

**EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 06 OCTOBER 2006**

**06/0537/FL: PROPOSED CHANGE TO CONDITION 2 OF THE EXISTING  
PLANNING PERMISSION TO ALLOW COAL RECOVERY FROM  
ADDITIONAL AREAS WITHIN THE PERMITTED SITE BOUNDARY  
AT GRIEVEHILL OPENCAST COAL SITE, NEW CUMNOCK**

**APPLICATION BY ATH RESOURCES PLC**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Permission is sought for the extraction of coal within an area of coal reserves that lie within the current approved Grievehill site boundary. The current approved extraction area amounts to 48 hectares of the 118 hectare Grievehill site and it is proposed to extend the extraction area to the north - east by an additional 10 hectares. This would allow the extraction of a further 370,000 tonnes of high quality coal while still remaining within the current approved site boundary. The proposed extension to the extraction area also includes areas that have been disturbed by previous mining activities. A variation to Condition 2 of the approved consent (Ref. No. 98/0452/FL) relating to the approved operational conduct of the site is therefore sought to allow for this proposed extension to the excavation area within the Grievehill site.

1.2 The proposed extension of the extraction area will not result in the need for any additional overburden storage and will operate under the terms and conditions of the original Grievehill site including hours of operation. Coaling will continue at an expected extraction rate of 10,000 tonnes over a period of approximately 40 weeks and coaling is anticipated to be completed within one year of commencement. The proposed extension area can therefore be worked within the current permitted timescale of the Grievehill consent.

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

## **2. RECOMMENDATION**

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 7.1 of this report.

## **3. SUMMARY OF ANALYSIS**

3.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are either not of sufficient weight to justify refusal of the application or are not relevant to the proposal.

3.2 The proposals represent an extension and modification of existing consented site at Grievehill and will involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. The increase in excavation area by approximately 10 hectares will result in an additional 370,000 tonnes of coal being extracted from the site.

3.3 It is considered that, given the relatively remote and sparsely populated area in which the Grievehill site is located, the proposal to extend the existing consented site by 10 hectares will have no significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it is considered that the extended operations proposed can be undertaken within acceptable environmental standards and appropriate timescales.

3.4 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are no significant environmental or community concerns regarding the proposal. Consequently it is considered that the application should be approved.

## **CONTRARY DECISION NOTE**

Should the Committee 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.**

## EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 06 OCTOBER 2006

### 06/0537/FL: PROPOSED CHANGE TO CONDITION 2 OF THE EXISTING PLANNING PERMISSION TO ALLOW COAL RECOVERY FROM ADDITIONAL AREAS WITHIN THE PERMITTED SITE BOUNDARY AT GRIEVEHILL OPENCAST COAL SITE, NEW CUMNOCK

#### APPLICATION BY ATH RESOURCES PLC

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

## 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation because it represents an extension and variation to the approved scheme of working for an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan but is subject to an objection.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The application site extends to approximately 118 hectares in area (excluding the access route) and encompasses lands associated with High Polquheys Farm, Watsonburn Farm and the Dumfries Estate. The application site relates to the operational opencast coal site at Grievehill and is part of the Garleffan-Grievehill project operated by ATH Resources plc. New Cumnock lies approximately 2.5km to the South-West of the proposed site.

2.2 Permission for the extraction of 0.5 million tonnes of coal by opencast method from the application site was granted on 16 June 2005 under planning application 98/0452/FL with operations on site commencing shortly after the issue of the planning consent. The Grievehill site is connected to the Garleffan site by an internal haul road. All coal extracted from the Grievehill site is currently hauled to the Garleffan site where it is then taken to the Crowbandsgate rail terminal for onward transportation by rail or via the A76 trunk road for onward transportation to local domestic markets. No more than 10% of total production is allowed to be transported by road.

2.3 **Proposed Development:** Permission is sought for the extraction of coal within an area of coal reserves that lie within the current approved Grievehill site boundary. The current approved extraction area amounts to 48 hectares of the 118 hectare Grievehill site and it is proposed to extend the extraction area to the north - east by an additional 10 hectares. This would allow the extraction of a further 370,000 tonnes of high quality coal while still

remaining within the current approved site boundary. The proposed extension to the extraction area also includes areas that have been disturbed by previous mining activities. A variation to Condition 2 of the approved consent (Ref. No. 98/0452/FL) relating to the approved operational conduct of the site is therefore sought to allow for this proposed extension to the excavation area within the Grievehill site.

2.4 The proposed extension of the extraction area will not result in the need for any additional overburden storage and will operate under the terms and conditions of the original Grievehill site including hours of operation. Coaling will continue at an expected extraction rate of 10,000 tonnes over a period of approximately 40 weeks and coaling is anticipated to be completed within one year of commencement. The proposed extension area can therefore be worked within the current permitted timescale of the Grievehill consent.

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

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

3.1 East Ayrshire Council Roads and Transportation Division indicates that it has no objections to the proposed development subject to conditions. There would appear to be no change in the existing arrangements regarding coal haulage by road i.e. 10% maximum of production via the A76 to domestic markets which must be adhered to.

***Noted.***

3.2 The Scottish Environment Protection Agency indicates that it has no objections to the proposal provided that the drainage arrangements are to its satisfaction. In this regard the drainage from the additional coal extraction areas is to be treated in existing authorised effluent treatment systems. Extracted coal will be processed in the existing authorised coal processing area. SEPA regularly inspects the coal processing area and samples these discharges for compliance with the Authorisation conditions.

***Noted.***

3.3 Scottish Water has no objections to the proposed development.

***Noted.***

3.4 Scottish Natural Heritage states that the proposed development lies adjacent to the Muirkirk Uplands Site of Special Scientific Interest (SSSI) designated for its upland and blanket bog habitat, moorland bird assemblage, breeding and wintering hen harrier and short-eared owl. The site is also adjacent to the Muirkirk and North Lowther Uplands Special Protection Area (SPA) classified for its breeding population of hen harrier, short-eared owl, merlin, peregrine and golden plover and wintering hen harrier. The legislative requirements relating to European sites are summarised in Scottish Executive Circular 6/95 as amended June 2000. SNH's advice is that this proposal is likely to have a significant effect on the qualifying interests of the site. 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 appraisal by SNH but you may wish to carry out further appraisal before completing the appropriate assessment.

***Noted.***

SNH advice to East Ayrshire Council is based on the information provided in the supporting statement and information contained in the original Grievehill 1996 surveys. SNH believes that sufficient information has been provided to assess the potential impacts on the sites of conservation objectives. 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 is identified as having potential to support otters, although recent surveys have not detected any activity. Otters have full protection under the Wildlife and Countryside Act 1981 (as amended) and Nature Conservation (Scotland) Act 2004. Otters are further protected as European Protected Species under Regulation 43(1) of the Conservation (Natural Habitats & c.) Regulations 2004.

***Noted.***

SNH objects to the proposed development unless it is made subject to conditions and legal agreements as follows which would overcome SNH concerns:

- (i) An appropriate barrier should be constructed to the south east of the proposed extension to inhibit drainage from the SPA into the opencast site. Alternatively the proposals could be amended to increase the standoff distance where the risk of adverse hydrological impact is potentially significant.
- (ii) Prior to the start of any work on the proposed development, the management of the mitigation area will be agreed with the Competent Authority. Activities relating to the management of the mitigation area shall commence prior to the work on the extension area.
- (iii) There should be no severance of watercourses.

(iv) No work shall commence within the main bird breeding season for ground nesting birds (March to July inclusive) unless with the agreement of the Competent Authority.

***The requirements of SNH in addressing its objection can be addressed through the imposition of appropriate conditions, or as part of an amendment to the existing Section 75 Agreement for the Grievehill site, in any consent granted for the proposed development.***

3.5 Power Systems and The Scottish Wildlife Trust have not responded to the consultation letter.

***Noted.***

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

***Noted.***

3.7 The Royal Society for the Protection of Birds indicates that it does not object to the proposed extension which it does not consider will have a significant negative impact on bird populations of conservation importance given its location within the existing site boundary and the low bird interest on the site.

***Noted.***

However, RSPB states that the following issues must be addressed through appropriate planning conditions and its position is conditional on these issues being addressed:

(i) Disturbance to breeding birds – in order to prevent destruction of nests and disturbance to breeding birds, all vegetation clearance and soil stripping must be carried out outwith the bird breeding season. Where this is not possible, surveys to identify nest sites must be carried out and suitable protection put in place. In particular there is a possibility that breeding golden plover within the SPA could be disturbed by the development, if nests are in close proximity to the excavation. As no breeding wader surveys were carried out in the SPA area, RSPB requests that a Brown and Shepherd survey be carried out in 2007 to a distance of 500 metres from the excavation boundary and suitable additional habitat mitigation be put in place, as agreed by the Technical Working Group (TWG), if any territories are found. As SNH has been able to confirm that no breeding raptor nest sites are likely to be affected by the development RSPB is confident that the other SPA qualifying species will not be impacted.

(ii) Restoration and rehabilitation – RSPB welcomes the commitment to restore the site to a variety of habitats that will have ecological benefit. RSPB questions the intention to include plantation forestry within the plan and

believes that restoration should not be tied to the plan submitted with the application but rather to a plan to be agreed with the TWG for the site. Allowing natural regeneration rather than seeding disturbed areas may not be effective and this idea must be reviewed by the TWG.

(iii) Mitigation and compensation – The proposal to carry out habitat enhancement within the SPA is welcome and RSPB believes that this should mitigate for any possible negative impacts on birds because of the development. The exception to this is black grouse, which could be negatively affected by disturbance. RSPB requests that woodland within the restoration plan is designed to benefit this species and that a black grouse management plan is developed for the remaining woodland area. While thinning may form one aspect of this plan, planting of native broadleaves, grazing exclusion and other measures should also be considered. Black grouse will also benefit from the proposed improvements to peatland habitats within the SPA. The application identifies a potential risk to peatland habitat within the SPA from drainage and suggests mitigation using a clay liner or sheet piled barrier. This mitigation must be employed to prevent any impact on peatland habitats. In addition, all standard measures must be in place to ensure all drainage towards the SPA comprises unpolluted water.

***Appropriate conditions can be attached to any consent granted for the proposed development to address the issues raised by RSPB.***

3.8 The Nith District Salmon Fishery Board has no objections in relation to the proposed changes to the planning permission on this site. Furthermore, the applicant has taken the responsible steps of commissioning the NDSFB to conduct an extensive electro-fishing survey of watercourses in the vicinity of their sites in this area. It is intended that these surveys will be repeated annually and thus an assessment of the fish populations and environmental status of the surrounding watercourses will be made possible. Such initiatives give confidence to those who view large scale developments with suspicion and help to ensure the highest possible environmental standards are maintained.

***Noted.***

#### **4. REPRESENTATIONS**

4.1 One letter of representation has been received objecting to the proposed development. The main points of objection are summarised as follows:

4.2 MEGA members are very angry that ATH should come forward with this application to extend the life of the Grievehill site when their justification for opening up a completely new site at Laigh Glenmuir was on the basis of job retention. Their consent at Glenmuckloch should also have been a

material consideration and their general hopes for extending operations in the Grievehill area where they still have interests.

***The Laigh Glenmuir site was approved following referral of the application to the Scottish Ministers and operations on this site will allow continuity of employment of personnel from the existing Garleffan site which has now ceased coaling. The Laigh Glenmuir approval and consent for the Glenmuckloch site outwith East Ayrshire have no bearing on the determination of the proposed extension to the Grievehill site.***

4.3 From the information provided it is clear that the Grievehill operations have been closely linked with those at Garleffan; the transportation of soil from the former to restore the latter; the connection of pipes through to Garleffan to remove water from the Grievehill site. We believe that these operations also warranted the submission of an application for variation of conditions of previous consents.

***With regard to operational synergies being exploited between Garleffan and Grievehill, it is correct that run-off and limited amounts of groundwater are being transferred to Garleffan from Grievehill via drainage channels associated with the permitted internal haul road. This water is being treated within the existing Garleffan treatment lagoons whilst observing SEPA's quality and quantity restrictions applied to existing discharge consents. The ability to treat the very limited quantities of groundwater experienced at Grievehill represents the best practical environmental option rather than the disturbance created by the provision of dedicated treatment areas on the Grievehill site. It was always the expectation that the working of the Garleffan /Grievehill mining complex would deliver the ability to reduce potential impacts and disturbance through communal use of facilities and conjoined operations. SEPA is fully aware of the situation with regard to water management and visits the sites regularly as part of ongoing monitoring duties.***

***The situation at Garleffan with regard to the soils position inherited by ATH Resources from the previous site operator has been well documented. The Garleffan/Grievehill Technical Support Group has been involved in environmental/restoration issues on a regular and ongoing basis and it is within this context that the opportunity to address soils issues on Garleffan through the use of significant quantities of peat and other soil forming materials within the north east corner of the Grievehill site, has been sanctioned through the TWG.***

4.4 Reference is made in the application documents to the Technical Working Party. When did they last meet? Did they approve of the export of material and water from one site to another?

***The last two meetings of the Garleffan / Grievehill Technical Working Group took place on 03 May and 12 July, 2006.***

4.5 ATH now controls so much opencasting in the area that the extent clearly makes it difficult to monitor. We ask for a thorough review of workings on all their sites; examination of the rates of extraction and quality of restoration against what was promised to be delivered by this date.

***Appropriate monitoring is undertaken in accordance with planning consents issued for the respective sites operated by ATH Resources. With respect to the comments made regarding the rate of quality of restoration, it should be noted that the Garleffan site has recently been awarded the Coal Authority Environmental award for work with the statutory bodies on restoration and conservation management. The program for Garleffan restoration was agreed with the TWG last year and ATH Resources is currently ahead of schedule with regard to areas re-instated.***

4.6 We do not believe that extending operations at Grievehill accords with the Opencast Coal Subject Plan. For the company to suggest as a benefit, the working of areas already disturbed by mining operations (i.e. theirs), because some of the ground which is the subject of this application has already been disturbed by them (i.e. covered by overburden) is unacceptable.

***While part of the land involved in the present application has been disturbed by the operations of the applicant in working the Grievehill site, part of the site has been disturbed by previous surface workings and the proposal will result in remediation of a small area of dereliction within the site. A full assessment of the proposal against the policy provisions of the East Ayrshire Opencast Coal Subject Plan is given in section 5 below which concludes that the proposal accords with policy.***

4.7 Further opencasting on the Grievehill site has no environmental / community benefit within its site boundaries.

***The proposed extension to the Grievehill site will provide continuity of employment for 70 people for a further year. Furthermore RSPB and SNH recognise the potential environmental benefits that will be delivered by management of mitigation areas and through restoration of the site.***

4.8 The cumulative impact of allowing Grievehill to continue is unacceptable, particularly when it would extend opencasting further east than

currently approved, dangerously close to ATH's stated interests within the SPA. It will therefore have an immediate detrimental impact on the SPA with more likely.

***Assessment of cumulative impact shows that the proposed extension to the Grievehill site will not result in any significant additional cumulative impacts in terms of landscape and visual impact, impact on communities or in terms of timescale. Furthermore, subject to appropriate conditions and obligations through a Section 75 Agreement, SNH and RSPB considers that there will be no significant adverse impact on the integrity of the SPA or its qualifying interests.***

4.9 Public access has in some cases been denied, in others discouraged near the Grievehill site, yet there are clear long-established routes. We have seen no detailed plans for restoration of both ground and public access.

***The proposed extension area lies within the site boundary of the Grievehill site which is fenced off in the interests of safety. No rights of way will be affected by workings within the extension area.***

4.10 A 15 metre standoff between void and site is inadequate in an area known for geological faulting / slumping.

***The applicant's design engineers have taken cognisance of the Grievehill geological conditions, of which they have significant experience.***

4.11 We saw no details of the proposed excavation depths, yet the supporting document assures that overburden heights were already at a maximum and no more storage was envisaged. Further overburden dumping at Grievehill would not have been possible, when the very site for dumping waste material was exploitable for coal, without some overburden being conveniently and apparently illegally taken to Garleffan.

***The applicant has confirmed that should the proposal be approved no additional overburden storage will be required. No overburden has been transported from Grievehill to Garleffan.***

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

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

## Ayrshire Joint Structure Plan

5.2 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the Greenburn 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.***

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

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

***The original application for the Grievehill opencast site (Ref. No. 98/0252/FL) was assessed and determined against the stated criteria. The proposals promoted by the current application will be implemented under the existing planning controls within the existing consent and Section 75 Agreement and subject to additional requirements referred to elsewhere in this report. It is considered that the proposed extension would not conflict with the stated criteria in terms of its operational conduct.***

***The proposed development is therefore considered to be in accordance with the approved Structure Plan.***

## East Ayrshire Opencast Coal Subject Plan

5.4 The proposed extension area of Grievehill falls mainly within a potential coal extraction area but part lies outwith it. Policy MIN3 is pertinent to the application, the policy stating that, subject to detailed consideration, the Council will generally be supportive of any proposal to extend an existing

operative opencast site within the Potential Coal Extraction Areas provided that all of the following criteria are met:

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

***Extraction will be carried out as a sequential phase of development of the overall site.***

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

***The development will utilise existing site facilities and infrastructure relative to the Garleffan / Grievehill mining complex.***

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

***The scale of operations, rate of extraction and number of vehicle movements generated by the extended site are commensurate with those as existing currently on site.***

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

***The proposed extension will not significantly prejudice plans for the restoration as the site will be progressively restored.***

***However, the part of the proposed Grievehill extension area does not fall within a Potential Coal Extraction Area.***

5.5 Policy MIN3 states that outwith the Potential Coal Extraction Areas, the Council will assess any extension on its own merits against the above criteria, and will not generally be supportive of such developments except where:

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

***There will be a small area of existing dereliction removed as a result of the proposed extension.***

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

***The working of the proposed extension area will safeguard the continued direct employment of 70 people at the Grievehill site for a further year.***

(vii) *there are no conflicts with any other Subject plan policies*

**See comments below.**

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

***The proposal will not result in any perpetuation of disturbance to a local community beyond the consented life of the Grievehill site.***

5.6 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 Grievehill site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12 with respect to the stated criteria.***

5.7 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 Grievehill 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. Restoration to high standards will be overseen by the Technical Working Group which has been set up, and is operational, as part of the existing Section 75 Agreements for the Garleffan/Grievehill mining complex.***

5.8 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.

***A minimum of 90% of coals won from the proposed extension area will require to be dispatched via the existing dedicated railhead facilities at the Crowbandsgate site.***

5.9 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 at Garleffan via internal haul roads. Permission has recently been granted for the construction of an overland conveyor system connecting the Glenmuckloch site near Kirkconnel with the Grievehill and Garleffan sites to the Crowbandsgate railhead. Coal not destined for local markets will be transported via the new conveyor system to the Crowbandsgate railhead.***

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

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

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

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

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

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

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

***The existing Section 75 Agreement for the Grievehill site contains an obligation in respect of this matter.***

5.11 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 to the existing site area extends to approximately 10 hectares. It is considered that the development will not have any significant adverse impact on nearby communities and the proposal is therefore considered acceptable in planning policy terms.***

(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 site operator is currently exploring the potential for further extraction of coal in the vicinity of the existing site. However, it is considered that the current proposal will not, in itself, result in perpetuation of disturbance to local communities.***

5.12 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 amended working face of the site.***

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

***There are no residential properties, outwith the applicant's ownership or control that lie within 100 metres of the amended working face of the site.***

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

***The existing Grievehill opencast site is the subject of a current Section 75 Agreement.***

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

***The applicant is currently a contributor to the Mineral Trust Fund in respect of the existing Grievehill opencast site.***

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

***The existing Grievehill opencast site is subject to a Section 75 Agreement encompassing the above matters.***

***It is therefore considered that the proposed development is consistent with the relevant EAOCSP policies pertinent to this application.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received, relevant planning history, Scottish Planning Policy Guideline 16: Opencast Coal and the new Finalised Draft Ayrshire Joint Structure Plan 2006.

## Consultation Responses

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

## Representations

6.3 It is considered that the objections to the proposed development are either not borne out by the consultation process, are not valid or can be addressed through the imposition of appropriate conditions in any consent granted for the proposed development. The points of objection are not of sufficient weight to merit refusal of the application.

## Planning History

6.4 Planning permission for the extraction of 0.5 million tonnes of coal by opencast method from the application site was granted on 16 June 2005 under planning application 98/0452/FL.

6.5 Planning permission has recently been granted for the construction of an overland conveyor part of which passes through the Grievehill site (Ref. No. 05/1309/FL dated 08 September 2006)

## Scottish Planning Policy Guideline 16: Opencast Coal

6.6 The proposed development has been assessed against the general tests set out in the recently published SPP16 on Opencast Coal and it is considered that the proposed development meets the relevant test of environmental acceptability subject to appropriate conditions and legal agreements and also on the test of the provision of local or community benefits that would outweigh likely impacts. Many of the provisions of SPP16 are enshrined within the East Ayrshire Opencast Coal Subject Plan, a full assessment against this plan being given in section 5 above.

## Finalised Draft Ayrshire Joint Structure Plan

6.7 There are no specific new policies pertaining to opencast coal extraction within the finalised draft structure plan.

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

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement to amend the existing Section 75 Agreement for the site to:

(i) secure the management of the proposed mitigation area and that activities relating to the management of the mitigation area shall commence prior to the work on the Grievehill extension area;

(ii) secure the undertaking of a Brown and Shepherd survey during 2007 for breeding waders to a distance of 500 metres from the excavation boundary. Suitable additional habitat mitigation shall be put in place, as agreed by the Garleffan / Grievehill Technical Working Group, if any territories are found; and

(iii) secure an obligation such that woodland within the restoration plan is designed for the benefit of black grouse and that a black grouse management plan is developed for the remaining woodland area in consultation with the Garleffan / Grievehill Technical Working Group.

## **8. CONCLUSIONS**

8.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are either not of sufficient weight to justify refusal of the application or are not relevant to the proposal.

8.2 The proposals represent an extension and modification of existing consented site at Grievehill and will involve the extraction of additional coals which in environmental terms is considered to present no significant additional adverse impacts and this is essentially borne out by the consultation process. The increase in excavation area by approximately 10 hectares will result in an additional 370,000 tonnes of coal being extracted from the site.

8.3 It is considered that, given the relatively remote and sparsely populated area in which the Grievehill site is located, the proposal to extend the existing consented site by 10 hectares will have no significant adverse effects on any local community. The proposal will not result in any breach of the required buffer distances promoted through the policies of the East Ayrshire Opencast Coal Subject Plan and it is considered that the extended operations proposed can be undertaken within acceptable environmental standards and appropriate timescales.

8.4 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are no significant environmental or community concerns regarding the proposal. Consequently it is considered that the application should be approved.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 7.1 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 because it would not be a significant departure from the development plan.

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

26 September 2006  
HM/HM

FV/DVM

### **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 Subject Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).
7. Previous applications
8. SPP16: Opencast Coal.
9. Finalised Draft Ayrshire Joint Structure Plan (2006).

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

**Implementation Officer: Dave Morris**

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|--------------------------------|--|
| Location                       | Grievehill OCCS, New Cumnock   |
| Nature of Proposal:            | Proposed changes to Condition 2 of the existing planning permission to allow coal recovery from additional areas within the permitted site boundary. |
| Name and Address of Applicant: | ATH Resources plc<br>Aardvark House<br>Sidings Court<br>DONCASTER DN4 5NU  |
| Name and Address of Agent      | N/A  |

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

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

1. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 98/0452/FL dated 16 June 2005.

REASON: To retain effective planning control over the proposed development in accordance with the current consent relating to the Grievehill opencast site.

2. An appropriate hydrological barrier shall be constructed to the south east of the proposed Grievehill extension to inhibit drainage from the Muirkirk and North Lowther Uplands SPA into the opencast site unless an alternative increase in the standoff distance between the excavation area and site boundary is agreed in writing with the Planning Authority in consultation with Scottish Natural Heritage, where the risk of adverse hydrological impact is potentially significant. Details of the proposed barrier shall be submitted to and approved by the Planning Authority, in consultation with Scottish Natural Heritage, prior to the commencement of development within the extended extraction area.

REASON: In the interests of protecting the Special Protection Area.

3. There shall be no severance of watercourses within the proposed extension area.

REASON: In the interests of protecting the Special Protection Area.

4. No work shall commence within the main bird breeding season for ground nesting birds (March to July inclusive) unless with the prior written agreement of the Planning Authority.

REASON: In the interests of safeguarding breeding birds

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