 85% of employees reside within a 10 km radius of the site.

2.13 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 between 18 and 24 months. The restoration plan submitted by the applicant indicates that the majority of the site will be returned to commercial forestry along with native woodland planting, river restoration and wetland features and public access. Watercourses will be re-instated and restored as wildlife corridors. The applicant also envisages the re-establishment of the various farm units associated with the House of Water complex. 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.

2.14 An Environmental Statement has been provided by the applicant which suggests that the proposal will have no significant additional impacts relative to noise, dust, blasting, traffic and hydrology. The existing operations are subject to appropriate monitoring and management measures to minimise any adverse impacts arising to the development. All other aspects of the proposed development will be in accordance with the terms of the existing planning consents for the site and associated conditions and obligations within the Section 75 Agreement.

### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 East Ayrshire Council Roads and Transportation Division indicates that there are no objections to the proposed development. The Roads and Transportation Division supports the amended proposal to transport coal to the Killoch railhead via the consented Kyle Forest overland haul road, but would require the conditions and obligations set out in that consent to be applied to this current proposal.

***Noted.***

3.2 The Scottish Environment Protection Agency notes that detailed hydrogeological and geotechnical investigations will be undertaken. However, SEPA wishes to highlight some specific points that require to be addressed. The Burnston Burn appears to be spring fed and so it is essential that mitigation measures are put in place that ensure that at the restoration phase, this spring and any other springs in the area are not affected by the operation. Any pumping of groundwater will probably require an authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR). If the abstraction rate is greater than 100 cubic metres per day, then the applicant will be required to undertake a Water Features Survey. The applicant should consult SEPA on this.

***The applicant has been advised of the comments of SEPA.***

During working of the site it is noted that headwaters of some small watercourses will be diverted into other watercourse catchments. There is no

indication in the report of the percentage increase in flows as a result of this. Additional information will require to be submitted on this in order to determine if mitigation measures require to be put in place to prevent increased risk of erosion of the watercourses which would result in increased sediment movement into the River Nith. This activity will probably require CAR authorisation. From the site layout plans it is not clear at the 42 month period and beyond where the March Burn and the Burnston Burn discharge to.

***A condition 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.***

If the current settlement lagoons are to be used for the contaminated site drainage from the extension, then the applicant should ensure that these do not need to be reviewed. Any new settlement lagoon discharges will require an authorisation under CAR. SEPA should be consulted in this regard.

***Noted.***

The restoration of the watercourses should match the existing profiles as closely as possible. This will therefore require river habitat surveys to be undertaken which will provide information on slope, width and depth of the channel as well as invertebrate and substrate information. The applicant must consult with SEPA with regard to this. All river habitat surveys and hydrological investigations must be undertaken before any work is commenced in the extension area. A hydrogeomorphologist must be employed to provide expert advice on the restoration of watercourses at the site. The burn restorations are a controlled activity and will require to be authorised by SEPA.

***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 states that the current House of Water site is authorised by SEPA in terms of the Environmental Protection Act 1990 in respect of emissions to air. Should the proposed development proceed, the applicant will require to notify SEPA regarding such and apply for a variation of authorisation or permit as appropriate. Following consultations with the local health board, monitoring was required for particulates less than 10 mm diameter (PM10) at another site

in the New Cumnock area. A similar requirement might have to be included in the PPC permit. However any such requirement would be subject to detailed discussions with the applicant and it is noted that the applicant has stated that there are no residential properties within 1 km of the site.

***Noted. The applicant has been made aware of the comments of SEPA.***

SEPA further states that restoration of the site should be agreed with the Technical Working Group which has been set up for the existing House of Water site. It is noted that mention is made of an aftercare period of five years following final restoration. This may require to be extended as one of the final restoration areas will be the Small Burn and Linn Burn which are tributaries of the Dalgig Burn. This burn has fishery interests and a longer period of monitoring would probably be beneficial. The time period should be agreed with the Technical Working Group.

***Noted. The remit of the existing House of Water TWG will be extended to encompass the proposed Burnston Extension area.***

All material for the restoration of the watercourses should be sought from the site. However, if any material is imported or exported from the site, SEPA must be consulted as a Waste management Licence or exemption may be required. Any septic tank discharge from the site to land or a watercourse will require authorisation.

***The applicant has been advised of the comments of SEPA.***

3.3 Scottish Natural Heritage objects to the proposal on the following grounds:

- This development could have potentially significant adverse impacts on landscape character and visual amenity. At this stage there is insufficient information to ascertain if there is likely to be a significant cumulative landscape and visual effect with the proposed extension to the Greenburn Open Cast Coal Site.
- The proposed development could have significant adverse impacts on an area of blanket bog identified in Annex 1 of The EC Habitats Directive as a priority habitat. The peatland to the north of Tappet Hill should be excluded from the application area and a clay bund installed on the southern edge of the habitat to prevent an adverse impact by the opencast on the hydrology of this blanket bog habitat.

SNH further states that notwithstanding this objection if the Council is minded to approve this project as submitted it recommends the following 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 and badger
- Areas to the south of the Pow Burn should be fully restored before commencement of operations to the extension area.

***With regard to the SNH concerns to cumulative visual and landscape impacts, it should be noted that a planning application (Ref. No. 06/0538/FL) for an extension to the Greenburn Opencast Coal site (Dalgig Extension) was approved by the Development Services Committee on 12 December 2006 and following formal notification procedures was subsequently cleared by the Scottish Ministers. It should be noted that the application site for the proposed extension to the Greenburn site is in the main coincident with the application site for the Burnston Extension. While in theory both applications could be approved, only one as submitted will be implemented and that will be determined through commercial and legal processes. Consequently, the adverse cumulative landscape and visual impacts suggested by SNH are unlikely to occur and SNH has accepted this position.***

***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 and SNH objects unless these conditions are attached to any consent granted for the Burnston Extension. The agreed suspensive conditions are as follows:***

***“1. 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.***

***2. Following an appraisal of the assessment by the Planning Authority in consultation with Scottish Natural Heritage, should Scottish Natural Heritage maintain its objection to the loss of this peat resource, then the applicant shall submit to, and have approved by the Planning Authority an amended phasing plan for the Burnston Extension, to exclude the area of blanket bog from the Burnston Extension opencasting operations.***

**3. 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."**

***In this regard, the applicant has also agreed to accept the terms of the proposed suspensive conditions.***

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

***Noted.***

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

***Noted.***

3.6 The Royal Society for the Protection of Birds does not object to the development subject to measures being implemented through appropriate planning conditions or a legal agreement as follows:

1. Ornithological Surveys – RSPB expect full, recent survey coverage using standard methods to form part of an application of this scale. It notes that standard survey methods have not been used to assess bird breeding interest at the site. The most recent complete survey work for Tappet Hill was carried out in 2004 and all open ground areas were covered by a single visit walkover in 2005. The forest area does not appear to have been surveyed. However the cumulative survey work and consultation responses from the Raptor Study Group suggest low bird interest at the site and RSPB knowledge of the area suggests that there are unlikely to be any significant bird issues. RSPB is therefore satisfied that permission is granted if the following surveys are carried out before work begins on the site:

- Survey of forest for Schedule 1 bird species before felling;
- Survey of buildings for barn owl before demolition; and
- Survey of Tappet Hill for breeding Schedule 1 species if excavation does not start until after the start of the bird breeding season 2007.

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

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

RSPB also states that Black Grouse have been recorded on the site and that the development will displace them from the site. Restoration should therefore be targeted to benefit this species. Breeding waders and passerines make use of the Tappet Hill area and the disused channel corridor. Restoration should be targeted to benefit these species. It is also crucial that grazing management of the restored areas within the existing site is in place to provide alternative habitats before soils are stripped.

***Noted. The restoration of the Burnston Extension would be overseen by the existing House of Water Technical Support Group that would advise on restoration of the site for targeted species.***

RSPB states that the extent of blanket bog that will be lost from Tappet Hill Moss is of serious concern. RSPB therefore requests that the excavation boundary be drawn back from the north of this area to avoid areas of peat over 1 metre in depth. Other areas of peat will be removed and in order to mitigate for this impact, all peat soils should be stored and spread according to best practice to maximise habitat creation potential. Some concern is also raised that excavation in this area could have negative impacts on the neighbouring Martyr's Moss and a clay bund should be used as suggested to prevent dewatering of the moss.

***The proposed suspensive conditions referred to in section 3.3 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 native tree planting for black grouse and restoration of peatland habitats. The acid grassland habitats, with appropriate management, will be of benefit to breeding waders as will the 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.

***Noted.***

However, RSPB is disappointed to see the intention to replant the plantation forestry with very little modification to benefit biodiversity. While RSPB understands that grant conditions may pertain to the forestry, all avenues should be explored to replace some of this area with open ground and native woodland. 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 the hillside. The Technical Working Group should be given a key role during finalisation and implementation of the restoration plan.

***Noted. The final restoration plan and implementation of the plan shall be the subject of prior consultation and agreement with the the House of Water Technical Working Group.***

A revised monitoring plan for the site should be developed in consultation with the Technical Working Group. This should include black grouse surveys and include extension areas with ongoing breeding bird surveys. Results must be written up and reported to the Technical Working Group annually.

***An obligation to this effect can be included in any amended Section 75 Agreement for the House of Water site to meet the requirements of RSPB.***

3.7 Scottish Water has no objections to the proposed development.

***Noted.***

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

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

WOSAS further states that the applicant will need to retain the services of a professional archaeologist to carry out the required works. Any significant discoveries made will require to be excavated before their destruction through a staged series of further works including any post excavation analyses and publication, as required. WOSAS does not agree that the recorded sites now contained within the forested areas should be assumed destroyed. A watching brief on the felling and clearing of the timber in those areas required to identify the surviving remains and those that can be relocated should then be subject to the initial evaluation as noted above.

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

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

***Noted.***

3.10 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.***

3.11 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.***

3.12 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-instated and the land returned to agriculture / forestry use as described in the Environmental Statement.

***Noted.***

3.13 The Scottish Wildlife Trust states that the Glaisnock Moss / Carnivan Hill Provisional Wildlife Site has been missed off the maps because the target area given during consultation was different to what has appeared in the ES. Thankfully the small part of the PWS that overlaps with the proposed development site is of low conservation value. Glaisnock Moss however is an important peatland partially under positive conservation management by Kier Mining. It is at least on a par with Martyr's Moss, if not better, so has regional value. SWT requires that the dewatering of Glaisnock Moss needs to be satisfactorily addressed before coming to a final conclusion about this proposal.

***The proposed suspensive conditions referred to in section 3.3 above in relation to the similar concerns raised by SNH are considered appropriate to address the concerns of RSPB.***

SWT indicates that as is often the case with EIA's, little concern has been paid to features of local wildlife importance with regard to habitats and plants. The ES does flag them up but then the decision is made to only value ecological receptors that are of district rating or above. With regard to local wildlife interest, the following is noted:

- (i) Having read the description of the base-rich grassland, it seems to be a good example of its type and stating that it was not considered a particularly rich example plays it down too much.
- (ii) Both base-rich grassland and acid grassland (not given any rating in the report) have a chapter in the Local Biodiversity Action Plan making them Ayrshire priority habitats for which there are targets.
- (iii) Key species in the LBAP are priority species – the LBAP is unfortunately not clear on this or the fact that the set of species for which Species Action Plans exist are not necessarily more important than the rest but merely a starting point from which more SPA's were to be drawn up as time went on.

***Noted.***

SWT would also like to see more detailed mitigation measures devised for grassland other than simply restoring pastures for birds, shown as acid grassland on the concept restoration master plan. For example, when restoring the pasture, a mosaic of mounds and hollows with shallow infertile soils could be created and sown with local wildflower mixes incorporating mountain pansy and grass-of-parmassus. As it is not possible for SWT to be represented on the House of Water Technical Working Group, SWT would be grateful if this could be brought to the attention of the TWG.

***The comments of SWT will be raised with the House of Water Technical Working Group for consideration.***

3.14 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.***

## **4. REPRESENTATIONS**

4.1 A total of 87 letters from 85 signatories have been received objecting to the proposed development. Of these 87 letters, 80 are in the format of a pro

forma letter of representation, specifically objecting to the original transportation proposals that would result in HGV movements through local communities, particularly New Cumnock and Ochiltree. The main points of objection are summarised as follows:

4.1 My objection is based primarily on the grounds of heavy vehicle movements along the B741 (New Cumnock – Dalmellington Road), the A76 (New Cumnock – Cumnock Road) and the A70 (Cumnock – Ayr Road). I feel that the communities subjected to these vehicle movements deserve a break and Environmental Justice.

***Having considered the representations made and the views of the Planning and Roads Authorities, the applicant has reconsidered the dispatch proposals in the Burnston Extension application. With the amended proposal to direct all minerals from the Burnston 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. The use of the Kyle Forest route will remove approximately 34,000 vehicle movements per annum through the communities of Dalleagles, Bank Glen, Connel Park, New Cumnock and Ochiltree. In this regard it is considered that the amended proposal has addressed the concerns of the pro forma objectors.***

4.2 Scottish Coal has no rights over the minerals on my land, nor have they started any negotiations with me. I object on the grounds that Scottish Coal has not provided me with any information on how they propose to re-instate the site that is right next to my woods. I have spent time, effort and money improving the amenity of this productive woodland by planting a variety of tree species including broadleaves and larch. I would also formally object because the proposal cuts across the only access track to my wood. Scottish Coal has not contacted me with a view to finding an alternate access arrangement.

***The points raised by the objector are essentially based on legal grounds and not planning grounds. Clearly the applicant would require to ensure that appropriate legal consents are obtained in order to implement the proposed development should permission be granted. However, this would be established through legal processes, not by planning processes.***

4.3 I have been around the area recently and the Scottish Coal opencast coal mine sites are a disgrace, with very little attention given to visual amenity and the re-instatement of old sites.

***The view of the objector is noted. However, with regard to the House of Water site, albeit that the site is only in partial operation at this time, there are no specific concerns regarding site restoration.***

4.4 I noticed a male black grouse displaying within the application site and I therefore wonder if the ecology section of the Environmental Statement attaches enough importance to this area for its usage by black grouse.

***RSPB in its consultation response also states that Black Grouse have been recorded on the site and that the development will displace them from the site. RSPB has indicated that restoration should therefore be targeted to benefit this species.***

4.5 We have super-imposed the application site on the plan of Potential Opencast Coal Extraction Areas in the Opencast Coal Subject Plan and find that they are not coterminous. The applicant is therefore incorrect to state that their application site is within a potential opencasting area. A third of the site, the western section, is outside the areas identified in the Opencast Coal Subject plan. It may be however that part of this area was included in the last consent at House of Water.

***It is accepted that a small part of the proposed Burnston Extension area does not fall within a designated Potential Coal Extraction Area. However it should be noted that the area that is not subject to the PCEA designation is excluded in this case simply because no coal reserves were identified in this area by British Geological Survey. The area has 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. Furthermore, existing consented operational opencast sites are not identified in the East Ayrshire Opencast Coal Subject Plan as Potential Coal Extraction Areas.***

4.6 The size of the House of Water site, if this application was to be approved, is unmanageable for the Council professional staff, along with others such as SEPA etc. to monitor, or to control. We discern a lack of commitment of the Technical Working Group who meet infrequently and seem to accept what the developer says rather than undertaking their own surveys over the ground and affected surrounding areas.

***The views of the objector are not accepted in this case. Additional resources have been set in place in terms of site monitoring. Furthermore, the Technical Working Group for the House of Water site has met frequently during the life of this opencast site and has been significantly involved in the River Nith diversion projects. Significant input has also been made in terms of progressive site restoration and this will continue during and indeed after the consented life of the House of Water site.***

4.7 We find this blatant disregard of approved confines for opencasting unacceptable and a sign of sheer arrogance, when Scottish Coal did not even

attend the Public Local Inquiry into the Opencast Coal Subject Plan, to justify their intentions of extending beyond approved areas.

**Noted.**

4.8 We have super-imposed the current application by Kier for the Dalgig Extension and find that approximately two thirds of this Burnston site lies within the Dalgig application boundaries. If we had time we would compare the two Environmental Statements as the difference in alleged potential impacts might make interesting reading. The different attitudes to restoration and the time periods for phasing and the amount of coal expected to be extracted within common boundary areas needs to be carefully appraised by the Council and other statutory consultees.

***It should be noted that a planning application (Ref. No. 06/0538/FL) for an extension to the Greenburn Opencast Coal site (Dalgig Extension) was approved by the Development Services Committee on 12 December 2006 and following formal notification procedures was subsequently cleared by the Scottish Ministers. It is accepted that the application site for the proposed extension to the Greenburn site is in the main coincident with the application site for the Burnston Extension. While in theory both applications could be approved, only one as submitted will be implemented and that will be determined through commercial and legal processes.***

4.9 According to the Opencast Coal Subject Plan the House of Water site started in 1996 and was due to finish by 2007. Already with extensions, the finish date is 2008 with restoration by 2009. The proposed extension now would add another six years of development. This could theoretically keep this site live until 2015, if there was no overlap and the extension commenced after the existing approved site was finished and restored. So a site that was originally to have an 11 year life could go on for 19 years.

***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. One notable exception to this was in relation to the dispatch of coal from the House of Water site. Having considered the representations made and the views of the Planning and Roads Authorities, the applicant has reconsidered the dispatch proposals in the Burnston Extension application. With the amended proposal to direct all minerals from the Burnston 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.**

4.10 Restoration of the existing opencast site is deficient in both quality and quantity. The effect of opencasting on the River Nith has been catastrophic at times. The Technical Working Group has in our opinion been negligent.

**While it is accepted that the House of Water site is only in partial operation at this time, site restoration at present is at an acceptable stage. It is acknowledged that although there have been issues in respect of the original River Nith diversion, considerable efforts have been made by the applicant and the House of Water Technical Working Group to ensure that the subsequent re-diversion works were successful. Indeed in this regard the project was the subject of an award for the achievements made in this regard. It is disingenuous for the objector to make such claims of negligence on the part of the Technical Working Group.**

4.11 The replacement dwellings will be presumably holiday homes as there is little prospect of viable, though marginal upland farming being re-introduced on former opencast workings. We ask for these houses to be excluded otherwise they will have approval in principle. Our members feel that extracting coal is sufficient benefit for the opencast operator without allowing them to gain residential value at this time.

**It is the intention of the applicant to restore in part for agricultural purposes and is not uncommon in respect of opencast coal sites. The proposed replacement dwellings do not form part of this application and are shown only in a restoration Concept master Plan and would be subject to future applications for planning consent.**

4.12 Scottish Coal states that the proposed development will ensure the retention of the existing labour force. Yet they have planning consent already, due to end in 2009. So jobs can be retained in this site until after restoration and part of the aftercare period already approved. In addition they have other opencast sites in East Ayrshire so workers could be transferred between sites or to Scottish Coal sites in South Lanarkshire. Scottish Coal seems to need little justification when laying off workers. Yet when it comes to continuity of employment, they shout too loudly.

**Notwithstanding the contentions of the objector, the proposed development would provide significant socio-economic benefits as described in section 2.12 of this report.**

4.13 Dalgig and Upper Beoch are regarded by Scottish Coal as being a significant distance from their site. MEGA submits that they are significantly vulnerable; Dalgig being in the lea of the prevailing wind and sandwiched between two sites and Upper Beoch lying between Chalmerston North / Pennyvenie and House of Water and affected by noise and dust from both. It would appear that Upper Beoch will be particularly exposed to noise, if the intervening contours are lowered through mining. Both properties are clearly sensitive receptors and noteworthy due to the fact that they are the only two remaining occupied houses of some antiquity and historical interest when there were once a dozen. If there is blasting and excavations 80 metres deep, there will be unacceptable detrimental impact from noise, vibration and dust waves to these local residents and to other visitors to the area who come on Covenanted Trails, for walking, bird watching and fishing.

***The potential environmental impacts through noise, vibration and dust are appropriately assessed and addressed within the Environmental Statement. The ES concludes that the Burnston Extension can be operated within acceptable environmental standards and this is essentially borne out by the consultation process. Appropriate mitigation and planning conditions can be put in place to safeguard these standards, with monitoring put in place to ensure compliance by the applicant.***

4.14 MEGA members have great concerns about removal of peat. We ask for verification that peat depths have been extensively and accurately sampled, as much of the peat locally can be much thicker than stated by Scottish Coal in this case. Interfering with peat could lead to bog slide particularly on this application site. Burnston and possibly even Dalgig is undermined from previous deep workings at Craigman. After all the problems with the River Nith, the risk of a 'bogalanche' needs to be thoroughly assessed.

***The proposed suspensive conditions referred to in section 3.3 above in relation to the similar concerns raised by SNH, SWT and RSPB are considered appropriate to address these concerns.***

4.15 Peat acts as a carbon sink so in terms of CO2 emissions opencasting coal from below peat would have a doubly negative environmental impact. Producing fossil fuels to be burned adds to carbon emissions.

***Noted.***

4.16 In terms of SPP16 of which the operators are fully aware, the Council is required to apply two tests to applications to extract coal by opencasting. The proposed development fails Test 1 and Test 2 as indicated in the Non-Technical Summary.

***Assessment of the proposal against the tests of SPP16 is given below in section 6.6 below.***

4.17 If it is a case of jobs versus the environment then it is surely time to assess how many local jobs are being provided, whether they are really going to local people, or simply to people who live in the area, whether in caravans or lodgings; are there any migrant labour, whether from outside East Ayrshire or perhaps even from Eastern Europe?

***The applicant has stated within the ES that during operations, 85% of its employees live within a 10 mile radius of the House of Water site.***

4.18 SPP16 requires an assessment of expected cumulative impacts on all communities within a radius of 5 km. This would cover Burnside, Bank Glen, Dalleagles and Benston. The Opencast Coal Subject Plan goes further, not surprising in East Ayrshire, where opencast coal sites are larger and more numerous than anywhere else in the UK. If further opencasting is to be approved at House of Water, then there will be a continuous scar of opencast sites from east to west. Where else in the UK are there 5 continuous miles of opencast sites? Policy requires consideration of cumulative impacts between sites within 3 km of each other; in this case Chalmerston/Pennyvenie, Greenburn and Rigghead/Hall of Auchincross.

***The cumulative impacts are addressed in the Environmental Statement accompanying the application. This application, should the Council be minded to approve it, will require to be notified to the Scottish Ministers. However, with the amended proposal for the transportation of minerals, it is not considered that the proposed Burnston Extension will raise any significant impacts on local communities as described elsewhere within this report.***

4.19 With the proposed amendment to the transportation via the Kyle Forest route, the coal would still go by road and affect other local people and add to traffic near Killoch. So we still object.

***The section of public road that would be used as part of the amended transport route has only two roadside dwellings, and is a route currently used by the Skares Road opencast coal site. While it is accepted that there would be additional impact on users of this route, the benefits of otherwise removing some 34,00 HGV movements annually from local communities is considered to far outweigh the disbenefits described by the objector.***

4.20 When the planning application for sludge deposition at Auchlin was first refused and then dismissed at appeal, there was a significant issue over the amount of coal traffic already on this road; similarly with refuse vehicles and timber traffic.

***The proposed Kyle Forest overland haul route and its link to Killoch via the public road network has already been approved and is considered to be a live consent and can therefore be***

***implemented subject to meeting the provisions of the planning consent and the obligations of the related Section 75 Agreement. The points raised by the objector are not therefore relevant to the consideration of this application.***

4.21 Although the plans for any leisure development at Piperhill have yet to be lodged, the question of compatibility of hauling coal adjacent to a leisure development is one to be considered carefully by the Council if they and Scottish Coal wish to see Piperhill properly restored and returned to some sort of beneficial use.

***The applicant owns and controls the Piperhill site and at this time no application has been received in respect of any leisure development at this site. The Kyle Forest overland haul route through the Piperhill site is however the subject of a live planning consent.***

4.22 The baseline values in respect of noise assessment that Scottish Coal has used are incorrect. The measurements were taken during working times for the 3 current working mines in the area. The baseline should be taken during the annual shutdown as this is a very quiet rural location. The noise monitor location was also faulty as it was in a hollow some 150 metres from the house. This could not be used to describe the situation at the house. The baseline at Beoch was used for Nith Lodge. This is inadequate. Nith Lodge need their own baseline measurements. The proposed removal of Tappet Hill would result in there being no physical barrier between the digging and the open valley floor and subsequently our home. My children have stood on the edge of this location and been audible at the house so I can only imagine 100+ dB levels of dumpers and diggers.

***In support of the objection, the objectors have commissioned their own noise assessment report which was critical of the findings of the Environmental Statement and suggested that the methodology and conclusions regarding noise at Upper Beoch was flawed. This information was reviewed by the applicant's consultants who have refuted the findings of the objectors' consultant. It should be noted that the Council's Environmental Health Division has not raised any significant concerns regarding the noise assessment section of the Environmental Assessment and has stated that it is unlikely that significant impacts will occur as a result of the proposed development. It further recommends that the standard PAN50 daytime and night time noise limits should apply as maxima in this instance.***

***It is further noted that formal complaints of noise nuisance from the existing operational sites have been made by the objector and these are currently being investigated in terms of potential breach of noise limit conditions. However, it is considered that should the Council be minded to approve this application, then appropriate***

***noise monitoring be undertaken at Upper Beoch (with the consent of the objector) or in the immediate vicinity to allow monitoring of the situation. It is considered appropriate in this instance to secure by a legal obligation through a Section 75 Agreement, the right to suspend opencast operations on site, should there prove to be justifiable and actionable complaints regarding breaches of noise limits. Operations would be suspended until appropriate additional mitigation measures are secured to resolve adverse impacts. This provision has been used successfully on other opencast sites within East Ayrshire.***

4.23 The removal of Tappet Hill and quarry would present a large scale change to the characteristic of the Beoch Valley. This would impact immediately at the start of the operation and be permanent. Upper Beoch is a sensitive viewpoint yet no visual assessment from this site has been included in the proposal. This viewpoint is essential.

***The comments of the objector are noted. However, the landscape and visual assessment undertaken in respect of the Environmental Statement, in the Visual Analysis Plan, clearly indicates that the property at Upper Beoch will be within the principal zone of visual influence of the proposed operations, at a distance of some 2 km from the site. While the visual impact would be immediate, it is considered that with progressive restoration as the operations move in a general easterly direction, these impacts would be temporary in nature, albeit the landform characteristic will be changed permanently. Notwithstanding this, the proposed restoration of the site presents an opportunity for positive changes in this regard.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (1999) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

### Ayrshire Joint Structure Plan

5.2 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the House of Water development site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads. The proposed development requires to be assessed against Policy E14 which states:

*Development opportunities for opencast coal working shall be directed to Preferred Areas of Search in East Ayrshire identified on the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.*

***The proposed Burnston Extension site falls within a Preferred Area of Search.***

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

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

***The proposed Burnston 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 Burnston 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 Burnston 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. Similarly remnants of previous drift mining undertaken at Craigmans Mine will be removed as part of the proposed operations.***

- (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 65 people at the House of Water site for a further period of 6 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. One notable exception to this was in relation to the dispatch of coal from the House of Water site. Having considered the representations made and the views of the Planning and Roads Authorities, the applicant has reconsidered the dispatch proposals in the Burnston Extension application. With the amended proposal to direct all minerals from the Burnston 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 interest in land in the vicinity of the House of Water site.***

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 210 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 Burnston Extension is designed to deliver some improvements 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 Burnston Extension site will be restored for commercial forestry purposes, 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 Burnston 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

***In an amendment to the original coal transportation arrangements, the applicant has responded positively to the concerns raised by local residents and the Planning and Roads Authorities, and intends now to implement 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 Burnston 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 Northern 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 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 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 northern 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 been made with regard to the area of blanket bog around Tappet Hill, from SNH, SWT and RSPB. However, it is considered that the proposed suspensive conditions as agreed with SNH and the applicant, as described in section 3.3 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 Burnston 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 Burnston 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 Burnston Extension.***

***It is therefore considered that the proposed development is generally consistent with the relevant EAOCS 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, relevant planning history and the Finalised Ayrshire Joint Structure Plan 2006.

### 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 with the mitigation measures promoted within the ES, the points of objection can be addressed either by condition or by means of a Section 75 Agreement, or are not of sufficient weight to merit refusal of the application. It is noted that some 247 letters of support have been received regarding the proposed development, seeking to safeguard continued employment at the site.

### 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 Burnston Extension development lie 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 Burnston 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 Burnston Extension will allow continuation 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 Burnston Extension.***

#### Planning Advice Notes

6.7 The proposed operations have also been designed to comply with the advice contained with 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).

#### Finalised Ayrshire Joint Structure Plan

6.14 There are no policy changes with regard to opencast coal mining being promoted in the new finalised joint structure plan and the current provisions of the approved structure plan remain relevant to this application.

***Noted.***

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

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement to amend the existing Section 75 Agreement for the site to include the Burnston Extension and as required to be amended by the terms of this report.

7.2 In terms of the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No.2) Direction 1998, certain categories of opencast development require to be formally notified to the Scottish Ministers should the Planning Authority be minded to approve opencast proposals. This includes development consisting of works connected with the extraction of coal by opencast methods, and other minerals extracted in association with works to extract opencast coal, for which a planning authority is minded to grant consent which involves sites greater than 500 hectares.

***The proposed combined House of Water site and the Burnston Extension covers an area of some 697.8 hectares. While this is an extension, existing infrastructure within the House of Water site is to be used and areas within the overall site will be undergoing restoration and aftercare. The application will therefore require to be notified to the Scottish Ministers in accordance with the Direction.***

## **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 objections raised are either not of sufficient weight to justify refusal of the application or can be addressed by conditions or by legal agreement.

8.2 The proposals represent a significant extension to the existing consented site at House of Water and will 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 attracted a significant body of objection to the proposal but these in the main relate to issues of coal transportation by HGV movements through local communities. However, the amended coal transportation to the Killoch coal disposal point and associated railhead, by the implementation of the consented Kyle Forest overland haul route, has addressed the significant proportion of objections received.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the proposed Burnston Extension site is located, this proposal will now 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 proposed can be undertaken within acceptable environmental standards. The present use of the site as a commercial forest also means that in landscape and ecological terms, the greater part of the application site is of low value.

8.4 The existing House of Water operation, albeit on a partial operation at this time, will provide full time employment for approximately 65 staff, operatives and contractors. These jobs will be maintained throughout the additional 6 year working life of the proposed Burnston Extension. 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 is acceptable 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 Burnston 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.

- (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 Burnston 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) An obligation that areas to the south of the Pow Burn shall be fully restored before commencement of operations to the Burnston Extension area.
- (ix) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site.
- (x) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and subject to Notification of Scottish Ministers under the Town and Country Planning (Notification of**

**Applications) (Scotland) Amendment (No 2) Direction 1998. 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.**

**Alan Neish**  
**Head of Planning, Development and Building Standards.**

19 March 2007  
HM/HM  
FV-DVM

### **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of representation
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (1999)
7. 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 and 04/0397/FL
8. SPP16: Opencast Coal
9. PAN50 and Annexes.
10. Burnston Extension Environmental Statement

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

***Implementation Officer: Dave Morris***

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 06/0548/FL

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Location	House of Water Opencast Coal Site Whitehill Farm New Cumnock
Nature of Proposal:	Extraction of coal by opencast methods with restoration to forestry farmland and nature conservation and retention and re-phasing of existing site operations
Name and Address of Applicant:	The Scottish Coal Company Limited Castlebridge Business Park Gartlove ALLOA
Name and Address of Agent	Phillip Rayson Garan House 28 Main Street MUIRKIRK

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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 6 years of the date of commencement of operations on the Burnston 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. Following an appraisal of the blanket bog assessment by the Planning Authority in consultation with Scottish Natural Heritage, should Scottish Natural Heritage maintain its objection to the loss of this peat resource, then the applicant shall submit to, and have approved by the Planning Authority an amended phasing plan for the Burnston Extension, to exclude the area of blanket bog from the Burnston Extension opencasting operations.

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 approved by the Planning Authority in consultation with the Scottish Environment Protection Agency, details of proposals for a 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 mire 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 Burnston 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.

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 Burnston Extension area, the applicant shall undertake River Habitat Surveys and hydrological investigations, 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.

REASON – 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 Burnston 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 shall be confined 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 buildings for barn owl before demolition; and
- (iii) Survey of Tappet Hill for breeding Schedule 1 species if excavation does not start until after the start of the bird breeding season 2007.

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.

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