

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 26 MAY 2006

05/1309/FL: PROPOSED CONSTRUCTION OF A TEMPORARY ACCESS ROUTE WITH ASSOCIATED OVERLAND CONVEYOR BETWEEN CROWBANDSGATE RAILHEAD, NEW CUMNOCK AND GLENMUCKLOCH OCCS, KIRKCONNEL

APPLICATION BY ATH RESOURCES PLC

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full permission is sought for the construction of a 12 km conveyor and access route to link the Glenmuckloch opencast coal site near Kirkconnel with the Crowbandsgate railhead near New Cumnock, via the existing opencast sites at Grievehill and Garleffan. The conveyor will be built within an internal access route following closely the line of the existing track between Grievehill and Glenmuckloch, will traverse a small section of upland moorland between Grievehill and Garleffan and will follow the existing Garleffan haul road down as far as the Garleffan site offices. The conveyor and access route will then continue across a small area farmland before passing under the A76 road and terminating at the existing Crowbandsgate railhead.

1.2 The proposed conveyor system will consist of a fully enclosed linear structure with a rectangular cross section with the structure placed on wooden sleepers at approximately 1 metre spacings. The structure will have coated covers for both top and sides, painted heritage green to minimise visual impact. The top covers will have a curved profile and the dimensions of the conveyor structure will be 1.3 metres high and 1.3 metres in width. The access route is required not only for the maintenance of the conveyor but to allow the movement of heavy plant and machinery to and from the Glenmuckloch opencast site.

1.3 The proposed conveyor system will require 8 drive units with associated transfer chutes. Each drive unit will consist of power units, transmissions and lagged drive drums. In addition to the conveyor structure, drive units and transfer chutes, the system will also include feeder plant for loading the belt at the Glenmuckloch site, a radial stacker for the abstraction of domestic coal and a tipper stacker for the discharge and stacking of coal at the discharge end of the system at Crowbandsgate. It should be noted that all of the drive units are located within East Ayrshire, together with some 10.7 km of conveyor. A separate planning application for those elements of the system located within Dumfries

and Galloway has already been approved by that Council. The route of the conveyor will be fenced off for safety reasons and the conveyor itself, together with the proposed drive units will incorporate safety guards and emergency stop wires.

1.4 The conveyor line and access route have been designed so as to minimise environmental effects with particular regard to ecology and archaeology. In order to address such issues, power lines to serve the system will be undergrounded where the route passes through the SPA and adjacent to other sensitive areas. This design modification will minimise any potential effects of bird strike and predation on protected species. Conveyor drive positions have also been located away from ecologically sensitive areas to minimise noise, disturbance during construction and operation to both the SPA and a bat hibernaculum. Access routes have been modified to minimise the effects on ecology and archaeology. As a result it is no longer proposed that heavy plant will access Glenmuckloch via the SPA thereby reducing considerably the width of the access route and any potential disturbance due to plant movements and access route construction.

1.5 The construction of the conveyor and access road will take approximately 6 months. Both the conveyor and the access road are temporary developments and following completion of opencast operations at Glenmuckloch, the conveyor will be removed followed by a phased removal of the access road with a programme of restoration and rehabilitation. Operations at the Glenmuckloch site will include coaling operations lasting until 2011. Delivery of coal to Crowbandsgate by conveyor will occur between 0700 and 1900 hours Mondays to Fridays and between 0700 and 1300 hours on Saturdays.

1.6 Although planning permission for a railhead has been granted by Dumfries and Galloway Council to serve the Glenmuckloch site, a feasibility study has shown that a number of factors acting together mean that the effectiveness of a new railhead introduces unacceptable uncertainty and that land ownership issues mean that any railhead would require to be dismantled before completion of coaling at Glenmuckloch. In the absence of the proposed conveyor and the proposed rail facility at Glenmuckloch, the only alternative means of dispatch of coal is by road that would take coal on the A76 northwards through New Cumnock to the developer's railhead facility at Crowbandsgate or to Ayr Harbour. The proposed conveyor system would mean that some 2.8 million tonnes of coal from the Glenmuckloch site would be taken from public roads removing some 254,000 HGV movements through New Cumnock.

1.7 The planning application has been accompanied by statement of environmental effects of the proposed development including ecological, archaeological, noise and visual and landscape character assessments.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions on the attached sheet but that the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement, under the Town and Country Planning (Scotland) Act 1997, with the developer in terms of the obligations described in section 8.4 of the report.

3. SUMMARY OF ANALYSIS

3.1 As indicated in Section 5 of the report, the application is 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 approved unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application. However in this case it is considered that with the imposition of appropriate conditions and use of a Section 75 Agreement, concerns raised by objectors can be addressed and that consequently the points of objection are not of sufficient weight to merit refusal of the application.

3.2 The proposal, although temporary would have potential adverse implications for the integrity of the Muirkirk and North Lowther Uplands SPA and the adjacent natural heritage resource. However, the proposed mitigation measures should ensure that the impact is not of significance and with compensatory measures proposed, there is likely to be no net adverse impact on natural heritage resources. The proposal will also have some effect on the Sensitive Landscape Area. However it is considered that these impacts will be minimised by mitigation works proposed and would be temporary and reversible.

3.3 While it is disappointing that the proposed dedicated railhead to serve the Glenmuckloch OCCS is not likely to proceed for a number of reasons, the proposed conveyor system represents an acceptable alternative to the transportation of coal by road as this would have a significant impact on the community of New Cumnock and others should access be required to Ayr Harbour.

3.4 Taking all relevant matters into account, it is considered that the environmental and community benefits to be gained from the removal of significant volumes of HGV traffic transporting coal to Crowbandsgate railhead outweigh the temporary and mitigated impacts on the landscape and ecological and archaeological resources that will be affected by the proposed development.

The approval of this development should be the subject of a Section 75 Agreement to cover the following matters:

- (i) the securing of a restoration bond for the restoration of the conveyor route and temporary access road;
- (ii) the securing of road infrastructure improvements in agreement with the Roads and Transportation Division to allow the movement of plant and machinery to and from the Glenmuckloch OCCS;
- (iii) the securing of an agreed programme of management of the mitigation area to be agreed with Scottish Natural Heritage in terms of its consultation letter dated 20 April 2006;
- (iv) the remit of the Garleffan Technical Working Group to be extended to encompass the site of and operation of the proposed conveyor, the access road and off site mitigation areas;
- (v) the undertaking of black grouse lek surveys during 2006 in consultation with Scottish Natural Heritage and the Royal Society for the Protection of Birds;
- (vi) the production of a habitat management and mitigation plan, to be agreed with the Garleffan Technical Working Group, prior to the commencement of construction works;
- (vii) the provision of monitoring information on a monthly basis relating to the tonnages of coal transported by conveyor through Crowbandsgate railhead and tonnages of coal otherwise transported by road from the Glenmuckloch site through East Ayrshire destined for local markets.

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 because it would not be a significant departure from the development plan.

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 as the proposed development is of area significance and is subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The site comprises a narrow tract of land running from the consented opencast coal site at Glenmuckloch, near Kirkconnel in Dumfries and Galloway to Crowbandsgate railhead, near New Cumnock in East Ayrshire, running for a length of some 12 kilometres and covers a total area of 9.2 hectares, with approximately 7 hectares located within East Ayrshire and 2.2 hectares in Dumfries and Galloway. The site follows the general route of an existing farm track heading in a north-west direction from Glenmuckloch and after approximately 5.5km enters the existing opencast site at Grievehill. The application site then continues in a north-westerly direction to the Garleffan opencast site and then follows the route of the existing Garleffan haul road south to the coal preparation area at Rottenyard before continuing and passing through a culvert beneath the A76 road before terminating at the existing railhead at Crowbandsgate.

2.2 Part of the application site lies within the Muirkirk and North Lowther Uplands Special Protection Area (SPA) but the greater parts of the site are located within existing operational opencast coal sites and coniferous forest plantation.

2.3 **Proposed Development:** Full permission is sought for the construction of a 12 km conveyor and access route to link the Glenmuckloch opencast coal site near Kirkconnel with the Crowbandsgate railhead near New Cumnock, via

the existing opencast sites at Grievehill and Garleffan. The conveyor will be built within an internal access route following closely the line of the existing track between Grievehill and Glenmuckloch, will traverse a small section of upland moorland between Grievehill and Garleffan and will follow the existing Garleffan haul road down as far as the Garleffan site offices. The conveyor and access route will then continue across a small area farmland before passing under the A76 road and terminating at the existing Crowbandsgate railhead.

2.4 The proposed conveyor system will consist of a fully enclosed linear structure with a rectangular cross section with the structure placed on wooden sleepers at approximately 1 metre spacings. The structure will have coated covers for both top and sides, painted heritage green to minimise visual impact. The top covers will have a curved profile and the dimensions of the conveyor structure will be 1.3 metres high and 1.3 metres in width. The access route is required not only for the maintenance of the conveyor but to allow the movement of heavy plant and machinery to and from the Glenmuckloch opencast site.

2.5 The proposed conveyor system will require 8 drive units with associated transfer chutes. Each drive unit will consist of power units, transmissions and lagged drive drums. In addition to the conveyor structure, drive units and transfer chutes, the system will also include feeder plant for loading the belt at the Glenmuckloch site, a radial stacker for the abstraction of domestic coal and a tipper stacker for the discharge and stacking of coal at the discharge end of the system at Crowbandsgate. It should be noted that all of the drive units are located within East Ayrshire, together with some 10.7 km of conveyor. A separate planning application for those elements of the system located within Dumfries and Galloway has already been approved by that Council. The route of the conveyor will be fenced off for safety reasons and the conveyor itself, together with the proposed drive units will incorporate safety guards and emergency stop wires.

2.6 The conveyor line and access route have been designed so as to minimise environmental effects with particular regard to ecology and archaeology. In order to address such issues, power lines to serve the system will be undergrounded where the route passes through the SPA and adjacent to other sensitive areas. This design modification will minimise any potential effects of bird strike and predation on protected species. Conveyor drive positions have also been located away from ecologically sensitive areas to minimise noise, disturbance during construction and operation to both the SPA and a bat hibernaculum. Access routes have been modified to minimise the effects on ecology and archaeology. As a result it is no longer proposed that heavy plant will access Glenmuckloch via the SPA thereby reducing considerably the width of the access route and any potential disturbance due to plant movements and access route construction.

2.7 The construction of the conveyor and access road will take approximately 6 months. Both the conveyor and the access road are temporary developments and following completion of opencast operations at Glenmuckloch, the conveyor will be removed followed by a phased removal of the access road with a programme of restoration and rehabilitation. Operations at the Glenmuckloch site will include coaling operations lasting until 2011. Delivery of coal to Crowbandsgate by conveyor will occur between 0700 and 1900 hours Mondays to Fridays and between 0700 and 1300 hours on Saturdays.

2.8 Although planning permission for a railhead has been granted by Dumfries and Galloway Council to serve the Glenmuckloch site, a feasibility study has shown that a number of factors acting together mean that the effectiveness of a new railhead introduces unacceptable uncertainty and that land ownership issues mean that any railhead would require to be dismantled before completion of coaling at Glenmuckloch. In the absence of the proposed conveyor and the proposed rail facility at Glenmuckloch, the only alternative means of dispatch of coal is by road that would take coal on the A76 northwards through New Cumnock to the developer's railhead facility at Crowbandsgate or to Ayr Harbour. The proposed conveyor system would mean that some 2.8 million tonnes of coal from the Glenmuckloch site would be taken from public roads removing some 254,000 HGV movements through New Cumnock.

2.9 The planning application has been accompanied by statement of environmental effects of the proposed development including ecological, archaeological, noise and visual and landscape character assessments.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Roads and Transportation Division states that the developer must agree to undertake all roadworks identified as required to ensure that the existing minor public roads (C47 Mansfield Road and U716 Glen/Craigshiel Road) over which construction vehicles and abnormal loads in connection with the Glenmuckloch OCCS and the construction (and maintenance) of the conveyor, are maintained at the developer's expense in a safe and serviceable condition and are capable of accommodating vehicles associated with this proposal. There are also a number of existing structures on the route that will require repairs and one requiring replacement and the developer has indicated in discussions that this work will be undertaken at their expense. Discussions are currently ongoing with the developer regarding the works required but as the developer is aware of the scale of works envisaged, a commitment through a Section 75 Agreement to fund the necessary works should be sought with the developer. Similarly an agreement that covers any work as required on completion of the opencast coal site and removal of plant from the site must be entered into with the Council. Providing this commitment is forthcoming, the Roads and Transportation Division would have no objections in principle to a

proposal that will remove a significant volume of potential coal haulage vehicles from the public road system.

A Section 75 Agreement can be entered into between the Council and the developer to secure the necessary obligations in respect of road infrastructure improvements to meet the requirements of the Roads and Transportation Division.

3.2 Scottish Water and Power Systems have no objections to the proposed development

Noted.

3.3 New Cumnock Community Council recognises that it is now in a very difficult position with regard to this proposal. The Community Council understands that the original approval given to Scottish Coal (for the Glenmuckloch site at Kirkconnel) included the use of rail rather than road and feels that there is now a gun against its head. Of the two options now given the Community Council would rather have the conveyor than the transportation of coal by road. Concerns have been raised by other groups (MEGA) and there are very relevant environmental considerations contained within the report. The Community Council feels that approval for this application should be given with the conditions that these concerns are taken seriously by the operator and that careful monitoring is carried out to ensure this is the case.

Noted.

3.4 The Scottish Environment Protection Agency notes that the proposed route of the overland conveyor links 3 opencast coal mining sites, namely Glenmuckloch, Grievehill and Garleffan, all of which have Part B Authorisation granted by SEPA in terms of the Environmental Protection Act 1990. These authorisations are either currently, or will be, being converted to Part B PPC permits. Regardless of the specific regulatory regime, the purpose of the authorisations and/or permits is to control emissions to air, in this case coal dust emissions. A conveyor system together with its associated loading and unload points has the capacity to generate dust emissions and hence, would come under the control of an authorisation or permit.

Noted.

SEPA further states that the construction of a conveyor system would constitute a change in operations and as such is a matter that must be discussed by the operator and SEPA. If, as a result of these discussions, the potential impacts of the proposed system were of sufficient significance, it could result in the current authorisations/permits having to be varied. In respect of PPC legislation, the conveyor may constitute a “technical connection” between all three sites, another

issue that must be discussed by the operator and SEPA. It is therefore essential that the operator contacts SEPA directly about its proposal. The construction of the conveyor system will require an access route to be formed which will entail crossing of watercourses. The operator should provide method statements to SEPA and any other interested parties with regard to the construction of this access route looking at aspects such as controlling run-off, culvert construction and general pollution prevention measures. These method statements should be agreed by all parties prior to work commencing.

A note can be attached to any consent granted for the proposed development to advise the applicant to make early contact with SEPA regarding the proposed development. A condition can be attached to any consent granted for the proposed development to secure the submission of appropriate construction method statements as required by SEPA.

3.5 The Royal Society for the Protection of Birds does not object to the proposed development subject to conditions detailed in its consultation response to ensure no negative impact on the Muirkirk and North Lowther Uplands Special Protection Area. Should the Council be minded to grant permission without attaching these conditions, RSPB's position should be regarded as an objection.

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

RSPB indicates that the conveyor route passes through the Muirkirk and North Lowther Uplands SPA, which is internationally important for its breeding populations of hen harrier, short-eared owl, peregrine, merlin and golden plover. There is potential for this development to negatively impact these species through disturbance effects. Therefore the 'Habitats' Regulations apply. According to Regulation 48, if the competent authority "concludes that a proposed development unconnected with site management is likely to significantly affect a European site, it must then carry out an appropriate assessment of its implications....so as to ascertain whether or not it will adversely affect the integrity of the site." In this case, it is the opinion of RSPB that disturbance effects can be minimised through the implementation of suitable conditions and the construction design proposed by the developer. RSPB believes implementation of the proposed habitat mitigation will ensure no net negative impact on the SPA. The conveyor route will also pass through an area of forestry that holds black grouse. There is potential for development in this area to result in disturbance to this species. RSPB notes that no specific lek surveys have been carried out as part of this assessment and request that lek surveys in 2006 are used to inform construction timetables and the location of mitigation work.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of RSPB as detailed in the annex accompanying its consultation letter.

3.6 Scottish Natural Heritage states that the proposal is for an overland conveyor with associated works and adjacent access road to link Glenmuckloch open cast coal site to the existing rail terminal at Crowbandsgate. This involves the construction of approximately 12km long overland conveyor, 2.4km of this falls within the Muirkirk Uplands SSSI. This site is designated for its upland and blanket bog habitat, moorland bird assemblage, breeding and wintering hen harrier and short-eared owl. The site is also covered by the Muirkirk and North Lowther Special Protection Area (SPA) classified for its breeding populations of hen harrier, short-eared owl, merlin, peregrine, golden plover and wintering hen harrier. The legislative requirements relating to European sites are summarised in Scottish Executive Circular 6/1995 as amended June 2000.

Noted.

SNH's advice is that this proposal is likely to have a significant effect on the qualifying interests of the site. This advice to East Ayrshire Council is based on the information provided in the environmental appraisal and additional clarification material supplied to SNH by ATH. If matters are addressed as noted below in conditions and through legal agreements, then an adverse effect on the integrity of the site can be avoided. The site has also been identified to be supporting otters and a bat hibernaculum is close by. Bats and otters have full protection under the Wildlife and Countryside Act 1981 (as amended) and Nature Conservation (Scotland) Act 2004. Bats and otters are further protected as 'European Protected Species' under Regulation 43 (1) of the Conservation (Natural Habitats &c.) Regulations 1994 and The Conservation (Natural Habitats &c.) Amendment (Scotland) Regulations 2004.

Noted.

SNH objects to the proposed development unless it is made subject to conditions and legal agreements as listed below which would overcome our concerns.

1. Prior to the start of any work on the proposed development area, the management of the mitigation areas (indicated in plan 627, supplied to SNH on 19th April 2006) will be agreed with the Competent Authority. Activities relating to the creation of this mitigation area shall commence in advance of work on the development area.
2. The proposed development will strictly follow the line identified in the report. The conveyor and associated track will be no wider than 18m through the SPA/SSSI.

3. The proposal will be temporary and the conveyor and associated track will be dismantled and restored by the end of 2012.
4. The power lines will be undergrounded through the SPA and in 'bird sensitive areas' identified in the ecological addendum dated December 2005.
5. No work will commence within the main bird breeding season for ground nesting birds (March to July inclusive) unless with the agreement of the Competent Authority.
6. An appropriate license should be obtained from the Scottish Executive regarding potential disturbance to otters.

The requirements of SNH can be secured through the imposition of appropriate conditions in any consent granted for the proposed development. A Section 75 Agreement would be required to secure off-site mitigation proposed within the Special Protection Area.

SNH further states that the advice given above considered the impact of the proposals on the following factors:

- The extension could potentially impact on 2 golden plover territories
- It is unlikely that any hen harrier, merlin, peregrine or short eared owl nest sites will be displaced based on recent data. Worst case scenario 1 pair of hen harrier and short-eared owl could be displaced. There could be a loss of foraging potential through a minor loss in prey species and disturbance during construction and operation.
- The habitat loss will be temporary and restored to at least a similar condition to present
- There could be disturbance to a bat hibernaculum and one otter holt

These losses may have an adverse affect on the site's integrity and on European protected species, although such an impact can be avoided provided matters outlined in 1-5 above are included in conditions and legally binding agreement. If the Competent authority is minded to grant consent without conditions and agreements that would overcome the above noted concerns, SNH's position should be regarded as an objection. It should be noted that East Ayrshire Council is required to undertake an appropriate assessment of the implications of the proposal for the site in view of the site's conservation objectives for its qualifying interests. This assessment may be based on the above appraisal by SNH but

you may wish to carry out further appraisal before completing the appropriate assessment.

Noted.

3.7 Dumfries and Galloway Council has advised that the planning application for the section of conveyor and temporary access road located within its administrative boundary was approved at a meeting of its Nithsdale Regulatory Committee on 12 April 2006.

Noted.

3.8 West of Scotland Archaeology Service notes that the proposed conveyor would be laid on a recognised archaeological site (early 19th century wagon way associated with limeworks) which also extends into the area of Dumfries and Galloway Council. The conveyor would also cross another major archaeological site (the Guelt limeworks at Craigdullyeart Hill). Neither of these sites is currently a Scheduled Ancient Monument but both have been recognised as potentially of national importance and of potential schedulable quality. The significance of these sites has been taken into account in the preparation of the proposals, which have been designed to minimise both direct and indirect impacts on archaeological resources. WOSAS is happy that suitable measures are proposed to protect archaeological sites affected by the proposed development and where this is not possible that suitable mitigation would be put in place.

Noted.

WOSAS recommends that should the Council determine to grant consent for this application, a suitable condition should be attached to ensure that a more detailed archaeological mitigation strategy is drawn up (which WOSAS on the Council's behalf will agree with the applicant's archaeological agents, and which will be based on the submitted mitigation strategy). The agreed mitigation strategy should then be submitted by the applicant to the Council for approval and subsequently implemented before and during the proposed development. WOSAS suggests the following wording for such a condition:

'Prior to the commencement of development, the developer shall submit for the Council's approval, an archaeological mitigation strategy. Thereafter the developer shall ensure that the approved strategy 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.'

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

3.9 East Ayrshire Environmental Health Division states that the principal interest would be in respect of any potential nuisance that might be created. In this regard the conveyor line traverses sparsely populated land and the data submitted in respect of Glen Hall Farm confirms that the predicted worse case scenario would be well below levels of concern.

Noted.

The principal concern will be in respect of the possible impact of the conveyor system on the coal loading rail facility at Crowbandsgate where there is the greatest potential for any disturbance. There have been intermittent complaints in the past from residents in the Pathhead area of New Cumnock about disturbance from the terminal. It is noted that the proposed conveyor operating times will be from 0700 to 1900 hours Mondays to Fridays and 0700 to 1300 hours on Saturdays. The incorporation of a condition in any consent issued to this effect would be welcome to ensure some restriction and control over operational hours.

It is considered that the incorporation of a condition as suggested by the Environmental Health Division to control operational times of the conveyor would be appropriate.

The Division states that the primary concern with respect to the proposals would be to ensure that there is no dilution of the operating conditions currently applicable to the Crowbandsgate facility which could result in potential complaint or nuisance to residents in the locality not only from noise but also from dust arising.

The operation of the rail facility is the subject of a separate planning consent including appropriate conditions and noise and dust monitoring programs.

4. REPRESENTATIONS

4.1 Two third party letters of representation have been received with respect to the proposed development with the main points of objection summarised as follows:

4.2 I write on behalf of the Ayrshire Branch of the Scottish Ornithologists Club to object to the proposed development. The proposed conveyor would pass through part of the Muirkirk and North Lowther Uplands Special Protection Area. This area was set up to protect the breeding and hunting areas of hen harriers and a number of other bird species granted special protection. Development of this type would compromise the ability of the SPA to achieve its primary objective.

Subject to the implementation of appropriate mitigation measures and the imposition of appropriate conditions and obligations secure through a Section 75 Agreement, neither Scottish Natural Heritage nor the Royal Society for the Protection of Birds object to the proposed development. SNH considers that there would be no net negative impact on the integrity of the SPA as a result of proposed mitigation measures.

4.3 The proposed Glenmuckloch opencast site is right beside an existing railway line. It would appear that the only or main reason for building a 12 km conveyor is to avoid the expense or inconvenience of building a new railhead at the site. This parsimony would not seem to be an adequate reason to damage an SPA and other areas of ecological importance. Building a new loading facility would save all this damage and its construction might well just provide as much local employment as constructing the conveyor.

The present application requires to be determined on its own merits. The applicant has indicated that the construction of a new railhead adjacent to the Glenmuckloch site is unlikely to happen due to a number of factors.

4.4 Although the environmental appraisal proposes a large number of precautions to limit environmental damage during construction, operation and final dismantling of the conveyor, the remote nature of the site would make it very difficult and expensive to monitor operations. It strains credulity somewhat to believe that all the precautions will be followed to the letter once work begins on the ground. Thus the actual disturbance to breeding and foraging birds and the bat hibernaculum, and damage to delicate plant communities, could well be significantly worse than predicted by the developer.

Appropriate monitoring will take place including the involvement of the Garleffan Technical Working Group whose remit is to be extended to take on board the conveyor site.

4.5 A similar problem applies to the rules for minimising disturbance and damage during operation of the conveyor once built. If a major fault developed during Spring one year, it is difficult to believe that the developer would delay repairs until July or later in order to avoid disturbing rare birds during the breeding season. It might only take one day of noisy engineering work to cause nest desertion by some species, and hence possibly the loss of a whole years breeding.

In the event of a major fault, appropriate consultation can be carried out with the relevant stakeholders to address the potential concerns raised by the objector.

4.6 Much of the eastern part of the proposed route for the conveyor is through an area which is not only of wildlife interest but is also valued for its scenic and recreational attractions by walkers and local families. The area around Craigdullyear and Corsencon Hills is also listed in SOC's publication 'Birdwatching in Ayrshire and Arran' which was sponsored by all three Ayrshire Councils as a service to local people and an attraction to tourists. Wildlife tourism is an important source of employment and money for the county. SPP15: Planning for Rural Development makes the point that tourism is of vital importance to the social, economic environmental and cultural well-being of rural Scotland. This sort of unnecessary development does the tourist industry no favours.

The comments of the objector are noted but this also requires to be assessed in the context of the potential impact on communities, especially in New Cumnock, resulting from the transportation of coal by road to available railheads at Crowbandsgate and Ayr Harbour in the absence of the proposed conveyor.

4.7 The current application does not appear to indicate the applicant's further interests in the area, yet the plans clearly show that they own more than currently has planning consent for opencasting. They may also have further interest in land which they do not own. MEGA therefore requests that the Council ascertains more information about the applicant's operational plans in the locality for the next ten years, as these may have a bearing on the permanence or otherwise of the conveyor.

The current application requires to be determined on its own merits.

4.8 The access road is described as temporary, which it can never be, as once ground is compacted, drainage will be altered and will scar the landscape.

The restoration of the access road will be undertaken in accordance with an approved restoration scheme that will be the subject of consultation with the existing Garleffan Technical Working Group, including representatives from Scottish Natural Heritage, the Royal Society for the Protection of Birds, the Scottish Environment Protection Agency and the Nith District Salmon Fishery Board. Input from these organisations will assist in ensuring positive restoration.

4.9 We note with particular concern that Mansfield Road will be used and extended to permit heavy plant to be taken to Glenmuckloch. This is totally unacceptable on a road used by walker, riders and bird watchers. They would not expect to find such traffic on this road which many families use. We assume that bringing in heavy plant through New Cumnock and accessing Glenmuckloch from the extension to Mansfield Road, is being proposed so that the developer

do not require to renew the railway bridge access from the A76 north of Kirkconnel.

The current application requires to be determined on its own merits. Subject to appropriate road infrastructure improvements, the Roads and Transportation Division has no objections to the proposed development. The movement of abnormal loads to Glenmuckloch site will be temporary in nature and confined generally to site start-up and closure. There would therefore be no long term impacts on users of Mansfield Road.

4.10 It is unclear whether any coal carrying HGV's will use this route. This requires to be clarified. At most opencast coal sites, even where coal is to be transported by rail, it is estimated that 10% of total output might still be carried by lorry to supply local markets.

No coal from Glenmuckloch OCCS will be transported along Mansfield Road. The purpose of the proposed conveyor is to remove HGV movement of coal from public roads.

4.11 MEGA strongly objects to any takeover of historic tracks and obstruction of through and circular routes. This is quite contrary to recent Freedom of Access legislation. Any diversion will equally scar the hillside. Walkers, birdwatchers and photographers who use these routes will not wish to be in close proximity to a noisy coal conveyor. The greater part of the conveyor's route will obstruct established rights of way.

The proposed conveyor route will utilise an existing track in general and will be occupied for a temporary period following which the conveyor and access route will be dismantled and restored. Alternative arrangements will be provided to ensure alleged rights of way will remain open to walkers.

4.12 Part of the system of tracks that the developer wishes to utilise is understood to be one of the first wagon-ways in the South-West. Mentieth's Inclined Plain which was constructed nearly 200 years ago has been described as unique in the region and sufficiently important to be 'scheduled'. This should not be altered or interfered with in any way but should be promoted as an important early transport relic.

The wagon-way is not 'scheduled' as indicated in the consultation response from the West of Scotland Archaeological Service. Nonetheless, the proposed development has been designed to ensure minimal impact on this feature and, subject to an appropriate archaeological brief, WOSAS does not object to the proposed development.

4.13 The proposed conveyor and access road routes impinge on the SPA, SSSI and Sensitive Landscape Area as indicated in the local plan. They not only impinge, but due to engineering works, continual maintenance, noise disturbance and activity and displacement of both walkers and wildlife, will adversely affect the whole ethos of these wild areas.

Subject to the implementation of appropriate mitigation measures and the imposition of appropriate conditions and obligations secured through a Section 75 Agreement, neither Scottish Natural Heritage nor the Royal Society for the Protection of Birds object to the proposed development. SNH considers that there would be no net negative impact on the integrity of the SPA as a result of proposed mitigation measures.

4.14 Servicing the site over the County boundary, by destroying land and tracks and visual amenity in East Ayrshire is unacceptable. There is no benefit to the New Cumnock area.

The reality of the situation regarding transportation of coal from the Glenmuckloch site is that without the proposed conveyor system, there is the very real prospect of coal being transported by road via the A76 through New Cumnock to the applicant's railhead at Crowbandsgate. The prospect of a dedicated railhead adjacent to the Glenmuckloch site no longer viable to the applicant and therefore, the proposed conveyor represents the removal of approximately 254,000 vehicle movements through New Cumnock which is of considerable environmental benefit to that community.

4.15 In terms of the approved Ayrshire Joint Structure Plan these proposals affecting a rural area are contrary to ADS6 where local plans were to bring forward specific policies for their protection and management – and did so – by agreeing to the designation of most of the application site as a Sensitive Landscape Area, also within the SPA. Structure Plan Policy ADS5 requires Councils to adhere to the guiding principle of protecting the countryside for its own sake. The land through which the conveyor would run is ecologically and visually sensitive and should be left alone, given that concessions have already been made to the SPA. It is contrary to policies E1, E5, E7 and E8 and could be in conflict with G2, G3 and G5.

A full assessment of the proposed development against relevant policies of the development plan is given in Section 5 below.

4.16 There is also a question over the capacity of Crowbandsgate railhead to move the coal from Dumfries and Galloway and from East Ayrshire. If there is

insufficient, then East Ayrshire could pay dearly for accommodating the transport needs of an opencast site which brings no local benefit.

Coaling at Garleffan is due to cease during early Summer 2006 and is due to cease in Grievehill during Winter 2006. Capacity will therefore be available to accommodate coals won from the Glenmuckloch site.

4.17 This area is important in terms of wildlife, not only the 42 species of birds noted by the applicant's consultants in one walkover, but the other 36 they might have seen if they had surveyed the route themselves in both breeding, migrating and roosting seasons.

SNH and RSPB were consulted on the scope of the ecological surveys. Notwithstanding the comments of the objector, subject to appropriate conditions, neither SNH nor RSPB object to the proposed development.

4.18 Since the SPA was designated after very careful scientific evaluation and very careful attention paid to establishing its boundaries. We have seen the latter eaten away by opencast development at Powharnal and Gasswater. Also to an extent by Glenmuir where the precedent of opencasting on land not thus identified within 500 metre of the SPA, will surely lead to an extension up to the SPA. We will end up with more areas outside the SPA designated to mitigate loss of or adverse impact on the SPA, than unspoilt areas within it.

As indicated previously, subject to the implementation of appropriate mitigation measures and the imposition of appropriate conditions and obligations secure through a Section 75 Agreement, neither Scottish Natural Heritage nor the Royal Society for the Protection of Birds object to the proposed development. SNH considers that there would be no net negative impact on the integrity of the SPA as a result of proposed mitigation measures.

4.19 East Ayrshire Council is possibly enabling the developer to open up Glenmuckloch without satisfying previous planning conditions. Those conditions on the previous consent issued in 2002 meant that opencasting in Dumfries and Galloway did not impinge on East Ayrshire as coal was to be transported from a railhead adjacent to the site at Glenmuckloch and equipment would be transported to the site over a new bridge over the railway line at the access to the site. This situation has clearly changed and East Ayrshire would be detrimentally affected. If Glenmuckloch is opened up with the proposed connections to East Ayrshire, then Garleffan / Grievehill and presumably the new site at Glenmuir would not be completed and restored until 2 years later than already stated and agreed.

The difficulties regarding the development of a railhead adjacent to the Glenmuckloch site will effectively rule this option out for the transportation of coal from Glenmuckloch. This inevitably will mean that coal would be transported by road via the A76 northwards through New Cumnock to Crowbandsgate railhead, also operated by the developer. The proposed conveyor would result in some 2.8 million tonnes of coal being removed from public roads and would be of considerable environmental benefit to the community of New Cumnock. It is a fact that the proposed conveyor will operate after the Garleffan and Grievehill sites have ceased coaling. However, this will mean that there will be a 2 year delay in the restoration of the Garleffan haul road but this has to be assessed against the impact of HGV coal transportation through New Cumnock.

4.20 In addition to the two letters of objection, three letters have been received supporting the proposed development, mainly on the grounds that the proposed conveyor will result in significant volumes of HGV traffic being taken off public roads.

Noted.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

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

Ayrshire Joint Structure Plan

5.2 Under Policy ADS1 the three Ayrshire Councils shall promote sympathetic industrial and business development throughout Ayrshire in order to foster the growth of the local economy, improve the economic well-being of existing and future residents and increase the prosperity of its business enterprises. As the proposal involves providing an installation which will enable efficient handling of coal at local opencast sites it would accord with Policy ADS1.

Noted.

5.3 Policy ADS 7 provides that the three Ayrshire Councils shall adhere to the principles of sustainability in considering significant development proposals. The temporary nature of the proposed works and the fact that they would particularly adhere to the principles of sustainable freight transport mean they would to a

great degree fulfil the provisions of Policy ADS7. However, there are reservations regarding potential permanent changes to habitat quality within the area that would be affected by construction and operation of the conveyor as indicated below.

5.4 Under Policy E7, development that has a significant effect on a Natura 2000 site (SPA/ SAC) will only be permitted where an assessment of the site's conservation objectives reveals that the integrity of such sites would not be adversely affected, there are no alternative solutions and there are reasons of over-riding public interest, including those of a social or economic nature. The preferred line of the conveyor would cross part of the Muirkirk and Lowther Uplands SPA and would directly affect the habitat within its area of construction and operation and the potential nesting and foraging areas of rare bird species.

Consultation with both SNH and RSPB has indicated that subject to the imposition of appropriate conditions regarding environmental mitigation and securing of obligations through a Section 75 Agreement, both consultees consider that there will be no significant adverse impact on the SPA.

5.5 Under Policy E8 development which would affect SSSIs shall conform to the Structure Plan only where any objectives of designation and the overall integrity of the site will not be compromised or where any significant effects are clearly outweighed by social or economic benefits of national importance. It is considered that the proposal does not conflict with Policy E8 because the integrity of the SPA would be not be significantly compromised as noted by SNH and RSPB.

Noted.

5.6 Policy E9 provides that the Ayrshire Councils should, in respect of sites which are not of national or international importance, have regard to manage features of the natural heritage which are of importance for habitats and species, with a view to complementing the Natura 2000 network. Part of the area which the conveyor would traverse comprises the Muirkirk South Uplands Provisional Wildlife Site. As this site takes in the Muirkirk and Lowther Uplands SPA it contains areas peripheral to the statutory site that complement its nature conservation importance. The incursion of the conveyor into the PWS would, however, be minor.

Noted.

East Ayrshire Local Plan

5.7 Under Policy IND9 the Council will be supportive of proposals to develop sites with direct access to the existing rail network for rail freight based industrial

use, subject to sites being fully justified in terms of locational need, economic benefit, environmental impact and transport and infrastructure implications. The redevelopment of railheads at existing coal disposal points will be particularly encouraged for such purposes.

The use of a conveyor with direct access to New Cumnock station means that, with the exception of its potentially minor adverse effects on nature conservation and to some degree the local landscape, it could be justified in terms of locational need and economic benefit (by linking of OCC sites and increased efficiency of operation) and transport/ infrastructure (by direct link to rail, rather than use of roads with its potential adverse impact on local community and environment).

5.8 Policy IND10(v) provides that industrial development outwith settlement boundaries will be acceptable to the Council only where the proposal relates to rail freight based industrial uses at existing coal disposal points.

It is considered that the proposed conveyor link into the New Cumnock railhead would accord with the provisions of Policy IND10(v).

5.9 Under Policy M4 the Council will assess all applications for new mineral workings, including the extension of mineral working at existing sites, against the following criteria:

(i) the impact of the development on the amenity of nearby residents and the residents of properties located along agreed haulage routes to and from the site;

The conveyor would obviate the need for frequent haulage movements by road along the A76 and through New Cumnock itself and therefore there would be no adverse effect on local residents terms of safety, noise or pollution along or adjacent to the A76. It is noted that in the Environmental Assessment the noise from operation of the conveyor is predicted to be similar to background daytime noise.

(ii) the impact of the development on the natural and built heritage, including wildlife and other sites of nature conservation interest, historic gardens and designed landscapes, the visual amenity and the landscape character of the area;

The proposed line of the conveyor would have implications for the natural and built heritage as follows:

- ***It would run across part of the Muirkirk and Lowther Uplands SPA and may cause degradation of existing habitat and change the relationship of protected and other species within the SPA.***
- ***It is noted that the conveyor would be temporary, occupying a relatively narrow but significant swathe of land and that afterwards the land would be restored to dry heath habitat.***
- ***The conveyor would be within a Sensitive Landscape Character Area.***

Nonetheless, it is considered that, by the use of appropriate conditions, implementation of agreed mitigation measures and by obligations secured through a Section 75 Agreement, the proposed development would not have a significant adverse impact on the natural and built heritage interests.

(iii) operational details, restoration proposals and after-use of the development site;

As the conveyor will be a temporary feature it will not have a permanent affect on the amenity and landscape of the area. It is the intention of the developers to restore the area occupied by the conveyor, and its maintenance track, to dry heath land habitat.

(iv) any cumulative impact of the development either concurrently or successively in association with other similar developments in the vicinity of the site;

The proposal would have some cumulative environmental impact in association with the opencast coal sites at Garleffan, Grievehill and Glenmuckloch but such cumulative impacts would be temporary in nature.

(v) the extent of directly related community and environmental benefits to be afforded to the area as a result of the development, such as the enhancement and creation of landscapes and habitats and removal of dereliction;

It is considered that there would be no community benefits from the proposal in respect of those matters specified under this criterion. Potential environmental benefit may accrue with the mitigation proposals and restoration of the site.

(vi) methods of transportation of material, volumes of traffic generated and proposed haulage routes; and

The need for road haulage, with its potential impacts on the community and the environment, would be obviated by the proposal.

(vii) the impact of the development on existing alternative economic initiatives and employment in the vicinity of the site e.g. tourism facilities etc.

Through improving the efficiency of existing opencast coal sites, the proposal would assist in safeguarding that industrial use and through that, potentially local employment. It is unlikely there would be any advantageous effect on other local initiatives.

5.10 Under Policy ENV1 the Council will seek to protect, preserve and enhance all heritage resources requiring conservation including Listed Buildings and Conservation Areas, together with their respective settings, Scheduled Ancient Monuments and Archaeological sites and landscapes. Under Policy ENV3 the Council will actively encourage the retention and preservation of archaeological and industrial archaeological resources and ensure that, in cases where the primary aim of preserving archaeological sites cannot be achieved, developers carry out appropriate archaeological investigations and recording of remains within a proposed development site, before the development commences.

West of Scotland Archaeology Service has been consulted and subject to appropriate conditions to safeguard archaeological resources does not object to the proposed development.

5.11 Under Policy ENV10(i) there will be an overriding presumption against development which could adversely affect sites designated as Special Protection Areas (SPA). The proposed route of the conveyor crosses part of the Muirkirk and Lowther Uplands SPA.

Consultation with both SNH and RSPB has indicated that, subject to the imposition of appropriate conditions regarding environmental mitigation and securing of obligations through a Section 75 Agreement, both consultees consider that there will be no significant adverse impact on the SPA.

5.12 Under Policy ENV11 within the Sensitive Landscape Character Areas the Council will give priority and prime consideration to the protection and enhancement of the landscape in assessing rural development proposals. The Council will not be supportive of development which would create unacceptable visual intrusion or irreparable damage within these areas and will be supportive of development proposals only where these positively enhance or protect the natural landscape, wildlife and cultural heritage of the area or promote the social and economic well-being of communities.

The proposal would be within the Sensitive Landscape Character Area. From the environmental assessment it would seem that the visual impact of the conveyor on the landscape from most common

viewpoints along the A 76 and New Cumnock would be slight (and temporary). It is noted that power to the conveyor would be provided by underground cabling in sensitive areas and this would accord with Policy ENV 11.

5.13 Under Policy ENV12 in the rural area, and especially in the Sensitive Landscape Character Areas the Council will ensure that all development proposals respect, in terms of their design, the local landscape characteristics of the particular area within which they are proposed. Developers will be expected to conserve and enhance, and reinstate or replace where appropriate, those features which contribute to the intrinsic landscape value and quality of the area concerned, including:

- (i) existing setting of settlements and buildings within the landscape;
- (ii) existing woodlands, shelter belts, hedgerows and trees;
- (iii) existing burns, rivers, lochs and other water features;
- (iv) existing field patterns and means of enclosure including dry stone dykes, hedging and fencing;
- (v) existing public rights of way, footpaths and bridleways and
- (vi) existing skylines, landform and contours.

Details of the power cabling and the conveyor itself has taken account of the landform and ensure that those above features to which policy ENV12 relates are either safeguarded or capable of successful reinstatement. Given the high nature conservation value of the area the retention and enhancement of natural features is paramount. The alignment of the conveyor will be predominantly along contour lines and there should be no implications in terms of skyline projection. Furthermore as the proposed western section of the conveyor would closely follow the line of the existing haul road it is unlikely to unduly increase existing visual disruption of the slopes of Cairnscadden Hill.

However, the route of the conveyor would cross the Watsonburn Farm/Kyle Farm to Dalblair claimed public right of way, Scottish Rights of Way and Access Society route SCD 91, and would run along the line of parts of routes SCD 92 and 94 which make up sections of the archaeologically important 'Watsonburn Wagonway'. A condition can be attached to require the developer to submit appropriate details for alternative access arrangements to secure continued use of the rights of way.

5.14 Under Policy ENV 13 within the rural area, and especially within the Sensitive Landscape Character Areas, the Council will ensure, through the development process, that:

- (i) any authorised development is in keeping with, has minimal visual impact and reflects the nature of the rural area in which it is located, in terms of layout, materials used, design, size, scale, finish and colour. The design and material finish of any ancillary features will also require to be sympathetic to the character and appearance of the area;
- (ii) any authorised development is sensitively sited, landscaped and screened so as to blend into, respect and complement the landscape characteristics of the particular area in which it is to be located and
- (iii) the landscape setting of a particular area affected by a proposed development is safeguarded from adverse or irreversible change by the use of appropriate planning conditions, management agreements, preparation and promotion of environmental improvement schemes, development and design briefs etc.

The cover of the proposed conveyor will be painted green to blend in with the landscape and the conveyor will be set on easily removable sleepers. Appropriate conditions will require to be placed on any consent relating to the removal of the conveyor and reinstatement of the route in consultation with SNH.

5.15 Policy ENV 14 provides that in assessing proposals relating to land within the rural area which has not been identified for specific development opportunity sites on the Local Plan maps, the Council shall ensure that these have minimum impact on the rural environment. There will be a general presumption against any development which would:

- (i) cause permanent and irreversible loss of prime quality agricultural land;

The proposal would not result in the loss of prime quality agricultural land.

- (ii) have a permanent adverse impact or cause irreparable damage to the built heritage resources requiring conservation or their settings including listed buildings, conservation areas, historic gardens and designed landscapes, scheduled ancient monuments, archaeological and industrial archaeological sites;

West of Scotland Archaeology Service has been consulted and, subject to appropriate conditions to safeguard archaeological resources, does not object to the proposed development.

- (iii) have a permanent adverse impact or cause irreparable damage to natural heritage resources requiring conservation and to existing species and habitats;

Consultation with both SNH and RSPB has indicated that subject to the imposition of appropriate conditions regarding environmental

mitigation and securing of obligations through a Section 75 Agreement, both consultees consider that there will be no significant adverse impact on the SPA.

(iv) adversely affect the quality of water resources, water catchment areas, land drainage or flood protection interests or create water pollution problems or

SEPA has not raised any significant issues regarding potential impact on water resources.

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

SNH has indicated that the loss of areas of peat will not be significant and can be addressed through restoration of the site.

5.16 Under Policy ENV19 the Council will presume against any developments which have an adverse effect on watercourses by increasing levels of pollution or having a detrimental impact upon water quality, aquatic habitats for wildlife or recreational amenity and have an adverse effect on groundwater of major aquifers. Where necessary, the Council shall require applicants to submit supplementary drainage information to assist in the determination of planning applications.

The proposed route of the conveyor would traverse several minor watercourses and may in itself affect surface drainage into these water bodies. As indicated in the consultation response from SEPA the developer will require to submit appropriate construction method statements for agreement with SEPA. This can be secured by conditions in any consent granted for the development.

East Ayrshire Opencast Coal Subject Plan

5.17 Policy MIN18 states, amongst other thing, that the Council will encourage the provision of a network of off-road haulage routes and covered conveyors linking opencast sites with any existing or proposed railhead for the transportation of extracted minerals.

While the proposed conveyor will transport coals extracted from Glenmuckloch OCCS outwith East Ayrshire, coals won from Garleffan OCCS and Grievehill OCCS will also be transported by the conveyor to the Crowbandsgate Railhead. The linking of these sites and the consequential removal of significant HGV movements associated with these sites from public roads, particularly through New Cumnock, is consistent with the provisions of Policy MIN18.

It is considered that the proposed development generally accords with the provision of the Ayrshire Joint Structure Plan, the East Ayrshire Local Plan and the East Ayrshire Opencast Coal Subject Plan.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

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

Consultation Responses

6.2 None of the consultation responses have raised any issues which would indicate that the application should be refused although a number of issues would require to be addressed either by conditions or obligations through a Section 75 Agreement.

Representations

6.3 The representations received objecting to the proposed development are either not borne out by the consultation process or relate to issues that can be addressed by the use of conditions or through obligations secured by means of a Section 75 Agreement. In this case three letters of support for the proposed development have also been received.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications would arise from the concluding of a Section 75 Agreement to secure the obligations as described in section 8.4 below.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report, the application is 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 approved unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application. However in this case it is considered that with the imposition of appropriate conditions and use of a Section 75 Agreement, concerns raised by objectors can be addressed and that consequently the points of objection are not of sufficient weight to merit refusal of the application.

8.2 The proposal, although temporary would have potential adverse implications for the integrity of the Muirkirk and North Lowther Uplands SPA and the adjacent natural heritage resource. However, the proposed mitigation measures should ensure that the impact is not of significance and with compensatory measures proposed, there is likely to be no net adverse impact on natural heritage resources. The proposal will also have some effect on the Sensitive Landscape Area. However it is considered that these impacts will be minimised by mitigation works proposed and would be temporary and reversible.

8.3 While it is disappointing that the proposed dedicated railhead to serve the Glenmuckloch OCCS is not likely to proceed for a number of reasons, the proposed conveyor system represents an acceptable alternative to the transportation of coal by road as this would have a significant impact on the community of New Cumnock and others should access be required to Ayr Harbour.

8.4 Taking all relevant matters into account, it is considered that the environmental and community benefits to be gained from the removal of significant volumes of HGV traffic transporting coal to Crowbandsgate railhead outweigh the temporary and mitigated impacts on the landscape and ecological and archaeological resources that will be affected by the proposed development. The approval of this development should be the subject of a Section 75 Agreement to cover the following matters:

- (i) the securing of a restoration bond for the restoration of the conveyor route and temporary access road;
- (ii) the securing of road infrastructure improvements in agreement with the Roads and Transportation Division to allow the movement of plant and machinery to and from the Glenmuckloch OCCS;
- (iii) the securing of an agreed programme of management of the mitigation area to be agreed with Scottish Natural Heritage in terms of its consultation letter dated 20 April 2006;
- (iv) the remit of the Garleffan Technical Working Group to be extended to encompass the site of and operation of the proposed conveyor, the access road and off site mitigation areas;
- (v) the undertaking of black grouse lek surveys during 2006 in consultation with Scottish Natural Heritage and the Royal Society for the Protection of Birds;
- (vi) the production of a habitat management and mitigation plan, to be agreed with the Garleffan Technical Working Group, prior to the commencement of construction works;

(vii) the provision of monitoring information on a monthly basis relating to the tonnages of coal transported by conveyor through Crowbandsgate railhead and tonnages of coal otherwise transported by road from the Glenmuckloch site through East Ayrshire destined for local markets.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions on the attached sheet but that the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement, under the Town and Country Planning (Scotland) Act 1997, with the developer in terms of the obligations described in section 8.4 of the 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 because it would not be a significant departure from the development plan.

Alan Neish
Head of Planning, Development and Building Standards

15 May 2006
HM/HM/SMB
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation responses.
4. Letters of representation.
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).

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

Implementation Officer: Dave Morris

Form TP24A

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 05/1309/FL

Location	Between Crowbandsgate Railhead, New Cumnock and Glenmuckloch OCCS, near Kirkconnel
Nature of Proposal:	Proposed construction of a temporary access route with associated overland conveyor system
Name and Address of Applicant:	ATH Resources plc Aardvark House Sidings Court DONCASTER DN4 5NU
Name and Address of Agent	N/A

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

The above FULL application should be approved subject to the following conditions:-

1. The proposed conveyor system and temporary access route hereby approved shall be removed from the site, its use discontinued all works for the restoration of the shall be concluded by 31 December 2012.

REASON – The development is temporary in nature.

2. Prior to the commencement of development on site, or unless otherwise agreed in writing, the applicant shall submit to, and have approved by the Planning Authority, in consultation with the Scottish Environment Protection Agency and the Garleffan Technical Working Group, a detailed Method Statement for on-site preparatory measures, construction of the access route and conveyor, the management of surface water run-off, culvert construction and general pollution prevention measures.

REASON – In order to minimise environmental impact and pollution of land and watercourses.

3. Prior to the commencement of development, the applicant shall submit for the Council's approval, an archaeological mitigation strategy. Thereafter the developer shall ensure that the approved strategy 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.

REASON – In order to address archaeological issues and ensure appropriate treatment and recording of the archaeological resource.

4. Prior to the commencement of development on site, the applicant shall submit to and have approved by the Planning Authority, details of the proposed means of alternative access relating to alleged rights of way affected by the proposed development. The alternative accesses shall be provided simultaneous to the conveyor construction at the points of potential conflict to ensure continued public access.

REASON – To ensure continued community use of existing tracks in the locality of the development.

5. Prior to the start of any work on the proposed development area, or at such time as may otherwise be agreed in writing, the management of the mitigation areas (indicated in plan 627, supplied to Scottish Natural Heritage on 19th April 2006) will be agreed with the Planning Authority. Activities relating to the creation of this mitigation area shall commence in advance of work on the development area.

REASON – To ensure implementation and appropriate management of mitigation areas.

6. The proposed development will strictly follow the line identified in the submitted application and approved plans. The conveyor and associated track shall be no wider than 18m where it passes through the Muirkirk and North Lowther Uplands SPA/SSSI.

REASON - In the interests of minimising environmental impacts.

7. The proposed power lines shall be undergrounded through the SPA and in 'bird sensitive areas' identified in the ecological addendum dated December 2005.

REASON - In the interests of minimising environmental impacts.

8. No work, including repair works to the conveyor belt and associated structures shall take place within the main bird breeding season for ground nesting birds (March to July inclusive) unless with the agreement of the Planning Authority in consultation with the Garleffan Technical Working Group.

REASON - In the interests of minimising environmental impacts.

9. The applicant shall, on an annual basis from the date of commencement of works on site, submit to the Planning Authority an Environmental Audit of the proposed development to assess the effectiveness of the environmental mitigation measures as promoted with the Statement of Environmental Impacts. This audit shall, where considered necessary and appropriate, specify modifications to the mitigation to ensure that its aims and effectiveness are achieved. Modifications proposed by any audit shall be the subject of prior discussion with the Garleffan Technical Working Group.

REASON - In order to monitor effectiveness of the proposed mitigation and to allow adjustments to be made in the interests of environmental protection.

10. Except in case of emergency, the proposed conveyor operating times shall be from 0700 to 1900 hours Mondays to Fridays and 0700 to 1300 hours on Saturdays. With the exception of essential maintenance works, the proposed conveyor shall not operate on Sundays.

REASON – In the interests of residential amenity.

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