

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 25 JUNE 2004

04/0397/FL: PROPOSED VARIATION TO THE APPROVED SCHEME OF WORKING INCLUDING AN EXTENSION TO THE CURRENT EXTRACTION AREA AND INCORPORATING A REDIVERSION OF THE RIVER NITH WITH ASSOCIATED HABITAT ENHANCEMENT WORKS, HOUSE OF WATER OPENCAST COAL SITE, DALLEAGLES, NEW CUMNOCK.

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full permission is sought for a variation to the existing excavation limit in Area B of the current approved House of Water opencast coal development site. This will result in an extension to the existing excavation area of approximately 14.8 hectares and this variation to Area B will result in additional cuts. The excavations will be carried out in a series of 14 cuts commencing in the northwest corner of Area B. At this time the working void extends to cuts B1 to B4. After cut B6, the operations will then commence in the new extension area that will progress in a westerly direction from the existing void in Area A through cuts B7 to B14. The extended excavation area will also yield some 1.1 million additional tonnes of coal, giving the total expected output of coal from House of Water at 5.9 million tonnes.

1.2 The variation also results in revised locations for the associated overburden and soil storage areas, but these still lie within the same general areas to those previously approved in the current permitted scheme apart from the requirement for a further overburden storage area located southeast of the proposed extension area within Area A. Soils will be stored on the western boundary of Area B with soil storage also north of the Beoch Lane.

1.3 The extension of Area B excavation area will in the overall period of site operations by approximately 2 years, giving a final end date for coaling operations in July 2007, with the remaining restoration works being completed by 2009. The current consents relating to the House of Water site requires all works to be completed by May 2009. Progressive restoration will take place in line with the proposed cuts in order to minimise the area of site occupation at any one time. The extension area contains the same geological sequence as the existing site and contains fifteen principle coal seams varying in thickness from 0.2 to 1.0 metre.

1.4 As indicated above, the coals to be extracted lie beneath the channel of the diverted River Nith and in order to access the coals, a further diversion

of the river is necessary. The applicant has commissioned consultants to analyse and provide an outline design of the re-diversion of approximately 2.8 kilometres of the River Nith. In order for the proposed coal extraction scheme to be viable, the channel requires to be re-diverted to the proposed new course by Autumn 2004.

1.5 The design of the proposed re-diversion scheme is broadly based on the previous 2000 river diversion scheme with further changes to reflect the knowledge and lessons learned after the 2000 diversion, particularly in respect of the channel width. The proposed re-diversion design is aimed at creating a new sustainable channel and conveyance corridor within which the River Nith will flow, and to improve on riparian and instream habitat for both flora and fauna.

1.6 The re-diversion channel will be routed through the area of backfilled opencast workings. In order to address any concerns associated with the loss of flow from the river due to the permeability of the backfill, a clay liner will be required to address these concerns and will be designed to address impacts of estimated settlement. The proposed channel length of the re-diverted River Nith is approximately 2950 metres which is 3.3% shorter than the original length, but represents an increase of nearly 6% over the current channel length. In order to achieve acceptable flow gradients, the re-diverted channel will be constructed on an engineered platform.

1.7 The proposed re-diversion of the River Nith has been the subject of advance discussion and consultation with House of Water Technical Working Group that includes the Royal Society for the Protection of Birds, Scottish Natural Heritage, the Scottish Environment Protection Agency, the River Nith Salmon Fishery Board and New Cumnock Angling Association. The input of these key stakeholders has been taken into consideration in the design of the River Nith diversion.

1.8 All other operational aspect of the proposed development would be undertaken in line with the provisions of the existing planning consents for the House of Water Opencast Site, including hours of operation, blasting and transportation of coal along existing agreed routes.

1.9 The proposed extension will however materially affect the existing restoration proposals for the site as the proposed extension will result in a further two years coaling operation, thereby extending the restoration period. However it is intended to continue to develop the restoration strategy with the purpose of providing an interesting and diverse landscape in consultation with the key stakeholders in the House of Water Technical Working Group.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal amendment to the agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matters described in Section 8.6 of this report.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report, the proposed development is considered to be generally in accordance with the Development Plans. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 of the report, there are material considerations relevant to this application, but in this regard, these are generally supportive of the proposed development.

3.2 The proposed development is considered to constitute a minor departure from Policy MIN3 as it represents an extension to an existing operative site not falling within the identified Potential Coal Extraction Areas. However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, existing operative opencast sites were excluded on the basis that these sites were currently being worked. The House of Water site lies within a Potential Coal Extraction Area, but is not itself identified as such. Any extension to the House of Water site outwith the current site boundary would in all probability fall within a Potential Coal Extraction Area, but any extension within the confines of the existing site would not.

3.3 The proposed extension to Area B is 14.8 hectares in size and lies wholly within the existing House of Water operational boundary. The site contains a significant reserve of high quality coal that lies between the two consented extraction areas within the House of Water site.

3.4 The site is relatively remote with only a few residential properties and farmhouses located in proximity to the application site, which most, if not all are now within the ownership or legal control of the applicant. It is considered that the extension and alteration to the excavation Area B will present no significant additional adverse impacts beyond those that may be expected as a result of the current consented operations.

3.5 The proposal will however require the re-diversion of the channel of the River Nith. The technical analysis and design of such a re-diversion indicates that this can be effectively done, taking into account the knowledge and lessons learned from the original diversion to provide a stable and more ecologically beneficial river and channel. The scheme has been the subject of

considerable discussions and input from key stakeholders, who are represented in the House of Water Technical Working Group. It is noted that there are no objections to the proposals from these statutory and non-statutory consultees.

3.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the House of Water site has been amended encompass obligations covering the following matters:

- (i) The securing of a contribution for the additional maintenance spending on the B741 public road, as described in section 3.1 above, that will be incurred as a result of additional coals being transported along this route;
- (ii) The membership of the House of Water Technical Working Group to be extended to include the local grazier, a representative from FWAG and a representative from New Cumnock Angling Association;
- (iii) The securing of Minerals Trust Fund contributions for coals extracted from the extension site at a rate of 27.5 pence per tonne;
- (iv) The submission of evidence of the collateral warranty that will ensure that funding is available for any remedial works required as a result of site monitoring in respect of the River Nith; and
- (v) The undertaking of Scottish Coal to advise the Planning Authority and the Scottish Environment Protection Agency of any works that require to be undertaken to the river corridor in terms of the Water Framework Directive.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee as it would not represent a significant departure from the Development Plan.

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.

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

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APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

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 it represents a variation and extension to an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan and is subject to objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 4.5 miles west of New Cumnock and lies within the secluded River Nith valley to the south of Dalgig Road. The application site lies within the existing consented operational opencast site at House of Water. The consented site extends to 473 hectares

2.2 Planning permission for the winning and working of coal by opencast method at the House of Water site was approved on 17 April 1996 (Ref. CD/94/0072/MIN). Under this application permission was granted for two distinct phases of development. Area A is almost complete in terms of coal extraction and significant operations for restoration are ongoing. Operations in Area B have now commenced with coaling currently ongoing in this area.

2.3 The proposed extension to the excavation site extends to approximately 14.8 hectares and lies wholly within the consented House of Water site. The extension site is currently occupied by a section of the River Nith, which was previously diverted to its current course in September 2000, and by the access road to the former steading at Waterhead. The site lies between extraction Area A and extraction Area B.

2.4 **Proposed Development:** Full permission is sought for a variation to the existing excavation limit in Area B of the current approved House of Water opencast coal development site. This will result in an extension to the existing

excavation area of approximately 14.8 hectares and this variation to Area B will result in additional cuts. The excavations will be carried out in a series of 14 cuts commencing in the northwest corner of Area B. At this time the working void extends to cuts B1 to B4. After cut B6, the operations will then commence in the new extension area that will progress in a westerly direction from the existing void in Area A through cuts B7 to B14. The extended excavation area will also yield some 1.1 million additional tonnes of coal, giving the total expected output of coal from House of Water at 5.9 million tonnes.

2.5 The variation also results in revised locations for the associated overburden and soil storage areas, but these still lie within the same general areas to those previously approved in the current permitted scheme apart from the requirement for a further overburden storage area located southeast of the proposed extension area within Area A. Soils will be stored on the western boundary of Area B with soil storage also north of the Beoch Lane.

2.6 The extension of Area B excavation area will in the overall period of site operations by approximately 2 years, giving a final end date for coaling operations in July 2007, with the remaining restoration works being completed by 2009. The current consents relating to the House of Water site requires all works to be completed by May 2009. Progressive restoration will take place in line with the proposed cuts in order to minimise the area of site occupation at any one time. The extension area contains the same geological sequence as the existing site and contains fifteen principle coal seams varying in thickness from 0.2 to 1.0 metre.

2.7 As indicated above, the coals to be extracted lie beneath the channel of the diverted River Nith and in order to access the coals, a further diversion of the river is necessary. The applicant has commissioned consultants to analyse and provide an outline design of the re-diversion of approximately 2.8 kilometres of the River Nith. In order for the proposed coal extraction scheme to be viable, the channel requires to be re-diverted to the proposed new course by Autumn 2004.

2.8 The design of the proposed re-diversion scheme is broadly based on the previous 2000 river diversion scheme with further changes to reflect the knowledge and lessons learned after the 2000 diversion, particularly in respect of the channel width. The proposed re-diversion design is aimed at creating a new sustainable channel and conveyance corridor within which the River Nith will flow, and to improve on riparian and instream habitat for both flora and fauna.

2.9 The re-diversion channel will be routed through the area of backfilled opencast workings. In order to address any concerns associated with the loss of flow from the river due to the permeability of the backfill, a clay liner will be required to address these concerns and will be designed to address impacts of estimated settlement. The proposed channel length of the re-diverted River Nith is approximately 2950 metres which is 3.3% shorter than the original length, but represents an increase of nearly 6% over the current channel

length. In order to achieve acceptable flow gradients, the re-diverted channel will be constructed on an engineered platform.

2.10 The proposed re-diversion of the River Nith has been the subject of advance discussion and consultation with House of Water Technical Working Group that includes the Royal Society for the Protection of Birds, Scottish Natural Heritage, the Scottish Environment Protection Agency, the River Nith Salmon Fishery Board and New Cumnock Angling Association. The input of these key stakeholders has been taken into consideration in the design of the River Nith diversion.

2.11 All other operational aspect of the proposed development would be undertaken in line with the provisions of the existing planning consents for the House of Water Opencast Site, including hours of operation, blasting and transportation of coal along existing agreed routes.

2.12 The proposed extension will however materially affect the existing restoration proposals for the site as the proposed extension will result in a further two years coaling operation, thereby extending the restoration period. However it is intended to continue to develop the restoration strategy with the purpose of providing an interesting and diverse landscape in consultation with the key stakeholders in the House of Water Technical Working Group.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Roads and Transportation Division notes that the current application seeks to remove approximately 1,100,000 tonnes of coal via the B741 route over a 2 year period with coaling ceasing on site mid 2007. This would result in approximately 160 coal lorry movements per day on the route plus service vehicles and staff. This volume of HGV movements continues to be extremely detrimental to both the structure of the road and to the amenity of the properties/residents abutting the road. A meeting took place with the applicant in February 2002 where the issue regarding haulage of coal and maintenance obligations on this route was discussed looking to completion of road haulage from House of Water in 2004. With this in mind, the following conditions should be applied to the current application to cover the 2 year extended haulage over the route:

1. The applicant must agree similar levels of contribution to the continued road maintenance of the public road haulage route namely the U720 House of Water site access to Dalleagles, B741 Dalleagles to Knockshinnoch and B741 Knockshinnoch to A76 at New Cumnock for the additional 2 year haulage period. (~ £25,000 per annum)
2. Kerbing and footways along Bank Glen and Connel Park that have suffered deterioration due to past over running by coal vehicles will require to be reinstated at the applicant's expense. (~£25,000)

3. The existing level crossing at Knockshinnoch will require to be upgraded to modern day standards including additional warning signage. (~£50,000)
4. Traffic calming within the 30 mph section of the B741 will be required to be agreed and funded by the applicant. (~£50,000)
5. The applicant will be required to provide marking of coal haulage vehicles using this route to identify to the public they are hauling for Scottish Coal from the House of Water site.
6. The applicant will require to sign up to East Ayrshire Council's Coal Transport Protocol.
7. Within 1 year of completion of coal haulage from the site, the road carriageway from the A76 to the site via the B741 and U720 will require to be re-surfaced by techniques agreed with East Ayrshire Council and at the applicant's expense. This may involve some patching and kerbing work, in order to restore the route to the condition it was in prior to coal haulage commencing in connection with the House of Water site. (~£400,000)

It is considered that the concerns of the Roads and Transportation Division regarding a contribution from the applicant in respect of additional maintenance spending on the B741 public road can be addressed through an amendment to the existing Section 75 Agreement currently in place for the House of Water site. The participation of the applicant in the Transport Protocol and the marking of vehicles is already part of the existing Section 75 Agreement

3.2 New Cumnock Community Council has no problem with the part of the application which is for the proposal to re-divert the River Nith. It is the other part that the objection is to. We object to an extension with a possible extension to that.

The comments of the Community Council are noted. However, each application requires to be determined on its merits. The re-diversion of the River Nith will not take place without the extraction of the coals within the proposed extension area.

3.3 Power Systems have no adverse comments to make on the proposed development.

Noted.

3.4 Scottish Natural Heritage has no objection to this planning application but indicates that comments were given on a draft of the Halcrow report - Volume 2 of the supporting documentation. In the view of SNH the most

important natural heritage interests within the area for re-diversion are judged to be as follows:

- Otters
- Aquatic interests including fish
- Visual Amenity and Landscape
- Birds

Each of the above issues is dealt with in either Volumes 1 or Volume 2 of the supporting documentation.

(i) Otters and other protected species: an otter holt is on the boundary of the development area where the River Nith enters the site beside a ruined Castle as shown in the map of the otter survey in Volume 1 of the supporting documentation and referred to under 3.6 Ecology. SNH understands from the applicant that this holt will not be disturbed. However the works proposed will remove their downstream foraging habitat and constitute disturbance to this creature's habitat. Since otters are specially protected under the EC Habitats and Species Directive and in this situation SNH advice to the applicant is that they should apply for a licence from the Scottish Executive to disturb otter habitat and that this is put in train as soon as possible. The supporting documentation does not mention the presence of water vole, badgers or bats. SNH presumes these are not present or affected by the proposals but the applicant should confirm that this is the case.

The applicant has been advised directly by SNH of the requirement for appropriate licences. The applicant has confirmed that the species indicated are not present or affected by the proposed development.

(ii) Aquatic interests and fish: SNH's strongest concern is that the re-diverted River Nith does not dry out and cease to flow above the level of the stream bed. Such a situation occurred during the summer drought of 2003 within a stretch of the River Nith which was previously re-aligned to allow exploitation of coal reserves within the House of Water site. SNH is convinced that re-alignment of the 'new' channel will result in the creation of a watercourse which is better designed to operate at all natural flow levels and ensure that the situation observed in 2003 does not re-occur. The supporting document produced by the applicant gives SNH comfort that the re-diversion will be a success, although suggests that fish, invertebrate abundance and community structure and water flow within the site are monitored during the post-alignment phase.

It is recognised that a crucial component of any consent granted for the proposed development will be the requirement for appropriate monitoring of the re-diverted channel, not only in respect of flora and fauna but also the physical integrity of the new channel.

(iii) Visual Amenity and Landscape: A second concern has been to ensure that the new river channel is not 'over engineered' and presents as near a natural appearance as possible. SNH recently met with the applicant and visited the House of Water. SNH understands it is intended to minimise the use of hard engineering solutions such as 'rip rap' and where such measures are thought necessary to ameliorate the landscape impact by use of willow whips and other planting in combination with rock armour. SNH recommends the use of 'soft engineering' solutions whenever possible.

Noted. The details of the design are currently the subject of ongoing discussion and input from the TWG of which SNH is a key stakeholder.

(iv) Birds: SNH is content that no specially protected birds (i.e. Schedule 1 of the Wildlife and Countryside Act or Annex I of the European Birds Directive) will be affected by the proposals. The impacts on other notable species (skylark, reed bunting, oystercatcher, ringed plover and lapwing) will involve the temporary loss of habitat; however SNH is satisfied that the restoration and proposals for wet grassland areas should ensure these species return to the area.

Noted.

(v) Future Management and Restoration: SNH has attended recent meetings with the applicant where it has been agreed that further detailed work is required on future restoration and management. SNH understands that it is the intention of Scottish Coal to fully involve key stakeholders in development of the details of final restoration and management. SNH believes this would include preparation of a management plan. Nevertheless we would recommend that future management and restoration is secured by use of a Section 75 planning agreement and bond. SNH met with the applicant recently to discuss restoration proposals including appropriate seed mixes and riparian planting. These plans were still being developed but we stated our agreement in principle to the plans as outlined in Volume 2, chapter 6 Ecology of the supporting documentation.

The restoration of the site is currently the subject of appropriate restoration bonding which would also extend into the five year aftercare period. It is considered appropriate that a comprehensive restoration and management plan is produced by the applicant to build on the indicative restoration proposals that form part of the current submissions. This can be secured by a condition in any consent granted for the proposed development.

3.5 New Cumnock Angling Association advises that its committee agrees that the proposed development should be allowed to go forward while at the same time expresses its concerns largely based on the disappearance of the River Nith last year. After attending various meetings, the Committee considers that Scottish Coal has taken appropriate steps to preserve the environment and the various types of natural habitat, if not to improving the

same for the benefit of all varieties of wildlife. The committee feels that the proposals will be as near the beau deal as any other options that are available at present. Over the last few years, Scottish Coal has been most helpful to the association and we are quite sure other organisations in the local environ have benefited also. The committee also notes that some of the association's members work in the coal industry or have family working there also or in other industry related to open casting, therefore creating various types of employment, which in a deprived area such as the former Cumnock and Doon Valley area, are in great need of more jobs. These are the association's reasons for supporting the proposed development at House of Water.

Noted.

3.6 The Scottish Environment Protection Agency indicates that as a result of the proposed extension there is a requirement for new lagoons to be constructed and as such, Scottish Coal has applied for two new consents which were granted in January 2004. However one of the discharge points is into the existing Nith diversion as are some of the existing lagoon discharges. Therefore Scottish Coal will require to seek a review of any consents where the outfall location will change as a result of the proposed diversion. The House of Water site has an authorisation under the Environmental Protection Act 1990: Part 1. It appears that the excavations will be within the existing site boundary as stated in the authorisation and a variation will not be required. If, however this changes, then the applicant should discuss the matter with SEPA.

A note can be attached to any consent granted for the proposed development advising the applicant to make early contact with SEPA.

SEPA indicates that the main concern is the re-diversion of a 3 km stretch of the River Nith. Following the issue of the River Nith Re-Diversion Planning Application Supporting Document (February 2004) a number of points were raised by SEPA. Further meetings between Scottish Coal, Halcrow and SEPA have taken place since and amendments agreed, some of which were incorporated in the document dated April 2004 which was included with the planning application. The changes included to improve the long term stability are:

- Moving the Beoch lane confluence down to chainage 1000 m
- Increasing sinuosity and thus the length of the river
- Coir matting along the banks, especially on the upper reaches down to chainage 2000m. Bank protection to be included in lower section where necessary
- Increase the width of the platform which will provide a better restoration profile
- Varying width of the channel
- Look closely at sizing of bedding materials especially in upper sections to reduce the potential of the bed being eroded
- The inclusion of runs in the river rather than just pool/rifle sequences.

Noted.

SEPA indicates that the other points that should be incorporated as conditions within any planning consent are as follows:

- The design of the culvert/bridge. Design of this should be agreed by SEPA and other relevant bodies before construction takes place.
- The opportunity to increase the width of the platform in future if materials become available
- The opportunity of removing the flood bund if, after a number of years, the river is stable, the platform width has been increased and there is no possibility of the river changing channel and draining into the lower lying wetlands
- A monitoring programme lasting 15 years and regular reports published on the integrity of the diversion. The monitoring programme should be agreed with SEPA before works commence
- The requirement to contact SEPA if, in the future, any work has to be undertaken in the river corridor. This will be a requirement under the Water Framework Directive. Funds should be secured to ensure that adequate money is available for future work
- River flow gauging stations should be provided. Sites should be agreed with SEPA.

SEPA would also like to have included in any planning permission, a requirement for the applicant to furnish to SEPA and other parties within the Technical Support Group, all the full design drawings. No work should be undertaken on the channel formation until these drawings have been agreed by all interested parties.

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

3.7 The Royal Society for the Protection of Birds does not object to the proposed extension of extraction area and river redirection but would like to make the following comments and recommendations on the proposals.

(i) We question the inclusion of forest plantation within the restoration overview and the intention to plant trees on initial backfill areas at the earliest opportunity. Forestry plantations in this area have very low ecological value and restoration presents an opportunity to improve on this. We believe that these comments relate to plantations in the original application area but hope this opportunity can be taken to revisit this aspect of the restoration plan.

The comments of RSPB have been forwarded to the applicant. However, the replanting of forestry is a legal condition of the lease that Scottish Coal has on the area concerned. This lease has previously been altered to allow creation of the proposed wetland area within the restored House of Water site.

(ii) Re-diversion of the River Nith – New Channel Design: RSPB requests that the results of the research work by Dr Gilvear (University of Stirling) be circulated to the TWG, so that it can be used to inform their advice on the rediversion. The statement that original, pre-grazing habitats will be created is misleading and we are concerned that the importance of grazing management to achieving high value wildlife habitats in this area is not fully recognised. It will be crucial to involve agricultural interests through the restoration period. RSPB requests that the local grazier and a FWAG representative be invited to take part in TWG meetings.

The terms of the existing Section 75 Agreement for the House of Water site can be amended to include such representation in the TWG.

(iii) Ecology: It is extremely useful to have the bird survey results presented in this document and RSPB is pleased to see a range of birds using the river corridor. It is requested that annual bird surveys of the re-diverted river Nith and restored site be carried out each year to the satisfaction of, and the results reported to, the TWG. The creation of a sandmartin bank was a planning condition attached to the original consent but this work has not been carried out. An area of suitable sandmartin nesting habitat should be created by exposing suitable material beside the river, as agreed by the TWG and that an artificial sandmartin bank be created to a design agreed by the TWG and installed at a suitable point along the river.

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

(iv) General: While it is correct to say that the Coalfield Environment Initiative (CEI) has produced a Draft Management Plan for the site, the Coalfield Environment Officer cannot be relied on to carry on with this work in the future. While the CEI may contribute to the plan and be involved with additional projects at the site, responsibility for producing the management plan should fall to the developer. It is important to stress that the restoration plan must include previous application areas, the new area and the re-diverted river. RSPB requests that Scottish Coal produces a revised management plan for the whole site, based on the existing draft plan, with input from and to the satisfaction of the TWG.

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

(v) The Physical Works: Several parts of the existing excavation area have been restored but now have overly compacted soils, lack of micro-topographical variation or are dominated by rushes. Later stages of the restoration proved more successful, following close working between Scottish Coal and RSPB. This experience should be used to improve the standard of restoration on the rest of the site. If an outside agency is brought in to manage the land on behalf of Scottish Coal, this should be done in close consultation

with the TWG. The restoration and management of the whole site should be considered together.

Noted.

(vi) Re-diversion route and profile: the final gradient is a result of insufficient backfill material and was not prescribed in order to create wet grassland. While we understand the need to create a two-tiered floodplain in order to rectify this, we are disappointed that this will minimise the area of wet grassland created. If sufficient material had been available, RSPB would always have advocated returning the river and floodplain to their natural altitude and gradient. Recharge would then eventually have allowed the whole area to be managed as wet grassland. The two-tier floodplain is likely to result in a significant difference in wetness of the two levels and value for breeding waders will therefore be lower in the higher area. We welcome the intention to remove the flood bund downstream of chainage 1800m after mining, as this should allow greater hydrological connectivity to develop between the river and wet grassland. We support the idea of the flow from the March Burns being used to recharge the wetland area after passing through settlement lagoons while mining occurs. It may be possible to connect the new Nith channel, at approximately chainage 2300 m, to one of the ditches that will run through the grassland area. This would allow the flow from the March Burns to 'wet up' the grassland and flow into the river. After mining has ceased, we would welcome the opportunity to connect this channel to one flowing across the current operations area.

The comments of RSPB are noted and have been forwarded to the applicant for further consideration.

(vii) The Proposed 2004 Re-diversion: given the unnaturally wide channel created in the 2000 diversion, RSPB welcomes the approach taken here of reducing the width to 4 or 5 m. We welcome the decision to lengthen the channel since production of the February report. Both design features should create a more natural river channel than that created as part of the 2000 diversion.

Noted.

(viii) Geomorphology: the proposed incorporation of 'natural' features, such as pools, riffles and backwaters is welcome and should help the river achieve a greater biodiversity value. It is important that the fine detail of the design of these features is completed with maximum input from members of the TWG.

Noted.

(ix) Floodplain grassland (wet grassland, acid grassland and wet hollows): grazing of the floodplain grassland will need to be combined with fencing along the river channel, to create a vegetated instream habitat and ensure poaching of the banks does not occur. The creation of hummocks as described should be restricted to the fenced river corridor and should not be

used on the wider restored hillsides and floodplain. It seems unlikely that all of the species listed can be successfully established through seeding and the mixes given should only be seen as indicative of the desired vegetation community. Some may be inappropriate given the altitude of the site and the need to incorporate grazing management over much of the site. The seeding mixes and detailed planting schemes should be agreed at a later stage by the TWG. Seeding mixes have already been developed for the existing restoration site and should form a useful reference point. RSPB agrees that the flood bund should be seeded but planting of the bund should not include scrub or trees. If these were to be planted on the edge of the wet grassland area they would form perches for crows, which would predate wader eggs and chicks. Planting of taller species should be restricted to the river channel itself. This is of particular relevance now that the proposed bund is to be 300m, rather than 100m from the channel. It seems far more appropriate to seed the bund with a grassland mix. We request that seeding mixes and planting specifications be agreed by the TWG.

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

(x) Management through the Establishment Phase: this report fails to address the management requirements of the site, which are closely related to the vegetation communities that will result. The acid grasslands and heath upstream are likely to be at least partly a function of the management there and this must be taken into account if trying to replicate them. The wet grassland cannot be managed without grazing. To suggest that the site can be managed using only mowing and strimming may be unrealistic. Over this large area, grazing will be an essential management tool. While mowing may be used during initial stages of restoration and before fencing is complete, the aim should be to graze vegetation as soon as fencing and access for livestock are possible. Grazing by cattle will be preferable to grazing by sheep. We request that the management of the site during all stages of establishment and aftercare shall be agreed by the TWG.

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

(xi) Tree and shrub planting: tree planting should be restricted to a relatively narrow band along the river. This will aid development of a healthy instream habitat without compromising the other objectives of maintaining agricultural use of the land and creating conditions beneficial to breeding wading birds.

Noted.

(xii) Construction Sequence: the report mentions that the existing channel will be infilled with suitable material. RSPB suggests that the flood embankments, which will no longer be required on the 2000 diversion, be used as infill material. Removing these bunds will maximise the wet grassland area and create a more natural landscape at the junction of the floodplain and

hillsides. We request that the flood embankments from the original diversion will be removed and used to infill the 2000 diversion channel and the landforms restored as agreed by the TWG as soon as the embankments become redundant.

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

(xiii) Implications of the WFD to River Nith Re-diversion: while it is relevant to list the objectives of the Directive in 8.1, it is also useful to consider the specific requirements of the Water Environment and Water Services Act 2003. For example, this places a duty on Scottish Ministers and SEPA to promote sustainable flood management. As we have previously suggested, a spillway in the flood bund at approximately 1800 m chainage would allow floodwater from the Nith to be stored in the wet grassland area during flood events. Although this could not happen until mining ceases, this design aspect would contribute to the aims of the WEWS Act, as a form of sustainable flood management.

Noted.

(xiv) Improved Ecological Status: ecological status should consider not just the channel but also the wider floodplain and catchment. It is important to understand that wetlands, particularly those connected to surface waterbodies should also be returned to as high an ecological status as possible under the WEWS Act. Restoration and management of the whole site is therefore key to achieving good ecological status of the waterbody and must be addressed through a site restoration and management plan.

Noted.

3.8 The Nith District Salmon Fishery Board indicates that Scottish Coal has met and consulted with the Board and sought its responses on a number of issues connected with the proposed development. The Board has found these meetings and inclusion in the planning process to be absolutely essential to enable it to fulfil its statutory duty of care for migratory salmonids within the Nith catchment. Confirmation is given that issues raised by the Board regarding this proposal have been addressed satisfactorily. Furthermore, Scottish Coal have given a commitment to the Board regarding post construction monitoring and surveying of the new channel to ensure the best possible environment for migratory salmonids will be created.

Noted.

3.9 Scottish Water indicates that it has apparatus located within the development site that may be affected by the development. Contact should be made with Developer Services to discuss what measures are required to be taken to safeguard this apparatus.

A note can be attached to any consent granted for the proposed development advising the applicant to make early contact with Scottish Water.

3.10 The Coal Authority and The Scottish Wildlife Trust have not responded to the consultation letters.

Noted.

4. REPRESENTATIONS

4.1 In addition to the objection received from New Cumnock Community Council, one letter of representation has been received objecting to the proposed development. The points of objection are summarised as follows:

4.2 We note that the extension will allow Scottish Coal to extract 1.1 million more tonnes of opencast coal and state that they have permission to extract 4.6 million tonnes, but do not state how much they have extracted already. We ask that this figure is included in the planning report.

The anticipated output from the existing consented site is 4.8 million tonnes which would increase to 5.9 million tonnes should consent for the proposed extension be granted. To date over 4 million tonnes of coal has been extracted from the site.

4.3 The site has reached the point where enough is enough. Scottish Coal is causing environmental rape for monetary gain. Upland habitats are fragile. Already we have seen how nature will not be tamed by man where Scottish Coal tried to divert the head waters of the River Nith, where they clearly did not understand the hydrological impact of moving a youthful river, where the ground was unstable due to old deep mine workings and faults.

The proposed extension site lies wholly within the existing consented House of Water site situated between two existing operational areas. The objector is making reference to the low flow incident which occurred in June 2003. Up to that point the previous River Nith diversion was considered to be largely successful. A full report on the cause of this incident was produced and remedial action taken to prevent recurrence of the situation, these measures having been taken in consultation with SEPA, the Nith District Salmon Fishery Board and the Planning Authority.

4.4 We make very strong objection to moving 2.8 km of the River Nith back on to made up ground; to altering the profile of the river, in particular the upstream gradients; proposing to try to make the river flow over an artificial platform; such pioneering engineering being inflicted on the most important of salmon producing rivers, all for monetary, not environmental gain.

The design and methodology of proposed re-diversion has been undertaken by recognised consultants acting on behalf of the applicant. The proposals have been appropriately formulated using recognised analysis and modelling techniques. It should be noted that the formulation of the proposals involve considerable advance discussions and input from the members of the House of Water Technical Working Group (TWG) with key stakeholders such as Scottish Natural Heritage, the Scottish Environment Protection Agency, the Royal Society for the Protection of Birds, the Scottish Wildlife Trust, New Cumnock Angling Association and the Nith District Salmon Fishery Board. No formal objections have been received from these groups in respect of the proposed development.

4.5 We have little confidence in the statements in the planning submission. Given the coyly-named River Nith low flow incident last June, which has not been explained satisfactorily, we ask the Council to require a model of the proposals to be laboratory tested before the application is determined. Or better still adopt a precautionary principle and refuse to permit yet another diversion on the basis of evidence on the ground that it was conspicuously unsuccessful.

As indicated above, the low flow incident was fully investigated and a report on the findings produced and was the subject of formal consultation with the TWG. The proposals have been the subject of computer modelling utilising established methodology.

4.6 We are astonished that EAC has not required an Environmental Assessment.

A formal screening request was sought by the applicant regarding the potential requirement for a full Environmental Impact Assessment to be undertaken in respect of the proposed development. Given that the proposed extension to the existing site represents an area of 14.8 hectares, and that the proposal is not for a new site, but for the extension of an existing site for which two full Environmental Assessments were previously undertaken, it was considered that the submission of a formal Environmental Statement was not necessary in this case.

Nonetheless, the applicant was advised that there would be a requirement to provide sufficient environmental information regarding the proposed development to enable the Planning Authority and statutory and non-statutory consultees to properly assess the implications of the proposed extension and river diversion. The scope of the information required was the subject of advance discussions with the TWG. While the information that accompanies this planning application is not a formal

Environmental Statement, it addresses the relevant potential environmental impacts of the proposals.

4.7 We find the background information purporting to back up the applicant's assertion that operations have been previously carried out without nuisance to neighbours quite insufficient, given deficiencies in bird surveys. These produced sightings of only 4 bird species and means that the survey was deficient or the site is becoming ecologically dead or depleted. There will therefore be no benefit to anyone except the applicant if the river is moved again.

The contentions of the objector have not been reflected in the views of statutory and non-statutory consultees. No indication has been given that there are deficiencies in bird monitoring, particularly where RSPB has been working in collaboration with Scottish Coal regarding experimental progressive restoration of the House of Water site for enhanced bird habitats. Contrary to the view of the objector, all of the members of the TWG regard the re-diversion as an opportunity improve the ecological status of the River Nith and environs.

4.8 We note that Scottish Coal wish the proposed re-diversion of the river to be completed by Autumn this year. This cannot be allowed to happen until proper river flow monitoring of the current diversion has been assessed by hydrologists quite independent of the applicant and an inspection of water levels in the adjacent Craigman Mine to ascertain whether, as we think likely, the water lost last June collected there.

Flow monitoring of the current River Nith diversion is already an ongoing process with information collated being provided to SEPA. This information has been used in formulating the current proposals for the re-diversion of the river and involves the information collated from 5 gauging stations between 1991 and 2003. This information is assessed by SEPA.

4.9 Scottish Coal state that they own /control all buildings within 500 metres of their proposals. This is not the case. We believe that it is time to inform councillors that all the traditional buildings in the upper Nith Valley have now been demolished by Scottish Coal or are under threat.

Scottish Coal own or have a controlling interest over all properties within 500 metres of the proposed site extension area.

4.10 Noise monitoring was carried out at unmapped locations. These sites need to be pinpointed in order to assess the data properly. It is unclear whether this noise monitoring was always in place when blasting occurred. We checked some of the data and found that noise monitoring ended at 3:26 pm on 19 February 2004, yet there were blasts at 4 and 4:45 pm that day. Why were these not measured /listed?

Noise monitoring is undertaken at agreed locations and is undertaken on a regular but not continuous basis. On occasions blasting operations may not necessarily occur at time when noise monitoring is undertaken. However, this is not of particular significance as noise monitoring results are averaged over the period time to give an equivalent continuous sound level (normally LAeq 1 Hour). The same monitoring information also indicates instances of noise monitoring that coincides with blasting operations.

4.11 Regarding dust monitoring, only working days were listed, yet dust can blow from haul roads, bunds etc. at any time. We question the information that dust was only recorded on 17-20 February and again from 23-25 March and 31 March. Why was there no effective remedial action on the first day?

The objector has failed to comprehend the monitoring information provided. The information notes that on the specified days, potential for dust nuisance was identified and appropriate action was undertaken by the operator to address the matter by the use of water bowsers to dampen down haul roads. The monitoring information identifies the action taken by the operator of the site. Even on the days on which no particular dust problem was identified, the monitoring records show that due to weather conditions that might give rise to dust nuisance, precautionary action has been taken to prevent this. This is in accordance with the good practice principles contained within PAN 50 Annex

4.12 Very severe vibration has been felt by the residents of Burnston Cottage, yet the information indicates that assessment only took place south of Craigman Farm. We draw your attention to the location of the monitor was left blank for two thirds of the readings listed.

The monitoring information contained within the planning application indicates that at no time has vibration limits set within the conditions of the planning consents for House of Water been breached. Vibration monitoring would generally be undertaken at the point on the boundary of the site closest to occupied residences, in this case south of Craigman Farm. The Planning Authority has not previously received any complaints regarding nuisance through vibration and it is understood that this property is in the ownership of Scottish Coal. The monitoring information has not recorded any information for many of the blasts simply because the monitor did not trigger due to low vibration levels.

4.13 We object to the lack of certainty about haul routes. It is only comparatively recent that the Council issued a planning consent for a haul road between House of Water and Piperhill which you agreed would significantly reduce traffic near New Cumnock. The proposals in the current application are vague as they hint at alterations after discussion with the

Council. MEGA asks that any such discussions are widened to include representatives of the communities near railheads and through which such coal vehicles pass.

The coal to be extracted from the proposed extension will be transported in accordance with the current practice with the majority of coals being taken by road to the railhead at Knockshinnoch. Planning permission has indeed been granted for an overland haul route, however the current proposal seeks to maintain the existing transportation methods. Scottish Coal is currently appraising its transportation strategy and discussions have taken place with the Planning Authority and Roads Authority. It should be noted that dialogue is already taking place regarding transportation through site liaison committees and in particular, more recently with the B741 Action Group to try to address concerns raised by communities.

4.14 We saw no breakdown of the likely proportion of coal traffic which would not go directly by rail from Knockshinnoch but which would pass through New Cumnock etc. Nor was there any indication of the return route for HGVs nor of their route into House of Water when collecting coal. It is often these empty vehicles which cause most nuisance to local people because of their speed / rattling and unhappened nature. We ask therefore that these other routes are clarified and controlled.

As indicated above the majority of coals won from the House of Water site are taken by road to Knockshinnoch railhead for dispatch. Coals destined for Killoch or other markets continue along the B741 and then onto the A class road network. The applicant has indicated that

4.15 We ask whether the £100,000 which the Council requested in order to repair the B741 was actually spent there in total as our members say that only a meagre amount of remedial work was actually carried out there.

Work carried out on the B741 and the U720 between House of Water and Knockshinnoch totals approximately £94000 to date. The patching work being carried out at present on the B741 between Knockshinnoch and the A76 is estimated at £30000 of which Scottish Coal is contributing £24000.

4.16 Scottish Coal states that the proposed extension is within the Preferred Area of Search for opencasting. This is simply an indicative diagram in the Ayrshire Structure Plan. The actual site specified is not within the area specified in the EAC Opencast Subject Plan as being within the potential area. This is for a good reason, being within the immediate catchment area of the River Nith. This may not be designated as SSSI but the waters of the Nith serve the SSSI at Knockshinnoch Lagoons and the site at the Nith Bridge is also protected. SNH should therefore be exercising great caution when a development which can affect these sites, in addition to the salmon spawning

grounds of the upper Nith. MEGA requests that this application is passed to their hydrologist for further examination. We have to say that we disagreed with their Rivers Officers' assessment of the River Nith incident last year; no such conclusion could be reached on the basis of the inadequate/ inaccurate information supplied.

The development plan status of the site is discussed more fully in section 5 of this report. The proposed extension area does however lie within a Preferred Area of Search as indicated in the Approved Ayrshire Joint Structure Plan. This is not simply an indicative diagram, but represents the framework upon which structure plan policies are to be reflected at the local level.

The proposed extension area does however lie outwith a Potential Coal Extraction Area in the East Ayrshire Opencast Coal Subject Plan. However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, existing operative opencast sites were excluded on the basis that these sites were currently being worked. The House of Water site lies within a Potential Coal Extraction Area, but is not itself identified as such.

With respect to the impact on SSSI designations, the proposed development has been the subject of wide consultation with recognised statutory and non-statutory conservation bodies, without any indication of concerns in this regard.

It is worthy of note that in respect of the existing diversion, both the Nith District Salmon Fishery Board and New Cumnock Angling Association have indicated positive feedback in terms of increased fish population. The comments that the objector disagreed with the Rivers Officer of SNH are merely noted as no evidence of inadequate or inaccurate information is given by the objector.

4.17 We strongly feel that the Council should be enforcing conditions / planning agreements on the previous application involving the river diversion, with which Scottish Coal has clearly been unable / unwilling to comply.

There is no evidence to suggest that the applicant has been unwilling or unable to comply with the terms of the current planning consents and legal agreements. The House of Water site is relatively remote from communities and lies within a sparsely populated area. The site has operated for some time with no significant levels of complaint regarding site operations. Issues of concern with respect to transportation of coal have been raised and where breaches of control have been identified, remedial action has been promptly undertaken by the applicant. The commitment by both the applicant and the Planning and Roads

Authorities to address transportation issues has recently been underpinned by the setting up of meetings with the B741 Action Group with such meetings also involving Strathclyde Police.

Throughout the period of the previous river diversion works and aftercare that followed, the works have been the subject of regular meetings with the House of Water Technical Working Group where input and advice has readily been taken on board and implemented by the applicant. The diversion is also the subject of research and monitoring by the University of Stirling and positive feedback has been given in terms of biological recovery of the channel.

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

East Ayrshire Opencast Coal Subject Plan

5.2 The application requires to be assessed against relevant pertinent policies promoted within this approved plan. *Note that in the following paragraphs some of the policies are summarised.*

(i) Policy MIN 1: All future opencast coal developments will be directed towards and limited to the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

The proposed site extension to Area B does not lie within a Potential Coal Extraction Area and therefore requires to be assessed against Policies MIN2 or MIN3.

(ii) Policy MIN 2: There will be a presumption of refusal of applications for 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.

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

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

The proposed development represents an extension to the existing House of Water operational opencast coal site and therefore requires to be assessed against Policy MIN3.

(iii) Policy MIN 3: Subject to detailed consideration the Council will generally be supportive of any proposal to extend the existing operative opencast coal site within the Potential Coal Extraction Areas either laterally or through an increase in the depth of existing workings provided that the following criteria are met:

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

The proposed development represents an extension to the existing operations and will be carried out as a sequential phase of the approved development in Area B of the House of Water site.

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

The proposed development will be carried out utilising existing site facilities and infrastructure.

- (iii) that the scale of operations, rate of extraction and number of vehicle movements generated by the extended site are commensurate with those as existing on the original site.

The scale of operations, rate of extraction and number of vehicle movements generated by the extended site operations will be commensurate with current site operations.

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

The proposed extension will result in alterations to the proposed restoration of the House of Water site, but it is considered that these alterations will produce enhanced proposals for added environmental benefit. Although the timescale for restoration will be extended as a result of the proposed development, it will not be significantly prejudiced as all operations will be completed within the current consented timescale for the House of Water site.

In this case the proposed extension area lies outwith a Potential Coal Extraction Area.

However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, existing operative opencast sites were excluded on the basis that these sites were currently being worked. The House of Water site lies within a Potential Coal Extraction Area, but is not itself identified as such. It is therefore considered that the proposed development would represent a minor technical departure from Policy MIN3.

Outwith the Potential Coal Extraction Areas, the Council will assess any extension proposal on its own merits and against the above criteria, and will generally not be supportive of such development except where:

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

There will be no significant removal of existing areas of dereliction as a result of working in the extension area.

(vi) there is an overall benefit for communities affected, including local employment;

The coaling within the proposed extension area will safeguard the jobs of approximately 108 employees, contractors and service providers for a further two years, over the current scheme being worked.

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

It is considered that the proposed development does not conflict with the other Subject Plan Policies as noted below.

Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a total extraction period in excess of 10 years will not be considered acceptable, unless it can be clearly demonstrated that there are significant local community and local environmental benefits to be secured by the development.

The existing House of Water opencast site has a current consent for a period of 13 years (May 2009). The proposed operations will be undertaken within this current consented timescale.

(iv) Policy MIN 4: 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 following criteria:

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

It is considered that the impact on the landscape character and quality of the site will be minimal given the relatively small extension area involved. Furthermore with the restoration proposed there will be a net benefit in landscape character and visual amenity of the site. No statutory or non-statutory natural or built environment interests will be affected by the proposals.

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

It is considered that in line with the existing controls imposed in the existing consents for the House of Water site, the proposed extension to Area B can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards.

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

It is considered that in line with the existing controls imposed in the existing consents for the House of Water site, the proposed extension can be operated in such a manner as to minimise any adverse impacts on residential properties and can be undertaken to environmentally acceptable standards.

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

The proposed extension operations and restoration will result in net ecological gains.

(v) the opportunities to maximise transportation by rail;

Coals won from the House of Water site will be transported by road to the Knockshinnoch and Killoch railheads for onward dispatch to the power generation market, consistent with the existing operations.

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

The proposed extension will result in alterations to the proposed restoration of the House of Water site, but it is considered that these alterations will produce enhanced proposals for added

environmental benefit. Although the timescale for restoration will be extended as a result of the proposed development, it will not be significantly prejudiced as all operations will be completed within the current consented timescale for the House of Water site.

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

It is considered that it would have minimal impact on inward investment opportunities in the area.

(viii) the period of extraction.

The amended scheme for Area Band the proposed new extension will be undertaken within the current consented life of the House of Water site that expires in May 2009.

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

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

(ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or

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

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

The proposed development is not a new site but an extension to the existing House of Water site, wholly contained within the existing operational boundary of the site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12.

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

The restoration of the entire House of Water site is designed to improve the wildlife conservation value of the land that would provide for greater benefits to the area both in bio-diversity terms and also in general amenity terms.

(vii) Policy MIN 18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

Coals won from the proposed extension area will be dispatched by road to the existing railhead facilities at Knockshinnoch and Killoch Disposal Points.

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

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

(ix) Policy MIN 20: 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.

As indicated in section 3.1 of this report, contributions by the operator to the maintenance of the B741 road can be secured through an amendment to the existing Section 75 Agreement for the House of Water site.

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

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

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

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

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

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

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

The existing Section 75 Agreement contains an obligation in respect of this matter.

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

(i) a development has a boundary which encroaches within 500 metres of the community concerned.

The proposed extension area does not encroach within 500 metres of any settlement.

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

The proposed extension area extends to 14.8 hectares and all operations within Area B, as extended, will be completed within the current consented life of the House of Water site.

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

The proposal under consideration is unlikely to be the subject of repeated extensions.

(xii) Policy MIN 25: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, group of dwellings or individual dwellinghouses not in the ownership or under the control of the developer will only be entertained by the Council where the development can

be fully justified by the developer in environmental terms and where all of the following criteria are met:

(i) the Council is satisfied that there are no objections which cannot be overcome through the expeditious use of conditions or planning agreements from residents, owners, tenants or occupiers of properties located within 500 metres of the proposed working face of the site;

There are no residential properties, outwith the applicant's ownership or control that lie within 500 metres of the working face of the site.

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

The proposed extension encroaches within 100 metres of Craigmarn Farm house. However, Scottish Coal owns this property and, although it is occupied at present by a worker from the site who understands that he will have to quit if or when planning permission is granted or when operations commence.

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

The applicant has indicated a willingness to enter into a Section 75 Agreement or an amendment to the existing agreement in respect of the matters that may require to be subject of such an agreement.

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

The applicant is a significant contributor to the Mineral Trust Fund in respect of the existing House of Water opencast site and other sites operated by the applicant. Coals extracted from the proposed extension site shall be subject to the contribution rate of 27.5 pence per tonne of saleable coal.

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

The existing House of Water opencast site is subject to a Section 75 Agreement encompassing the above matters.

It is therefore considered that the proposed development is generally consistent with the relevant EAOCSP policies pertinent to this application although it does represent a minor technical departure from Policy MIN3 as described above.

Ayrshire Joint Structure Plan

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

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

The proposed extension site falls within a Preferred Area of Search.

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

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

It is considered that the proposed extension would not conflict with the stated criteria in terms of its operational conduct.

The current application is therefore considered to be in accordance with the Development Plans although it does represent a minor technical departure from Policy MIN3.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are NPPG 16 – ‘Opencast Coal and Related Minerals’, appropriate Planning Advice Notes, consultation responses, the representation received and relevant planning history.

National Planning Policy Guidelines

6.2 Recent guidance on opencast coal extraction has been given in National Planning Policy Guideline 16: Opencast Coal and Related Minerals. 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.

6.3 Many of the provisions of NPPG 16 are addressed within the EAOCSP with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. The proposal is considered to be consistent with NPPG 16.

Planning Advice Notes

6.4 The proposed operations have also been designed to comply with the advice contained within Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D.

Planning History

6.5 The more relevant planning history of the House of Water site and other relevant information is as follows:

- (i) CD/94/0072/MIN: Winning and Working of Coal by opencast methods at House of Water: approved on 17 April 1996
- (ii) 96/0400/FL: Proposed Extension to Existing Permitted Opencast Coal Site including Diversion of River Nith at House of Water: approved on 19 June 1998.
- (iii) 03/0506/FL: proposed variation and extension to approved scheme of working, House of Water opencast coal site: approved on 15 December 2003.

Consultation Responses

6.6 There are no consultation responses that would suggest refusal of the application is appropriate.

Representations Received

6.7 It is considered that the representations received are either not substantiated through the consultation process, are not valid or are not of sufficient weight to justify refusal of the application. It is noted the New

Cumnock Community Council has no objection to the proposed re-diversion of the River Nith but objects to yet another extension to the House of Water site.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council associated with the determination of this application. It is considered that the proposed development will necessitate an amendment to the existing Section 75 Agreement relating to the House of Water site should the application be approved.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report, the proposed development is considered to be generally in accordance with the Development Plans. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 of the report, there are material considerations relevant to this application, but in this regard, these are generally supportive of the proposed development.

8.2 The proposed development is considered to constitute a minor departure from Policy MIN3 as it represents an extension to an existing operative site not falling within the identified Potential Coal Extraction Areas. However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, existing operative opencast sites were excluded on the basis that these sites were currently being worked. The House of Water site lies within a Potential Coal Extraction Area, but is not itself identified as such. Any extension to the House of Water site outwith the current site boundary would in all probability fall within a Potential Coal Extraction Area, but any extension within the confines of the existing site would not.

8.3 The proposed extension to Area B is 14.8 hectares in size and lies wholly within the existing House of Water operational boundary. The site contains a significant reserve of high quality coal that lies between the two consented extraction areas within the House of Water site.

8.4 The site is relatively remote with only a few residential properties and farmhouses located in proximity to the application site, which most, if not all are now within the ownership or legal control of the applicant. It is considered that the extension and alteration to the excavation Area B will present no significant additional adverse impacts beyond those that may be expected as a result of the current consented operations.

8.5 The proposal will however require the re-diversion of the channel of the River Nith. The technical analysis and design of such a re-diversion indicates that this can be effectively done, taking into account the knowledge and

lessons learned from the original diversion to provide a stable and more ecologically beneficial river and channel. The scheme has been the subject of considerable discussions and input from key stakeholders, who are represented in the House of Water Technical Working Group. It is noted that there are no objections to the proposals from these statutory and non-statutory consultees.

8.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the House of Water site has been amended encompass obligations covering the following matters:

- (vi) The securing of a contribution for the additional maintenance spending on the B741 public road, as described in section 3.1 above, that will be incurred as a result of additional coals being transported along this route;
- (vii) The membership of the House of Water Technical Working Group to be extended to include the local grazier, a representative from FWAG and a representative from New Cumnock Angling Association;
- (viii) The securing of Minerals Trust Fund contributions for coals extracted from the extension site at a rate of 27.5 pence per tonne;
- (ix) The submission of evidence of the collateral warranty that will ensure that funding is available for any remedial works required as a result of site monitoring in respect of the River Nith; and
- (x) The undertaking of Scottish Coal to advise the Planning Authority and the Scottish Environment Protection Agency of any works that require to be undertaken to the river corridor in terms of the Water Framework Directive.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal amendment to the agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matters described in Section 8.6 of this report.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development

Services Committee as it would not represent a significant departure from the Development Plan.

Alan Neish
Head of Planning and Building Control

16 June 2004
HM/HM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory notices and certificates.
3. Consultation responses.
4. Letter of representation.
5. Adopted East Ayrshire Opencast Coal Subject Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).
7. Previous application CD/94/0074/MIN
8. Previous application 96/0400/FL
9. Previous application 03/0506/FL
10. NPPG 16: Opencast Coal and Related Minerals.
11. PAN 50, Annexes A, B, C and D.

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

Implementation Officer: Dave Morris

4. The applicant shall provide river flow gauging stations for monitoring purposes, the number and locations of these being submitted to the Planning Authority for approval in consultation with the Scottish Environment Protection Agency.

REASON: In the interest of monitoring flows within the re-diverted River Nith.

5. Prior to the commencement of works on site, the applicant shall submit full design drawings of the re-diversion works to the Planning Authority for approval in consultation with the House of Water Technical Support Group. No works shall be undertaken in respect of the new channel formation until the design has been agreed by the planning Authority.

REASON: In the interests of protecting the river environment.

6. The applicant shall provide an area of suitable sandmartin nesting habitat to be created by exposing suitable material beside the river, and that an artificial sandmartin bank be created to a design and location to be agreed by Planning Authority in consultation with the House of Water Technical Support Group.

REASON: In the interest of providing appropriate replacement habitat for birds.

7. Notwithstanding the provisions of condition 1 above, seeding mixes and planting specifications to be used in site restoration shall be submitted to, and approved by the Planning Authority in consultation with the House of Water Technical Support Group.

REASON: In the interests of proper site restoration.

8. The flood embankments from the original River Nith diversion shall be removed and used to infill the 2000 diversion channel and the landforms restored as agreed by the Planning Authority in consultation with the House of Water Technical Support Group as soon as the embankments become redundant.

REASON: In the interests of proper site restoration.

9. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent CD/94/0072/MIN dated 17 April 1996 as amended by planning consent 96//0400/FL dated 19 June 1998 and by planning consent 03/0506/FL dated 15 December 2003.

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

NOTE TO APPLICANT

1. The applicant should make early contact with SEPA regarding any possible new requirements relating to the proposed development in respect of discharge consents or EPA authorisations.
2. The applicant should make early contact with Scottish Water regarding existing apparatus that may be affected by the proposed development.

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