

**EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 10 SEPTEMBER 2004**

**04/0440/FL: PROPOSED VARIATION OF CONDITIONS 7 AND 13 TO PERMIT LONGER WORKING HOURS UNDER CONSENT 98/0762/FL, CROWBANDSGATE RAIL SIDING, PATHHEAD, NEW CUMNOCK.**

**APPLICATION BY ATH RESOURCES**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Permission is sought for variations to conditions 7 and 13 of planning consent 98/0762/FL to alter the hours of operation in respect of delivery of coals from the Garleffan site to Crowbandsgate and also in respect of the rail dispatch hours for the facility.

1.2 Condition 7 states:

*Except in the case of emergency, the hours of working of the rail facility shall be restricted to between 0800 to 1630 Monday to Friday, with the exception of essential site maintenance to be agreed with the Planning Authority.*

*REASON: In the interests of the amenity of the area.*

Under the present application, the operator seeks to amend this condition to extend the operational hours of the facility to between 0800 Monday and 0800 Saturday (i.e. 24 hour continuous working) for loading and dispatch of trains. Amendment is also sought for extending the delivery hours to between 0800 and 1800 hours Mondays to Fridays (i.e. an extension of one and a half hours on weekdays).

1.3 The applicant has indicated that the change to the operational hours is important to permit proper and efficient use of the rail network as, at present, the high quantity of daytime trains tends to stress the network that leads to failures and cancellations. This in turn leads to a requirement for additional trains during the daytime that stresses the network even further. The applicant suggests that a more even distribution of train movements would be beneficial overall to the rail network.

1.4 Condition 13 states:

*The noise level generated from the development hereby approved workings shall at no time exceed 50 dBA Laeq, 1 hour (measured over an hourly period) at the nearest noise sensitive properties.*

*REASON: In the interests of residential amenity.*

The applicant seeks to alter this condition to introduce a night time noise limit to address the extended operational dispatch hours from Crowbandsgate to ensure that there are no significant adverse noise impacts resulting from the extended operational hours.

1.5 In support of the application, a report on the Assessment of Environmental Noise at Crowbandsgate rail siding accompanies the planning application. This report assesses the potential for noise impact on the nearest noise sensitive properties as a result of activity during the proposed night time operations and relates to worst case scenarios. The conclusions of the report indicate that without exception, the noise received at the closest residential locations during coal handling operations at any time of the day or night does not exceed the measured existing levels.

1.6 Furthermore, during recognised night time hours, noise from the loading of coal into trains would not exceed 42 dB Laeq, 1hour at the nearest noise sensitive properties, a limit that accords with the night time criterion given in Planning Advice Note 50: Annexe A. At no time does the predicted rating level from coal handling operations exceed the measured background noise level by more than 10 dB. In essence the report concludes that the facility would be able to operate during the proposed extended hours without detriment to the residential amenity of noise sensitive properties.

## **2. RECOMMENDATION**

**2.1 It is recommended the application be approved subject to the conditions on the relevant attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement with the applicants regarding the obligations referred to in Section 8.4 of this report.**

## **3. SUMMARY OF ANALYSIS**

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

3.2 It is considered that the proposed development will not result in any additional significant impact on residential properties at Pathhead in New Cumnock. The current operations at the facility, as far as can be ascertained, have not been the subject of any formal complaint in respect of noise since commencement of use in 2000. The proposal for the extension to the operational hours has not generated any third party objections in this regard.

3.3 Although New Cumnock Community Council has objected to the proposal and the Environmental Health Service has raised concerns over the proposal, it is considered, through the imposition of amended noise limits to cover night time working and an amendment to the existing Section 75 Agreement for the Crowbandsgate rail head, that sufficient safeguards can be introduced to safeguard the amenity of noise sensitive residential properties at Pathhead. This would include where necessary, the suspension of night time operations at the facility should the operations give rise to actionable complaints.

3.4 Any approval of the application should therefore be the subject of an amendment to the existing Crowbandsgate Section 75 Agreement to cover the following matters:

- (i) the extension of the noise monitoring programme for the Crowbandsgate site to monitor the night time operations, to a scheme to be agreed in consultation with the Environmental Health Service. The results of the night time noise monitoring shall be submitted to the Planning Authority on a weekly basis.
- (ii) the right of the Council as Planning Authority to suspend the night time operations if monitoring indicates persistent breaches of the nominal night-time noise limit of 40dB(A), through noise attributable to such operations.

#### **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 this would not result in 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: 10 SEPTEMBER 2004

**04/0440/FL: PROPOSED VARIATION OF CONDITIONS 7 AND 13 TO PERMIT LONGER WORKING HOURS UNDER CONSENT 98/0762/FL, CROWBANDSGATE RAIL SIDING, PATHHEAD, NEW CUMNOCK.**

### APPLICATION BY ATH RESOURCES

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

## 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application, which is to be considered by the Local Planning Committee under the scheme of delegation because the proposed development is subject to objection.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 280 metres west of Pathhead in New Cumnock and lies 200 metres off the south side of the new roundabout on the A76 Cumnock – New Cumnock Trunk Road. The site extends to approximately 4.5 hectares and relates to the Crowbandsgate Railhead that serves the Garleffan Opencast Coal Site in respect of rail dispatch of coals on from that site.

2.2 Planning permission for the Crowbandsgate Railhead was granted on 29 October 1999 under application 98/0762/FL with the facility having been in operation since 2000. The facility was previously operated by L.A.W. Mining Limited but is now operated by its new owner ATH Resources Limited which has also taken ownership of the Garleffan Opencast Site.

2.3 **Proposed Development:** Permission is sought for variations to conditions 7 and 13 of planning consent 98/0762/FL to alter the hours of operation in respect of delivery of coals from the Garleffan site to Crowbandsgate and also in respect of the rail dispatch hours for the facility.

2.4 Condition 7 states:

*Except in the case of emergency, the hours of working of the rail facility shall be restricted to between 0800 to 1630 Monday to Friday, with the exception of essential site maintenance to be agreed with the Planning Authority.*

*REASON: In the interests of the amenity of the area.*

Under the present application, the operator seeks to amend this condition to extend the operational hours of the facility to between 0800 Monday and 0800 Saturday (i.e. 24 hour continuous working) for loading and dispatch of trains. Amendment is also sought for extending the delivery hours to between 0800 and 1800 hours Mondays to Fridays (i.e. an extension of one and a half hours on weekdays).

2.5 The applicant has indicated that the change to the operational hours is important to permit proper and efficient use of the rail network as, at present, the high quantity of daytime trains tends to stress the network that leads to failures and cancellations. This in turn leads to a requirement for additional trains during the daytime that stresses the network even further. The applicant suggests that a more even distribution of train movements would be beneficial overall to the rail network.

2.6 Condition 13 states:

*The noise level generated from the development hereby approved workings shall at no time exceed 50 dBA Laeq, 1 hour (measured over an hourly period) at the nearest noise sensitive properties.*

*REASON: In the interests of residential amenity.*

The applicant seeks to alter this condition to introduce a night time noise limit to address the extended operational dispatch hours from Crowbandsgate to ensure that there are no significant adverse noise impacts resulting from the extended operational hours.

2.7 In support of the application, a report on the Assessment of Environmental Noise at Crowbandsgate rail siding accompanies the planning application. This report assesses the potential for noise impact on the nearest noise sensitive properties as a result of activity during the proposed night time operations and relates to worst case scenarios. The conclusions of the report indicate that without exception, the noise received at the closest residential locations during coal handling operations at any time of the day or night does not exceed the measured existing levels.

2.8 Furthermore, during recognised night time hours, noise from the loading of coal into trains would not exceed 42 dB Laeq, 1hour at the nearest noise sensitive properties, a limit that accords with the night time criterion given in Planning Advice Note 50: Annex A. At no time does the predicted rating level from coal handling operations exceed the measured background noise level by more than 10 dB. In essence the report concludes that the facility would be able to operate during the proposed extended hours without detriment to the residential amenity of noise sensitive properties.

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

3.1 East Ayrshire Council Environmental Health Service states that it is noted that the results obtained during the monitoring exercise in March 2004

were taken when the wind direction and speed were south-easterly and 3-5 m/s respectively. In relation to wind direction, the prevailing winds are from the west and it is suggested that the results obtained do not accurately reflect the normal situation, particularly as the railhead lies to the west of the noise sensitive dwellings. In relation to wind speed, 5 m/s is at the upper limit of the norm for measurements to be taken and it is also suggested that this may have had an effect on the validity of the results. It is noted that the applicant seeks to adhere to a 42 dB(A) night time noise limit at the nearest noise sensitive dwellings and it is suggested that this limit be lowered to 38 dB(A) and 36 dB(A) Laeq 5min at 94 Pathhead and Alvor respectively, mentioned in the assessment. The Environmental Health Service states its primary reservation remains the possibility of complaint arising from overnight use of the rail loading facility. Should the Council be disposed towards approval of this application then it would be appropriate to ensure that the noise levels arising from the facility do not exceed 10 dB(A) above background levels rather than opt for the less stringent 42 dB(A) nominal night time limit. It would be prudent to require the applicant to undertake some routine monitoring at the site boundary with results submitted to the Council as a check on compliance with any noise conditions.

***It is recognised that the existing facility lies in proximity to residential properties in Pathhead. However, since the commencement of operations at Crowbandsgate, there have been no notified complaints from residents in terms of noise nuisance or indeed any other nuisance relating to the development. The introduction of night time loading and dispatch of coal by train has been the subject of a report to assess noise impact on residential properties. This report concludes that without exception, the noise received at the closest residential locations during coal handling operations at any time of the day or night does not exceed the measured existing levels. Furthermore, at no time does the predicted rating level from coal handling operations exceed the measured background noise level by more than 10 dB. In essence the report concludes that the facility would be able to operate during the proposed extended hours without detriment to the residential amenity of noise sensitive properties.***

***It should be noted also that at present production levels from Crowbandsgate are around 22,000 tonnes per week and in terms of associated train movements, this equates to approximately 4 trains per day. The applicant does not seek to increase the number of train movements but rather to introduce flexibility in accessing the rail network. In this respect further discussion and clarification of the level of activity within the railhead with the Environmental Health Service has resulted in a proposed night time noise limit of 40 dB(A).***

***The concerns of the Environmental Health Service could be addressed by an amendment to the existing Section 75***

***Agreement for the Crowbandsgate facility relating to noise monitoring to allow for an extension of the noise monitoring programme for the site to monitor the night time operations, this scheme to be agreed in consultation with the Environmental Health Service. The amendment to the Section 75 Agreement could also incorporate the right of the Council as Planning Authority to suspend the night time operations if monitoring indicates persistent breaches of the nominal night-time noise limit of 40dB(A), through noise attributable to such operations.***

3.2 New Cumnock Community Council has indicated that it objects to the proposed alteration of conditions as it could lead to 24 hour working and that condition 13 is not explained and as there are houses nearby and they don't need any more noise.

***Comments as per 3.1 above.***

3.3 The Scottish Executive Trunk Roads Network Management Division does not propose to advise against the granting of permission.

***Noted.***

#### **4. REPRESENTATIONS**

4.1 Apart from the objection received from New Cumnock Community Council, no other letters of representation have been received objecting to the proposed development.

***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 Opencast Coal Subject Plan (2003).

##### Ayrshire Joint Structure Plan

5.2 The Approved Ayrshire Joint Structure Plan indicates under Policy T4 that the three Ayrshire Council, through the development of a freight transport strategy for Ayrshire, shall consider supporting and developing proposals for the transport of freight by rail and shall consider the logistics of freight movement as it affects Ayrshire business.

***The applicant seeks to address a current rail network issue that limits the availability of trains and network slots that result from the presently restricted operational hours of the rail head facility at Crowbandsgate. It is considered that the proposal to extend the operational hours would be consistent with the provisions of Policy T4.***

#### East Ayrshire Opencast Coal Subject Plan

5.3 Policy MIN 18 is pertinent to the application, the policy stating that the Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

***The Crowbandsgate rail head facility was constructed specifically for the dispatch of coals from the Garleffan Opencast Site to markets by rail.***

#### East Ayrshire Local Plan

5.4 Policy T8 states that the Council will, wherever it is feasible, strongly encourage the transportation of freight by rail rather than by road.

***It is considered that the proposed development would be consistent with the provisions of Policy T8.***

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

6.1 The principal material considerations relevant to the determination of the application are appropriate Planning Advice Notes, consultation responses, the representations received and relevant planning history.

#### Planning Advice Notes

6.2 The proposed operations have also been designed to comply with the advice contained within Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexe A: The Control of Noise at Surface Mineral Workings.

#### Planning History

6.3 Planning permission for the Crowbandsgate Railhead was granted on 29 October 1999 under application 98/0762/FL with the facility having been in operation since 2000. The facility was previously operated by L.A.W. Mining Limited but is now operated by its new owner ATH Resources Limited which has also taken ownership of the Garleffan Opencast Site.

## Consultation Responses

6.4 There are no consultation responses that would suggest refusal of the application is appropriate. While the Environmental Health Service has raised some concerns regarding the potential for noise complaint, the noise assessment report submitted by the applicant indicates that the facility could operate extended hours during night time without any significant impact on noise sensitive residential properties. It is considered that an amendment to the existing noise monitoring scheme for Crowbandsgate, together with the right of suspension of night time operations should actionable complaints arise, should provide sufficient safeguards to residential amenity.

## Representations Received

6.5 It is considered that the representation received can be appropriately addressed as described in section 6.4 above.

## **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 in terms of an amendment to the existing Section 75 Agreement as indicated in section 8.4 below.

## **8. CONCLUSIONS**

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

8.2 It is considered that the proposed development will not result in any additional significant impact on residential properties at Pathhead in New Cumnock. The current operations at the facility, as far as can be ascertained, have not been the subject of any formal complaint in respect of noise since commencement of use in 2000. The proposal for the extension to the operational hours has not generated any third party objections in this regard.

8.3 Although New Cumnock Community Council has objected to the proposal and the Environmental Health Service has raised concerns over the proposal, it is considered, through the imposition of amended noise limits to cover night time working and an amendment to the existing Section 75 Agreement for the Crowbandsgate rail head, that sufficient safeguards can be introduced to safeguard the amenity of noise sensitive residential properties at Pathhead. This would include where necessary, the suspension of night time

operations at the facility should the operations give rise to actionable complaints.

8.4 Any approval of the application should therefore be the subject of an amendment to the existing Crowbandsgate Section 75 Agreement to cover the following matters:

- (i) the extension of the noise monitoring programme for the Crowbandsgate site to monitor the night time operations, to a scheme to be agreed in consultation with the Environmental Health Service. The results of the night time noise monitoring shall be submitted to the Planning Authority on a weekly basis.
- (ii) the right of the Council as Planning Authority to suspend the night time operations if monitoring indicates persistent breaches of the nominal night-time noise limit of 40dB(A), through noise attributable to such operations.

## **9. RECOMMENDATION**

**9.1 It is recommended the application be approved subject to the conditions on the relevant attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement with the applicants regarding the obligations referred to in Section 8.4 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 this would not result in a significant departure from the development plan.

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

30 August 2004  
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. East Ayrshire Local Plan (2003)
6. Adopted East Ayrshire Opencast Coal Subject Plan (2003).
7. Approved Ayrshire Joint Structure Plan (1999).
8. Previous application 98/0762/FL.
9. PAN 50, Annexe A

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

**Implementation Officer: Dave Morris**

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 04/0440/FL

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Location	Crowbandsgate Railhead Pathhead New Cumnock
Nature of Proposal:	Proposed variation of conditions 7 and 13 to permit longer working hours under consent 98/0762/FL
Name and Address of Applicant:	ATH Resources Darntaggart Farm SKARES KA18 2RG
Name and Address of Agent	N/A

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

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

1. Condition 7 of planning consent 98/0762/FL dated 29 October 1999 shall be amended to read as follows:

‘Except in the case of emergency, the hours of working of the rail facility shall be restricted to between 0800 hours on Mondays and 0800 hours on Saturdays, with the exception of essential site maintenance to be agreed with the Planning Authority.’

REASON: In the interests of residential amenity

2. Condition 13 of planning consent 98/0762/FL dated 29 October 1999 shall be amended to read as follows:

‘The noise level generated from the development hereby approved shall at no time during daytime (0700 to 1900 hours) exceed 50 dB Laeq,1h and 40dB Laeq,1h during night-time (1900 to 0700 hours) at the nearest noise sensitive properties.’

REASON: In the interests of residential amenity

3. Except with the prior written approval of the Planning Authority, the number of trains dispatching from the Crowbandsgate railhead shall not exceed 25 during any working week.

REASON: To ensure that activity within the site does not have any significant detrimental impact on residential amenity.

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