

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 11 JANUARY 2006

05/0232/FL: PROPOSED EXTRACTION OF COAL BY OPENCAST METHOD, RESTORATION OF SITE AND ASSOCIATED ENGINEERING WORKS AT LAIGH GLENMUIR FARM, NEAR CUMNOCK

APPLICATION BY ATH RESOURCES PLC

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought for the extraction of some 500,000 tonnes of coal from the proposed development area in the Main and Lower Gasswater coal seams. The mineral extraction area itself extends to approximately 22.5 hectares and is located in the south-western part of the application site. The north-eastern portion of the site will be used mainly for the storage of soils and overburden. The proposed lifespan of the site is three years including final restoration with a five year aftercare period. Coaling operations will last for 2.5 years. Weekly output from the site is anticipated to be 5000 tonnes of coal.

1.2 Excavation of the overburden material will be predominantly undertaken by mechanical means only with some limited requirement for blasting in some of the harder strata. The proposed extraction operations will be undertaken in a series of nine box cuts progressing in a general north-east to south west direction. Prior to the commencement of excavation in each of the box cuts, soils will be stripped and stored in the soil storage area located in the south-eastern part of the development site, or used in progressive site restoration. Initial soil stripping operations will allow for the formation of a 3 metres high screen bund along the western and south-western site boundary to screen the development from the High Glenmuir access road as well as acting as a noise attenuation measure to minimise noise impact on receptors lying to the east of the site.

1.3 The remaining soils will be stored in two soil mounds to a maximum height of 5 metres, one mound located in the small triangular area previously described and one in the eastern part of the development site adjacent to the first box cut. The soil mounds proposed bunds are to be seeded in grass. Overburden excavated from the first box cut is to be stored in the north-east part of the site and as the working void progresses in the proposed series of nine box cuts, the initial void will be backfilled and overburden will be surcharged on this area to a height of 20 metres above ground level. The maximum working depth of the excavation will be 47 metres with an average of 22 metres.

1.4 All coals excavated from the Laigh Glenmuir site is to be transported via an overland haul route previously approved under the Garleffan II Opencast Site planning consent. This overland route was to be constructed to

allow coals from the Garleffan II site to be taken to the A70 Cumnock – Muirkirk road to access the proposed railhead at Powharnal. The applicant intends to implement in part this overland route to allow coals to be taken overland, via the Garleffan II site to the existing railhead at Crowbandsgate and to the A76 Trunk Road. The applicant has stated that the overall output to Crowbandsgate and onto the A76 Trunk Road will not increase above the current consented level. Production from the Laigh Glenmuir site is stated to be 5,000 per week on average. The applicant indicates that 90% of the coals produced from Laigh Glenmuir will be dispatched by rail from Crowbandsgate.

1.5 The existing coal preparation and vehicle dispatch facilities at the Garleffan II site shall be utilised for the Laigh Glenmuir development and the existing Laigh Glenmuir farm buildings will be used as site offices and storage facilities. This will also form part of the site compound including the proposed settlement lagoons. The full development area will be fenced off with stock-1.6

2.10 Access to the proposed site offices will be off the A70 road and via the Glenmuir Road and minor access road to Laigh Glenmuir steading via the existing agricultural entrance. Access will be maintained to the 5 properties to the east and south-east of the development site. Coal haulage traffic will access the Laigh Glenmuir site via the consented overland haul road. This will entail the use of crossing points between the public road network and the haul road. Concrete surfacing shall be used to prevent damage to the public road and will be controlled by means of traffic lights, configured to give priority to public road users. The majority of movements off-site will be restricted to staff vehicular traffic arriving and leaving the site.

1.7 In terms of water management, cut-off ditching will be provided around overburden and soil storage mound and around the perimeter of the site, all to intercept untreated waters entering groundwater or watercourses. This will be diverted or pumped to a series of settlement lagoons located to the south-west of the excavation area within the proposed site compound. During the course of excavations, the un-named burn traversing part of the development site will be diverted along the northern boundary of the site. The Glenmuir Water and Glenmuir Burn will not be disturbed during mining operations.

1.8 Hours of work will be 0700 to 1900 hours Monday to Friday, 0700 to 1200 hours on Saturdays with no working on Sundays, Bank or Public Holidays. Only essential vehicle and site maintenance will be undertaken outwith these proposed hours. The applicant has indicated that the proposed workforce shall consist of 29 full time employees at its peak.

1.9 The use of progressive restoration techniques has been incorporated into the Laigh Glenmuir scheme. Progressive restoration will take place across the worked out excavation area, the storage areas and water treatment area. The proposed restoration contours will generally reflect the existing topography. However, localised changes will be introduced during restoration to allow for the formation of wetland marsh and riparian habitats. Some 6.2 hectares of native woodland will be introduced in the south and south-east of the restored site. A further 8.5 hectares of native woodland will also be planted to the south-east and south-west of the site. Some 590 metres of new hedgerows are also to be planted along the minor access road. The restored site will be the subject of a five year aftercare programme.

1.10 The planning application is accompanied by an Environmental Statement in terms of the Environmental Impact Assessment (Scotland) Regulations 1999. Aspects of the project design of the Laigh Glenmuir development have been undertaken in parallel with the environmental impact assessment to achieve the best possible outcome between environmental standards and the objectives of the proposed development. This has enabled the integration of environmental issues and operational requirements to arrive at effective solutions in minimising impacts on the environment.

2. RECOMMENDATION

2.1 It is recommended that the application be refused for the reasons listed on the attached sheet.

3. SUMMARY OF ANALYSIS

3.1 As is indicated at paragraph 5.2 above, the application is not considered to be 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 refused unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. In terms of consultations, it is considered that in the main, points of concern can be addressed through the imposition of appropriate conditions in any consent granted or by means of a Section 75 Agreement. Similarly many of the points of objection can also be addressed in this manner.

3.2 In terms of planning policy, the proposals would result in a significant departure from Policies MIN1, MIN2, MIN29 and MIN30 as indicated in Section 5 above. The policies of the EAOCSP seek to protect the landscape, visual amenity and recreational resource of the Glenmuir Valley, hence the reason that the greater part of the Laigh Glenmuir site is excluded as a Potential Coal Extraction Area. Due to the timescale of the proposed development being 3 years and with a total site area of 47 hectares, the Laigh Glenmuir proposal does not fall within the small scale, short terms developments allowed for in terms of Policy MIN2.

3.3 The proposed development is considered to accord with the Adopted Ayrshire Joint Structure Plan since the proposed Laigh Glenmuir development site lies within a Preferred Area of Search where it is recognised that such sites have few environmental constraints, are isolated from most local communities and are close to existing railheads. However, the EAOCSP has refined the Preferred Areas of Search and has determined that the greater part of the Laigh Glenmuir site should be excluded from potential opencast development.

3.4 With regard to SPP16, It is considered a significant benefit will arise from the continued employment offered to 29 employees who would transfer from the existing Garleffan site on cessation of coaling on that site in Spring 2006. The Laigh Glenmuir development would provide employment for a further 3 years. This is a significant material consideration in the determination

of this application, particularly at a time when jobs within the opencast industry have recently been lost. The majority of these jobs are taken by people in the local communities and is therefore important to local communities in socio-economic terms.

3.5 It is considered that the Laigh Glenmuir development will not impact significantly on any local community and it is noted that there is not a considerable number of objections from the local community. Therefore in this case it is considered that the principal assessment to be made is whether the benefits of the continued employment opportunities offered by the Laigh Glenmuir development outweigh the disbenefits resulting from the environmental impacts that would affect the high amenity and recreational value of the Glenmuir Valley. In this regard it is considered that the benefits of continued employment do not outweigh the adverse impacts on the Glenmuir Valley. The approval of the Laigh Glenmuir development could set an undesirable precedent for opencast development being accepted on those areas where, for environmental reasons and in the interests of sustainability, they have not been identified as Potential Coal Extraction Areas.

3.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that there no over-riding environmental and community benefits which would outweigh adverse environmental impacts on the Glenmuir Valley sufficient to justify a significant departure from the East Ayrshire Opencast Coal Subject Plan. Consequently it is considered that the application should be refused. Should the Committee disagree with this view and be disposed to grant planning permission, any consent should be withheld until an appropriate Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, covering the stated matters referred to in this report, has been concluded with the applicant.

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 ATH RESOURCES PLC

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 Local Planning Committee under the scheme of delegation because the proposed development relates to a new mineral extraction site which is considered to be contrary to policies in the East Ayrshire Opencast Coal Subject Plan and is the subject of letters of representation.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 2.3 kilometres east of Logan and lies on the east side of the Uc21 Wallaceton Farm – Dornal Farm minor road. The site relates to the steading and part of the lands of Laigh Glenmuir Farm extending to approximately 47 hectares. The site also lies partly adjacent to the Glenmuir Water.

2.2 The site lies in a rural agricultural setting on the fringes of an upland moorland area, however the Powharnal – Gasswater opencast site boundary lies 510 metres to the north, the boundary of the Gartleffan I and II opencast site lies 2.05 kms to the south and the boundary of the recently commenced Grievehill opencast site lies 3.48 kms to the south-east. Part of the application site also lies on the east side of the minor road leading to High Glenmuir creating a small triangular area.

2.3 In terms of topography, the application site extends from a low lying field adjacent to the Glenmuir Water in the south at approximately 200 metres Above Ordnance Datum (AOD) rising gently and eastwards to 230 metres AOD to the south-western slopes of Hawk Hill. The site is also traversed in the north-western part of the site by an unnamed tributary of the Glenmuir Water.

2.4 The major part of the application site is currently in pastoral use with areas of marshy grassland and blanket bog present within the site. The site is bordered by open, undulating moorland to the west, north and east. Two private properties lie within the application site, namely Laigh Glenmuir farm steading and Laigh Glenmuir Cottage. A small part of the application site also lies within the Low Moss Provisional Wildlife Site and the boundary of the

Muirkirk and North Lowther Uplands Special Protection Area (SPA) lies 1.05 km to the east.

2.5 Proposed Development: Full planning permission is sought for the extraction of some 500,000 tonnes of coal from the proposed development area in the Main and Lower Gasswater coal seams. The mineral extraction area itself extends to approximately 22.5 hectares and is located in the south-western part of the application site. The north-eastern portion of the site will be used mainly for the storage of soils and overburden. The proposed lifespan of the site is three years including final restoration with a five year aftercare period. Coaling operations will last for 2.5 years. Weekly output from the site is anticipated to be 5000 tonnes of coal.

2.6 Excavation of the overburden material will be predominantly undertaken by mechanical means only with some limited requirement for blasting in some of the harder strata. The proposed extraction operations will be undertaken in a series of nine box cuts progressing in a general north-east to south west direction. Prior to the commencement of excavation in each of the box cuts, soils will be stripped and stored in the soil storage area located in the south-eastern part of the development site, or used in progressive site restoration. Initial soil stripping operations will allow for the formation of a 3 metres high screen bund along the western and south-western site boundary to screen the development from the High Glenmuir access road as well as acting as a noise attenuation measure to minimise noise impact on receptors lying to the east of the site.

2.7 The remaining soils will be stored in two soil mounds to a maximum height of 5 metres, one mound located in the small triangular area previously described and one in the eastern part of the development site adjacent to the first box cut. The soil mounds proposed bunds are to be seeded in grass. Overburden excavated from the first box cut is to be stored in the north-east part of the site and as the working void progresses in the proposed series of nine box cuts, the initial void will be backfilled and overburden will be surcharged on this area to a height of 20 metres above ground level. The maximum working depth of the excavation will be 47 metres with an average of 22 metres.

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2.9 The existing coal preparation and vehicle dispatch facilities at the Garleffan II site shall be utilised for the Laigh Glenmuir development and the existing Laigh Glenmuir farm buildings will be used as site offices and storage

facilities. This will also form part of the site compound including the proposed settlement lagoons. The full development area will be fenced off with stock-proof fencing.

2.10 Access to the proposed site offices will be off the A70 road and via the Glenmuir Road and minor access road to Laigh Glenmuir steading via the existing agricultural entrance. Access will be maintained to the 5 properties to the east and south-east of the development site. Coal haulage traffic will access the Laigh Glenmuir site via the consented overland haul road. This will entail the use of crossing points between the public road network and the haul road. Concrete surfacing shall be used to prevent damage to the public road and will be controlled by means of traffic lights, configured to give priority to public road users. The majority of movements off-site will be restricted to staff vehicular traffic arriving and leaving the site.

2.11 In terms of water management, cut-off ditching will be provided around overburden and soil storage mound and around the perimeter of the site, all to intercept untreated waters entering groundwater or watercourses. This will be diverted or pumped to a series of settlement lagoons located to the south-west of the excavation area within the proposed site compound. During the course of excavations, the un-named burn traversing part of the development site will be diverted along the northern boundary of the site. The Glenmuir Water and Glenmuir Burn will not be disturbed during mining operations.

2.12 Hours of work will be 0700 to 1900 hours Monday to Friday, 0700 to 1200 hours on Saturdays with no working on Sundays, Bank or Public Holidays. Only essential vehicle and site maintenance will be undertaken outwith these proposed hours. The applicant has indicated that the proposed workforce shall consist of 29 full time employees at its peak.

2.13 The use of progressive restoration techniques has been incorporated into the Laigh Glenmuir scheme. Progressive restoration will take place across the worked out excavation area, the storage areas and water treatment area. The proposed restoration contours will generally reflect the existing topography. However, localised changes will be introduced during restoration to allow for the formation of wetland marsh and riparian habitats. Some 6.2 hectares of native woodland will be introduced in the south and south-east of the restored site. A further 8.5 hectares of native woodland will also be planted to the south-east and south-west of the site. Some 590 metres of new hedgerows are also to be planted along the minor access road. The restored site will be the subject of a five year aftercare programme.

2.14 The planning application is accompanied by an Environmental Statement in terms of the Environmental Impact Assessment (Scotland) Regulations 1999. Aspects of the project design of the Laigh Glenmuir development have been undertaken in parallel with the environmental impact assessment to achieve the best possible outcome between environmental standards and the objectives of the proposed development. This has enabled the integration of environmental issues and operational requirements to arrive at effective solutions in minimising impacts on the environment.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Statutory and non-statutory consultations have been carried out in respect of both the planning application and the Environmental Statement. The consultees' responses and comments on the issues raised are as follows:-

3.2 East Ayrshire Council Roads and Transportation Division has indicated that it has no objections in principle to the proposal subject to clarification and agreement with the applicant regarding the following matters:

(i) There is no mention in the planning application of how abnormal loads and site establishment construction traffic will access the site. Should access be via the unclassified public roads to and from the site it is likely that considerable damage will be done to these routes, and structures along these routes, which are not designed to cater for this type of traffic. Widening and strengthening work would be required on these routes to cater for this scenario.

The applicant has advised that all abnormal loads will access the site via the Garleffan site and the consented northern haul road.

(ii) While it is appreciated that no coal haulage will occur on the unclassified public roads around the site and traffic volumes on these roads will remain low, there is still a significant increase in traffic due to staff and service deliveries as a result of the proposal. This Division would consider that the applicant will require to provide a number of additional passing places within the road boundaries and surfacing of a number of existing informal passing places to accommodate this traffic.

The applicant considers, in line with the view of independent traffic consultant's conclusions within the ES, that the provision of additional passing places is unnecessary and difficult to achieve. The applicant is however prepared to discuss the matter further with the Roads and Transportation Division. Nonetheless conditions can be attached to any consent granted for the proposed development to meet the requirements of the Roads and Transportation Division.

(iii) In view of this additional generated traffic, the Division would require the applicant to enter into a joint maintenance agreement (under a Section 75 Agreement) to contribute an agreed annual sum towards the maintenance costs for these minor routes in order to ensure their future structural integrity.

The applicant accepts the general principle of this requirement but that any contribution should be in the context of actual increased usage and the potential for damage.

(iv) There are no agreed details for the two public road crossing points of the site haul road. These require to be located where acceptable visibilities can be achieved based on the speed of traffic on the public road at these locations. The public road will require to be kerbed, strengthened and widened

at and either side of the crossing points with appropriate signage of the crossing point provided.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of the Roads and Transportation Division.

(v) No cross sections were provided showing the distance of the 3 metre bund and opencast excavation from the existing public road. This Division would recommend that the base of the bund be no closer than 2 metres from an adjacent field or property boundary to ensure the road forward visibilities are retained and that the opencast excavation is no closer than 20 metres from the public road boundary. This distance should be checked by the applicant against an influence line of 1 in 2 from rock head to be no closer than 2 metres from the boundary of the public road.

The applicant has confirmed that the base of the bund will be no closer than 2 metres from an adjacent field or property boundary as requested. Nonetheless conditions can be attached to any consent granted for the proposed development to meet the requirements of the Roads and Transportation Division.

(vi) Visibility improvements will be required on the inside of the bend opposite the access to Laigh Glenmuir by the removal of a section of existing hedge. This is also required within the road boundary at the A70 junction.

The applicant has confirmed agreement to meet this requirement that can be secured by appropriate conditions attached to any consent granted for the proposed development to meet the requirements of the Roads and Transportation Division.

In general the requirements of the Roads Division in respect of the stated matters can be addressed either by the imposition of appropriate conditions in any consent granted for the proposed development or by means of a Section 75 Agreement for the Laigh Glenmuir development.

3.3 East Ayrshire Council's Economic Development Division notes from the supporting information that the proposed employment in the project will be of 29 people, mainly in the skilled areas of operating plant and machinery. Due to the nature of mining and the fact that each individual project will only have a finite lifespan, this new project will ensure the continuity of employment of people already in the industry and in whom there has been investment in terms of training. Accordingly this Division would be supportive of the application.

Noted.

3.4 Transco and Scottish Power have no adverse comments to make on the proposed development.

Noted.

3.5 West of Scotland Archaeology Service has indicated that apart from the Laigh Glenmuir farmstead which could be of importance, there would appear to be no certain impediment to the development proceeding in this area as there are no recorded sites of proven significance affected by the proposals. Also, as the ground is improved there is less chance of the development encountering remains so well preserved that refusal of the whole application would be warranted. However, given our inability to predict the location of buried archaeological remains in advance, it is true to state that the large area comprised of green fields that will be disturbed by this development stands a reasonable chance of unearthing buried unrecorded remains which could be of any period or importance, and which may survive below ground level. It is therefore possible that buried remains could be found which would require to be excavated. These could be associated with the remains of former farmsteads.

The Environmental Statement (ES) gives the impression that the existing state of knowledge interpreted from the available information is good enough to state with confidence that the human use of this ground over thousands of years can be recreated to such a degree that it is possible to say there is little or no chance of encountering significant buried remains. This is a fallacy. It is entirely possible for there to be significant and extensive prehistoric remains contained within this large application area. Any such remains that survive would be destroyed by the proposals and so there should be an attempt made to investigate this possibility. The applicant is advised to carry out an intrusive evaluation of the site since it represents best practice and reflects Government guidance but this can be done under a condition placed on any consent issued by the Council. This evaluation should involve trial trenching of 5% of the application area and should be targeted to recorded sites, obviously suitable topography and also provide wide coverage of areas to be disturbed/destroyed or affected during the course of the proposals. The developer must use a suitable professional archaeological consultant to carry out the necessary evaluation.

The only appropriate form of condition in these circumstances would be a negative suspensive condition such as that suggested in PAN 42. WOSAS recommends the following draft which reflects recent experience and current best practice:

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

The use of such a condition on any consent allows the potentially complex archaeological issues to be addressed in detail after the principle of the

development has been accepted, but of necessity, limits the opportunities to amend designs or operations to achieve the preferred preservation of remains in situ. This means that it is more likely that any important remains within the development boundary will have to be excavated under archaeological conditions prior to their destruction by the approved development. Attachment of the condition without a prior evaluation also does not allow the developer to quantify any financial risk associated with the potential archaeological issue at an early stage of the development. In the experience of WOSAS it is difficult to ensure that archaeological investigations in opencast sites are carried out to the required standards and are completed to an agreeable timescale. WOSAS would be happier to have the requirements for the archaeological investigations in this instance built into a Section 75 Agreement made with the developer as suggested in PAN 42.

Conditions in accordance with the recommendations of PAN42 can be attached to any consent granted for the development to address archaeological issues with respect to the development site. It is not considered necessary for the scheme of archaeological investigations to form part of any proposed Section 75 Agreement as this can be dealt with through the condition proposed by WOSAS as it would relate directly to the application site.

3.6 Scottish Water, for its water and sewerage functions, has no adverse comments to make on the proposed development.

Noted.

3.7 The Scottish Wildlife Trust has not responded to the consultation letter.

Noted.

3.8 Historic Scotland has no comments to make on the Environmental Statement. HS is content that the proposed development would not have any adverse impacts on any aspects of the historic environment which are protected at the national level. HS notes that some impacts on unscheduled features are predicted and that a mitigation strategy to address them is proposed. Detailed comments on these should be sought from the West Of Scotland Archaeology Service.

Noted. WOSAS has been consulted as indicated in paragraph 3.5 above.

3.9 The Scottish Executive Environment Group has no comments to make on the Environmental Statement.

Noted.

3.10 The Ayrshire Joint Structure Plan and Transportation Committee states that the application requires to be assessed within the context of Structure Plan policy E14. The requirements of this policy have subsequently been reflected in the East Ayrshire Opencast Coal Subject Plan (EAOCSF).

Structure Plan policy seeks to direct opencast coal proposals toward preferred areas of search and these are identified in detail in the subject plan. The proposal lies outwith the preferred areas of search and is therefore inconsistent with Policy E14A. The exception to this policy which is established in Policy E14B is not applicable. It is therefore advised that the proposal does not accord with the development plan. Should the Council be minded to approve the application, it should be treated as a departure from the development plan. The mitigation measures identified in the Environmental Assessment should be met in full should the latter case apply.

The policy considerations relative to the approved Ayrshire Joint Structure Plan are set out and discussed in Section 5 of this report. However, it is considered that the Laigh Glenmuir development site does lie within a Preferred Area of Search as indicated in the structure plan Key Diagram and therefore consistent with Policy E14A. This is also borne out by the fact that part of the Laigh Glenmuir site fall within a Potential Opencast Extraction Area as identified in the EAOCSP. It is recognised however that the greater part of the Laigh Glenmuir site lies outwith the Potential Opencast Extraction Areas as identified in the EAOCSP.

3.11 The Scottish Environment Protection Agency states that the Environmental Impact Assessment shows that the project is a major opencast coal excavation with the construction of haul roads linking to the existing Garleffan site and progressive restoration works over a period of three years. The excavation and restoration phase is clearly the most sensitive time period with the increased risk of impact to surface water courses and shallow hydrology. It is imperative that the applicant ensures that all mitigation measures proposed to be protective of surface water and shallow groundwater are implemented. Both the shallow surface hydrogeology and surface hydrology will be linked, therefore protection of both the quality and quantity of these resources should be paramount.

Noted. The proposed mitigation measures promoted within the Environmental Statement shall require to be implemented in full should permission be granted. Monitoring and auditing of the mitigation measures should ensure that the requirements of SEPA are met in this regard.

The ES acknowledges the need to minimise impact to the environment through sound working practices. The ES proposes thorough design of the site drainage system to ensure minimal impact on site hydrology. However it is essential that the design is agreed with SEPA prior to the commencement of works. Various techniques have been proposed to prevent pollution of watercourses and it is essential that a programme is established to monitor the effectiveness of these measures. Past experience of similar developments shows that the proper design and construction of clean water interception ditches is critical to prevent continual erosion of newly excavated channels and pollution of the watercourses they discharge to by suspended solids. The design of these cut-off ditches must take account of this and incorporate any necessary mitigation measures to control the velocity of the flow such as

plunge pools and suitable bed profile. Flow balancing of the effluent treatment lagoons to cope with expected storm conditions must be addressed at an early stage and included in the site pollution and incident plan. SEPA's prior consent will be required for discharges of effluent from the site and prescribed coal processes. River Crossings are to be achieved by means of culverts and SEPA would re-iterate its policy against unnecessary culverting of watercourses. Where a culvert is essential, it should be designed and installed in accordance with the advice contained in the CIRIA report 168: Culvert Design Guide for Hydraulic Performance and Environmental / Aesthetic Considerations.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of SEPA. The applicant has been advised of the comments made by SEPA.

SEPA further states that the Water Framework Directive (WFD) requires consideration of any aspect of river habitats, channel structure and flow regimes that impact upon the biology of the water. The ES proposes designated areas for the storage of potentially polluting substances e.g. diesel fuel and higher risk activities e.g. vehicle maintenance. SEPA welcomes this approach and would also draw attention to SEPA's relevant Pollution Prevention Guidance Notes (PPG) which are freely available. Septic tanks and soakaways should be designed and constructed in accordance with the current code of practice.

Noted.

With respect to waste, the developer should be aware of the Waste management Licensing Regulations 1994 as amended. It is understood that all of the spoil generated will be re-used/ recycled on site and this practice, along with maximising the use of secondary aggregates is to be encouraged.

Noted.

Although the applicant proposes to consult SEPA regarding engineering activities in close proximity to watercourses, responsibility lies with the developer to provide acceptable proposals in respect of any modifications including river crossings. The mitigation / management plans discussed in the ES are of a general nature and it is essential that full site specific method statements on construction methodology, site drainage and work practice are produced i.e. Construction Method Statements (CMS). SEPA would also state that the environmental mitigation measures outlined in PPG's should be incorporated into the CMS. The CMS should be agreed with SEPA and we would reiterate that these upland streams are sensitive ecosystems and form headwaters for larger watercourses and it is crucial that all necessary mitigation measures are taken to preserve their good status.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of SEPA. The applicant has been advised of the comments made by SEPA.

SEPA's experience in these types of projects is that the combination of soil stripping, road construction and inclement weather can rapidly turn greenfield

sites into muddy quagmires. SEPA has a duty to protect the environment and will use its statutory powers in accordance with the terms of the Control of Pollution Act 1974 (as amended) to enforce those responsibilities, if in SEPA's opinion, insufficient measures have been taken prior, during or post construction phase, to ensure that the risk of pollution to controlled waters, inclusive of groundwater, has been satisfactorily addressed.

Noted. The applicant has been advised of the comments made by SEPA.

Water treatment areas should be located to receive all contaminated water from the excavation, haul roads, overburden tips, plant areas and the coal preparation site. All this site drainage requires treatment before being discharged to a watercourse. Ground water from the dewatering of the site may need treatment to reduce iron concentration, as has already been the case with the nearby Gasswater site. An effective flow-balancing plan will be required to cope with expected storm conditions and ensure compliance with discharge consent conditions.

The applicant has been advised of the comments of SEPA and an appropriate condition can be attached to any consent granted to meet the requirements of SEPA.

Clean water from around the site is to be intercepted and diverted away from the working area. In order to prevent pollution from these ditches it is essential that they be properly designed to take account of the expected flows/water velocity and constructed incorporating suitable ditch profiles to prevent erosion of the channel. Where possible existing natural drainage features should be utilised. Should it prove unavoidable to cut ditches on steep slopes then some form of protection to prevent erosion and pollution from mineral solids such as plunge pools and rock armouring will be required. The applicant should contact SEPA with detailed proposals prior to work commencing on site.

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

The proposal involves a burn diversion and, prior to the diversion, the applicant should ensure that a full assessment of the ecology of this watercourse has been carried out in order that the existing habitats can be restored as far as practicable. SEPA should be consulted prior to the works commencing.

The requirement for a detailed ecological study of the aquatic flora and fauna associated with the watercourse to be carried out before any diversion is carried out can be secured through an obligation in a Section 75 Agreement for the site.

All foul drainage from offices, canteens etc., will require treatment prior to discharge to a watercourse and SEPA's consent will be required for the discharge of sewage effluent to a watercourse. The applicant should ensure that any changes to the natural drainage/burn flows brought about by these

works are taken account of and do not result in the loss of amenity to downstream users such as flooding or removal of a water supply for livestock.

The applicant has been advised of the comments of SEPA and a condition can be attached to any consent granted for the development to meet the requirements of SEPA.

All oil storage tanks/drums should be stored within a properly bunded compound capable of holding 110% of the contents of the largest tank. Delivery and outlet points should also be contained within the bunded compound. All valves and fillers should be padlocked when not in use. Waste oil from plant maintenance should be collected and disposed of safely.

Conditions can be attached to any consent granted for the proposed developments to meet the requirements of SEPA.

Any discharges of trade effluent to watercourses from the site will require the formal consent of SEPA.

The applicant has been advised of the comments of SEPA.

3.12 The Health and Safety Executive has no objections to raise regarding the proposals. The site operator will be subject to the Health and Safety at Work etc. Act 1974 and to the requirements of the Quarries Regulations 1999.

Noted.

3.13 East Ayrshire Council's Environmental Health Division states that the issue of noise was raised with the applicant's consultants last year as some baseline assessment work undertaken by the Division had indicated generally low background levels which suggested that adherence to normal PAN50 daytime limits of 55 dBA would be inappropriate. The Division was minded to recommend the 45 dBA one-hour limit specified in PAN 50 for exceptionally quiet rural areas, but ultimately considered that a limit of 50 dbA Leq, one hour, at any noise sensitive receptor would be an acceptable compromise. This Division would accordingly recommend incorporation of this standard as one of the conditions in any consent, if approved. It is understood that there will be no night time operation of the site.

A condition can be attached to any consent granted for the proposed development to meet the requirements of the Environmental Health Division. With the exception of essential maintenance works, no night time operations are proposed as part of this development. The applicant has indicated that it would accept a condition limiting noise levels to the suggested limit of 50 dBA Leq, one hour.

It is appreciated that a less stringent limit may be permissible for soil stripping, site preparatory works and erection of bunds, although it is understood that this limit will be applicable only in respect of specific works and for limited timescales and will be covered by specific conditions of approval.

Standard conditions can be applied to allow for variation to noise limits for certain operations on site as recommended in PAN 50.

The Division notes that some blasting is likely to be undertaken on this site although the proposals suggests that this will be limited to a number of cuts due to harder rock strata information in this area. Again blasting should be covered by specific agreement with the applicant or by relevant conditions to ensure that the blasts do not exceed the criteria of PAN 50 – Annex D. The report lists two sensitive receptors in close proximity to the site, namely the Glenmuir Bridge structure to the south of the site and the dwellinghouse at High Glenmuir to the east. The proximity of the latter is of some concern. The applicant states that a detailed physical survey of both the bridge and the dwellinghouse works is to be undertaken prior to the commencement of. This should be formally conditioned as part of any consent. It is suggested that it would be appropriate to recommend that monitoring of blasting activity be undertaken at High Glenmuir.

The undertaking of appropriate structural surveys of the abovementioned properties can be secured through an obligation in a Section 75 Agreement for the site should consent be granted. Appropriate monitoring of blasting operations at sensitive receptors can also be secured by means of such an agreement. A condition can be attached to any consent granted for the proposed development to ensure that blasting operations are not undertaken within 500 metres of any residential property.

The question of air quality impact on the locality from particulate matter arising from the opencasting operations is an issue that may affect a small number of rural properties in the locality. Of these, High Glenmuir will be the most vulnerable simply because of its location and proximity to the site. It is noted that it is proposed to establish a dust monitoring scheme with continuous monitoring being undertaken during the particularly high risk activities of soil stripping and overburden mound formation in this locality. This will be supported by the provision of additional dust suppression measures during this time. It is important that these measures are adhered to and rigorously checked, to minimise any dust nuisance impact on High Glenmuir.

Appropriate dust monitoring measures can be secured through an obligation in a Section 75 Agreement for the site should consent be granted.

The Division believes that the majority of properties in the vicinity of the development area are now serviced by public mains water, although High Glenmuir itself still maintains a private supply system. It is incumbent on the applicant to ensure that site workings do not materially disrupt either the quality or quantity of any such supplies.

Protection of existing water supplies or provision of alternative supplies can be secured through the imposition of an obligation in a Section 75 Agreement for the site should consent be granted.

All coal to be extracted will be transported along a haul road connection the Laigh Glenmuir site to the applicant's existing complex at Garleffan for processing and onward transportation, although the Glenmuir roads will be used for access by site workers and local deliveries. The haul road will be subject to similar criteria as the site operations with regard to noise limit conditions and dust control / supervision measures for the avoidance of nuisance. Obviously any properties within the proximity of the haul route will be affected by the impact of this road throughout the duration of coal extraction. Accordingly, due adherence to consent conditions will require to be constantly maintained during this overall period.

The overland haul route was approved as part of the consent for the Garleffan II opencast coal site and is essentially governed by the conditions and Section 75 Agreement for that site. Nonetheless, a Section 75 Agreement can be used to ensure that any requirements or obligations imposed on the Laigh Glenmuir site are extended in so far as is necessary to the construction and operation of the previously consented haul road.

3.14 The Royal Society for the Protection of Birds states it has some concerns that minimal survey work has preceded production of the ES and there is very little ornithological information on which to judge the impact of the proposal. In particular, RSPB raised concerns at the scoping stage because of the proximity to the Muirkirk and North Lowther Uplands SPA. However, given that the duration of the development will be for three years and is on improved farmland, RSPB believes it is unlikely that there will be any significant impact on the SPA.

Noted. This is a view also shared by Scottish Natural Heritage.

RSPB welcomes the commitment to best practice given by the applicant in the ES but has some concerns that the lack of survey effort has not demonstrated this commitment. RSPB urges the applicant to adopt a comprehensive and thorough approach to assessing and mitigating the environmental effects of the development and to restoration.

The applicant has advised that at all stages in the production of the ES, Scottish Natural Heritage was consulted and it was as a result of these consultations that agreement on the scale of the survey work required was made.

Given the proximity of the site to the SPA, restoration of the site will offer an opportunity to compliment and enhance the habitats bordering the SPA. RSPB believes that biodiversity enhancement should be the principle aim of the restoration. RSPB welcomes the commitment to habitat work outwith the application boundary. The restoration plan as presented is a useful starting point but should be developed in consultation with RSPB, SNH and other relevant parties and RSPB strongly recommends the establishment of a Technical Working Group to facilitate this.

The establishment of a Technical Working Group for the Laigh Glenmuir Development could be secured through an obligation in

a Section 75 Agreement for the site should consent be granted for the proposed development. The establishment of a TSG would be consistent with current policy and practice.

RSPB is concerned by the proposal to remove 5% of the Low Moss peat bog. This is a priority habitat in the UK Biodiversity Action Plan and the Ayrshire Local Biodiversity Plan. RSPB strongly suggests that the excavation boundary be altered to prevent dewatering of the bog.

The ES does not indicate that there is an expectation that of any significant risk of dewatering of the Low Moss bog, given that appropriate mitigation will be developed. The issue is also addressed by the imposition of the conditions / obligations required by SNH to satisfy its concerns regarding Low Moss. It should be further noted that the proposed development was reduced in size when principal environmental issues were identified during the scoping stage of the development.

RSPB further states that the ES concludes that no cumulative impact on ecology will arise from the development, as Garleffan will soon finish operating. However it should be noted that land management and mitigation measures agreed as conditions for this site have not yet been implemented. RSPB requests that progress be made with the mitigation measures at Garleffan this year. A positive contribution to combating the cumulative environmental effects of mining is being made by the East Ayrshire Coalfield Environment Initiative. RSPB urges the applicant to become involved with this partnership and support the project officer and the projects the initiative is implementing.

The applicant, who also operates the Garleffan site, is already addressing the issue of restoration on that site and, since receipt of the consultation response, has made progress in respect of addressing outstanding issues inherited from the previous operator of the site. The restoration will be progressed in conjunction with input from the Technical Working Group for the Garleffan site that will in all probability consist of the core stakeholders that could be involved in any TSG relative to the Laigh Glenmuir development.

The applicant has expressed its interest in becoming involved in the EA Coalfield Environment Initiative.

3.15 New Cumnock Community Council and Lugar and Logan Community Council have not responded to the consultation letter.

Noted.

3.16 Scottish Natural Heritage considers that the proposed development could have adverse impacts on important natural heritage interests, but these could be reduced to a satisfactory level through conditions and / or legal agreements. SNH objects to the proposed development unless it is made

subject to conditions and / or legal agreements that would overcome SNH concerns as follows:

(i) Prior to the commencement of operations, a full method statement regarding the construction of retaining wall to prevent the movement of Low Moss into the operational area should be provided and approved by East Ayrshire Council in consultation with SNH, detailing the following:

- Peat handling and storage methods.
- Construction methods and material for the wall/bund.

(ii) Prior to the commencement of operations, details on management of the site during operations to minimise the risk of damage to Low Moss through:

- The implementation of procedures to monitor, prevent and remedy any hydrological disruption of Low Moss before, during and after coal extraction operations.
- The establishment and implementation of emergency procedures in the event of bog burst and an assessment of likely impacts.

(iii) The establishment and implementation of a restoration programme detailing:

- The restoration of the area of peatland removed by opencast operations.
- The hydrological linking of the area of restored peatland with the undisturbed area of Low Moss.
- The restoration of the remainder of the opencast site.

(iv) The woodland adjacent to Laigh Glenmuir cottage should be surveyed for bats prior to felling. A licence will be required for the felling of trees if bats are present.

(v) Prior to the commencement of operations further information is required on the potential impact of the overburden mound on Dalfad Moss.

The applicant has been advised of the comments and requirements of SNH in respect of the issues raised and has accepted the principle of the conditions proposed. Conditions could be attached to any consent granted for the proposed development or by means of a Section 75 Agreement to meet the requirements of SNH.

SNH notes that the majority of the site is outwith the area designated for potential opencast coal extraction as identified in the East Ayrshire Opencast Coal Subject Plan (Policy MIN1 and MIN2). The proposed site consists mainly of improved pasture, with smaller areas of marshy grassland and lowland raised bog. The site lies on the edge of open moorland to the north and Glenmuir Water flows approximately 200 metres to the south of the site, less than 1 kilometre from the boundary of the Muirkirk and North Lowther Uplands Special Protection Area.

Noted.

The Landscape and Visual Impact Assessment has been carried out using appropriate methodology. The ES states that visual impact is limited to properties in the immediate vicinity of the project and to the public highways within Laigh Glenmuir valley. The visual impact of the project is limited by the constrained topography of the site and there are no significant cumulative visual impacts on the site and the restoration of the site should restore the area to its current condition of high landscape value. SNH concur with these findings.

Noted.

The site lies within 1 kilometre of the Muirkirk and North Lowther Uplands SPA which is designated for its moorland birds. These birds may occasionally use Low Moss both for occasional feeding and for foul weather roosts. Mine workings and habitat destruction may disturb bird interests in this area. These concerns were previously advised to the applicant and SNH does not consider these threats to be significant to the bird population on the SPA. SNH has advised that an appropriate assessment would not be required.

Noted.

As with all applications which are the subject of an objection from SNH, it is requested that SNH be advised at the earliest possible stage about any proposed modifications, conditions or agreements relative to its interests. If the Council is minded to grant planning consent without conditions, agreements or modifications that would overcome the stated concerns, SNH's position should be regarded as an objection.

As indicated above, it is considered that the concerns of SNH can be addressed by the imposition of appropriate conditions in any consent granted or by means of a Section 75 Agreement for the Laigh Glenmuir site. The applicant has indicated acceptance of the requirements of SNH.

3.17 The River Ayr District Salmon Fishery Board objects to the proposed development. The watercourse immediately adjacent to this proposed development, the Glenmuir Water, was part of a comprehensive survey by the Ayrshire Rivers Trust. It proved to be the last remaining fully productive section of the River Ayr system in providing salmonids with a successful spawning medium. Juvenile fish densities in the area directly south of the proposed development were the highest on the entire system and as such, should be considered as being worthy of special protection. The Board notes with concern that the developer has failed to recognise potential impact on salmonids in the adjacent watercourse and that the proposed mitigation measures are of a design that has a proven record of failure. As recently as January 2005, the identical mitigation measures in place at the Powharnal opencast site failed and caused an environmental disaster with SEPA now considering prosecution.

The applicant has responded to the consultation by indicating that the proposed extraction boundary of the Laigh Glenmuir development lies approximately 220 metres from the Glenmuir Water and does not lie immediately adjacent to it. The area to the south of the Laigh Glenmuir farm steading will be utilised for settlement lagoons and associated soils and clays. These are to be designed with the approval of SEPA.

During the Environmental Impact Assessment, areas where impacts may occur have been identified and mitigation measures are proposed. Fishery matters were carefully considered during the impact assessment process and a range of mitigation measures are proposed to prevent any adverse impact on the surrounding watercourses.

With regard to the pollution incident at the Powharnal opencast site, this was related to an overburden slippage. The applicant has stated that the circumstances related to this incident cannot be compared to mitigation measures proposed for the Laigh Glenmuir development where the risk of slippage of overburden movement and spillage into the Glenmuir Water is unlikely to occur. Notwithstanding this, the applicant employs dedicated personnel concerned with water management and is committed to continually improve its water management techniques ensuring that the Glenmuir Water continues to be an important salmonids habitat.

Without exception, all other opencast mining operations in Ayrshire have resulted in detrimental environmental impacts on adjacent watercourses. We now have vast sections of the system devoid of salmonids and invertebrates critical for juvenile survival. On each and every occasion we have been assured there would be no loss of habitat and no impact on the environment. This without fail has not been the case. It should be recognised as a matter of course that opencast operations cannot be conducted without discharging material in the form of sediment to the nearest watercourse and that such discharges are detrimental to aquatic life. In summary it is our opinion that the applicant has failed in the application process to conduct a full and proper assessment of the impacts the proposed operations will have and that the applicant has failed in the restoration proposals to recognise the adverse effects the proposal will have on the adjacent watercourse. It is the opinion of the Board that the failure to include such impacts is a deliberate attempt to mislead the Planning Authority and an admission that such impacts are an inevitable result of opencast operations. We would ask that the Council recognises and considers the value of this watercourse as a crucial piece of our natural heritage and an important recreational asset to the local community.

In addition to proposed mitigation measures, detailed method statements for the management of site activities to prevent surface or ground water pollution are to be outlined in the Pollution Prevention and Incident Plan that will require to be developed in consultation with SEPA. A monitoring plan will also

be agreed in consultation with SEPA that will include ground and surface water sampling and analysis.

It is considered that a Technical Working Group for the Garleffan site could be set up to monitor restoration and mitigation, and could assist in addressing the issues raised by the RASFB. The Board could also be invited to participate in this group. This can be achieved through obligations within a Section 75 Agreement. It has been the experience on other sites that involvement of the local salmon fishery board in such a TWG has been of considerable benefit in monitoring mitigation and restoration of opencast sites.

3.18 JMP Consulting (on behalf of the Scottish Executive Trunk Road Network Management Division) states that the proposed development represents an intensification in use of this site and may increase associated traffic movements on the local road network. However the percentage increase in traffic is such that the proposal is unlikely to cause an environmental impact on the trunk road network and as such no comments are offered.

With the anticipated cessation of coaling activities in the Garleffan site during 2006, it is unlikely that the proposed Laigh Glenmuir development will result in any significant intensification of traffic on the local road network.

4. REPRESENTATIONS

4.1 In addition to the representations received from the River Ayr Salmon Fishery Board, a further 11 letters of representation from 9 signatories have been received objecting to the proposed development. The main points of objection are summarised as follows:

4.2 Our objections are on safety grounds as our road is only a single track road and to have heavy goods vehicles crossing at a certain point on the road whilst a school taxi and other traffic use this road. We feel that this would put people's lives at risk.

The proposed crossing point is to be controlled by traffic signals configured to give priority to users of the public road. Subject to the detailed location of the crossing point being agreed and other road infrastructure requirements being implemented, the Roads and Transportation Division has not objected to the proposed development on road safety grounds.

4.3 I work as a nurse including night shifts. Sleep will be a problem with the noise. I already have a problem with Garleffan as the noise keeps me awake during the day.

The objector's property lies approximately 1.6 km from the Laigh Glenmuir development site and it is considered that given the

intervening topography, landscape features and proposed mitigation measures promoted within the ES, it is considered that the proposed development would not impact significantly on the objector's property in terms of noise nuisance.

4.4 During the Summer I cannot open windows in the house due to dust that drifts across. This will be doubled now if the site a Laigh Glenmuir goes ahead.

The objector's property lies approximately 1.6 km from the Laigh Glenmuir development site and it is considered that given the intervening topography, landscape features and proposed mitigation measures promoted within the ES, it is considered that the proposed development would not impact significantly on the objector's property in terms of dust nuisance.

4.5 This used to be a lovely glen to live in but now the landscape is an eyesore and the peace and quiet will be obliterated.

It is considered that the proposed development would have an adverse environmental impact on the landscape character, high visual amenity and recreational resource afforded by the Glenmuir Valley.

4.6 The ecological assessment, obviously prepared in a great hurry, is hopelessly inadequate. Detailed surveys are of poor value, conducted over a very limited period of two days. The surveys were conducted at a time of year which cannot assess the impact this development will have on other seasons. The surveys appear to have taken the form of a walk -about and have not been conducted on the scale, or use, the recommended systematic methodology.

A full and comprehensive scoping exercise was undertaken with involvement of all statutory consultees. Such consultees were also duly informed as to the results of baseline surveys throughout the process. The applicant rejects the accusation that that the ES has not been properly and correctly formulated.

4.7 It would appear that whoever conducted the assessment knows very little about birds. Reference is made to three pairs of snipe, however outside the breeding season snipe do not hang around in pairs so these six birds are just likely to be the other half of six breeding pairs. The recommended techniques for surveying black grouse were ignored but a conclusion was reached the black grouse were not recorded on this site.

4.8 An acknowledgement is made to the fact that the survey of bats was carried out at the wrong time of year. It is implied that further surveys may be carried out after planning permission is granted. No guarantees are given that this will in fact occur.

The applicant is committed to ensure that appropriate bat surveys are undertaken in line with current legislative requirements and in consultation with SNH.

4.9 An otter holt was identified approximately 500 metres upstream and whilst the problem of blasting is considered, the fact that otters have very extended territories put the feeding range, especially in the breeding season, well within the site boundaries of this development, is not considered.

It should be noted that SNH has not raised any concerns regarding impact on otters. Furthermore the proposed restoration of the site promotes new areas of habitat creation and wetlands that will provide additional habitat suitable for otters.

4.10 No attempt was made to determine the feeding potential of the area, during the breeding season, for species such as hen harrier, short-eared owl, curlew, lapwing etc, or as a pre-breeding gathering area for golden plover.

Consultations carried out with SNH and RSPB did not identify any birds or populations of birds of conservation significance on the site. The applicant has indicated that the initial scoping with SNH did not reveal any birds of interest and it was not felt appropriate to conduct further bird surveys as some 85% of the Laigh Glenmuir development site is improved pasture land.

4.11 As with bats, the full floral extent of the blanket bog requires further investigation, but to conduct this after the planning application has been presented is not a satisfactory procedure.

Appropriate established techniques were used in the floral survey carried out for the EIA, these having been agreed with SNH. The information in the Environmental Statement describes the full floral extent of the blanket bog, heathland and marshy grassland communities which are a part of Low Moss and does not require further investigation.

4.12 The imperfect investigations have produced conclusions very sympathetic to the development. All in all this is a very hurriedly produced, poor quality assessment. The ecological investigation forms an important part of the environmental assessment required for planning permission, one must question the arrogance displayed in submitting this as part of the planning application.

The applicant has indicated that the conclusions are based on consultation, historical data, recent surveys and survey findings. The assessment draws on consultation responses, current legislation, filed data and professional judgement to evaluate the different ecological elements.

4.13 Laigh Cottage, formerly a school, is to be demolished. This building and the setting of the site should not be included in the plans unless it is to be used by the applicant for offices, or if not then it should be resold as a

dwellinghouse. I know the applicant has already acquired the property and this factor makes me wonder why, since they have not yet obtained planning permission to start coal extraction. NPPG4 states that the effect of mineral workings on features of the built heritage should be minimised and wherever possible avoided. This building is a vital part of our local heritage as it connects us with our farming community's past. It is important that the few remaining rural schools are kept for future generations in order to retain part of the county's identity.

Laigh Cottage is to be demolished as the property lies within the proposed coal extraction area. While the comments of the objector are appreciated in respect of the local history of the property, it is not the subject of any statutory listing or other statutory or non-statutory designations. Prior to the acquisition of the property by the applicant, it has been the subject of systematic vandalism.

With regard to the acquisition of the property by the applicant, it is normal practice by mineral operators to acquire property rights prior to the submission of a planning application for mineral development.

4.14 The main concern to the Cumnock and District Angling Association is the detrimental effect that an opencast mine will have on the water quality of the River Lugar. This area is the main spawning ground for salmon, trout and sea trout in the River Lugar system. The association has spent considerable time and money over the years to strip and bring on salmonids in our hatchery. The recent incident at Powharnal has highlighted the risk associated with this type of development. This incident coloured the water from the Bellow Burn to the tidal stretches of the River Ayr. The River Ayr Trust intends to survey the river to ascertain the extent of pollution to the river. If this opencast development goes ahead, it will have a massive detrimental impact on the fishing the Association has on the River Lugar.

It is considered that with the mitigation measures proposed in the ES and with the management and monitoring systems that will be require to be agreed with SEPA, it is considered that the proposed development should not result in any significant adverse impact on the water resources in the locality of the site.

4.15 Less than 20% of the site is in a potential coal extraction area.

Only 8.5% of the Laigh Glenmuir development lies within a Potential Coal Extraction Area. The policy position in respect of the Laigh Glenmuir proposal is assessed in full in section 5 of this report.

4.16 The entire Glenmuir Valley is of high visual amenity, although part of the site is outwith this area. The excavation area is within the high visual amenity boundary. The site is visible from the Glenmuir Water Road from just east of Boyston Farm, a distance of 2 kilometres. It is also visible from the Low Moss Road.

It is accepted that the Glenmuir Valley is an area of high visual amenity and that the proposed development will have an adverse environmental impact in visual amenity, landscape character and recreational terms.

4.17 The opencast encroaches on Low Moss, an SNH site of peat and heath land.

Subject to appropriate conditions and agreements being imposed on the developer to ensure appropriate safeguards are put in place to conserve peat and protect the hydrological integrity of Low Moss, SNH does not object to the proposed development.

4.18 There are 4 sites (excluding Laigh Glenmuir) within a 5 km radius and 2 (excluding Laigh Glenmuir) within a 3 km radius.

Noted. It is recognised however that the Gasswater site is currently under restoration.

4.19 There is a dwelling within 500 metres of the proposed site. There are two further dwellings within 500 metres and although empty, should still be protected.

One dwelling, at High Glenmuir, lies within 500 metres of the working face of the proposed Laigh Glenmuir development. However, it is understood that the applicant has reached an agreement with the owner of that property in order to offset any adverse impacts associated with the development. Laigh Glenmuir Cottage is now in the ownership of the applicant and Glenmuir Cottage is derelict.

4.20 Glenmuir Bridge is a listed B structure and lies only 300 km from the site.

Noted. The applicant has indicated the intention to conduct a structural survey of the bridge prior to the commencement of any operations on site. No concerns regarding the structural integrity of the bridge have been raised by the Roads and Transportation Division.

4.21 The watercourse running through the site will change drastically and become a larger catchment area for water / marsh.

Both SNH and RSPB are content with the restoration proposals for the site that would allow the creation of enhanced and diverse habitats.

4.22 Local folk, mainly children and the elderly cycle and walk the round trip from Logan, along Glenmuir Water Road, across Glenmuir Bridge to Laigh Glenmuir Cottage, along Low Moss Road to the A70 through Lugar and back

to Logan. The west perimeter is right along Low Moss Road and could pose a danger to the public.

Subject to appropriate conditions requiring road infrastructure improvements and stand-off distances, the Roads and Transportation Division does not offer any objections to the development in road safety terms.

4.23 During the summer, children swim in the Glenmuir Water. Run-off from the opencast will pose a danger to them.

It is considered that with the mitigation measures proposed in the ES and with the management and monitoring systems that will be require to be agreed with SEPA, it is considered that the proposed development should not result in any significant adverse impact on the water resources in the locality of the site.

4.24 Planning permission for the proposed haul route through to Garleffan is no longer active.

The planning consent relative to the Garleffan II development that includes the proposal for the northern haul route is still extant.

4.25 Overall this is another site on the fringes of a Special Protection Area and less than 3 km from a Site of Special Scientific Interest, the Muirkirk and North Lowther Uplands.

SNH has indicated that the proposed Laigh Glenmuir development is unlikely to have any adverse impact on the SPA.

4.26 Since early opencast operations, jobs were an important factor. Now it is accepted that new sites or extensions are to accommodate the continuity of employment and not to create new jobs.

Noted. However in socio-economic terms, the sustaining of existing jobs is considered to be as equally important as the creation of new jobs.

4.27 We cannot be guaranteed proper restoration and aftercare at this site. Not that I am questioning the applicant's proposal, but East Ayrshire Council's failure to enforce planning conditions. I say this because of the lack of proper restoration and aftercare at exhausted sites throughout Cumnock and Doon Valley.

The Council as Planning Authority is committed to the monitoring and enforcement of mineral planning consents. In this regard the Council has recently agreed to commit further resources to this particular task.

4.28 This site is not within Areas identified for Open-Casting in EAC's Adopted Opencast Subject Plan. The application site is outwith areas identified as 'Preferred Areas' in the Approved Ayrshire Structure Plan. This

application is therefore contrary to AJSP Policy E14A. As it is not a proposal which could be described as small-scale being a site of under 25h total size, it is contrary to E14B. 25h does NOT refer to merely to extractable area (ATH recognised this, when they accepted the requirement for EIA).

Assessment against the policies of the development plan is given in section 5 of this report. Notwithstanding this, it is considered that the site is within the broad Preferred Area of Search indicated in the Structure Plan Key Diagram. In the East Ayrshire Opencast Coal Subject Plan (EAOCSP), the site falls partly within a Potential Coal Extraction Area.

4.29 In addition, there cannot be an environmental benefit, when the applicant wishes to implement the haul road and generally scar the landscape in the Glenmuir Valley which is known for its unspoilt scenic and ecological value, one of the few left thus in Cumnock and Doon Valley area.

The proposed construction of the previously approved internal haul road between Garleffan OCCS and the proposed Laigh Glenmuir development will allow the off-road transport of coal to the Garleffan complex and then on transport via rail. This is a significant environmental benefit of the scheme when compared against alternative coal supplies and complies with MIN18 of the EAOCSP and in sympathy with T4 of the AJSP. Furthermore, the consented haul road will be temporary in nature. Once mining at Laigh Glenmuir has been completed, the haul road will be removed and the area restored.

4.30. The proposal is contrary to AJSP Policy E13, apart from not conforming with E14. The applicant has alternative supplies, if not at Garleffan, then at Skares OCCS, where they acknowledge they have consent until 2009.

In terms of the AJSP, it is considered that the Laigh Glenmuir proposal is not contrary to E14, and fully complies with E13. The EIA concludes that any visual impact will be tightly confined and short term in nature. The applicant has indicated that coaling on the Garleffan II site is due to cease during Spring 2006 and that coaling in the Skares Road site will cease during 2007. The Laigh Glenmuir development seeks to provide continuity in supplying coal to the applicant's customers as well as providing

4.31 There will be severe visual impact on surrounding areas. Excavation on a valley side, where stream diversion is required poses a pollution risk to Glenmuir Water and to the rivers it joins. The only benefit will be to the developer who has derived much financial benefit from unsustainable activities, with little sign of environmental enhancement, creation of habitats etc.

The risks to the Laigh Glenmuir Water have been identified and mitigation measures developed. These include the adoption of best practice in terms of lagoon design, flow balancing provision, the provision of properly designed cut off and intercept ditches

and the development of a Pollution Prevention Plan. SEPA has not objected to this proposal and on this matter.

The potential benefits attributable to the Laigh Glenmuir proposal can be summarised as follows:

- **direct jobs allowing the continuation of employment for the entire Garleffan workforce as well as the creation of additional jobs. Coaling at Laigh Glenmuir will not commence until the Garleffan operations cease.**
- **indirect jobs through the use of contractors and specialist services.**
- **induced jobs through the influence of the wages available to the local economy and of the capital and revenue investment required with such a proposal.**
- **environmental benefits through the ability to use the internal haul road and the Crowbandsgate rail terminal, ensuring coal transport on public roads is minimised. Through the restoration proposals for the site, it is anticipated that improved habitat and biodiversity as well as other landscape improvements can be achieved.**
- **economic benefits through the ability to utilise 500,000 tonnes of high quality indigenous coal will offset against coal imports.**
- **local community benefits will continue through increased contributions to the Minerals Trust Fund.**

4.32 The cumulative impact of Garleffan I, then Garleffan II, extending almost to Gasswater, and thus Powharnal, is unacceptable.

Cumulative impact has been addressed comprehensively within the EIA, which concludes that no significant cumulative impacts will result due to the Laigh Glenmuir development. It should be noted that the Gasswater site is currently under restoration and progressive restoration on the Garleffan I and II complex is currently being undertaken on site.

4.33 The development/extraction period is given as 2.5 years and therefore even if the site was smaller, the 2 year limit in E14 is exceeded. However from the alteration of site boundaries between scoping and lodgement and from the land holdings/options the applicant has in the area, it is clear that this site will be extended further, if/when required. Why have the applicants not indicated their other potential interests in the area? We are aware that drilling has been undertaken in the vicinity.

The applicant has indicated that there is no intention to reconsider the enlargement of Laigh Glenmuir on the lines previously considered. The site boundary was changed and the scale of the operation reduced as a result of consultation with the Planning Division, RSPB and SNH and as a consequence of concerns over the environment. In light of this, the applicant has no other interests within the immediate vicinity of the Laigh

Glenmuir proposal. Although additional drilling has been undertaken in the Laigh Glenmuir area, this has not been undertaken by the current applicant and it is understood that the drilling undertaken close to Darmalloch Farm found no economic coal deposits.

4.34. In addition to specific Mineral Policies in the AJSP, we submit that this application is contrary to ADS5, ADS7, W6, and E1. The Glenmuir is part of the Sensitive Landscape Character Area, shown in the AJSP. In previous Local Plans, the Council recognised the Glen's Special qualities and presumed against such damaging development. Table NTS 5 in the EA indicates that the site is within an area identified by EAC as having 'High Visual Amenity'. What has changed which would allow open-casting? What has changed, to presume against open-casting here is that a Subject Plan was produced, to provide direction to developers and certainty to residents, that with the SAC being designated nearby with local habitats being enhanced in order to compensate for open-casting at Powharnal

It is considered that the Laigh Glenmuir proposal is generally in compliance with the Ayrshire Joint Subject Plan. The scheme is not at odds with ADS5 or ADS7 and is in sympathy with W6 and is not contrary to E1. A detailed assessment of potential effects on the Muirkirk and North Lowther Uplands SPA has been carried out; however, no potential environmental effects were identified. Both SNH and the RSPB concur with these findings.

4.35. If the Glenmuir was regarded as being too sensitive for forestry, then it must be too sensitive for open-casting.

Bearing in mind that the proposed Laigh Glenmuir project in terms of timescale is three years, this would have a lesser impact than that of a longer terms forestry proposal.

4.36. This development is contrary to AJSP Policy E6 as it will affect the balance of bio-diversity by such a damaging development in the heart of this valley and as it will require implementation of a previous consent for a haul road, cutting right across the valley. This will add to the detrimental effect on bio-diversity and scar/mar the landscape.

The Environmental Statement demonstrates that land at Laigh Glenmuir is of low ecological value. This conclusion is shared by SNH and the RSPB. The development does have regard for the principal of biodiversity and therefore is considered to be in compliance with policy E6 of the AJSP. Increased biodiversity will result from the proposed restoration scheme, this being especially welcomed by RSPB and SNH. The construction of the haul road will be a short term measure and facilitates the use of existing Garleffan infrastructure and the rail network.

4.37 In terms of the policies in the adopted EAC Opencast Coal Subject Plan, it is self-evident that this development would contravene Policies MIN 1, MIN 2, MIN 3 (this is not an extension to Garleffan I and II even though there

may be a link by way of a haul road - it is shown as a separate site) and MIN4 (as it cannot be termed small or short-term, when opening up a void and extraction would extend beyond 2 years).

Assessment of the proposed development against the principal policies of the East Ayrshire Opencast Coal Subject Plan is presented in Section 5 of the report.

4.38 MIN 6: We have not seen any indication of future extensions; nor the applicant's interest in or knowledge of reserves in surrounding land, other than the blue line site.

The applicant has indicated that there are no plans for extensions to the proposed Laigh Glenmuir development and is not aware of the presence of economic deposits of coal between Laigh Glenmuir and the existing site.

4.39 MIN 12: Cumulative Impact: Fig NTS 6 in the ES indicates quite clearly that development of this site would bring the number of sites within 3km of one another or within 3km of the communities of Logan and Lugar to 3. Gasswater has to be termed an operative site as it is still live, servicing Powharnal: the latter being deemed an extension to Gasswater as it used services there. Garleffan I is not mentioned in Table 13.1, but its start-date and the proposed finish date for this site, would exacerbate adverse effects on communities for over 10 years.

It is accepted that the Laigh Glenmuir development will result in a third operative site within a 3 km radius of a very extended settlement boundary of Lugar and Logan as identified in the East Ayrshire Local Plan. Nonetheless this should be taken in the context of the ongoing restoration at Gasswater and the cessation of coaling in the Garleffan site in Spring 2006. It is not considered that the existing Garleffan site has any direct impact on the communities of Lugar or Logan nor would the proposed Laigh Glenmuir development. Operations commenced on Garleffan I during 1999 and operations are expected to be completed in the Garleffan I and II complex by 2008/2009. Should operations commence on the Laigh Glenmuir development in 2006, the site would be completed within a 10 year timescale from the commencement of Garleffan I operations.

4.40 MIN 15: As this site would have links to coal/treatment/grading and storage yards etc at Garleffan, by way of a haul road leading to Crowbandsgate Railhead, any consent would delay restoration further at Garleffan. Indeed MEGA asks the Council to require the applicant to demonstrate that they have restored Garleffan I and II to required standards, before they are permitted further environmental damage.

The proposed Laigh Glenmuir development will have no significant impact on the timescale for restoration of the Garleffan

I and II sites. Progressive restoration of the Garleffan complex is ongoing.

4.41 The Glenmuir Valley is well used by walkers and naturalists. This development will compromise and most adversely affect their enjoyment of the valley and the two adjacent listed Provisional Wildlife Sites. Coal traffic may be on a private road, but workers' cars will probably double the existing traffic volumes during the working week.

The Laigh Glenmuir proposal does not affect rights of way or open access land. As such walkers and naturalists will still be able to enjoy the Glenmuir Valley. Post-restoration, naturalists will benefit from an area of the Glenmuir Valley with increased ecological value. The ES together with the commitment to mitigate against bog burst at Low Moss demonstrate that the development will not compromise the two listed provisional wildlife sites.

The ES evaluates the potential effects of workers cars on local roads. The effect has been evaluated as insignificant. Furthermore, workers will be on-site by 7.00am and will leave after 7.00pm. Subject to appropriate road infrastructure improvements, the Roads and Transportation Division has no objections to the proposed development on road safety grounds.

4.42 MIN 17: Restoration: We are sceptical of proposals to restore and establish moorland and peat habitats in 5 years. That is impossible. Perhaps the applicant would like to demonstrate where they have themselves managed to do this successfully?! Part of Low Moss peat habitat would disappear: we understood that such habitats were protected. In addition, locally there are still restrictions on livestock movement due to radiation still present in peat/soils after the Chernobyl 'accident'. Our members do not believe it is prudent to interfere with any soils which still may contain any such contamination. If approved, then a specific condition must be imposed, to prevent importation of materials: - sewerage sludge in particular!

Restoration proposals have been developed in conjunction with independent experts. As with the applicant's existing sites at Garleffan and Grievehill, restoration proposals and techniques are to be developed in conjunction with ecological consultants, the Planning Authority, SNH and the RSPB within a technical support group forum that can be secured by means of a Section 75 Agreement.

Only a small section of Low Moss will be temporarily lost during the life of the development. With regard to Chernobyl the EIA undertaken by independent experts has not identified any such risk. The applicant has indicated that there is no intention of importing sewerage sludge at Laigh Glenmuir. Any such activities would require further authorisation by the Planning Authority and SEPA.

4.43 MIN 19: the haulage of extracted materials to the point of dispatch is not through an internal haul road, as the proposed haul road, goes through land which is not part of an open-cast site. The applicants state that a full Transport Assessment is not necessary, as coal haulage traffic will utilise existing non-public transport infrastructure to transport the coal. That is not the case, as the haul road from Garleffan 1 and 2 to Crowbandsgate uses part of the Trunk Road A76, north of New Cumnock. Applicants also mention distribution by road, i.e. the A76.

References made to internal haul road concerns the previously consented haul route between Laigh Glenmuir and Garleffan which when constructed would not involve coal traffic on “external” public roads, so is therefore considered to be transported ‘internally’. Any coal haulage from Laigh Glenmuir will occur after coaling at Garleffan has ceased. Therefore no increase in the current volume of coal haulage will result from the proposed development. Coal from Garleffan, Grievehill and potentially Laigh Glenmuir is transported from Crowbandsgate by rail, thereby being in full compliance with MIN 18. The scope of the traffic assessment was agreed prior to its completion with the Roads and Transportation Division.

4.44 MIN 22: We see no evidence of mitigation, other than what would be required in any case to try to reduce impact through bunding etc and the usual financial bribe. The effect on nearby properties would be profound. With one, the company has simply bought the property: Another has been unexpectedly vandalised and torched: Others will be rendered unsaleable. There will be more depopulation in Upland Ayrshire, if open-casting is allowed to encroach. There will also be an effect on the tourist potential of such unspoilt, attractive landscapes.

Reducing impact through bunding is a method of mitigation, to be potentially used within the proposed Laigh Glenmuir operations. The Laigh Glenmuir ES contains appropriate mitigation measures relating to all environmental aspects of the proposed development. These are wide ranging and are inherent within the design and proposed operation of the development. Mitigation is also included within systems and management procedures which will be utilised on site. The applicant has indicated that any properties purchased have clearly been done so with full agreement and benefiting former owners The applicant has further stated that any inference that it is connected to this vandalism is offensive and belies the continued commitment it has to the local communities of East Ayrshire through employment, minerals trust fund activities, and other community involvement.

4.45 MIN 23: As we are not privy to the applicant’s future plans in the area, we can only assume that there will be further extensions to this site, as there is coal between it and their existing sites. (iii) Their operations will therefore continue to have unacceptable effects on local communities.

The applicant has indicated that there are no plans for extensions to the proposed Laigh Glenmuir development and is not aware of the presence of economic deposits of coal between Laigh Glenmuir and the existing site.

4.46 MIN 24: Sensitive establishments: Listed Bridges may not be thus described, but they are sensitive structures. Service traffic will not use a haul road crossing difficult terrain through operational sites at Garleffan. Will heavy plant be brought by way of these haul roads? We think not. Is the Bridge over Glenmuir Water adjacent to the application site, capable of taking heavy loads? There may be others between the main public road access down to the A70 which also have questionable structural capability.

Other than light vehicles, all service traffic is to enter the site via the internal haul road. The few abnormal load movements required will access Laigh Glenmuir via Garleffan or via a suitable route to be approved by the Police and in conjunction with specialist contractors.

4.47 MIN 26: We believe open-casting here will have an adverse impact on important areas of Nature conservation, local, national and international.

This view is not reflected within the ES nor is it shared by SNH or RSPB.

4.48 MIN 27: We find it arrogant that an English developer should dismiss sites of cultural importance as negligible and make scant reference to a possible earlier settlement.

The applicant is a British company, with British shareholders that employs 200 people in Scotland with a small head office team of approximately 12 in Yorkshire. The argument that an 'English' developer has no regard for 'Scottish' heritage is stated by the applicant to be offensive. The mitigation measures contained within the Laigh Glenmuir ES fully comply with MIN 24 and specifically NPPG4 with regard to cultural heritage.

4.49 MIN 28: If 500,000 tonnes of coal is removed on a sloping site, then it will be impossible to recreate existing skylines, landforms and contours, nor will it be possible to reduce visual and physical impact.

The Laigh Glenmuir proposal is fully compliant with MIN 28. Compensation for the loss of coal in terms of volume will be provided through natural bulkage. The restoration proposals are in line with the Ayrshire Landscape Assessment.

4.50 MIN 29: Given the high landscape status of the valley, open-casting, blasting and a new haul road will have an unacceptable impact on tourism, and the existing use of the valley by local walkers and bird watchers. This policy specifically mentions the Glenmuir Valley.

The Glenmuir Valley is widely used for recreational purposes and is important to the local communities in this area for various recreational pursuits. The greater part of the Laigh Glenmuir development site fall within an area that would conflict with locations of high visual amenity or recreational potential. It is due to this particular conflict that known coal reserves in this area were excluded from being designated as a Potential Coal Extraction Area as it was considered that the valley is relatively self-contained and unspoilt and that opencast development would be highly intrusive and visually damaging in both environmental and recreational terms. The part of the Laigh Glenmuir development that does fall within a PCEA represents the boundary of this area of conflict. It is considered that the Laigh Glenmuir development, while relatively short term in nature, will still have a significant impact on the Glenmuir Valley area to the detriment of the enjoyment of the area by local community users.

4.51 MIN 31: We have already referred to risk of pollution, both directly into the tributaries of the Glenmuir Water; -and the Bellow Water and thus into the Lugar Water and finally into the River Ayr, an important salmon river. We ask you to consult the River Ayr Fishery Board: there will be salmonids in the Glenmuir Water, if not in adjoining streams. They are averse to both pollution & sedimentation: The latter will occur as the stream will require re-profiling after excavation: Erosion will therefore occur. It would be useful for the Council to ascertain whether the operator has a clean bill of health when it comes to river pollution, and to advise elected members accordingly.

SEPA, SNH, the River Ayr District Salmon Fishery Board, Ayrshire Rivers Trust and the Council were consulted during the impact assessment process. No surface flooding is predicted. Detailed method statements for management of site activities to prevent surface or ground water pollution will be outlined in the Pollution Prevention and Incident Plan (PPIP). The PPIP will be developed and implemented in consultation with SEPA, and will be used throughout site preparation, excavations and restoration.

4.52 MIN 37: If the applicant operates Liaison Committee already for Garleffan I and II, then there is little/no publicity about these, so that local people can raise concerns with committee members. If this site is developed, then there should be a separate liaison committee with local members drawn from this valley and from Lugar and Logan communities.

The applicant agrees to and is supportive of the formation of a Liaison Committee for Laigh Glenmuir.

4.53 MIN 38, MIN 39 and MIN 40 require monitoring, progress reports and environmental audits. If the requirement for regular monitoring information on their other 3 sites, is not already being supplied to the Council, by the applicant then it is unlikely that they will comply with these policies. Such 'planning history' is we believe pertinent and material to the current application.

The applicant will fully comply with the requirements of MIN 38, MIN 39 and MIN 40 in respect of the Laigh Glenmuir site.

4.54 With storage mounds on the south east side of the access road to High Glenmuir, means that both properties are totally compromised (Laigh Glenmuir Cottage already being 'doomed'). Plant crossing this farm road, so close to High Glenmuir will render continued habitation there unacceptable, if not unviable: probably the scenario the applicant wishes for.

The Environmental Statement with the mitigation measures proposed demonstrates that the Laigh Glenmuir development can operate to environmentally acceptable standards. It is understood that the applicant has concluded an appropriate agreement with the owners of High Glenmuir in terms of the potential impacts on this property.

4.55 The Environmental Statement is poor, full of generalised methodology and with little evidence of specific application to this locality.

The applicant, in conjunction with independent environmental experts, has produced a low-impact site design. This design has been the subject of a full ES which was produced in compliance with current best practice, national guidance and planning regulations. A full and comprehensive scoping exercise was undertaken with involvement of all statutory consultees. Such consultees were also duly informed as to the results of baseline surveys throughout the process. The applicant rejects the accusation that that the ES has not been properly and correctly formulated.

4.56 In terms of meteorological data we disagree with the Met. Office that figures from Salsburgh in West Lothian could be applicable to this application site. The Laigh Glenmuir site being within a valley has quite a different micro-climate. Weather statistics used to be collected at Cumnock and we understand Scottish Coal also collect statistics at Spireslack and House of Water. A cross check with these should confirm the adequacy/ applicability, or otherwise, of the statistics used.

The applicant has stated that the Meteorological Office advised that the Salsburgh Meteorological Station would be more representative of the site than Prestwick Airport. As such this has been used as base data.

4.57 We strongly disagree with the assertion that there is unlikely to be a dust deposition impact beyond a mere 400 metres from a site boundary, particularly in a valley situation where there is wind eddying. There seems to be no assessment of the effect of dust on areas of ecological value or agricultural resources. When there is an SPA nearby, three wildlife sites and spawning beds of some importance and where blasting will be required, the onus is on the developer to undertake thorough environmental impact assessment, derived from correct basal information.

Dust deposition from the proposed development may have some adverse effects on the adjacent listed provisional wildlife sites, Glenmuir Valley to the south and Low Moss along the north-western site boundary. These are likely to be minor in nature, relatively short in duration and reversible. Dust deposition impacts are unlikely to extend beyond 400m from the site boundary. It is highly unlikely that dust deposition from the proposed operations will have any impact on the Muirkirk and North Lowther Uplands SPA, approximately 1km to the east of the site due to the intervening distance and topography. SNH has also indicated that the proposed development is unlikely to have any significant impact on the SPA. Furthermore, the site layout, together with the implementation of appropriate dust mitigation measures should ensure that potential dust nuisance is minimised to within acceptable environmental standards.

4.58 We are at a loss to know why the application for a site within 1 km of an SPA was even accepted by the Council when there was no proper habitat survey. A walkover in October / November when much wildlife is absent or hibernating, when most seasonal birds disappear, is grossly inadequate.

The ES indicates that the majority of the habitats on site are of little ecological significance consisting mainly of improved grassland. A small area of blanket bog and marginal marshy grassland (approximately 5% of the total area) which are linked to Low Moss Provisional Wildlife Site are likely to be affected. Field surveys were conducted for signs of protected species. No water voles, otters or badgers or other protected mammals were recorded on the site. No specially protected birds were observed during the site walkover.

Overall this study concludes there are minor ecological impacts on the site as a result of the proposed development. Minor impacts will arise on the provisional wildlife site of Low Moss. A small area of approximately 5% of the site will be lost in the short term. However, mitigation measures are in place to minimise this damage and a restoration plan will reinstate the peatland soils and vegetation to encourage future regeneration of mire habitats. The consultation with SNH has confirmed that it is satisfied that the proposed development is unlikely to have a significant impact on the Muirkirk and North Lowther Uplands SPA. Following restoration the long term, permanent cumulative impact will be beneficial as the restoration proposal aims to increase and enhance habitats, encourage wildlife and increase the nature conservation value of the area.

4.59 We have reservations about the wisdom of converting settlement lagoons into pretend river meanders, hoping to attract birds and aquatic life when there will be bottom sediments containing polluted materials, heavy metals etc. If the Glenmuir Valley has been deemed unsuitable in planning / visual terms for forestry then two large areas of proposed woodland are excessive. We suspect that they have been proposed so that they camouflage poor restoration behind.

Both SNH and RSPB are supportive of the Laigh Glenmuir restoration proposals. Settlement lagoons will be managed appropriately and in accordance with operating procedures and regulations to be approved by SEPA.

4.60 Where will periodic de-sludging material from the lagoons be disposed of? Where does the existing discharge system from Laigh Glenmuir buildings exit to?

The de-silting of the settlement lagoons is an accepted practice undertaken to ensure the efficiency of the water treatment areas. Generally the normal practice is to dispose of the fines within the working void of the opencast operations.

In terms of the use of Laigh Glenmuir Farm as site offices, sewage and waste water is to be dealt with to the satisfaction of SEPA.

4.61 There would be potential impact on the Glenmuir Bridge.

In terms of safeguarding the structural integrity of Glenmuir Bridge, a full structural survey would be undertaken prior to any works commencing on site. The Roads and Transportation Division has not raised any concerns regarding potential impact on this listed structure either in terms of increased usage or in terms of vibration impacts.

4.62 The applicant has failed to take into account the fact that I have full planning permission for the erection of a dwellinghouse at Little Darmalloch. I intend to have this dwelling in place.

Full planning permission was granted on appeal for the erection of a dwellinghouse at Little Darmalloch, but to date no works have yet commenced on the construction of this dwelling. Notwithstanding this the applicant has submitted information regarding the potential impact of the proposed development on this potential property.

4.63 The Council require to take cognisance of Policy MIN25 in relation to my property in terms of the required buffer zones relative to noise, vibration blasting and dust, which is a serious issue for me having elected to live in a rural area due to recommendations by health specialists.

The assessment of impacts on this proposed property indicates that the proposed Laigh Glenmuir development can be undertaken without significant adverse impacts and to acceptable environmental standards. However, an issue arises from the fact that the proposed dwellinghouse would lie within 500 metres of the working face of the opencast operation and in an area of likely blasting operations. It is considered if the dwelling is constructed and occupied during the proposed life of the Laigh Glenmuir development, this could present conflict with Policy MIN25 as the proposed dwellinghouse would lie some 360 metres from the limit

of excavation and within 500 metres of potential blasting operations. A condition could be attached to any consent granted for the development to restrict blasting operations within the 500 metres buffer zone unless the applicant reaches an appropriate legal agreement with the owner of this potential property if the proposed dwellinghouse is constructed, completed and occupied during the life of the Laigh Glenmuir site.

4.64 The presence of the haul road needs to be questioned. This means that locals and visitors will have to view lorries rolling past for 12 hours per day. At the close of the mine will lorries continue to move along it every day for future workings? The restoration plans show no road. This contradicts advice I was given that the road would be adopted as a local road.

Planning permission for this haul road was granted under planning consent for the Garleffan II development and the impact from the construction and use of this overland haul route have previously been assessed. This route would be restored on completion of the proposed Laigh Glenmuir development and there is no proposal to retain this route as an adopted public highway.

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 Ayrshire Joint Structure Plan indicates in its Key Diagram that the Laigh Glenmuir development site lies within a Preferred Area of Search which generally 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 development at Laigh Glenmuir would be in accordance with the provisions of Policy E14 of the joint structure plan as it lies 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.

The proposed development has been the subject of a comprehensive Environmental Impact Assessment. The Environmental Statement suggests a series of mitigation measures which would minimise any temporary, adverse impacts 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.

The Laigh Glenmuir site is relatively remote and with the mitigation measures promoted within the Environmental Statement, it is considered that there would not be any significant adverse impacts through noise, dust or water pollution.

- (iii) any adverse effect on communities within Ayrshire.

The Laigh Glenmuir site, being within a Preferred Area of Search, is acknowledged as being isolated from most local communities and it is considered that there will be no significant direct impact on communities resulting from the proposed opencast operations. With the use of the existing railhead at Crowbandsgate and the formation of the previously consented haul road, local communities will not be adversely affected by road transportation of coal from the site.

- (iv) opportunity to maximise transport by rail or sea.

Comments as above.

- (v) extent of directly related community benefit derived such as enhancement and creation of landscapes and habitats, and removal of dereliction.

Through the restoration of the Laigh Glenmuir development site, the applicant states that a more comprehensive and effective approach to landscape enhancement and habitat creation can be achieved.

- (vi) cumulative impact of proposals in one area and the extraction period.

It is accepted that the Laigh Glenmuir development will result in a third operative site within a 3 km radius of a very extended settlement boundary of Lugar and Logan as identified in the East Ayrshire Local Plan. Nonetheless this should be taken in the

context of the ongoing restoration at Gasswater and the cessation of coaling in the Garleffan site in Spring 2006. It is not considered that the existing Garleffan site has any direct impact on the communities of Lugar or Logan nor would the proposed Laigh Glenmuir development. Operations commenced on Garleffan I during 1999 and operations are expected to be completed in the Garleffan I and II complex by 2008/2009. Should operations commence on the Laigh Glenmuir development in 2006, the site would be completed within a 10 year timescale from the commencement of Garleffan I operations.

It is considered that the proposed Laigh Glenmuir development generally accords with the policy provisions of the approved Ayrshire Joint Structure Plan.

East Ayrshire Opencast Coal Subject Plan

5.4 The proposed development requires to be assessed against the policy provisions of the EAOCSPP. It should be noted that some of the undernoted policies have been summarised.

(i) Policy MIN1: All future opencast coal developments will be directed towards and limited to the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

Part of the Laigh Glenmuir development site (approximately 8.5%) lies within an identified Potential Coal Extraction Area and subject to compliance with all other appropriate subject plan policies, extraction within this area is in accordance with the EAOCSPP. The greater part of the site lies outwith the Potential Coal Extraction Areas. In this regard, the proposals for the greater part of the development site would require then to be assessed against Policies MIN2 and MIN3.

(ii) Policy MIN2: The Council will not generally be supportive of any new opencast coal developments outwith the Potential Coal Extraction Areas with the exception of small scale, short term extraction proposals which meet the following criteria:

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

The proposed development will not result in the removal of any existing areas of dereliction.

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

The proposed Laigh Glenmuir development will allow the continuity of employment for 29 people as coaling operations on

the applicant's Garleffan site are due to cease in Spring 2006. This is considered to be of significant benefit to local employment.

(c) there are no conflicts with any other Subject Plan Policies.

Assessment against other EAOCSF policies is as stated below.

Notwithstanding the above, Policy MIN2 applies only to those sites that fall within the definition of 'small scale' which relates to proposals with a total site area of less than 25 hectares. The Laigh Glenmuir development has a total site area of 47 hectares, albeit the extraction area is 22.5 hectares. Only 3.8 hectares of the Laigh Glenmuir development lies within the identified POEA and even when this area is disregarded for the purposes of assessment against Policy MIN2, the proposal would not conform to the definition of small scale development within the EAOCSF. The timescale of the development at three years does not also accord with the definition of short term indicated in the EAOCSF which states that the total extraction and restoration period should be less than 2 years.

The proposed development is therefore contrary to Policy MIN2.

(iii) Policy MIN3: Outwith the Potential Coal Extraction Areas, the Council will assess any extension to an existing opencast site on its own merits and against the following criteria:

(a) that the proposed extraction operations are carried out as a sequential phase of development and not independently or in isolation from the extraction programme of the original approved site;

The proposed Laigh Glenmuir development is a new site, not an extension to an existing one.

(b) that the extended operations utilise fully the facilities and site infrastructure serving the original opencast site; and

Although not an extension to an existing site, the proposed Laigh Glenmuir development will involve the use of existing site facilities at Garleffan in respect of coal processing and distribution to markets by rail at Crowbandsgate and by road via the A76 Trunk Road.

(c) 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.

The proposed Laigh Glenmuir development is a new site, not an extension to an existing one. Nonetheless the applicant has indicated that coaling operations on Laigh Glenmuir would commence only after coaling has ceased at Garleffan. In this regard the rate of extraction and number of vehicle movements

from Laigh Glenmuir and channelled through to the Garleffan site, would be commensurate with the Garleffan operations.

The Laigh Glenmuir proposal represents a new opencast development site and therefore cannot be justified in terms of Policy MIN3.

(iv) Policy MIN4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against the stated criteria.

As the Laigh Glenmuir development is not a small scale or short term development or an extension to an existing site, Policy MIN4 is not applicable in this case.

(v) Policy MIN5: Outline planning applications will not be accepted by the Council.

The submitted application for the Laigh Glenmuir development is a detailed application.

(vi) Policy MIN6: The Council will require all opencast coal operators, when submitting their extraction proposals to the Council for consideration, to support their planning application:-

(a) with information which addresses all the issues highlighted elsewhere in the Subject Plan; and

(b) with information which indicates their understanding of the location of coal reserves in surrounding land; and

(c) with information about their interest in any likely future extensions to current applications and future adjacent sites in which they have an interest.

The applicant has no other interests within the immediate vicinity of the Laigh Glenmuir proposal. Although additional drilling has been undertaken in the Laigh Glenmuir area, this has not been undertaken by the current applicant and it is understood that the drilling undertaken close to Darmalloch Farm found no economic coal deposits.

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

(a) whether the proposal is environmentally acceptable or can be made so by the use of appropriate planning conditions and/or agreements designed to mitigate any adverse impacts, and if not:-

(b) whether the proposal provides any local or community benefits related to the proposal which sufficiently outweigh any material risk of disturbance or environmental damage.

Notwithstanding the conflicts with policy mentioned above, with the mitigation measures proposed within the Environmental Statement, the imposition of appropriate planning conditions and the establishment of appropriate environmental monitoring systems, it is considered that the proposed development could operate within environmentally acceptable standards. It is considered that the sustaining of 29 jobs will provide significant socio-economic benefits, both directly and indirectly, to the local area.

(viii) Policy MIN8: The submission of Environmental Impact Assessments for sites of less than 25ha in area will be required where the development meets the requirements for an Assessment to be made under the provisions of the 1999 Regulations and its accompanying Circular 15/1999.

A comprehensive Environmental Statement accompanies the planning application for the Laigh Glenmuir development.

(ix) Policy MIN10: Where the Council has granted consent for an opencast coal development, all other economic minerals should be removed at the same time as the extraction of the coal.

The applicant has not indicated any presence of other economic minerals within the Laigh Glenmuir development site.

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

The Laigh Glenmuir development will result in the loss of an area of peat bog at Low Moss. However, the ES provides for mitigation measures to ensure that the peat is appropriately conserved and is subject to appropriate restoration procedures. SNH has requested that areas of peatland to be removed by the operations are restored and that appropriate procedures are put in place to ensure the hydrological integrity of Low Moss.

(xi) Policy MIN 12: The Council will seek to ensure that a proliferation of opencast sites within close proximity to any one particular community or within any one particular geographical area does not occur. Any proposed new opencast coal developments may be considered to contribute to an

unacceptable cumulative impact on the amenity of an area where that development would:

- (a) constitute a third operative site within 3kms of each other or within a 3Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map

The proposed Laigh Glenmuir site will constitute a third operative site within 3km of existing operational sites at Gasswater (0.3 km) and Garleffan (1.8km). It should be noted that Grievehill is now operational but that this site lies 3.5 km from the Laigh Glenmuir development.

Furthermore the Laigh Glenmuir development would also constitute a third operative site within 3km of the settlement boundary of Lugar and Logan as identified in the East Ayrshire Local Plan.

In this context it should be noted that the Gasswater site has ceased coaling and restoration is being progressed on this site. Furthermore coaling at Garleffan is due to cease in Spring 2006 and coaling at Laigh Glenmuir is not to commence until that time. Nonetheless these sites are still considered to be operational at this time. With regard to Garleffan, it is not considered that this site has any significant adverse impact on the community of Lugar and Logan, either through site operations or by the transportation of coal. Similarly as the closest part of the Gasswater site to Lugar and Logan is being restored it is not considered that this has any significant adverse impacts on the community.

In this regard, with the design of the site layout, the mitigation measures proposed and the fact that coals won from the Laigh Glenmuir site will be taken to Garleffan for onward dispatch by rail and road, it is not considered that the Laigh Glenmuir development will generally result in unacceptable cumulative impacts on Lugar and Logan.

- (b) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from successive opencast operations over an extended extraction period in excess of 10 years;

It is considered that there will not be any perpetuation of excessive adverse amenity and environmental disruption experienced by any local community as a result of the Laigh Glenmuir development.

- (c) generate volumes of heavy goods traffic which, when 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.

With the proposed use of the existing railhead at Crowbandsgate through the formation of the proposed haul road to access the existing Garleffan site, local communities will not be adversely affected by road transportation of coal from the site to any significant degree.

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

The proposed development will not impinge upon any international or nationally designated sites of nature conservation interest.

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

Details of the method of working, restoration and aftercare proposals are contained within the Environmental Statement and the planning application. It is considered that the establishment of a Technical Working Group for the Laigh Glenmuir site can be assist in addressing the more detailed issues of restoration and aftercare raised by SNH and the RSPB. This can be achieved through obligations within a Section 75 Agreement.

(xiii) Policy MIN15: All developers are required to progressively restore their operational sites to the highest possible standards. The use of restored land for specific agricultural, forestry, recreational and nature conservation purposes will be acceptable to the Council and applicants are encouraged to create wildlife habitats and wetland areas, if appropriate, within their restoration proposals.

Progressive restoration during the course of operations is to be undertaken on site. Provision can be made within a Section 75 Agreement to ensure positive restoration of the site in the interests of habitat creation and enhancement as indicated by both the RSPB and SNH.

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

No known rights of way are affected by the proposed development.

(xv) Policy MIN17: Developers required to submit detailed restoration and aftercare plans with their submitted applications.

Details of restoration and aftercare have been submitted as part of the planning application and associated Environmental Statement. The implementation of the site restoration and aftercare proposals can be monitored through a Technical Support Group with input from representatives of SNH and RSPB. This can be secured through any Section 75 Agreement for the site.

(xvi) Policy MIN18: Operators will be strongly encouraged to transport coal by rail which is not specifically destined for local domestic Ayrshire markets. Where particular market destinations can be serviced by rail, opencast operators will be expected to make a firm commitment to transporting coal using the rail facilities available, taking coal from the extraction site to the nearest rail disposal point for onward delivery along haulage routes which, where possible, avoid passing through the area's settlements.

The railhead at Crowbandsgate will be used to dispatch approximately 90% of the proposed output from the site to markets. The maximisation of coal transportation by rail can be secured through obligations within a Section 75 Agreement, an arrangement that is presently in force for the existing Garleffan site. The proposed implementation of the previously approved overland haul route will also mean that coal laden vehicles will not use the local road network to access the railhead.

(xvii) Policy MIN20: Haulage of opencast coal on the public road system to be along clearly defined haulage routes agreed with the Council. With the exception of the 'A' Class Roads throughout East Ayrshire, opencast operators will be required, at their own expense, to bring all roads used by their haulage vehicles up to an acceptable standard for haulage purposes, prior to the use of the route for dispatch purposes. Requirement for operators to pay for any necessary upgrading and maintenance of routes used by opencast traffic.

Provision for recovery of extraordinary road maintenance costs attributable to the proposed development can be made in any Section 75 Agreement for the site.

(xviii) Policy MIN21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

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

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

(c) 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

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

(e) 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 will be invited to subscribe.

The applicant has indicated a willingness to subscribe to the protocol which will be included as part of any Section 75 Agreement.

(xix) Policy MIN22: Consideration of impact of proposed opencast development on local communities to be given by developers.

The Environmental Statement considers the potential impacts that the proposed development will have on residential properties in proximity to the site as well as the impact on nearby communities. The proposals submitted by the applicant together with mitigation measures prescribed seek to minimise such impacts.

(xx) Policy MIN 23: In order to ensure that opencast coal operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council may consider opencast developments unacceptable where:-

(a) a development has a boundary which encroaches within 500 metres of the community concerned, or

(b) the proposal involves a substantial area for extraction over an extended extraction period in excess of ten years, or

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

The Laigh Glenmuir development area lies in a relatively remote area and no part of the development site lies within 500 metres of any community. The extraction period is two years and is not likely to be the subject of repeated extensions.

(xxi) Policy MIN24: Requirement for developers to demonstrate measures they propose to minimise the effect of their operations on sensitive establishments including all individual or small scale groups of dwellings located outwith communities and not in the ownership or under the control of the developer. In such cases developers will be required to provide the Council with evidence that they are prepared to enter into appropriate legal agreements with owners or tenants of affected properties in order to offset any adverse effects from the development that may be experienced.

Only one existing dwellinghouse lies within 500 metres of the working face of the site, this being High Glenmuir which lies 330 metres from the limit of excavation and some 80 metres from the proposed soils storage area. It is understood that the applicant has reached a formal agreement with the owner of this property to offset any adverse effects from the development that may be experienced.

(xxii) Policy MIN25: 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, local community, group of dwellings or individual dwellinghouses not in the ownership 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:

(a) 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;

(b) the total period of extraction and restoration within the 500 metre buffer zone does not exceed a period of 12 months

(c) the proposed extraction does not involve any blasting operations within the 500 metre buffer zone; and

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

The residential property at High Glenmuir is the only existing residential property that lies within 500 metres of the proposed working face of the Laigh Glenmuir development. Blasting operations will take place on site but the nearest point of blasting to High Glenmuir will be approximately 550 metres i.e. outwith the 500 metres buffer zone. However, it is understood that the applicant has reached a formal agreement with the owners of High Glenmuir in respect of offsetting any adverse effects on this property from the Laigh Glenmuir development.

Detailed planning permission has been granted for the erection of a dwellinghouse at Little Darmalloch, although this dwelling has not yet been constructed. However, if constructed and occupied during the proposed life of the Laigh Glenmuir site, this could present conflict with Policy MIN25 as the proposed dwellinghouse would lie some 450 metres from the limit of excavation and within 500 metres of potential blasting operations. A condition could be attached to any consent granted for the development to restrict blasting operations within the 500 metres buffer zone unless the applicant reaches an appropriate legal agreement with the owner

of this property if the proposed dwellinghouse is constructed, completed and occupied during the life of the Laigh Glenmuir site.

(xxiii) Policy MIN26: Protection of areas of nature conservation interest from adverse effects of opencasting.

The site impinges on the Low Moss provisional wildlife site but it is considered that the proposals will not adversely affect the integrity of these sites subject to appropriate mitigation measures and safeguards as identified by SNH and RSPB.

(xxiv) Policy MIN27: Protection of natural and built heritage resources from adverse impact from opencast proposals.

The proposal will not result in the permanent loss of prime quality agricultural land. It will not have any significant adverse impact or cause irreparable damage to any heritage resources requiring conservation including listed buildings, historic gardens and designed landscapes, scheduled ancient monuments, archaeological and industrial archaeological sites. While Laigh Glenmuir Cottage is to be demolished, there is no statutory protection afforded to this dwelling.

Appropriate mitigation is also proposed to protect air quality and the quality and quantity of water resources. The proposal does not result in the loss of trees identified as ancient woodland nor covered by tree preservation orders.

(xxv) Policy MIN28: Protection of landscape. The Council will ensure that any opencast coal development proposal respects, in terms of its design and restoration details, the distinctive local landscape characteristics of the particular area in which it is proposed. Developers will be expected to conserve, maintain and enhance, and to reinstate or replace where appropriate, those features which contribute to the intrinsic landscape value and quality of those areas concerned. The Council will not be supportive of development which creates unacceptable visual intrusion or irreparable damage to areas of established landscape character as defined by the Councils Ayrshire Landscape Assessment.

The ES indicates that the impact upon the landscape and the character of the area in which the Laigh Glenmuir development is located will be of major magnitude and adverse in nature for the three year period of operations. However, the restoration proposal aims to mitigate these impacts in the long term by changing the impacts to a long term, permanent beneficial impact. The short term impact on the landscape character of the wider area will be minimised by the containment provided by the local topography and vegetation.

The restoration proposals are considered to contribute to the overall high visual amenity of the area aiming to create visual interest by introducing new native woodland and increasing the

wooded appearance of Glenmuir Water by linking existing woodland vegetation. Following restoration, the long term, permanent cumulative impact will be beneficial as the restoration proposals aim to enhance the visual amenity of the surrounding area and create a diversity of habitats to encourage wildlife.

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

The Glenmuir Valley is widely used for recreational purposes and is important to the local communities in this area for various recreational pursuits. The greater part of the Laigh Glenmuir development site fall within an area that would conflict with locations of high visual amenity or recreational potential. It is due to this particular conflict that known coal reserves in this area were excluded from being designated as a Potential Coal Extraction Area as it was considered that the valley is relatively self-contained and unspoilt and that opencast development would be highly intrusive and visually damaging in both environmental and recreational terms. The part of the Laigh Glenmuir development that does fall within a PCEA represents the boundary of this area of conflict. It is considered that the Laigh Glenmuir development, while relatively short term in nature, will still have a significant impact on the Glenmuir Valley area to the detriment of the enjoyment of the area by local community users.

It is recognised that these impacts are relatively short term and reversible in nature but it is considered that opencast development at Laigh Glenmuir is contrary to the provisions of Policy MIN29.

(xxvii) Policy MIN30: Protection of landscape and visual amenity. In particular developments will not be considered acceptable where these would be detrimental to the landscape and scenic quality of....the Glenmuir Valley.

See response to Policy MIN29 above.

It is recognised that these impacts are relatively short term and reversible in nature but it is considered that opencast development at Laigh Glenmuir is contrary to the provisions of Policy MIN30.

(xxviii) Policy MIN31: Protection of Water Resources. The Council will not be supportive of any opencast proposal which could disrupt or otherwise

adversely impact on water catchment areas, principal watercourses and their tributaries or other major water resources.

It is considered that with the mitigations measures promoted within the ES and with appropriate agreement of pollution prevention systems and monitoring with SEPA, the proposed Laigh Glenmuir development will have no significant adverse impact on water resources.

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

The applicant has indicated a willingness to enter into a Section 75 Agreement in respect of the matters contained within Policy MIN33.

(xxx) Policies MIN3 and MIN34: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

The applicant has indicated a willingness to contribute to the Minerals Trust and is a current contributor through the existing Garleffan, Skares Road and Grievehill sites.

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

The applicant is willing to provide necessary Restoration and Aftercare Bonds with respect to the proposed development.

(xxxiii) Policy MIN37: Establishment of liaison committees.

The applicant has indicated a willingness to establish a Liaison Committee if considered appropriate.

(xxxiiii) Policies MIN38, MIN39 and MIN40: Monitoring of sites.

The applicant will provide the necessary monitoring information required by the requisite policies.

It is considered that the proposed development is contrary to Policies MIN1 and MIN2, and is contrary to Policies MIN29 and MIN30.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The other principal material considerations relevant to the determination of the application are the consultation responses, the representations, NPPG 16 – ‘Opencast Coal and Related Minerals’, Planning Advice Note 50 and its related annexes and relevant planning history.

Consultation Responses

6.2 Although the River Ayr District Salmon Fishery Board has objected to the proposed development, the consultation responses generally would not suggest that the application be refused. This is of course subject to appropriate conditions being attached to any consent granted or by means of a Section 75 Agreement for the Laigh Glenmuir development. While the RADSFB has raised strong concerns regarding the potential impact on the Glenmuir Water and the River Lugar, SEPA offers no objections to the development provided appropriate mitigation measures and monitoring systems are put in place to prevent any adverse impact on these waters.

Representations

6.3 It is considered that with the mitigation measures promoted within the ES, many of the points of objection can be addressed either by condition or by means of a Section 75 Agreement. The points of representation relative to the impact of the development on the visual amenity and recreational value of the Glenmuir Valley are pertinent in this instance as expressed in section 5(xxv) above.

Scottish Planning Policy

6.4 Recent 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 but in this regard the greater part of the Laigh Glenmuir development lies outwith 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

It is considered that the proposed development in terms of its conflicts with Policies MIN29 and MIN30 of the EAOCSP, is not environmentally acceptable and that it would result in disbenefits with regard to the impact on the recreational and high amenity value of the Glenmuir Valley. It is for these reasons that the greater part of the Laigh Glenmuir development site is excluded as a Potential Opencast Extraction Area. While it is accepted that the timescale of the development is relatively short and that restoration will potentially provide additional longer term landscape benefits, it is considered that it would take a number of years for the area, and in particular the landscape character, to recover and regain maturity and the appearance of being undisturbed.

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

The proposed Laigh Glenmuir development will not result in the removal of any areas of dereliction. However a significant benefit will arise from the continued employment offered to 29 employees who would transfer from the existing Garleffan site on cessation of coaling on that site in Spring 2006. The Laigh Glenmuir development would provide employment for a further 3 years. This is a significant material consideration in the determination of this application, particularly at a time when jobs within the opencast industry have recently been lost. The majority of these jobs are taken by people in the local communities and is therefore important in socio-economic terms.

It is considered that the Laigh Glenmuir development will not impact significantly on any local community and it is noted that there is not a considerable number of objections from the local community. Therefore in this case it is considered that the principal assessment to be made in this case is whether the benefits of the continued employment opportunities offered by the Laigh Glenmuir development outweigh the disbenefits resulting from the environmental impacts that would affect the high amenity and recreational value of the Glenmuir Valley.

Planning Advice Notes

6.6 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.

6.6 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.

The proposed Laigh Glenmuir development is only 47 hectares in size, does not have any excavation boundary within 500 metres of an existing community or sensitive establishment or any soil, overburden or site maintenance area boundary within 100 metres of an existing community or sensitive establishment. Should the Committee be minded to approve this application it would not require to be notified to the Scottish Ministers in terms of the Order.

Planning History

6.7 Full planning permission for the erection of an energy efficient dwelling and for the erection of a wind turbine at Little Darmalloch Farm was granted on appeal on 08 October 2002 (Ref. No. 02/0119/FL). Construction work on this dwelling has not yet started.

6.8 Full planning permission for the winning and working of coal by opencast method and for the construction of an overland haul road at Garleffan II, near New Cumnock was approved on 05 October 2001. This consent is not due to expire until 05 October 2012 (Ref. No. 00/0526/FL)

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Should the Council agree to approve the application, this would necessitate the Council entering into a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 with the applicant.

8. CONCLUSIONS

8.1 As is indicated at paragraph 5.2 above, the application is not considered to be 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 refused unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. In terms of consultations, it is considered that in the main, points of concern can be addressed through the imposition of appropriate conditions in any consent granted or by means of a Section 75 Agreement. Similarly many of the points of objection can also be addressed in this manner.

8.2 In terms of planning policy, the proposals would result in a significant departure from Policies MIN1, MIN2, MIN29 and MIN30 as indicated in Section 5 above. The policies of the EAOCSP seek to protect the landscape, visual amenity and recreational resource of the Glenmuir Valley, hence the reason that the greater part of the Laigh Glenmuir site is excluded as a Potential Coal Extraction Area. Due to the timescale of the proposed development being 3 years and with a total site area of 47 hectares, the Laigh

Glenmuir proposal does not fall within the small scale, short terms developments allowed for in terms of Policy MIN2.

8.3 The proposed development is considered to accord with the Adopted Ayrshire Joint Structure Plan since the proposed Laigh Glenmuir development site lies within a Preferred Area of Search where it is recognised that such sites have few environmental constraints, are isolated from most local communities and are close to existing railheads. However, the EAOCSP has refined the Preferred Areas of Search and has determined that the greater part of the Laigh Glenmuir site should be excluded from potential opencast development.

8.4 With regard to SPP16, It is considered a significant benefit will arise from the continued employment offered to 29 employees who would transfer from the existing Garleffan site on cessation of coaling on that site in Spring 2006. The Laigh Glenmuir development would provide employment for a further 3 years. This is a significant material consideration in the determination of this application, particularly at a time when jobs within the opencast industry have recently been lost. The majority of these jobs are taken by people in the local communities and is therefore important to local communities in socio-economic terms.

8.5 It is considered that the Laigh Glenmuir development will not impact significantly on any local community and it is noted that there is not a considerable number of objections from the local community. Therefore in this case it is considered that the principal assessment to be made is whether the benefits of the continued employment opportunities offered by the Laigh Glenmuir development outweigh the disbenefits resulting from the environmental impacts that would affect the high amenity and recreational value of the Glenmuir Valley. In this regard it is considered that the benefits of continued employment do not outweigh the adverse impacts on the Glenmuir Valley. The approval of the Laigh Glenmuir development could set an undesirable precedent for opencast development being accepted on those areas where, for environmental reasons and in the interests of sustainability, they have not been identified as Potential Coal Extraction Areas.

8.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that there no over-riding environmental and community benefits which would outweigh adverse environmental impacts on the Glenmuir Valley sufficient to justify a significant departure from the East Ayrshire Opencast Coal Subject Plan. Consequently it is considered that the application should be refused. Should the Committee disagree with this view and be disposed to grant planning permission, any consent should be withheld until an appropriate Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, covering the stated matters referred to in this report, has been concluded with the applicant.

9. RECOMMENDATION

9.1 It is recommended that the application be refused for the reasons listed on the attached sheet.

Alan Neish
Head of Planning, Development and Building Standards

21 December 2005
HM/HM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Environmental Statement.
4. Representation Letters.
5. Consultation Responses.
6. East Ayrshire Opencast Subject Plan (2003)
7. Approved Ayrshire Joint Structure Plan (1999)
8. Adopted Cumnock and Auchinleck Local Plan
9. SPP16: Opencast Coal
10. PAN50: Controlling Environmental Effects of Surface Mineral Workings (Annexes A, B, C and D)
11. Previous applications 02/0119/FL and

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

Implementation Officer: Alan Neish

Application no: 05/0232/FL

Location	Laigh Glenmuir Farm, Cumnock
Nature of Proposal:	Proposed Opencast Extraction of Coal by Opencast Method, Restoration of Site and Associated Engineering Works
Name and Address of Applicant:	ATH Resources PLC Richmond House White Rose Way DONCASTER
Name and Address of Agent	RPS PTE 45 Timberbush Bernard Street EDINBURGH

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

The above FULL application should be refused on the following grounds:

1. The greater part proposed Laigh Glenmuir development site lies outwith the identified Potential Coal Extraction Areas defined in the adopted East Ayrshire Opencast Coal Subject Plan. Furthermore with a development site area of 47 hectares and an expected lifespan of three years, the proposed development does not fall within the definition of a small scale, short term development stated within the Subject Plan. The proposed development is therefore contrary to Policies MIN1 and MIN2 of the adopted East Ayrshire Opencast Coal Subject Plan.
2. The Council considers that the proposed Laigh Glenmuir development will have a significant adverse environmental impact on the Glenmuir Valley in terms of its value to local communities as a recreational resource and in terms of its wider landscape character and visual amenity. The proposed development is therefore contrary to the provisions of Policies MIN29 and MIN30 of the adopted East Ayrshire Opencast Coal Subject Plan that specifically seek to protect the high amenity value and recreational resources of the Glenmuir Valley.
3. Approval of the proposed development would create an undesirable precedent for the further exploitation of coal reserves in areas outwith the Potential Coal Extraction Areas identified within the adopted East Ayrshire Opencast Coal Subject Plan within areas of known environmental constraint.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
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PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 576790.**