

# EAST AYRSHIRE COUNCIL

## DEVELOPMENT SERVICES COMMITTEE: 01 AUGUST 2002

### 99/0761/FL: PROPOSED EXTRACTION OF COAL BY OPENCAST METHODS UTILISING EXISTING SITE INFRASTRUCTURE AT GASSWATER OCCS, RESTORATION OF PREVIOUSLY DESPOILED LAND, AND ENHANCEMENT OF LANDSCAPE AND NATURE CONSERVATION INTERESTS AT POWHARNAL, NEAR MUIRKIRK.

#### APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

#### Report by Director of Development Services

## 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 Development Services Committee under the scheme of delegation because the proposed development relates to an extension to an existing mineral extraction site which is contrary to the policies in the East Ayrshire Opencast Coal Subject Plan and the Ayrshire Joint Structure Plan, is the subject of letters of representation and requires to be notified to the Scottish Ministers if approved.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies in generally open countryside, some 2 kilometres south-west of the village of Muirkirk. The site lies immediately south of the A70 Cumnock – Muirkirk Road, in the general locality of the farmstead of Nether Wellwood. The site lies on the southern side of the valley of the River Ayr at an elevation of between approximately 200 m to 260 m Above Ordnance Datum.

2.2 The site itself is located within the 'Muirkirk Valley' in an area of moor land forming the lower slopes of part of the Southern Uplands and comprises north facing sloping ground, divided into a series of smaller hillocks by incised burns that flow to the River Ayr which lies to the north. The western limit is formed by the Powharnal Burn and the central area includes a former railway line and former area of coal extraction. On the eastern boundary are the March and Shiel Burns.

2.3 The predominant landuse within the site is open heather moor land or grassland used for sheep grazing. The greater part of the site is covered by acid grassland and peatland that has been modified by land drainage activity. Enclosed fields of improved grassland are evident along the A70 corridor.

2.4 The area is sparsely populated with generally only isolated farmsteads being in evidence these principally being Boghead, Nether Wellwood, Mid Wellwood, Upper

Wellwood and Dalfram. These farmsteads are within the ownership of the applicant. One property lies within the development site namely Wellwood Siding/Stables Cottage, again within the ownership of the applicant. The Powharnal development will result in the demolition of this property.

2.5 The application site extends to approximately 414 hectares (1023 acres) and lies at an elevation ranging from 200 metres to 260 metres Above Ordnance Datum. Of this area, some 150 hectares (341 acres) lie within the existing consented and operational Gasswater Opencast Coal Site that lies immediately southwest of the Powharnal application site. Part of the application site lies within the recently designated Muirkirk and North Lowther Uplands Site of Special Scientific Interest and the associated potential Special Protection Area (pSPA) of the same name. This pSPA site qualifies for protection because it regularly holds breeding populations of five bird species of European importance.

2.6 The area is also characterised by the remnants of past deep mining and opencast activity still evident within the application site. Particularly evident is the solum of the former Cronberry – Muirkirk mineral rail line that bisects the northern part of the application site. The former deep mining activities relate to the Nether Wellwood complex of collieries. To the south-west of the application site (and forming part of the Powharnal development) lies the existing operational opencast site at Gasswater.

2.7 **Proposed Development:** Full planning permission is sought for the extraction of 6.8 million tonnes of coal by opencast method from the application site. Although the overall site development area extends to 414 hectares, 138 hectares lie within the consented and operational Gasswater opencast site. The proposed ‘new’ mineral working area extends to 276 hectares of which some 184 hectares will be subject to disturbance with 146 hectares forming the new coal extraction area.

2.8 In general, the Powharnal development is a continuation of the consented Gasswater opencast site in the working of coals that extends through the common boundary of the two sites. It is proposed that excavations will continue in a north-easterly direction with overburden from the Powharnal development being temporarily surcharged on the backfilled last phase of the Gasswater site. The last phase of the development at the Gasswater site is currently being worked and it is anticipated that coaling operations will cease in early 2003.

2.9 Preliminary operations on site will involve the fencing off of the Powharnal development area followed by the interception of existing watercourses, including the catchment of Powharnal Burn, that will be diverted via a series of cut-off ditches around the eastern side of the development site. Water treatment facilities and internal roads will also be constructed at this time.

2.10 Initial entry into the Powharnal development will be via the easternmost part of the existing Gasswater site and within approximately 2 months of entry, soil stripping will commence. Owing to the outcropping nature of the coal and the Powharnal development being designed as a continuation of the Gasswater workings, it is anticipated that coal extraction operations will be continuous from Gasswater.

2.11 Topsoils, including mineral soils and peat, and subsoils will initially be stripped during drier seasons and stored until needed at the various stages of progressive site restoration. As the Powharnal development area is progressively worked, soils from advance stripping operations will be directly placed on the parts of the site undergoing final restoration operations. Topsoils will be stored in mounds to a height of no more than 5 metres, with subsoils stored at maximum height of 10 metres to ensure minimal compaction and damage to soil structure.

2.12 The surface strip of peat required for topsoiling during restoration is to be stored as a low bund up to a maximum height of 2 metres. Excess subsoil peat will be stored to a maximum height of 5 metres within a containing bund of overburden. All topsoil bunds will be grass-seeded as soon as possible after their formation. Topsoil will generally be stored in locations to assist in the visual screening of the site, particularly along the A70 visual corridor adjacent to the road itself.

2.13 Overburden construction will take place approximately 6 months following commencement of operations on the Powharnal development and will continue for a period of approximately 24 months. As indicated above the overburden from the Powharnal development will be surcharged onto the area of the last phase of development on the Gasswater site. Overburden will be stored to a maximum height of 25 metres with the mound being constructed and treated in such a manner as to minimise adverse impacts on the landscape and visual amenity.

2.14 Coals won from the Powharnal development will be taken via internal haul routes to the existing coal stocking and preparation facilities at Gasswater. Entry to and exit from the Powharnal development will be via the existing access road to the Gasswater site from the A70 Cumnock – Muirkirk Road, the junction of which lies some 250 metres north-east of Welltrees Bridge. The existing offices, maintenance buildings and workshops at Gasswater will also be retained and used for the Powharnal development, including the existing weighbridge, wheel wash and vehicle sheeting facilities.

2.16 The proposed working hours of the Powharnal development will be between 0700 hours on Mondays to 1600 hours on Saturdays (i.e. continuous 24 hour working. This reflects the current hours of operation on the Gasswater site. There will be no working outwith these hours or on Public Holidays, with the exception of emergency works and essential maintenance operations. As a result of the 24 hour working, a maximum of 80 direct jobs will be provided. The existing contractor at the Gasswater site is in the process of securing planning permission for the Greenburn site near New Cumnock and it is likely that some of the site personnel will transfer to this site following the completion of the current contract on the Gasswater site. It is therefore likely that the 80 direct jobs resulting from the Powharnal development will consist of the retention of existing personnel as well as additional recruitment to the site.

2.17 The anticipated timescale of the Powharnal development is 10 years including a period of some 9 months residual landscaping works. The exact timescale will however be dependent on the rate of coal production and the actual tonnage of coals recovered from the site. During the coaling operations 28 coal seams will be encountered, having a total thickness of approximately 24 metres, with the lowest seam being worked to a depth of 84 metres Above Ordnance Datum. Blasting will be necessary in the

sandstone measures to fracture resistant rock and is likely to be carried out on a daily basis. Average coal output from the site will be approximately 16000 tonnes per week.

2.18 The Powharnal planning application promotes the transportation of coal off site by road to the existing railhead facilities at Knockshinnoch and Killoch, both of which are operated by the applicant. This would result in a daily dispatch rate of approximately 240 HGV movements (two-way). This would be commensurate with the existing site operations at Gasswater. Coal would be dispatched from the site between 0800 and 1700 hours Mondays to Fridays.

2.19 However, since the submission of the Powharnal development application, the applicant has secured planning permission for the re-instatement of the former Auchinleck to Cronberry rail line and for the establishment of a rail loading facility on a site opposite the existing Gasswater site entrance. A significant grant has been awarded in principle by the Scottish Executive towards the construction of this project. It is the intention of Scottish Coal to use its best endeavours to ensure that this rail line and railhead facility is constructed to allow maximisation of transportation of coal by rail to appropriate markets.

2.20 **Environmental Impact Assessment:** The Powharnal development planning application has been accompanied by an Environmental Statement, being the findings of a process of environmental impact assessment of the proposed Powharnal development. The main purpose of this assessment is to identify how a development can be designed and managed to have minimal adverse effects and maximum benefits upon the environment.

2.21 The initial Powharnal enquiry area was a much larger area covering three distinct coaling areas, stretching from Gasswater in the west to an area south of Muirkirk village itself (Areas A, B, and C). Following the scoping study carried out prior to the EIA, it was identified that only Area A of the larger Powharnal site could be worked without adverse environmental impacts of high significance being experienced, resulting in the current application site (Area A).

2.22 Since the submission of the Powharnal application, the Muirkirk and North Lowther Uplands Site of Special Scientific Interest (SSSI) has been formally designated and, in relation to the application site, the SSSI is also co-incident with the boundary with the Muirkirk and North Lowther Uplands potential Special Protection Area. (pSPA). This results in approximately 99 hectares of the Powharnal development application site lying within the SSSI and the pSPA.

2.23 However, during the process of consultation on the submitted Powharnal planning application and its associated Environmental Statement, it became evident through the responses from both Scottish Natural Heritage and The Royal Society for the Protection of Birds, that further environmental assessment was necessary in terms of the impact of the Powharnal development on the qualifying interests and habit of the pSPA.

2.24 In consultation with SNH and RSPB, the applicant undertook further detailed survey, research and analysis in respect of these interests, with work commencing during Spring 2000. The findings of this research, having taken almost two years to complete, led to the submission of further information and amended plans in light of the findings of the research. This further information has also been the subject of formal consultation.

2.25 The culmination of this consultation process has led to the drafting of the Powharnal Mitigation Management Plan (PMMP) covering an area of 1259 hectares of land within the control of the applicant, and significantly in excess of the 184 hectares of land disturbed by the Powharnal development. The PMMP has a lifespan of 20 years and promotes a number of prescriptions for mitigation and restoration including the following:

- The allocation of a suitably qualified and experienced Project Manager to organise and implement the PMMP;
- The appointment of a Wildlife Manager to undertake keeping of the management area;
- The establishment of a Technical Steering Group to oversee implementation of the PMMP;
- The introduction of a monitoring regime to assess if PMMP prescriptions are meeting objectives, including a 5 yearly review of the PMMP.

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

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

3.2 East Ayrshire Council Roads Division indicates that the access onto the A70 Road utilising the existing Gasswater access is acceptable. The developer should be encouraged to form the proposed Cronberry railhead and to re-establish the rail link to Auchinleck as soon as practicable in order to reduce the number of coal movements on the A70 through Lugar, Cumnock, Ochiltree and also New Cumnock on the A76 and B741.

***The proposed re-instatement of the Auchinleck–Cronberry rail line and establishment of a railhead adjacent to the existing Gasswater opencast site was approved on 28 February 2002 (Ref. No. 99/0757/FL).***

The Roads Division recommends that if the development of the railhead and rail link is likely to be delayed beyond the commencement of coaling at Powharnal, there should be a clause within the Section 75 Agreement that works are undertaken at the applicant's expense to complete the Welltrees Bridge re-alignment due to the volume of coal traffic expected.

***The required infrastructure improvements of the Roads Division, where appropriate and necessary, can be secured through obligations within a Section 75 Agreement should planning consent be granted for the proposed development.***

Standard conditions relating to the provision of an effective site wheel wash, happing of vehicles, hours of transportation are assumed will be applied in line with the transportation protocol.

***Existing wheel wash and lorry sheeting facilities at the Gasswater site will be used in respect of the Powharnal site. Conditions can be attached to any consent granted for the proposed development to meet the requirements of the Roads Division.***

3.3 East Ayrshire Council's Economic Development Division has no adverse comments about the proposed development. It is noted from the documentation that the development will require a labour force of up to 80 people for the duration of the coal extraction and it is also envisaged that the area will benefit from about 230 indirect jobs. This increase in local employment opportunities, allied to training that is proposed is to be welcomed in an area where the rate of adult male unemployment is unacceptably high.

***Noted.***

3.4 The Coal Authority, British Gas Transco and Scottish Power have no adverse comments to make on the proposed development.

***Noted.***

3.5 West of Scotland Archaeology Service advises that the Cultural Heritage Section of the Environmental Statement is satisfactory and no other archaeological assessment is required at this stage. The ES makes clear that there are a number of archaeological features within the planning application site boundary but that only a handful of these are within the current proposed extraction limit. As the proposed development is well outside the defined area of industrial archaeological importance covered by draft development plan policy, and the archaeological sites that will be directly affected are of minor importance, no major archaeological issues are raised by the proposed development that might justify refusal of the planning application. There is however a number of archaeological issues which will nonetheless require to be covered by suitable conditions as follows:

(i) There will require to be mitigation works to record those archaeological features which are in the current proposed extraction limit prior to their destruction. It is recommended that the following condition is attached to any consent granted:

*The developer shall undertake recording of archaeological resources within the development site to the satisfaction of the Planning Authority. No development shall take place until the developer has secured the implementation of a programme of*

*archaeological work in accordance with a written scheme of investigation, this scheme to be submitted for approval by the planning Authority following consultation and agreement with the West of Scotland Archaeology Service.*

(ii) There are a number of archaeological sites outside the current extraction area but within the planning application boundary. WOSAS is not convinced that the potential effects on these from associated works have been fully assessed. Some seem perilously close to the proposed overburden and topsoil tips. It is recommended that a condition is attached to any consent granted for the development requiring Scottish Coal to assess the full potential impacts on archaeological sites outwith the extraction area but within the site boundary and to bring forward for the Council's approval prior to the commencement of development, a suitable detailed strategy for the protection of such sites.

***Appropriate conditions, in the terms stated above, can be attached to any consent granted for the proposed development to meet the requirements of WOSAS.***

3.6 Scottish Water, for its water and sewerage functions, indicates that it has no comments to make on the proposed development. If the developer is aware of, or discovers any public sewers or water mains affected by the development. Scottish water must be notified immediately.

***A note can be attached to any consent granted for the proposed development to meet the requirements of Scottish Water.***

3.7 The Scottish Wildlife Trust objects to the proposed development for the following reasons:

- (i) The development incorporates and is adjacent to a potential Special Protection Area;
- (ii) The development for the most part falls within the Muirkirk South Uplands Wildlife Site;
- (iii) The loss of breeding habitat and displacement of birds coming within the European Birds Directive, Wildlife and Countryside Act 1981 and Local Biodiversity Action Plan Species Priorities List;
- (iv) The fact that no consideration was given to Local Biodiversity Action Plans;
- (v) Loss of upland habitat-degraded bog and wet heath which is nonchalantly dismissed as of little interest to a human perspective but of interest to birds, mammals and invertebrates; and
- (vi) The general environmental impact to species and habitats and to the landscape.

***It is acknowledged that some 99 hectares of the Powharnal development site falls within the SSSI, pSPA and the listed wildlife site. However, a full assessment of the potential impacts on these interests has been undertaken with the conclusion that, with appropriate mitigation, monitoring and restoration, there will be no significant adverse impacts on the qualifying interests. Since objections were originally lodged there***

***have been extensive discussions with SNH and RSPB and further survey work. SNH and RSPB have indicated that subject to appropriate measures being put in place, the Powharnal development presents a unique opportunity to restore pSPA habitats. Indeed SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.***

3.8 Historic Scotland states that for its statutory built heritage interests, it has no comments to offer on the Environmental Statement. HS had some initial concerns at the pre-application consultation stage because the search area then covered an extensive area to the south of Muirkirk in which significant industrial archaeological remains, protected at both the national level and through structure plan policy, are located. HS is pleased to note that the subsequent scoping study recognised that extraction within Areas B and C, in which those remains are concentrated, would be a major impact on an environmental resource of high significance and, as a result, Scottish Coal has decided not to pursue either of those two areas on environmental grounds. HS is content that the reduced application area, covering Area A only, does not raise any archaeological issues of national importance.

***Noted.***

However, HS is aware that a number of archaeological sites and areas of regional/local importance are still affected. The Council must seek further guidance on that aspect from the West of Scotland Archaeology Service.

***The views of WOSAS have been sought as indicated in section 3.5 above.***

3.9 The Scottish Executive Environment Group, in relation to responsibilities for water supply, water protection, sewerage, flood prevention, air quality, waste disposal, coastal protection, and countryside and natural heritage, has no comments to offer on the Environmental Statement.

***Noted.***

3.10 The Ayrshire Joint Structure Plan Committee indicates that the proposed development requires to be assessed against Policy E14 which states:

*E14(A): Development opportunities for opencast coal working shall be directed to the Preferred Areas of Search identified in the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.*

*E14(B): In North and South Ayrshire, and the remaining parts of East Ayrshire outwith the Preferred Areas of Search, opencast working shall not conform to the Structure Plan except where there is a clearly demonstrated environmental benefit achieved through the removal of existing areas of dereliction. In this case, proposals for small-scale, short-term extraction shall be supported.*

As the proposal does not fall within the Preferred Areas of Search identified in the Structure Plan, nor meets the criteria accordingly required by Policy E14(B)., it is therefore advised that the proposal is contrary to the Approved Development Plan for the area.

***Noted. Full assessment of the proposed development against the policy provisions of the Ayrshire Joint Structure Plan is made in Section 5 of this report.***

3.11 The Scottish Environment Protection Agency states that there are no objections in principle to the proposed development provided that the drainage requirements and methods of minimising the risk to the environment are to SEPA's satisfaction. The following points are relevant:

- (i) The water treatment areas should be located to receive all contaminated water from the excavation, haul/access roads, overburden/soil tips, plant areas and the coal preparation site. All this drainage requires treatment before being discharged to a watercourse. Ground water from the dewatering of the site may need treatment to reduce iron concentration. An effective flow-balancing plan will be required to cope with expected storm conditions and ensure compliance with SEPA's discharge consent conditions.
- (ii) Clean water from around the site should be intercepted and diverted away from the working area. In order to prevent pollution from these ditches it is essential that they be properly designed taking account of the expected flows/ water velocity and constructed incorporating suitable ditch profiles. Freshly cut ditches on steep ground will require some protection to prevent erosion and pollution from mineral solids.
- (iii) The proposal involves a number of burn diversions. Prior to their diversion, the applicant should ensure that a full assessment of the ecology of these watercourses has been carried out in order that the existing habitats can be restored as far as practicable. SEPA should be consulted prior to the works commencing.
- (iv) All foul drainage from offices, canteens etc., will require treatment prior to discharge to a watercourse and SEPA's consent will be required for the discharge of sewage effluent to a watercourse.
- (v) All oil storage tanks/drums should be stored within a properly bunded compound capable of holding 110% of the contents of the largest tank. Delivery and outlet points should also be contained within the bunded compound. All valves and fillers should be padlocked when not in use. Waste oil from plant maintenance should be collected and disposed of safely.
- (vi) It is noted that the site will use the existing wheel wash facility at the Gasswater site. This meets with the requirements of SEPA.

- (vii) The proposed operations in respect of the coal processes is a prescribed process designated for SEPA control and will require Authorisation under the Environmental Protection (Prescribed Processes and Substances Regulations 1991).

***Appropriate conditions and notes can be attached to any consent granted for the proposed development to meet the requirements of SEPA.***

3.12 East Ayrshire Council's Environmental Health Division offers the following comments:

- (i) A section of the report is devoted to transportation and highways issues. I would assume that a considerable proportion of this section may become redundant if the company's application to establish the railhead at Cronberry comes to fruition.

***The proposed re-instatement of the Auchinleck–Cronberry rail line and establishment of a railhead adjacent to the existing Gasswater opencast site was approved on 28 February 2002 (Ref. No. 99/0757/FL). The submitted application promotes transportation of coal by road. However the applicant has indicated that its best endeavours shall be used to ensure construction of the proposed railhead and maximisation of coal transport by rail.***

- (ii) It is noted from the non-technical summary that the company's original area of interest extended eastwards from the existing Gasswater site boundary to beyond Kames. Such a massive development extending along the southern flanks of Muirkirk would almost certainly have generated a considerable degree of opposition from the local populace. The removal of potential development Areas B and C from the application will in all probability be beneficial to the applicant when considering this application.

***This comment relates to areas which are not subject of the application (see para 2.21 above)***

- (iii) The existing Gasswater site will already be controlled by SEPA authorisation that will include relevant conditions pertaining to dust control etc. The authorisation will either be renewed or amended to incorporate the Powharnal development and these conditions should likewise presumably be carried over to the new development.

***See section 3.11(vii) and response above.***

- (iv) There are a small number of properties in relatively close proximity to the site, e.g. Nether Wellwood, Wellwood Kennels, Mid Wellwood etc; the primary concerns in respect of these properties will be to ensure avoidance of any nuisance to them from the opencast activities. In respect of dust arisings it is noted that some of the properties will at various times be relatively close to the site workings. The applicants contend that diligent management of workings should effectively minimise any potential problems in this respect. It might also be of benefit to incorporate at least one of these properties as

a dust monitoring location in ongoing assessment of the situation. Controls should generally be in accord with the provisions of PAN 50 Annex B.

***Conditions can be attached to any consent granted for the proposed development to ensure that appropriate measures are in place to minimise dust arisings from site operations, all in accordance with best practice identified in PAN 50, Annex B. The applicant has promoted appropriate mitigation measures within the Environmental Statement to avoid significant adverse environmental impact in this regard. It should be noted that the applicant has ownership or control over the above mentioned properties. An appropriate dust monitoring scheme can be secured through the provisions of a Section 75 Agreement for the site.***

(v) In respect of noise issues, it is noted that all estimated scenarios produced by the applicant comply with the criteria specified in PAN 50, Annex A. As the site will operate on a 24 hour basis, there will obviously be a requirement to comply with the stricter night time criteria of PAN 50, Annex A. Again the company seem confident that it can meet or better these standards. In view of the proximity of a small number of properties in the vicinity, It is considered that there would be reasonable grounds for requesting the company to submit a noise monitoring protocol to the local authority that should include periodic monitoring at agreed designated locations. This would ensure the provision of data to confirm compliance with specific limits.

***Conditions can be attached to any consent granted for the proposed development to ensure that appropriate measures are in place to minimise noise nuisance from site operations, all in accordance with the appropriate noise limits identified in PAN 50, Annex A. The applicant has promoted appropriate mitigation measures within the Environmental Statement to avoid significant adverse environmental impact in this regard. It should be noted that the applicant has ownership or control over the above mentioned properties. An appropriate noise monitoring scheme can be secured through the provision of a Section 75 Agreement for the site.***

(vi) In respect of blasting works, the worst case predicted vibration levels shown in the Environmental Statement are a mean PPV of 2.0 and a maximum of 3.5 mm/sec at Nether Wellwood. Not surprisingly this property is considerably closer to the excavation works than the rest, at 120 metres. Whilst the predicted levels are well within the normal limit of 6 mm/sec PPV, the proximity of the dwelling to the site would certainly justify a structural pre-survey of the property and the use of this location as a possible monitoring point for blast vibration levels. It is noted that the applicant states that a blast monitoring programme will be established.

***Conditions can be attached to any consent granted for the proposed development to ensure that appropriate limits are in place to minimise vibration arising from blasting operations, all in accordance with the appropriate noise limits identified in PAN 50, Annex D. The applicant has promoted appropriate mitigation measures within the Environmental***

***Statement to avoid significant adverse environmental impact in this regard. It should be noted that the applicant has ownership or control over the property at Nether Wellwood. An appropriate blast monitoring scheme can be secured through the provision of a Section 75 Agreement for the site including, where considered appropriate, implementation of structural surveys of properties within close proximity to the development site.***

(vii) The application document states categorically that no private water supplies will be affected by the development. This being the case, there should be no objection to any condition being attached requiring suitable precautions to be taken to safeguard private water supplies in the vicinity, as a number of properties beyond the north and eastern boundaries of the development are known to utilise private water supplies.

***Appropriate provision can be made within a Section 75 Agreement for the site to ensure that no private water supplies are interrupted as a result of the proposed development.***

3.13 The Royal Society for the Protection of Birds states that Scottish Coal has recently provided additional information in support of the Powharnal application. Whilst RSPB acknowledges the considerable efforts of Scottish Coal in responding to its concerns, at present the RSPB is unable to withdraw its objection to the Powharnal proposal. However, based on the ongoing discussions with Scottish Coal and SNH, RSPB anticipates that it will be able to withdraw its objection providing a satisfactory Section 75 Agreement can be agreed prior to consent being granted. SNH has agreed to draft the Section 75 Agreement conservation section that would satisfy its requirements and RSPB will be liaising with SNH and Scottish Coal in the hope that conservation interests can be met.

***Noted.***

Subject to the completion and registration of an acceptable Section 75 Agreement, RSPB believes that a package of mitigation and restoration measures can ensure that the Powharnal proposal will not result in an adverse impact on the pSPA or SSSI. The Agreement will need to ensure procedural requirements are in place and that all desirable mitigation measures and restoration measures have been assured. The detailed comments from RSPB are set out in an annex to the consultation response.

***Should consent be granted for the proposed development, appropriate conditions and measures through a Section 75 Agreement can be imposed on the development to address the issues raised by RSPB, in particular the details set out in the annex to its consultation response. The terms of the Section 75 Agreement can be the subject of appropriate liaison and consultation with RSPB prior to its completion and registration. The establishment of a Technical Steering Group for the Powharnal site, to monitor and oversee mitigation and restoration, is advocated by Scottish Natural Heritage and that such a group would***

***involve participation by RSPB to ensure that has appropriate input to meet its interests.***

The RSPB wishes to make clear its belief that the previous history of mining at Powharnal has created a unique situation where restoration of pSPA habitats is possible, using proven techniques that have been applied in the same local conditions. Opencast activities elsewhere in this area are unlikely to prove amenable to such mitigation and restoration. RSPB will nonetheless examine all applications for opencast or other development on their own merits, should any such applications be forthcoming. In considering future development applications (including forestry, opencast, wind farm applications and other plans and projects), the RSPB will continue to examine their cumulative impact on the interests of the pSPA.

***Noted.***

RSPB does not consider that the granting of planning permission for Powharnal in any way diminishes the validity or strength of planning policies contained in the Ayrshire Joint Structure Plan or other current planning or draft planning documents. RSPB believes that the circumstances at Powharnal are unique, enabling mining to take place, subject to the stringent measures, without compromising the purpose of those policies.

***Noted.***

3.14 Muirkirk Community Council has no comments to make on the proposed development.

***Noted.***

3.15 Scottish Natural Heritage states that its involvement with this development proposal dates back to early 1999. During this time there have been two meetings with officials from East Ayrshire Council as well as numerous meetings with Scottish Coal and their consultants. SNH has provided formal responses to consultations from the Planning Authority. Having considered the significant amendments to the previously submitted information, SNH is satisfied that the relevant matters have now been adequately addressed, including:

- the phasing of the operations within the Muirkirk and North Lowther uplands potential Special Protection Area (pSPA)
- the outcomes of progressive restoration and aftercare (although some further detailed plans are required)
- the nature, extent, location and timing of mitigation measures required to offset the potential impacts of opencast operations within the pSPA
- the nature and frequency of monitoring required to demonstrate compliance with and efficacy of the mitigation measures.

***Noted.***

Furthermore, the information provided is sufficient to reassure SNH that the mitigation measures proposed will adequately offset the full range of potential impacts on the

pSPA arising from the excavation and associated opencast operations, SNH therefore is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.

***Noted.***

In summary, SNH considers that the additional information provided is sufficient to enable withdrawal of its objection to the proposed development, subject to the following conditions:

(a) that the development and associated mitigation measures are carried out strictly in accordance within the specification included in the submitted Powharnal Mitigation management Plan (PMMP), the revised layout/phasing maps and the revised indicative restoration plan.

(b) that the applicant produces for inclusion in the Section 75 Agreement a final set of restoration/phasing plans as specified within section 3.1 of Appendix 3 to the PMMP.

(c) that such a requirement as specified in (a) above is made the subject of a Section 75 Agreement to be concluded between East Ayrshire Council, the applicant and SNH. The Section 75 Agreement should be agreed and registered prior to the issue of the planning consent. Such an agreement must also incorporate any other third party interests necessary to ensure continued management in accordance with the PMMP for the lifetime of the project (20 years). The Section 75 Agreement should incorporate in full the PMMP and the finalised restoration plans as described at (b) above and the heads of agreement should furthermore include the following matters:-

- the establishment of a Technical Steering Group (TSG) to be convened by the Council, which will meet regularly (at least every six months) to monitor and oversee the implementation of the development and associated mitigation, including that specified in the PMMP, and agree any changes to the work programme that may be necessary. The TSG should comprise representatives of the Council, SNH, Scottish Coal and RSPB, each of these four parties exercising a single vote, and SNH having a casting vote on any decisions relating to the implementation of, or departures from the PMMP;
- the parties employed by the applicant to implement the PMMP, with the agreement of the members of the TSG;
- the involvement of the TSG members including SNH in the appointment of the 'wildlife manager' whose functions are described in the PMMP; and
- a requirement that the applicant will fund and undertake appropriate remedial measures to be agreed by the TSG should at any time monitoring establish that the mitigation measures are not adequately achieving their purpose as set out in the PMMP.

To be clear, SNH will not be in a position to withdraw fully its objection to the proposal until such time as the Section 75 Agreement described above has been drawn up to their satisfaction

***The conditions and details set out above by SNH can be fully incorporated into a Section 75 Agreement for the Powharnal development should consent be granted for the proposed development. Should the Committee resolve to grant planning consent subject to the making of a Section 75 Agreement, a decision notice will not be issued until the Solicitor to the Council has satisfactorily concluded such a formal agreement under the Town and Country Planning (Scotland) Act 1997. It is proposed that SNH should be a party to the S75 Agreement and that the RSPB should be consulted on relevant terms.***

Further more detailed commentary and advice from SNH in support of its position is attached as an appendix to the consultation letter.

***Noted.***

3.16 The River Ayr District Salmon Fishery Board has not responded to the consultation letter.

***Noted.***

3.17 The Health and Safety Executive (Field Operations Directorate) has no comments or representations to make on the proposed development.

***Noted.***

3.18 The Scottish Executive Rural Affairs Department indicates that according to the Macaulay LCA map for the area, the agricultural land involved is class 4.2 and poorer and is therefore considered to be non-prime. The need is stressed to keep individual topsoil types separate in the interest of the proposed restoration. These proposals, with particular reference to mineral soils, appear in line with any SERAD would recommend. However, there may be as need to sow seed of native species to assist in the establishment of desired cover for heath and dry rough grassland. On completion of operations, the site will be restored mainly to agricultural afteruse and consequently the proposed development is considered to be reversible. SERAD therefore has no objection to the proposal.

***Noted.***

3.19 The Forestry Commission states that as the area has little or no woodland currently and only small areas are to be established post restoration, it has little comment to make on the proposed development. In relation to the proposed riparian woodland by Powharnal Burn and the other small blocks, native mixed broadleaves should be encouraged. The Forestry Commission may be able to offer grant for tree planting dependent on the quality of the restoration. The new woodlands would also

have to meet current Environmental and Design Guideline standards at the time of application.

***The applicant has been advised of the comments of the Forestry Commission.***

#### **4. REPRESENTATIONS**

4.1 A total of 22 letters of representation have been received from two organisations and 16 individuals objecting to the proposed development. A further 16 signed, pro forma letters from individuals have been received but do not bear a contact address. A total of 7 pro forma letters have been received in support of the proposed development. The Scottish Wildlife Trust has also objected to the proposed development as indicated in section 3.7 above. Scottish Natural Heritage and the Royal Society for the Protection of Birds have indicated that they would be in a position to withdraw fully previous objections to the development subject to the conclusion of a satisfactory Section 75 Agreement. The main points of objection are summarised as follows:-

4.2 I feel that the Council should be on the side of people and voters of East Ayrshire, promoting our interests and not the interests of the coal barons.

***The Council as Planning Authority requires to determine the planning application in accordance with the provisions of the Development Plan for the area and taking into account other material considerations relative to the development proposals.***

4.3 The Council must reject this application as the site will encroach up to the road and be unsightly.

***The site boundary lies adjacent to the A70 road. However, through the environmental impact assessment process, appropriate mitigation measures are proposed, including the provision of screen bunding, along the A70 frontage. While it is accepted that there will be impacts on the visual amenity of the area, these impacts will not be significant and will be temporary in nature.***

4.4 The opencast operator cannot guarantee the transport of coals to market.

***A planning application for the proposed re-instatement of the Auchinleck–Cronberry rail line and establishment of a railhead adjacent to the existing Gasswater opencast site was approved on 28 February 2002 (Ref. No. 99/0757/FL). The applicant seeks to ensure the transportation of coal to market mainly by rail and the development of the railhead will facilitate this proposal.***

4.5 The proposed site is not in a preferred area for opencast coaling.

***The application site does not lie within a Preferred Area of Search as indicated in the Key Diagram of the Approved Ayrshire Joint Structure Plan. Furthermore, the application site lies outwith the potential opencast coal extraction areas identified in the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications). Assessment against the relevant policies is made within sections 5 and 6 of this report.***

4.6 The proposed site will cover part of an area of Special Protection.

***Part of the Powharnal site impinges on the Muirkirk and North Lowther Uplands Site of Special Scientific Interest and the associated potential Special Protection Area (99 hectares). Scottish Natural Heritage has stated that it is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.***

4.7 Coal is being overworked in Cumnock and Doon Valley and its associated problems outweigh environmental and community benefits.

***National Planning Policy Guideline 16 – Opencast Coal and Related Minerals makes it clear that it is not Government policy to set limits or targets for any particular source of energy supply, nor to pre-determine the appropriate levels of coal to be produced by underground or opencast mining. Planning Authorities must determine the acceptability of individual development proposals in accordance with the principles of the land use planning system having regard to the policies set out in NPPG16 and all other material considerations.***

4.8 The cumulative impact on communities, roads and the environment is unacceptable.

***Given that the nearest point of the Powharnal site is 2 kilometres away from the community of Muirkirk, it is unlikely that the operations from the proposed development site will have any significant cumulative impact on Muirkirk itself.***

***It is recognised that cumulative impacts can occur to communities through traffic impacts. The submitted application promotes the transportation of coal by road to disposal points at both Killoch at Ochiltree and Knockshinnock at New Cumnock. Given that the scale of operations at Powharnal will be commensurate with those at Gasswater, there will be no greater traffic impact than that experienced at present, although this would continue for a further period of approximately 9 years.***

***Since the submission of the Powharnal application, the applicant has secured planning consent for the re-instatement of the Auchinleck – Cronberry rail line and for the establishment of a dedicated railhead at Gasswater. The applicant has given a commitment to use its best endeavours to maximise transportation of coal via this facility. With transportation of coals mainly by rail from this facility, this will potentially remove associated traffic impacts on communities such as Lugar, Cumnock, Ochiltree and New Cumnock. There is also the potential to divert coals from the current opencast coal site at Spireslack off road and onto rail, further reducing traffic impacts on communities.***

***With respect to cumulative impact on the environment, see response to 4.6 above.***

4.9 When the residents of Muirkirk became aware that the south side of Muirkirk might be considered for opencasting, 768 individual petitions were signed by the people of Muirkirk.

***The Powharnal application has been the subject of comprehensive statutory publicity. A total of 4 letters of representation have been received from residents in Muirkirk expressing objection to the Powharnal development. As indicated in section 2.21 above, the potential development areas immediately south of Muirkirk village itself have been removed from the present submission.***

4.10 Coal is being imported from other countries much cheaper than Britain can produce it. Therefore there is no credible market for the surface mining of coal in Britain at this time.

***See response to 4.7 above.***

4.11 The potential distress caused by the surface working of coal on the south side of Muirkirk will outweigh any monies produced by its working.

***The Powharnal site lies approximately 2 kilometres south-west of the community of Muirkirk and it is unlikely that the operations from the proposed development site will have any significant impact on Muirkirk itself. The applicant has not pursued the potential extraction of coals in Areas B and C (referred to in section 2.21 above) that lie immediately south of Muirkirk, these areas having been identified at the scoping stage of the Powharnal development.***

4.12 There can be no mitigating circumstances for opencasting on the Powharnal site.

***The comprehensive Environmental Statement that accompanies the planning application, including the further information submitted by the applicant promotes mitigation measures to minimise adverse environmental impacts associated with the proposed development. Such***

***mitigation will require to be taken into account as material considerations in the determination of the planning application.***

4.13 The Powharnal site is in fact a Listed Wildlife Site, not only in Britain but in Europe and has status as a Site of Special Scientific Interest under EC Directive 79/409/EEC on the conservation of wild birds. The hen harrier is a rare bird of prey and the short-eared owl is also rare. The loss of suitable foraging territory, for any rare and protected species, by means of commercial exploitation is in deliberate contravention of the provisions laid down in the Scottish Office Circular 6/1995. Clearly open-casting of this area would impoverish this wildlife habitat by exhausting the natural strength and fertility of this site.

***Following the extensive further survey, research and analysis of the potential impacts on the pSPA, SNH states that it is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.***

4.14 The Welltrees Bridge has at present a weight restriction. What plans are in place to upgrade this bridge to make it safe for the 40 tonne lorries travelling over it?

***There is a restriction on the Welltrees Bridge relating to the movement of abnormal loads across it. There are no restrictions on normal traffic movements including HGVs. The applicant proposes to use its best endeavours to ensure transportation of the majority of coal from the Powharnal site by rail. It is further proposed that the S75 Agreement should include a requirement to upgrade the bridge to make it safer if the rail option does not proceed.***

4.15 The Powharnal site as it is naturally, gives Muirkirk an extraordinary feature of significant importance in ornithological circles, thus paving the way for tourism in the future. This fact is to be able to alter this site, Government Directives will have to be altered or breached.

***See response to section 4.13 above.***

4.16 Several sites of archaeological interest border the proposed site. Although these may not as yet be considered of national importance, if the proposed open-cast goes ahead, there will not be an opportunity to search for artefacts there.

***There are no archaeological features of national importance within the development site. The presence of locally important archaeological features within the Powharnal site is, however, acknowledged. As recommended by the West of Scotland Archaeological Service, appropriate conditions can be attached to any consent granted for the***

***proposed development to ensure that such sites are suitably protected where appropriate, or properly identified and recorded prior to destruction.***

4.17 In nature conservation terms, the area around Muirkirk is an Environmentally Sensitive Area, most notably for the population of hen harriers which it supports. The emphasis on nature conservation these days is to protect the habitat of species that are under threat.

***See response to section 4.13 above.***

4.18 There are huge stockpiles of coal so there is no need for more planning applications for new sites as those with permission already hold reserves which will last for a number of years. What kind of market is there for Scottish Coal in view of the known oversupply?

***National Planning Policy Guideline 16 – Opencast Coal and Related Minerals makes it clear that it is not Government policy to set limits or targets for any particular source of energy supply, nor to pre-determine the appropriate levels of coal to be produced by underground or opencast mining. Planning Authorities must determine the acceptability of individual development proposals in accordance with the principles of the land use planning system having regard to the policies set out in NPPG16 and all other material considerations.***

4.19 East Ayrshire Council should take heed of the cumulative effect on local people's health of so much opencasting. Health surveys are bound to be inconclusive as regards impact on health. Respiratory ailments have a well known association with particles such as stone or coal dust and diesel emissions. In health matters, as in the environment, we should be more prepared to adopt the precautionary principle.

***Current advice from the Scottish Executive in respect of this matter indicates that for existing and potential opencast sites, current best practice will be sufficient to ensure that air quality standards are not exceeded. The guidance indicates a 1km cut off distance for undertaking dust assessment and in this regard there are few residential properties within this distance of the Powharnal site, the majority of which are within the control of the applicant. Given the mitigation measures promoted within the Environmental Statement with regard to dust control, it is considered that the proposed development would not raise any significant adverse public health issues.***

4.20 The hydrology of the site will radically alter following opencast mining and therefore will be unable to support the same range of plants as before.

***While it is accepted that there will be alterations to both the hydrology and hydrogeology of the extraction area, the mitigation measures promoted within the Environmental Statement should ensure minimal adverse impacts on water quality. Indeed through the removal of the remnants of former deep mining in the area, it is likely that water quality will be greatly***

**improved. Similarly, through the implementation of the Powharnal Mitigation Management Plan, restoration of the site is likely to improve the habitat of the pSPA.**

4.21 Policy MIN7 of the finalised version of the opencast coal subject plan referred to a maximum of two operational opencast sites within 3 km of a settlement. With the Burnfoot Moor site and the Tardoes site already active, objection is made on the grounds of cumulative impact.

**Full assessment of the Powharnal development against the provisions of the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) is made within section 6 of this report.**

4.22 Regardless of the findings of the Environmental Impact Assessment, the Muirkirk and North Lowther Uplands SSSI has finally been approved by Scottish Natural Heritage and this conservation status has been conferred to protect hen harriers. Allowing the Powharnal opencast site to infringe on this SSSI is deemed unacceptable.

**SNH states that it is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.**

4.23 As it is proposed to use part of the Gasswater site to serve the Powharnal development, MEGA objects to the continuation of detrimental impact and delay in restoring Gasswater. Planning permission was only granted for Gasswater on the condition that this site would be completed and restored by 2003/2004.

**The planning consent for Gasswater expires in September 2006, although it is anticipated that coaling operations will cease during Spring 2003. While it is accepted that there will be a delay in the restoration of the area within Gasswater that will be used principally for the surcharge of overburden from the Powharnal development, this has to be balanced against the use of undisturbed additional areas of land for overburden storage. This is particularly important in considering overall areas of land disturbed in relation to impacts on the pSPA. In this instance it is considered to be more appropriate to store the overburden on an area already disturbed by opencast operations.**

4.24 MEGA objects to the titling of this application that includes restoration of previously despoiled land and enhancement of landscape and nature conservation interests. It is proposed to create two large voids, alter drainage patterns and alter contours, vegetation and the nature of a landscape that cannot be called despoiled.

**The Powharnal development will result in the removal of despoiled areas of land, being the remnants of former opencast and deep mining in the**

**area. In mitigation of the potential impacts of the development, the applicant proposes to implement the prescriptions within the Powharnal Mitigation Management Plan that, insofar as the pSPA is concerned, present the opportunity to restore an even broader area outwith the application site to yield benefits to the habitats and species within the pSPA beyond the lifetime of the development.**

4.25 MEGA objects to Scottish Coal's attempt to justify its eight or ninth site in East Ayrshire, by reference to unemployment rates which in fact have not been lowered by opencasting activities.

**The Powharnal development if approved will provide direct employment for 80 people, either by sustaining the existing workforce at Gasswater or by providing new employment opportunities, particularly for local people. In addition up to 230 jobs will similarly be sustained or created through indirect support services to the site.**

4.26 MEGA does not consider that an opencast site west and therefore upwind of Muirkirk and which is at a distance of less than 2 km from site working is acceptable in terms of effect from dust emissions.

**Appropriate impact assessment has been undertaken with respect to potential dust impacts. The western fringe of Muirkirk, being the closest substantial residential area is in excess of 2 km from the proposed extraction area. The Environmental Statement promotes effective mitigation measures (in line with those set out in Planning Advice Note 50: Annex B – The Control of Dust at Mineral Surface Workings) that will minimise nuisance arising through fugitive dust.**

4.27 The likely increase in noise is almost excused by Scottish Coal as they state that nearby properties are already affected by noise from existing mining operations and from traffic. This does not justify any additional noise. MEGA objects to 24 hour working not just the noise and activity generated but the light pollution near an ecologically sensitive area

**The properties in closest proximity to the proposed Powharnal development are either within the control or ownership of the applicant. The Environmental Statement promotes effective mitigation measures (in line with those set out in Planning Advice Note 50: Annex A – The Control of Noise at Mineral Surface Workings) that will minimise noise nuisance. Conditions can be attached to any consent granted for the proposed development to ensure that appropriate daytime and night time noise limits apply to operations undertaken at Powharnal, within appropriate environmental standards. Conditions can also be attached regarding site illumination to ensure minimal impact on the environment. It should be noted that the current operations at the existing Gasswater site has not been the subject of previous complaint to the Planning Authority with regard to either noise or illumination.**

4.28 Vibration from blasting is often felt much further than 1 km because of transference through faults. Scottish Coal persists in saying that blasting will take place without undue annoyance. MEGA disagrees.

***As indicated above the closest properties to the Powharnal development site are either within the control or ownership of the applicant. Given the advice contained within Planning Advice Note 50: Annex D – The Control of Blasting at Mineral Surface Workings, appropriate limits on ground vibration can be applied through planning conditions, which together with the implementation of blast monitoring scheme should ensure that blasting operations are carried out in an environmentally acceptable manner without detriment to local communities or residents.***

4.29 MEGA objects to the lack of reference to the condition of the A70, in particular Welltrees Bridge over which road hauled coal from Powharnal would have to travel.

***See response to section 3.2 above.***

4.30 Overburden mounds on the valley side will have considerable adverse visual impact and the fact that the site boundary is immediately adjacent to the A70 for over 2km will greatly detract from the amenity of the area.

***It is acknowledged that there will be negative visual impacts arising from the Powharnal development. However, through the implementation of the mitigation measures proposed in the Environmental Statement, such impacts should be minimised and are temporary.***

4.31 MEGA objects to the removal of the railway line which traverses the site as it has a prescriptive established right of public use. If the site does get planning consent then this established walkway should be re-instated.

***There are no formal Rights of Way identified within the Powharnal development site, although the applicant recognises that there are a number of informal tracks and paths that are used occasionally for informal recreational purposes. It is anticipated that restoration plans for the Powharnal site will include improved public access with links to proposed long distance footpaths/ cycle ways.***

4.32 MEGA notes that there are possible burial mounds within the site boundary. There may be Covenanted relics within the peat. Mining remains within the site boundary are stated to be of regional importance and that there are 13 other sites which will be physically unaffected. What guarantee is there in this statement?

***See comments and response to section 3.5 above.***

4.33 MEGA submits that the Powharnal development is contrary to Policies Min2, Min3, MIN6, MIN7, MIN9, MIN12, MIN13, MIN14, MIN15, MIN17, MIN19, MIN21, MIN22, MIN24, MIN27, MIN28, MIN29, MIN31, MIN32 and MIN33.

**Full assessment of the Powharnal development against the policies of the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) is made within section 6 of this report. The policies referred to by MEGA relate to those stated in the East Ayrshire Opencast Coal Subject Plan (Finalised Version) which, for the purposes of policy assessment, have been superseded by the EAOCSP (Finalised Version with Modifications)..**

4.34 The proposed development is contrary to several fundamental policies in the Ayrshire Joint Structure Plan in that it is outwith the Preferred Areas on the Key Diagram and it is within a Sensitive Landscape Area.

**The application site does not lie within a Preferred Area of Search as indicated in the Key Diagram of the Approved Ayrshire Joint Structure Plan. Assessment against the relevant policies is made within section 5 of this report.**

4.35 Despite removing 50 hectares from the site Scottish Coal still show development within this area by altering drainage patterns by rerouting water right across this area. MEGA objects to such fundamental hydrological alterations.

**The stated 50 hectares still forms part of the Powharnal development application site. However, although burn diversion works will be undertaken, the remaining area will remain unaffected by site operations. This area will however form part of the wider area subject to the Powharnal Mitigation Management Plan.**

4.36 The SSSI which still covers a significant part of the application site has now been approved by the main board of SNH. It has been carefully identified because of its ecological importance on European terms. The SSSI has not simply been approved on the basis of hen harriers, etc. but because of the variety and diversity of flora and fauna. The land at Powharnal is in equilibrium now but this would be fundamentally altered and cannot be restored to what it is now in less than a generation.

**Part of the Powharnal site impinges on the Muirkirk and North Lowther Uplands Site of Special Scientific Interest and the associated potential Special Protection Area (99 hectares). The designation of the SSSI is a pre-requisite to the site's formal designation as Special Protection Area. Scottish Natural Heritage has stated that it is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests and habitats of the pSPA beyond the lifetime of the development.**

**Furthermore, the Habitat and Birds Directives, which confer special protection to such areas, state that it is important to recognise that the Directive does not impose a general prohibition on development or other**

**activities affecting European sites. If appropriate assessment indicates that there would be no adverse effect on the integrity of the site, the Directive will not prevent the development going ahead simply because it happens to be within the boundaries of such a site.**

4.37 I am concerned that this application may be heard before the report from the local public inquiry into the Council's Opencast Coal Subject Plan has been considered by the relevant committees of the Council. The recommendations must be in the public domain before a planning hearing should take place regarding Powharnal or the public will have been excluded from having the appropriate information on which to form objections.

**A report on the finding of the Reporter in respect of the Public Local Inquiry on the EAOCSP (Finalised Version with Modifications) will be presented to committee in due course. Any modifications agreed to by the Council will require to be the subject of further statutory publicity and public consultation. In view of the timescale to eventual adoption of the plan, it would be inappropriate to delay determination of the application under consideration pending the outcome of this process.**

4.38 The extraction of minerals by opencast methods has never become the foundation of the economy in this area as was originally hoped. During the last two decades, the period of operations, unemployment has remained high and population continues to decline. Until work has been undertaken to examine the negative impact of environmental degradation on inward investment and infrastructure, there must be no new development of this kind.

**The opencast industry within East Ayrshire provides significant direct and indirect employment and, in the absence of the industry, it is likely that unemployment levels would be higher with greater detriment to the local economy.**

4.39 Even if some coal is moved by rail, the site will increase traffic through Muirkirk.

**While the Powharnal development will result in some coals being directed to local domestic markets and may therefore travel through Muirkirk, there will be no significant traffic movements through Muirkirk related to the Powharnal development.**

## **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), the Adopted Muirkirk Local Plan (1985) and the Adopted Cumnock and Auchinleck Local Plan (1992), as the Powharnal site straddles these two local plan

areas. The Adopted Local Plans were prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 In terms of the Adopted Muirkirk Local Plan the proposal would fall to be considered principally against the relevant policy 4.10.8(K)(ii) relating to opencast development as follows:

- (i) In all cases where an application for opencast mineral working is applied for there will be a presumption in favour of protecting good quality/ locally important agricultural land, listed wildlife sites and water catchment areas, the SSSI at Bloods Moss/Slot Burn and historical artefacts.

***It is acknowledged that some 99 hectares of the Powharnal development site falls within the listed wildlife site. However, a full assessment of the potential impacts on these interests has been undertaken with the conclusion that, with appropriate mitigation, monitoring and restoration, there will be no significant adverse impacts on the qualifying interests. SNH and RSPB have indicated that subject to appropriate measures being put in place, the Powharnal development presents a unique opportunity to restore pSPA habitats. Indeed SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.***

***The Powharnal development will not adversely affect water catchment areas, good quality or locally important agricultural land or historical artefacts of national importance.***

5.3 In terms of the Adopted Cumnock and Auchinleck Local Plan, the part of the Powharnal development site lying within this local plan area is identified as an Opencast Priority Area. The proposal would fall to be considered against policies as follows:

- (i) Policy 36: Presumption in favour of protecting good quality locally important agricultural land, listed wildlife sites, SSSI's, heritage resources and water catchment areas.

***See response to 5.2(i) above.***

- (ii) Policy 37: Presumption in favour of opencast coal operations in coal priority areas in particular where this would lead to the restoration of despoiled land.

***The part of the Powharnal development lying within the Cumnock and Auchinleck Local Plan Area falls within an opencast coal priority area. The Powharnal development will also result in the removal of despoiled land and areas of dereliction.***

- (iii) Policy 38: Private operators will be required to lodge a restoration bond

***The applicant is willing to provide appropriate bonding for the restoration of the site.***

- (iv) Policy 39: Restoration of sites to agriculture, forestry, recreational or other use will require to be of the highest standard.

***The development site is to be restored in accordance with the Powharnal Mitigation Management Plan that will be agreed in consultation with SNH and the RSPB to secure appropriate restoration of not only the Powharnal development site, but to secure enhancement of a much larger area of pSPA habitat.***

- (v) Policy 45: The Council will pay particular regard to the proximity of residential properties in the processing of planning applications for opencast operations.

***The locality in which the proposed Powharnal site is located is sparsely populated with isolated farms and a few residential properties, the majority of which are within the control or ownership of the applicant. The EIA process has resulted in a scheme designed to minimise any adverse impact the development may have on local residents and other affected parties.***

It is considered that the Powharnal development is generally consistent with the provisions of the adopted local plans.

5.4 The Ayrshire Joint Structure Plan indicates in its Key Diagram that the Powharnal development site lies outwith a Preferred Area of Search. Policy E14A 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 Powharnal development does not lie within the Preferred Areas of Search identified in the Key Diagram.***

Furthermore Policy E14B states:

*In North and South Ayrshire, and the remaining parts of East Ayrshire outwith the Preferred Areas of Search identified on the Key Diagram, opencast coal working shall not conform to the Structure Plan except where there is a clearly demonstrated environmental benefit achieved through the removal of existing areas of dereliction. In this circumstance, proposal for small scale, short term extraction shall be supported.*

*Any proposals will be considered against the criteria in Policy E13*

***The Powharnal development does not meet the criteria for exception set out in Policy E14B***

***The proposed development is therefore contrary to the provisions of Policy E14 of the Approved Ayrshire Joint Structure Plan. Should the Committee be minded to approve the Powharnal development, it will be necessary to notify the Scottish Ministers under the Town and Country Planning (Notification of Applications (Scotland) Direction 1997 as this proposal would be a departure from the Approved Ayrshire Joint Structure Plan.***

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

- (i) impact on the countryside, landscape character, visual amenity and the natural and built environment.

***The proposed development has been the subject of a comprehensive Environmental Impact Assessment. The Environmental Statement presents a series of mitigation measures which would minimise any temporary, adverse impacts on the countryside, landscape character, visual amenity and the natural and built environment. It is recognised that there would be significant impact on the landscape character and visual amenity of the area, however the phasing of development together with the progressive restoration of the Powharnal site and other opencast sites in the locality, this would be temporary and reversible. With respect to potential impact on the pSPA, SNH has indicated that it is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.***

- (ii) the impact caused by noise, dust and the contamination of ground and surface water.

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

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

***The Powharnal site is isolated from most local communities and it is considered that there will be no direct impact on communities resulting from the opencast operations. With the potential use of the proposed Cronberry railhead, local communities should not be adversely affected by road transportation of coal from the site.***

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

**Comments as above.**

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

***The Powharnal development will result in the removal of areas of despoiled land including removal of former deep mine workings. The implementation of the Powharnal Mitigation Management Plan will allow through mitigation, restoration and aftercare, yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development. The mitigation area covers some 1259 hectares, well in excess of the area of the Powharnal application site.***

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

***Opencast operations at the existing Gasswater site commenced in September 1998 with coaling operations due to cease in early 2003. Commencement of the Powharnal development immediately following on from the Gasswater operations would result in opencast operations and restoration continuing to 2013. This equates to a total timescale of opencasting in this area of 15 years. However, as indicated previously, the area is sparsely populated and is located away from local communities. With the proposed establishment of a dedicated railhead to serve the Powharnal development, the main source of cumulative impact, resulting from the transportation of coal by road, should be significantly reduced.***

It is considered that the Powharnal development is generally consistent with the provisions of Policy E13

5.5 In summary it is considered that the Powharnal development is generally consistent with the provisions of the adopted local plans. It is however contrary to the approved structure plan as the Powharnal development site does not fall within a Preferred Area of Search for opencast coal development. The relative weight to be given to these considerations is discussed at Section 8 below.

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

6.1 The other principal material considerations relevant to the determination of the application are as follows:

- (i) the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications)(April 2001);
- (ii) the Habitats and Birds Directive (Scottish Office Circular 6/1995);
- (iii) the consultation responses;
- (iv) the objections detailed in Section 4 above;

- (v) NPPG 16 – Opencast Coal and Related Minerals;
- (vi) PAN 50: Annexes A,B,C and D; and
- (vii) relevant planning history.

### East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications)

6.2 The Adopted Local Plans covering the development site are considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the modified East Ayrshire Council Opencast Coal Subject Plan (Finalised Version with Modifications),(EAOCSP), should be considered as a prime material consideration. The application now requires to be fully assessed against the principles promoted within this modified plan. Note that in the following paragraphs some of the policies are summarised.

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

***The Powharnal development site lies outwith a Potential Coal Extraction Area and therefore coal extraction within this area is not in accordance with the EAOCSP. The development therefore requires to be considered against Policy MIN2.***

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

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

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

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

***The Powharnal development is neither a short-term nor a small scale opencast coal development and therefore is not in accordance with the EAOCSP. However as the Powharnal development is considered to be an extension to the existing Gasswater site, the development requires to be assessed against Policy MIN3.***

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

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

***The Powharnal development will be implemented as a continuous sequential phase of opencast coal extraction through the contiguous seams of coal within the area.***

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

***The existing site infrastructure of the Gasswater site, in terms of site access, office and workshop complex, coal washing and preparation facilities, weighbridge and vehicle washing facilities, will be used to serve the Powharnal development. In addition, ground disturbed as part of the Gasswater development will be used for the surcharge and storage of overburden from the Powharnal development, reducing the land-take requirement of the development.***

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

***The scale of operations the Powharnal development and the rate of extraction will be commensurate with those of the existing Gasswater site. With the proposal to construct the dedicated railhead to serve the development, there will be a significant reduction in HGV movements as the applicant seeks to maximise transportation of coal by rail.***

The Council will only be supportive of such developments where, additionally:-

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

***The Powharnal development will result in the removal of existing areas of former mining dereliction, the majority of which lie within the Muirkirk and North Lowther Uplands potential Special Protection Area. As part of mitigation required from the incursion of the Powharnal development into the pSPA, the Powharnal Mitigation Management Plan has been produced that will promote management of 1259 hectares of land to secure the interests and enhancement of pSPA habitat, an area considerably greater than the Powharnal development site itself.***

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

***The Powharnal development will either secure continued employment for the existing workforce, or will provide additional jobs in an area of high unemployment. The total number of direct jobs provided through the***

**development is 80, with up to 230 indirect jobs similarly sustained or created.**

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

**Assessment against other relevant policies is given below.**

(vii) Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a period substantially in excess of 5 years will not be considered acceptable, unless it can be clearly demonstrated that there are significant local community and local environmental benefits to be secured by the development.

**Opencast operations at the existing Gasswater site commenced in September 1998 with coaling operations due to cease in early 2003. Commencement of the Powharnal development immediately following on from the Gasswater operations would result in opencast operations and restoration continuing to 2013. This equates to a total timescale of opencasting in this area of 15 years. However, as indicated previously, the area is sparsely populated and is located away from local communities. With the proposed establishment of a dedicated railhead to serve the Powharnal development, the main source of cumulative impact, resulting from the transportation of coal by road, should be significantly reduced. It is considered that the overall community and local environmental benefits to be derived from the Powharnal development are significant.**

**It is considered that the Powharnal development is generally consistent with the provisions of Policy MIN3, but would be contrary to criterion (vii) above. The proposals would therefore represent a minor departure from Policy MIN3.**

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

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

**With the exception of the Scottish Wildlife Trust, there are no significant consultee objections from statutory or non-statutory with regard to the stated impacts, subject to appropriate conditions and an appropriate Section 75 Agreement for the Powharnal development. While it is recognised that there will be adverse impacts on the landscape and visual amenity in the locality, appropriate mitigation is promoted within the Environmental Statement to minimise such impacts, which are temporary in nature.**

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

***With the mitigation measures proposed within the Environmental Statement for the Powharnal development, it is considered that the proposed development can operate within environmentally acceptable standards relating to noise, dust, vibration, air quality and water quality. The removal of former deep mine workings within the site is likely to lead to an improvement in the water quality in the area.***

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

***The area is sparsely populated and is located away from local communities, the nearest being Muirkirk, some 2 km to the north-east. The properties in closest proximity to the development site are all within the ownership or control of the applicant. With the proposed establishment of a dedicated railhead to serve the Powharnal development, the main source of cumulative impact, resulting from the transportation of coal by road, should be significantly reduced. It is therefore unlikely that there will be significant adverse impact on local communities, groups of houses or individual dwellings.***

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

***It is considered that through the positive restoration and aftercare proposals for the Powharnal site, and the wider PMMP area, there will be overall significant improvement to the landscape character and visual amenity of the area, extending beyond the application site itself. The proposed restoration of the site will promote greater opportunities for wildlife and habit creation, remove areas of dereliction, and secure a unique opportunity to restore pSPA habitat.***

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

***The submitted application for the Powharnal site is a detailed application.***

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

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

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

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

***Relevant information in respect of the above issues has been submitted as part of the planning application and accompanying Environmental Impact Statement.***

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

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

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

***With the mitigation measures proposed within the Environmental Statement, the imposition of appropriate planning conditions and the establishment of appropriate environmental monitoring systems, it is considered that the proposed development can operate within environmentally acceptable standards.***

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

***No other economic minerals have been identified within the development site.***

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

***There are no significant areas of active peat bog within the Powharnal extraction area. All peat encountered within the site shall be retained for use in the restoration of the site.***

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

(a) constitute a third operative site within 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

***The Powharnal development represents an extension to the existing Gasswater site that would result in the site lying within a 3 km radius of Muirkirk. There are three existing sites currently operative within a 3km radius of the community of Muirkirk. The Burnfoot Moor (Bankend) extension site is currently coaling with consented operations continuing until 2004. The Tardoes site has ceased coaling and is currently undergoing restoration which is due to be completed by September/October 2002. The Spireslack opencast site to the east of Muirkirk has a boundary within 3 km of Muirkirk, but the current operational area lies in excess of this distance. It is considered that the extension of the Gasswater site in the Powharnal development will not exacerbate the current position. If approved, the Powharnal development is not likely to commence until early 2003, by which time the Tardoes site will be fully restored and in aftercare.***

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

***Although the combined operational period of Gasswater/Powharnal will be in excess of 10 years, the area is sparsely populated and is located away from local communities, the nearest being Muirkirk, some 2 km to the north-east. The properties in closest proximity to the development site are all within the ownership or control of the applicant.***

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

***The Powharnal application is based on the transportation of coal by road and in this regard, the continuation of coaling from the Gasswater site into the Powharnal development site, at a scale and rate commensurate with the existing Gasswater operations, will not exacerbate traffic impacts on communities or groups of dwellings.***

***With the proposed establishment of a dedicated railhead to serve the Powharnal development, the main source of cumulative impact, resulting from the transportation of coal by road, should be significantly reduced. It is therefore unlikely that there will be significant adverse impact on local communities, groups of houses or individual dwellings. It is further likely that coal currently being won at Spireslack will also be diverted to the proposed new railhead, further reducing traffic impacts on communities to***

***the west of Muirkirk including Lugar, Cumnock, Ochiltree and New Cumnock.***

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

***Following the extensive further survey, research and analysis of the potential impacts on the Muirkirk and North Lowther Uplands pSPA, SNH states that it is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.***

***It is considered that while the Powharnal development does not generally conflict with the provisions of MIN12, the development will technically constitute a fourth site within a 3km radius of Muirkirk, contrary to the spirit of criterion (a) above.***

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

***Details of the method of working, restoration and aftercare proposals are contained within the Environmental Statement and the planning application. These details have been further refined through the preparation of the Powharnal Mitigation Management Plan and will be subject to appropriate, monitoring and review. Monitoring and review of the PMMP will also allow the restoration of the site to be adapted if necessary to ensure restoration to the highest standards.***

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

***Specific phasing of the Powharnal development and requisite progressive restoration during the course of operations is to be undertaken on site in line with the PMMP. Provision will be made within a Section 75 Agreement to ensure positive restoration of the site in the interests of pSPA habitat creation and enhancement as indicated by both the RSPB and SNH.***

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

***There are no formal Rights of Way identified within the Powharnal development site, although the applicant recognises that there are a number of informal tracks and paths that are used occasionally for informal recreational purposes. It is anticipated that the final restoration plans for the Powharnal site will include improved public access with links to proposed long distance footpaths/ cycle ways.***

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

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

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

***A planning application for the proposed re-instatement of the Auchinleck–Cronberry rail line and establishment of a railhead adjacent to the existing Gasswater opencast site was approved on 28 February 2002 (Ref. No. 99/0757/FL). The applicant has given a commitment to use its best endeavours to ensure the transportation of coal to market mainly by rail and the development of the railhead will facilitate this proposal.***

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

***If necessary, the appropriate road infrastructure requirements relating to the Welltrees Bridge re-alignment, as indicated in the consultation response from the Roads Division, can be secured through a Section 75 Agreement and at the expense of the applicant.***

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

- (a) to ensure the highest possible operational standards for the transportation of extracted minerals;
- (b) to ensure best operational practice regarding road safety and operational matters;
- (c) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes
- (d) to audit and record operational details of the transportation of coal on a regular basis; and
- (e) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

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

***The applicant is fully supportive of the development of the protocol with the Council and has indicated a willingness to subscribe to the protocol which will be included as part of any Section 75 Agreement.***

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

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

(xix) Policy MIN23: Requirement for developers to carry out structural surveys of nearby residential properties if considered necessary.

***The applicant has indicated a willingness to undertake such surveys if necessary and this can be incorporated within a Section 75 Agreement. However it should be noted that the applicant owns or has control over the residential properties in close proximity to the Powharnal site.***

(xx) Policy MIN 24: In order to ensure that opencast coal operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council may consider opencast developments unacceptable where:-

(a) a development has a working face or operational areas relating to the storage, processing or dispatch of coal which encroach within 500 metres of the community concerned, or

(b) storage mounds, landscaping bunds or settlement lagoons are located within 100 metres of the community concerned, or

**No part of the Powharnal development falls within 500 metres of any community.**

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

**While the combined extraction period for both Gasswater and Powharnal will be in excess of 10 years, it is considered that this will not result in unacceptable nuisance or disturbance to any community, given that the nearest community is Muirkirk, some 2kms to the north-east.**

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

**As indicated above, the applicant is aware of other reserves of coal in the area (Areas B and C of the Powharnal scoping site) and has excluded these areas from the Powharnal application site, principally because these areas could not be worked without causing significant adverse environmental impacts. It is therefore considered unlikely that the Powharnal development will be subject to further extensions.**

(xxi) Policy MIN26: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, local community, group of dwellings or individual dwellinghouses not in the ownership of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where certain criteria are met.

**Policy MIN 26 is not relevant in this instance as no part of the Powharnal development falls within 500 metres of any sensitive establishment, local community, group of dwellings or individual dwellinghouses not in the ownership of the applicant.**

(xxii) Policy MIN27: Protection of areas of nature conservation interest from adverse effects of opencasting.

**Since the submission of the Powharnal application, the Muirkirk and North Lowther Uplands Site of Special Scientific Interest (SSSI) has been formally designated and, in relation to the application site, the SSSI is also co-incident with the boundary with the Muirkirk and North Lowther Uplands potential Special Protection Area (pSPA). This results in**

**approximately 99 hectares of the Powharnal development application site lying within the SSSI and the pSPA.**

**The applicant has undertaken further detailed assessment of the potential impacts of the Powharnal development on the qualifying interests of the pSPA, resulting in the PMMP. The information provided is sufficient to reassure SNH that the mitigation measures proposed will adequately offset the full range of potential impacts on the pSPA arising from the excavation and associated opencast operations, SNH therefore is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.**

(xxiii) Policy MIN28: Protection of built heritage resources and the natural environment from adverse opencast proposals. In particular, development proposals will not be supported where they would:

(a) cause the permanent loss or irreversible damage to prime quality, and the highest grade category of locally important agricultural land.

**The proposals would not conflict with policy.**

(b) have a permanent adverse impact or cause irreparable damage to heritage resources requiring conservation

**No listed buildings, historic gardens or designed landscapes will be affected by the Powharnal development. While a number of archaeological sites will be affected by the development, West of Scotland Archaeology Service has not objected to the development and those sites that will be affected by excavation operations will be subject to archaeological investigation and recording, secured through appropriate planning conditions on any consent granted for the development.**

(c) adversely affect air quality and the quality and quantity of water resources

**With the mitigation measures proposed within the Environmental Statement for the Powharnal development, it is considered that the proposed development can operate within environmentally acceptable standards relating to air quality and water quality. The removal of former deep mine workings within the site is likely to lead to an improvement in the water quality in the area.**

(d) result in the loss of any areas of ancient and semi-natural broadleaf woodland or trees covered by a Tree Preservation Order.

***The proposals would not conflict with policy.***

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

***The proposals would not conflict with policy.***

***Although the West of Scotland Archaeology Service has not objected to the Powharnal development, the loss of some archaeological features represents a minor departure from Policy MIN28.***

(xxiv) Policies MIN29 and MIN31: Protection of landscape value and visual quality of areas from opencast developments.

***It is acknowledged that there will be negative visual impacts arising from the Powharnal development. However, through the implementation of the mitigation measures proposed in the Environmental Statement, such impacts should be minimised and are temporary. The Powharnal development will result in the removal of areas of despoiled land including removal of former deep mine workings.***

(xxv) Policy MIN30: Protection of existing rural tourism, leisure and recreational resources and facilities. The Council will not be supportive of proposals which would impinge on or adversely affect the physical setting, operational viability or recreational quality of specific sites and resources considered to be of importance to the local economy or local residents especially within stated areas.

***It is considered that the Powharnal development will not have any significant impact on existing rural tourism, leisure and recreational resources and facilities. The implementation of the PMMP with appropriate restoration and aftercare of the site should enhance future prospects for such resources and facilities.***

(xxvi) Policy MIN32: Protection of water resources: The Council will not be supportive of proposals which would adversely impact on water catchment areas.

***Appropriate mitigation measures are promoted within the Environmental Statement to ensue that there will be no significant adverse impact on water resources. SEPA has not raised any objections to the proposed development insofar as water resources are concerned.***

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

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

(xxviii) 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 has indicated a willingness to contribute to the Minerals Trust.***

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

***The applicant is willing to provide necessary restoration and aftercare bonds with respect to the proposed development.***

(xxx) Policy MIN38: Establishment of liaison committees.

***Although the existing Gasswater site does not have a Liaison Committee, the applicant has indicated a willingness to establish a Liaison Committee for the Powharnal site if considered appropriate.***

In summary the Powharnal development would result in departures from Policies MIN3, MIN12 and MIN28 of the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications).

#### National Planning Policy Guidelines

6.3 Recent guidance on opencast coal extraction has been given in National Planning Policy Guideline 16: Opencast Coal and Related Minerals. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coaling may take place.

***Noted.***

6.4 Many of the provisions of NPPG 16 are addressed within the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport.

***These issues have been addressed fully in Section 6 of the report. The applicant has submitted proposals that have been designed to comply fully with the guiding principles of NPPG16.***

Planning Advice Note 50

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

**Noted.**

6.6 In terms of the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No.2) Direction 1998, certain categories of opencast development require to be formally notified to the Scottish Ministers should the Planning Authority be minded to approve opencast proposals.

***Although the Powharnal development is an extension to the existing Gasswater site, the extension area would encroach into an area which would result in 3 operational sites within 5 km of the Powharnal development. Should the Committee be minded to approve this application it will require to be referred to the Scottish Ministers under this Direction.***

The Habitats and Birds Directive: Circular 6/1995

6.7 The Habitats and Birds Directive apply a common protection scheme to Special Protection Areas. The Directive requires European Community Member States to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the sites have been designated. Any plan or project likely to have significant effect on a European site and which is not directly connected with or necessary to the management of that site must undergo appropriate assessment. The Directive further indicates that plans or projects that would adversely affect the integrity of the site may go ahead only under certain circumstances. The need for appropriate assessment extends to plans or projects outwith the boundary of the site in order to determine their implications for the interest to be protected within the site. Planning Authorities are required to consult Scottish Natural Heritage on development proposals and assessments.

***Appropriate assessment has been undertaken by the applicant with respect to the potential impact of the Powharnal development on the qualifying interests of the pSPA. Following this assessment and consultation on the information provided, this has proved sufficient to reassure SNH that the mitigation measures proposed will adequately offset the full range of potential impacts on the pSPA arising from the excavation and associated opencast operations, SNH therefore is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA. Indeed, SNH considers that the implementation of the mitigation, restoration and aftercare will yield considerable long-term benefits to the interests of the pSPA beyond the lifetime of the development.***

6.8 The circular further states that it is important to recognise that the Directive does not impose a general prohibition on development or other activities affecting European

sites. If appropriate assessment indicates that there would be no adverse effect on the integrity of the site, the Directive will not prevent the development going ahead simply because it happens to be within the boundaries of such a site.

***Noted.***

### Consultation Responses

6.9 There are no significant adverse issues raised in the consultation responses that would justify refusal of the application other than the Powharnal development would represent a significant departure from the Approved Ayrshire Joint Structure Plan.

### Planning History

6.10 Full planning permission for the extraction of coal by opencast methods at Gasswater was approved on 10 June 1998 (Ref. No 96/0496/FL). Full planning permission for the re-instatement of the Auchinleck – Cronberry mineral rail line and construction of a rail loading facility at Gasswater was approved on 28 February 2002 (Ref. No. 99/0757/FL).

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

7.1 There are no financial implications for the Council in the determination of this application. Should the Council agree to approve the application, this would necessitate the Council entering into a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 with the applicant, Scottish Natural Heritage and adjoining landowners to secure obligations on the developer as detailed below in section 8 of this report.

## **8. CONCLUSIONS**

8.1 As is indicated in section 5 of this report, the application is considered to be contrary to the provisions of the development plan. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise.

8.2 The Powharnal development is considered to be contrary to the Adopted Structure Plan for the following reasons:

- The Powharnal development site lies outwith the Preferred Areas of Search identified on the Key Diagram of the Approved Ayrshire Joint Structure Plan (and is not a small scale, short-term development)

8.3 A number of factors, however, may be weighed against this:

- The significant criterion for excluding the Powharnal application site as part of the Preferred Areas of Search was the potential conflict with the Muirkirk and North Lowther Uplands potential Special Protection Area and Site of Special Scientific Interest. The assessment that has been carried out by the applicant has provided

information sufficient to reassure SNH that the mitigation measures proposed will adequately offset the full range of potential impacts on the pSPA arising from the excavation and associated opencast operations, SNH therefore is satisfied that there will be neither a short-term nor a long-term adverse effect on the populations of the bird species for which the area qualifies for inclusion within the Muirkirk and North Lowther Uplands pSPA.

- Part of the Powharnal development site lies within an opencast priority area identified in the Adopted Cumnock and Auchinleck Local Plan
- The extension of the supply of land for winning and working of minerals at the Powharnal development site has been assessed against the criteria of Policy 13 of the Adopted Structure Plan.
- The site has been assessed as an operational extension of an existing site. The Structure Plan leaves detailed policies including such matters as the consideration of extensions to be specified in Local Plans.
- Whilst the development is contrary to the Adopted Structure Plan it is consistent with the Adopted Local Plans.

8.4 As is indicated in Section 6 above, there are also material considerations relevant to this application. It is considered that the weight that should be attached to these material considerations, where relevant to policy, should be greater than that given to the policies of the Adopted Local Plans due to the age of these plans. In terms of the East Ayrshire opencast Coal Subject Plan (Finalised Version with Modifications), the proposals would result in conflict with the East Ayrshire Opencast Coal subject Plan for the following reasons:

- The Powharnal development would result in an extended operational site that would constitute a third operative site within 3kms of the community of Muirkirk.
- The Powharnal development, as an extension to the existing Gasswater site, would result in a substantial area of extraction for a combined operational period in excess of 10 years.
- The Powharnal development would result in negative visual impacts along the A70 corridor during the operational life of the site.
- The loss of some archaeological features within the Powharnal extraction area

8.5 The Powharnal development is, however, considered to accord with the provisions of the Opencast Coal Subject Plan as:

- As an extension to the Gasswater site, the Powharnal development will utilise existing site facilities and will reduce the overall area of land disturbed through the storage of overburden within part of the Gasswater site.

- The proposal would result in the removal of areas of despoiled land and former mining dereliction.
- The Powharnal development will provide significant employment opportunities whether this be through the continuation of existing jobs at Gasswater or the creation of additional jobs. A total of 80 jobs direct jobs will be retained or and together with indirect employment through service providers and suppliers, this will have a significant financial input to the economy of an area which suffers from high levels of unemployment.
- The implementation of the Powharnal Mitigation Management Plan will secure significant community and environmental benefits over a wider area than the development site itself over a timescale beyond the life of the site itself.

8.6 As indicated by RSPB, it is considered that the previous history of mining at Powharnal has created a unique situation where restoration of pSPA habitats is possible, using proven techniques that have been applied in the same local conditions. Opencast activities elsewhere in this area are unlikely to prove amenable to such mitigation and restoration. In this regard it is considered that the granting of planning permission for Powharnal development would not set an undesirable precedent. Nor would such a decision diminish the validity or strength of planning policies contained in the Approved Ayrshire Joint Structure Plan or the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) for the fundamental reasons identified in paragraph 8.2 above.

8.7 The proposed development has not attracted any significant level of objection from local communities and no objections from residents living within the immediate locality of the development and this has to be weighed up against any concerns regarding cumulative impact.

8.8 In respect of all relevant matters and material considerations to be taken into account, it is considered that there are over-riding environmental and community benefits which would outweigh any temporary adverse impacts and give justification for the stated departures from the Approved Ayrshire Joint Structure Plan and the East Ayrshire Opencast Coal Subject Plan. Consequently it is considered that the application should be approved. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the appropriate Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, covering the following matters, has been duly concluded:

### ***Section 75 Agreement***

- (i) A Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the EAOCSP.
- (ii) The undertaking of structural surveys of residential properties lying in close proximity to the site, where appropriate, in consultation with the applicant, the Planning Authority and the Environmental Health Division.

(iii) The establishment of the site liaison committee for the Powharnal site, the composition of which shall be the subject of discussion and agreement between the applicant and the Planning Authority.

(iv) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;

(v) The establishment of noise, dust and vibration monitoring programmes for the Powharnal site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development.

(vi) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the Powharnal development site;

(vii) The establishment of a Technical Steering Group, in the terms stated by Scottish Natural Heritage in its consultation response dated 11 June 2002, to oversee the progressive restoration of the site to ensure appropriate opportunities for habitat creation and enhancement. The Group shall include representatives from SNH, RSPB, and the Planning Authority.

(viii) The implementation of the Powharnal Mitigation Management Plan and the associated recommendations and prescriptions contained within consultation responses from Scottish Natural Heritage (dated 15 March 2002 and 11 June 2002) and the Royal Society for the Protection of Birds (dated 11 June 2002).

(ix) The implementation in full of the mitigation and restoration recommendations contained with the Environmental Statement that accompanied the planning application. Notwithstanding the provisions of clause (viii) above, the applicant shall provide a Mitigation Management Plan for the site that shall be the subject of an annual audit with a monitoring report provided to the Planning Authority assessing the effectiveness of mitigation measures.

(x) The securing through legal agreement of the future management and preservation of the areas of enhanced habit.

(xi) The subscription of the applicant to the Council's Transportation Protocol;

(xii) The obligation of the developer to use best endeavours to secure maximisation of transportation of coal extracted from the site to be despatched to markets by rail.

(xiii) The definition of agreed dispatch routes for minerals destined for domestic markets taken off site with an in-built mechanism for flexibility to take account of market conditions;

(xiv) The undertaking by the applicant to pay to the Council, in the event of the Council incurring any extraordinary expense with the maintenance of the A70 road, so much of

the expenses of maintaining this road attributable to damage caused by heavy vehicles operated by the applicant, all in terms of the Roads (Scotland) Act, 1984.

(xv) The undertaking of the applicant to carry out road infrastructure improvements at Welltrees Bridge in the event that the rail option is unable to proceed.

## **9. RECOMMENDATIONS**

### **9.1 It is recommended:**

**(a) that the application be approved subject to the conditions on the attached sheets and that the issue of the decision notice be withheld until:**

**(i) the application has been formally notified to and has been cleared by the Scottish Ministers in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 (as amended);**

**(ii) 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 applicant and SNH, in respect of the matters described in Section 8 of this report; and**

**(iii) SNH and RSPB have formally withdrawn their objections;**

**(b) note that the Director will formally consult RSPB on the conservation management aspects of the Section 75 Agreement before it is concluded.**

**(c) in the event that there is a failure to secure the requisite Section 75 Agreement with the relevant parties, the application be referred back to the Development Services Committee for further consideration.**

**Stephen Chorley  
Director of Development Services**

7 August 2002  
SC/HM/JR

## **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans
2. Statutory Notices and Certificates
3. Environmental Statement
4. Representation Letters
5. Consultation Responses
6. East Ayrshire Opencast Subject Plan (Finalised Version with Modifications)

7. Approved Ayrshire Joint Structure Plan
8. Adopted Muirkirk Local Plan
9. Adopted Cumnock and Auchinleck Local Plan
10. Habitats and Birds Directives (SO Circular 06/1995)
11. NPPG16: Opencast Coal and Related Minerals
12. PAN50 : Controlling Environmental Effects of Surface Mineral Workings (Annexes A, B, C and D)
13. Previous application 96/0496/FL and 99/0757/FL

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: 99/0761/FL

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Location	Powharnal, Near Muirkirk
Nature of Proposal:	Proposed extraction of coal by opencast methods utilising existing site infrastructure at Gasswater OCCS, restoration of previously despoiled land, and enhancement of landscape and nature conservation interests
Name and Address of Applicant:	Scottish Coal Company Limited per Mr. Peter Barker Ayrshire Office Chalmerston Site DALMELLINGTON KA6 7PN
Name and Address of Agent	

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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 development hereby permitted shall enure for the benefit of the applicant only, and the approved operations shall be completed within 10 years of the commencement date of the operations at Powharnal, or within such other time as may be agreed formally in writing with the Planning Authority.

REASON: To ensure that the development, which is temporary in nature, is commenced and completed within an acceptable timescale. The development is acceptable only because of the individual circumstances pertaining to the applicant and on a temporary basis.

2. The applicant shall give notice to the Planning Authority, in writing, of the commencement of operations on the Powharnal site, one month prior to their commencement.

REASON: To ensure that appropriate monitoring systems are in place prior to the commencement of operations on site.

3. Prior to the commencement of operations on the Powharnal site, the applicant shall submit details of any additional structures to be located within this area. Details of the means of illumination of this area shall also be submitted and this illumination shall be installed in a manner that minimises any potential nuisance. Operations shall not commence until the Planning Authority has approved the submitted details.

REASON: In the interests of amenity.

4. The phasing of the Powharnal development shall be carried out in strict accordance with the submitted Phasing Plans (May02\layout3mnthsb.prn – May02\layout90mnthsb.prn inclusive: 19 plans in total).

REASON: To ensure minimal impact on the Muirkirk and North Lowther Uplands SSSI and pSPA.

5. The developer shall undertake recording of archaeological resources within the development site to the satisfaction of the Planning Authority. No development shall take place within the development site until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, this scheme to be submitted for approval by the Planning Authority following consultation and agreement with the West of Scotland Archaeology Service.

REASON: To ensure that appropriate archaeological work is undertaken before the development commences.

6. Prior to the commencement of operations on site, the developer shall assess the full potential impacts on archaeological sites outwith the extraction area but within the site boundary and to bring forward a suitable detailed strategy for the protection of such sites to the Planning Authority for approval.

REASON: To ensure that appropriate measures are undertaken to prevent damage to archaeological features not affected by the extraction operations.

7. Access to the Powharnal site shall be by means of the existing access road from the A70 road serving the Gasswater site.

REASON: In the interests of road safety.

8. No drainage connection shall be made to the public road drainage system without the prior approval of the Roads Authority. No surface water shall be allowed to discharge from the development site on to the adjacent public roads.

REASON: In the interests of public road safety.

9. Appropriate measures, to prevent mud, dirt, dust, slurry, coal or stones being carried onto the highway, shall be taken and such steps shall include the provision and use of hard standing areas and a full wheel and body vehicle wash facility for the cleaning of all lorries, dump trucks, other heavy vehicles and plant leaving the site, all in accordance with the mitigation measures promoted within the Environmental Statement which accompanied the planning application.

REASON: In the interests of road safety.

10. The access roads and public roads adjacent to the site shall be kept clear of mud or other deposited materials at all times by means of mechanical brushing.

REASON: In the interests of road safety.

11. Prior to any road vehicle loaded with coal or other minerals leaving the site, the load shall be suitably covered/happed to ensure there is no escape of materials. A hard standing area shall be provided within the coal preparation area to facilitate the happing of haulage vehicles. Vehicles returning to the site shall also be happed to minimise traffic noise associated with empty vehicles.

REASON: In the interests of road safety and minimising noise impact.

12. Prior to excavation works commencing on site statutory undertakers' apparatus shall be protected and diverted as required, to the satisfaction of the respective statutory undertakers and at the expense of the developer.

REASON: In the interests of public safety.

13. The developer shall make stock-proof and maintain, until the restoration of the site is completed, all existing perimeter hedges and fences and shall protect these from damage during operational works. Where the site boundary does not coincide with an existing hedge or fence, then the developer shall provide and maintain stock-proof fencing with gates or cattle grids at every opening. Where the developer has the right to do so, undisturbed hedgerows, within or bounding the site, shall be maintained, the hedgerows to be cut and trimmed at the proper season throughout the period of working and restoration of the site. Where dry stone dykes are to be removed, the stone shall be stored and later re-used in the restoration of these dykes.

REASON: In the interests of visual amenity.

14. Topsoil and sub-soil shall only be stripped when the soils are sufficiently dry so that when moved, no damage will be done to the structure of the soils. Apart from the works required to enclose the site, no operations shall be carried out until the topsoil is fully stripped and stored in the designated areas within the site, in accordance with the phased programme of extraction as described in the Project Description which forms part of the planning application.

REASON: To ensure that the topsoil and sub-soil will be suitable for the restoration of the site following storage.

15. Topsoil shall be stripped to full available depth from all areas within the site except those areas designated in the approved plans as topsoil dumps. Following topsoil stripping operations from any areas of land, sub-soil shall be stripped as a separate operation to a depth, where possible, to achieve topsoil and sub-soil not less than 0.9 metre at restoration.

REASON: In the interests of achieving maximum restoration potential.

16. The developer shall give at least two working days notice to the Planning Authority before work commences on the stripping of topsoil and/or sub-soil. The Planning Authority reserves the right to suspend operations during adverse conditions.

REASON: To prevent damage to soils and to ensure that the topsoil and sub-soil to be stored will be suitable for use during restoration of the site.

17. Bind-free soil forming material found during the course of the operations shall be reserved where practicable and stored for later use in the final restoration of the land. This material shall be used to replace shortages of sub-soil or topsoil, or otherwise used to cap overburden mounds.

REASON: To ensure that sufficient soils are available during restoration of the site.

18. Topsoil, sub-soil and overburden shall be carefully stored in separate dumps and prevented from mixing. Topsoil dumps shall not exceed 5 metres in height. Topsoil dumps and sub soil dumps shall be evenly graded and tops shaped to prevent water ponding. Sub-soil dumps shall not exceed 15 metres in height and overburden dumps shall not exceed 30 metres in height.

REASON: To prevent damage occurring to soils and in the interests of visual amenity.

19. All peat encountered within the site shall be suitably stored for later use in the restoration of the site.

REASON: To ensure proper restoration of the development site.

20. In the first available seeding season following their formation, all mounds of topsoil, sub-soil and soil making materials shall be seeded in grass and shall be so maintained until the soils are required for use in the restoration of the site except as may be otherwise agreed with the Planning Authority. The overburden mound shall be grassed on visible faces in accordance with the mitigation proposed in the Environmental Statement to the satisfaction of the Planning Authority.

REASON: In the interests of visual amenity.

21. All weeds on the site, particularly those on the topsoil and sub-soil storage mounds, shall be treated with weed killer or cut to prevent spreading within the site or onto adjoining agricultural land.

REASON: To prevent weed contamination of soils in the interests of proper site restoration.

22. The location of baffle embankments shall generally be as indicated on the approved plans. Their specific location shall be chosen to assist in the visual screening of the site and their form should be such as to present a natural looking feature.

REASON: In the interests of visual amenity.

23. The sub-soil and overburden storage mounds shall be so formed as to have minimal visual intrusion on the surrounding landscape.

REASON: In the interests of visual amenity.

24. Where the soils are to be used in the restoration of land to forestry, then the stripping and storage of soils shall be to the general requirements and specifications of the Forestry Commission.

REASON: In the interests of site restoration.

25. All water treatment areas and settlement lagoons shall be enclosed by a one metre high stock-proof fence and shall be implemented prior to any significant soil stripping.

REASON: In the interests of public safety.

26. Throughout the period of site working, agricultural restoration and after-care, the developer shall protect and maintain or divert any ditch, stream, watercourse or culvert passing through the site so as not to impair the flow nor render less effective drainage onto and from adjacent lands. If there are any watercourses that contain fish the culverts shall be constructed to allow the passage of fish through them. Any culverts installed shall be removed following re-instatement of the site.

REASON: To prevent a detrimental effect upon adjacent agricultural and other operations.

27. Appropriate provision shall be made at all times to ensure that under drainage is maintained for land outwith the working areas. Standing water must not be allowed to gather in any area where the topsoil and sub-soil has not been stripped.

REASON: To prevent damage to adjacent land and soils.

28. Alternative arrangements shall be made for any interruption of adjacent drainage systems, new interceptor leaders shall be laid, or ditches cut, where required, to ring the site and bleed in existing lateral drains from adjoining undisturbed land.

REASON: To prevent damage to adjacent land and soils.

29. All contaminated drainage and run-off from the site roadways, intercepting ditches, overburden and other tips, coal handling and stocking areas, the working areas of the excavations and pump mine water shall receive adequate and appropriate treatment prior to being discharged to any watercourse, such treatment being to the satisfaction of the Planning Authority.

REASON: To prevent contamination of watercourses.

30. Prior to any coaling operations being undertaken, the applicant shall consult with the Scottish Environment Protection Agency with respect to measures for the diversion of watercourses arising from the proposals. Such measures shall be undertaken to the satisfaction of SEPA and the Planning Authority.

REASON: To safeguard the watercourse and in the interests of public safety.

31. Appropriate precautions shall be taken to prevent the discharge of oil from fuelling, oil storage, plant maintenance and vehicle wash areas within the site.

REASON: To prevent contamination of watercourses.

32. All fuel, oil or other chemical storage tanks on the site shall be sited on impervious bases and surrounded by tank bund walls. The bunded areas shall be capable of containing 110% of the tank's volume and shall enclose all fill and draw pipes. If the storage tanks are to be sited at a single compound, the bund wall shall be capable of containing 110% of the volume of the largest storage tank. All fill and draw points shall be padlocked when not in use. Waste oil from plant maintenance should be collected and disposed of safely. Any maintenance of vehicles required to be undertaken outwith the proposed workshops area shall be undertaken in a manner as to prevent any spillage of oils or fluids entering watercourses.

REASON: In the interests of public safety and to prevent any pollution of watercourses.

33. All foul drainage from sanitary facilities, canteens, etc. shall be treated prior to discharge to a soakaway system. In the event that percolation tests indicate that the ground is not suitable for discharge to soakaway system then

additional treatment will be undertaken prior to any discharge of sewage effluent to any watercourse.

REASON: To prevent any pollution of watercourses

34. The formation of overburden areas shall be carried out, as far as practicable, behind mounds in order to reduce noise nuisance to a minimum and, whenever possible, during the hours of darkness, warning lights shall be used instead of beepers as a warning device on plant and maintenance vehicles, or other appropriate warning devices the details of which shall be submitted to and approved by the Planning Authority.

REASON: In the interests of minimising noise impact.

35. The operational conduct of the site shall be generally as indicated in the Method Statement that forms part of the application.

REASON: To ensure that the development is undertaken in accordance with the details approved.

36. A dust-monitoring programme shall be agreed with the Planning Authority in consultation with the Environmental Health Authority and undertaken using appropriate equipment and recording devices. The results and records shall be made available to the Planning Authority on a monthly basis during the operational life of the site.

REASON: To ensure that appropriate environmental standards are maintained throughout the life of the site.

37. Except in the case of emergency, the hours of working on site will be between 0700 hours on a Monday through 1600 hours on a Saturday (24-hour working). With the exception of essential site maintenance and the maintenance of plant and machinery, no work shall take place on Sundays or on recognised Public Holidays in East Ayrshire.

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

38. Except in cases of emergency, the dispatch of coal by road from the site shall be confined between 0800 hours and 1700 hours Mondays to Fridays. There shall be no dispatch of coal on Saturdays or Sundays.

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

39. The conduct of the site and method of operations shall comply with British Standards 5228 and Part 3 of the 1984 Code of Practice for Noise Control Application to Surface Coal Extraction by Opencast methods. Except during the formation a removal of baffle mounds and the stripping and replacement of soils, the noise limit during daytime (0700 to 1900 hours) shall not exceed 45dB Laeq, 1h and 40dB Laeq, 1h during night time (1900 to 0700 hours) at noise sensitive

properties. During the formation and removal of baffle mounds and the stripping and replacement of soils, the noise limit shall not exceed 70dB Laeq, 1h at noise sensitive properties with such works only taking place during daylight hours.

REASON: In the interests of residential amenity.

40. An appropriate noise-monitoring programme shall be undertaken during the operational life of the site, the details of which shall be agreed by the Planning Authority prior to the commencement of development using appropriate equipment and recording devices, the results of which shall be made available to the Planning Authority on a monthly basis.

REASON: To ensure that appropriate environmental standards are maintained throughout the life of the site.

41. Except in cases of emergency or as otherwise may be agreed with the Planning Authority, blasting operations shall be carried out between 1000 to 1600 hours Mondays to Fridays and between 1000 to 1200 hours on Saturdays. No blasting operations shall take place on Sundays, on recognised East Ayrshire Public Holidays, during the hours of darkness or during periods of adverse visibility.

REASON: In the interests of amenity and public safety.

42. An appropriate blast-monitoring scheme shall be undertaken during the operational life of the site, the details of which shall be agreed with the Planning Authority in consultation with the Environmental Health Authority, using the appropriate equipment and recording devices, the results of which shall be made available to the Planning Authority on a monthly basis.

REASON: To ensure that appropriate environmental standards are maintained throughout the life of the site.

43. All opencast machinery not in use shall be parked, as far as practicable, in an inconspicuous position and shall not be astride soil or overburden mounds.

REASON: In the interests of visual amenity.

44. Any rubbish and scrap materials generated on the site shall, as far as is practicable, be kept in a screened position until disposed of in an approved manner to the satisfaction of the Planning Authority.

REASON: In the interests of visual amenity.

45. The site shall be progressively restored generally in accordance with the scheme submitted with the planning application as may be amended in consultation with the Technical Steering Group to be established for the site. The details of the restoration shall be promoted to secure the wider objectives of the Powharnal Mitigation Management Plan (June 2002) as may be amended by the

Technical Steering Group. The scheme shall also include the reinstatement of any access roads/rights of way at present in existence in accordance with the Restoration Strategy. The procedures for replacement of overburden, sub-soil and topsoil shall generally accord with those indicated in the Method Statement and to the satisfaction of the Planning Authority.

REASON: To ensure appropriate restoration of the site.

46. No materials for filling shall be introduced to the site from sources external to it without the formal approval of the Planning Authority.

REASON: To enable the Planning Authority to retain control over development of the site.

47. The restored site shall be progressively landscaped generally in accordance with the Powharnal Mitigation Management Plan and shall include details of field patterns, forestry planting, shelter belt creation, hedgerows, nature habitat creation including additional wetland areas and, if appropriate, broadleaf species in the design of shelterbelts and the creation of imaginative walkways and nature trails.

REASON: To secure appropriate restoration features and habitat enhancement.

48. The restored site shall be subsequently managed in accordance with the aftercare scheme detailed within the Powharnal Mitigation Management Plan. The aftercare scheme shall be the subject of monitoring and review in consultation and agreement with Scottish Natural Heritage, the Royal Society for the Protection of Birds and the Planning Authority.

REASON: In the interests of amenity.

49. There shall be an annual formal review to consider all the operations which have taken place on the site during the previous year, and to consider the programme for the ensuing year. The parties involved in the review shall include the applicant, the Mineral Operator, the owners of the land and the Planning Authority.

REASON: To enable the Planning Authority to update the operation of the site in the light of any difficulties encountered and to monitor progress of site operations.

50. Two weeks prior to the annual formal review an updated plan will be forwarded to the Planning Authority indicating the year's work on the site and showing the anticipated work programme for the ensuing year.

REASON: To assess the operational status of the site.

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**THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON  
VIEWING PLEASE CONTACT (01563) 576790.**

**AGENDA**