

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 24 MAY 2001

**00/0526/FL : PROPOSED OPENCAST EXTRACTION OF COAL,
GARLEFFAN II EXTENSION, GARLEFFAN OPENCAST COAL SITE,
NEW CUMNOCK**

**AMENDMENT TO THE PROPOSED SECTION 75 AGREEMENT UNDER
THE TOWN AND COUNTRY PLANNING(SCOTLAND) ACT 1997**

Report by Head of Planning and Building Control

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a proposal to amend the terms of the Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 for the Garleffan II proposed opencast coal site. The Local Planning Committee, on 02 February 2001, approved this development subject to a Section 75 Agreement in specific terms and consequently the proposal for amendment to these terms would fall to be considered by the Local Planning Committee.

2. BACKGROUND

2.1 The Southern Local Planning Committee, at its meeting on 02 February 2001, approved a full planning application by LAW Mining Limited for the Garleffan II extension to the existing operational opencast coal site at Garleffan near New Cumnock. This approval was subject to the concluding of a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 which would seek to impose a series of obligations on the opencast developer in the development of the site extension. This agreement has not yet been formally concluded.

2.2 Paragraph 8.9 of the Committee Report listed a total of fifteen obligations to be incorporated within the Section 75 Agreement. In terms of this present report, the obligation under paragraph 8.9 (xiv) is of particular relevance and states:-

(xiv) The obligation of the developer not to undertake operations within the Garleffan II development site until a firm contract has been let to secure the construction of the proposed Gasswater railhead.

2.3 This obligation was considered necessary as the proposed coal production from the site had been assessed on the basis of the coals being directed to the existing railhead at Crowbandsgate at New Cumnock, and the proposed new railhead at Gasswater near Cronberry. A resolution to grant planning consent for this railhead was made by the Southern Local Planning Committee on 20 April 2000 and the proposed development is currently the

subject of a grant application to the Scottish Executive. Due to the uncertainty of the outcome of this grant application, it was considered reasonable to impose the above obligation, since in the event of the new railhead not being implemented, a further assessment of the Garleffan II proposals in terms of timescale and transportation impacts would be necessary.

3. CURRENT SITUATION

3.1 Planning consent for the extraction of 1.2 million tonnes of coal from the Garleffan I site was approved on 09 September 1999 (Ref.No. 98/0539/FL). This consent was granted subject to a time limiting condition of six years from the date of commencement of operations on site (4.5 years coaling and 1.5 years restoration). With commencement of operations in November 1999, coaling operations would have been expected to continue potentially until April 2004.

3.2 LAW Mining has advised that due to a combination of geological faulting and encountering narrower seams of coal within the Garleffan I extraction area, coaling operations are nearing completion with workable reserves almost exhausted. The coal partings of the upper coals within the extraction area are much narrower than drilling had shown resulting in a higher ratio of coal wastage. Despite the introduction of a wash plant facility on site to maximise the coal return and minimise the adverse effect on the coal tonnage produced, it is anticipated that only a further 60,000 tonnes of workable coal will be extracted from the existing Garleffan I site.

3.3 LAW Mining now seeks to commence coaling in the Garleffan II extraction area in order to maintain coal production to serve its existing supply contracts and to maintain continuity of employment of its current workforce. However the proposed obligation under the Section 75 Agreement for the Garleffan II extension requiring LAW Mining not to commence operations in Garleffan II until a contract has been let for the construction of the new railhead facility at Gasswater would seriously impact on maintaining the continuity of markets and employment.

3.4 The existing operations at Garleffan restrict production of coal to 10,000 tonnes per week, a minimum 90% of which is transported to the Crowbandsgate railhead for onward dispatch by rail to power generation markets. Under the proposed Garleffan II operations, this situation would be maintained. Although production from the Garleffan II site is intended to be at the rate of 20,000 tonnes per week (10,000 tonnes to the existing Crowbandsgate railhead and 10,000 to the proposed Gasswater railhead), LAW Mining would undertake not to exceed the current 10,000 tonnes limit taken from the site via the existing access road to the Crowbandsgate railhead until such time as a firm contract has been let for the new railhead at Gasswater. In the event of the Gasswater railhead not proceeding, LAW Mining would undertake to submit a formal application for amendment to the Garleffan II development for assessment and consideration.

3.5 In addition LAW Mining is seeking to exclude from the Section 75 Agreement, the land that would be taken up in the formation of the new northern haul road linking the Garleffan II site with the new railhead at Gasswater, until such time as a final decision on the construction of this facility is made.

4. PLANNING IMPLICATIONS

4.1 The Garleffan II development has been assessed and determined on the basis of a total output of 20,000 tonnes of coal per week from the site with coals being split for dispatch via two railhead facilities, one existing and one proposed. In order to address potential uncertainty over the construction of the proposed railhead at Gasswater, it was considered necessary to seek an undertaking from the developer not to commence operations on the Garleffan II development until a formal contract had been let for its construction.

4.2 Should operations commence on the Garleffan II development and subsequently the new railhead proposal at Gasswater not be implemented, this would potentially have an impact on the timescale for the proposed development as the 5 million tonnes of coal to be extracted over the 11 year duration of the development would be affected by a production limitation of 10,000 tonnes per week. In this regard, it would be necessary for LAW Mining to address this issue through a formal modification to the planning consent with a further assessment of potential cumulative timescale and transport impacts.

4.3 In addition, if the proposed railhead was not implemented, this would mean that the construction of the proposed new haul road to access the new railhead via the A70 Cumnock – Muirkirk Road would no longer be necessary

4.4 Notwithstanding the above, the commencement of the Garleffan II development at this time would not result in any additional adverse environmental impacts as the development would proceed on the basis of a production limit of 10,000 tonnes of extracted coal per week, with a minimum 90% of this tonnage being taken directly to the Crowbandsgate railhead for dispatch to market i.e. the status quo would be maintained.

4.5 With regard to the progress of the grant application for the new railhead at Gasswater, the application has been assessed by consultants acting on behalf of the Scottish Executive and it is understood that a site inspection by Scottish Executive representatives is due to take place in the near future prior to a formal decision being made.

5. FINANCIAL AND LEGAL IMPLICATIONS

5.1 There are no financial implications for the Council in the consideration of this report. Legal implications would arise in the incorporation of the

amended terms of agreement in the Section 75 Agreement for the Garleffan II development.

6. CONCLUSIONS

6.1 In the expectation that operations on Garleffan I would have continued potentially until 2003/2004, the obligation not to undertake any operations on Garleffan II was reasonable and would have allowed for a definitive decision to have been made on the implementation of the new railhead facility at Gasswater.

6.2 The current operational difficulties faced by LAW Mining could have serious commercial consequences for the company and for the continuity of employment for its workforce, particularly if it is held to the obligation not to undertake any operations on the Garleffan II development site prior to the let of a formal contract for the construction of the new railhead at Gasswater. The fact that workable reserves of coal within the Garleffan I extraction are almost exhausted has resulted in a significant reduction in the life of this part of the site. In this regard, this obligation could be regarded as being overly restrictive, bearing in mind that to allow 10,000 tonnes of coal to be extracted from the Garleffan II site in advance of the construction of the Gasswater railhead would not result in any additional adverse environmental impacts.

6.3 However, if this was to be a long term situation, the ability of LAW Mining to extract the coal reserves within the Garleffan II site within the proposed timescale of 11 years could be compromised. If this occurred then LAW Mining would require to apply for a formal modification of the planning permission. Such a modification would require to be formally assessed including a re-appraisal of potential environmental impacts. Consequently, should the Committee accede to the request by LAW Mining, it is considered that this concession be limited to a maximum period of 12 months. If no formal contract for the Gasswater railhead is let within this period, LAW Mining will require to make a formal planning application for an amendment to the Garleffan II development proposals. Such an application should be submitted for determination prior to the expiry of the 12 month concession period. Members should note that, given the timescale for determination of applications, if the Committee is minded to approve the recommendations in section 7 of this report, LAW Mining would be permitted to extract coal at the agreed rate until determination of the application.

6.4 With regard to the exclusion of the land associated with the construction of the new haul road from the Section 75 Agreement, it is considered that this could be addressed through a separate Minute of Agreement that would oblige the developer to ensure this land will be added to the Garleffan II Section 75 Agreement at a later date.

7. RECOMMENDATIONS

7.1 It is recommended that the Committee accede to the request by LAW Mining and that the obligation listed under paragraph 8.9 (xiv) of the Committee Report 00/0526/FL dated 24 January 2001 be amended as follows:

(xiv) Prior to the construction and operation of the proposed new railhead facility at Gasswater, coal production from the Garleffan II site shall not exceed 10,000 tonnes per week. In the event that a contract for the construction of this railhead facility is not let within a period of 12 months from the date of the issue of the planning consent for the Garleffan II development, LAW Mining shall require to submit a formal planning application, prior to the expiry of the 12 month period, for a modification to the development proposals to allow a re-assessment of site operations and timescale in the absence of this railhead. For the avoidance of doubt, coal production at Garleffan II shall be permitted to continue, at the rate above-mentioned, until determination of this planning application.

7.2 It is further recommended that the lands associated with the formation of the new haul road be excluded from the proposed Section 75 Agreement at this time but that a separate Minute of Agreement be entered into by the Council and LAW Mining requiring that this land be incorporated in the Section 75 Agreement prior to the commencement of any works on this haul road.

Alan Neish
Head of Planning and Building Control

17 May 2001
HM/HM
FV/AN

LIST OF BACKGROUND PAPERS

1. Committee report 00/0526/FL dated 24 January 2001.

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

Implementation Officer: Dave Morris

AGENDA

