

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 10 OCTOBER 2003

**03/0506/FL: PROPOSED VARIATION AND EXTENSION TO APPROVED
SCHEME OF WORKING, EXCAVATION AREA B, HOUSE OF WATER
OPENCAST COAL SITE, DALLEAGLES, NEW CUMNOCK.**

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full permission is sought for a variation to the existing excavation limit in Area B of the current approved House of Water opencast coal development site. This will result in an extension to the existing excavation area of approximately 12 hectares and this variation is being sought to allow an overdig in the excavation along the northern and western boundaries of Area B to address an issue of geological instability, in the interests of site safety and stability. The extended excavation area will also yield some 200,000 additional tonnes of coal, giving the total output of coal from House of Water at 4.8 million tonnes.

1.2 The variation also results in revised locations for the associated overburden and soil storage areas, but these still lie within the same general areas to those previously approved in the current permitted scheme. Overburden will be stored on the western boundary of Area B with soil storage taking place generally on the southern part of the area with a soil bund located along the boundary of the site with Dalgig Road. Excavations will be undertaken in three cuts, commencing at the northern boundary of the revised Area B and progressing in a southerly direction.

1.3 The extension to Area B excavation area will not increase the overall period of site operations at House of Water and coaling within this area will take approximately 18 months to complete, giving an anticipated completion date of operations in November 2006. Progressive restoration will take place in line with the proposed cuts. The proposed amendment will not affect the existing restoration proposals for the House of Water site.

1.4 All other operational aspect of the proposed development would be undertaken in line with the provisions of the existing planning consents for the House of Water Opencast Site, including hours of operation, blasting and transportation of coal along existing agreed routes.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal amendment to the agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matters described in Section 8.6 of this report.

3. CONCLUSIONS

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

3.2 The proposed development is considered to constitute a minor departure from Policy MIN3 as it represents an extension to an existing operative site not falling within the identified Potential Coal Extraction Areas. However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, existing operative opencast sites were excluded on the basis that these sites were currently being worked. The House of Water site lies within a Potential Coal Extraction Area, but is not itself identified as such. Any extension to the House of Water site outwith the current site boundary would in all probability fall within a Potential Coal Extraction Area, but any extension within the confines of the existing site would not.

3.3 The proposed extension to Area B is modest in size and lies wholly within the existing House of Water operational boundary. The extension is being promoted to address geological issues pertaining to the site, to ensure a safe and stable working environment. It is also noted that the extended area will yield an additional 200,000 tonnes of coal.

3.4 The site is relatively remote with only a few residential properties and farmhouses located in proximity to the application site. It is considered that the modest extension to the excavation Area B will present no significant additional adverse impacts beyond those that may be expected as a result of the current consented operations.

3.5 The approval of the proposed extension will not have any impact on the timescale for completion of the House of Water development that is anticipated to be completed approximately 1 year earlier than the life of the current consent.

3.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the House of Water site has been amended encompass obligations covering the following matters:

- (i) The securing of a contribution for the additional maintenance spending on the B741 public road that will be incurred as a result of additional coals being transported along this route; and
- (ii) The subscription of the applicant to the Council's 'Transportation of Coal by Road Protocol'.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application will not require to be referred to the Development Services Committee as it would not represent a significant departure from the Development Plan.

Alan Neish
Head of Planning and Building Control

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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03/0506/FL: PROPOSED VARIATION AND EXTENSION TO APPROVED SCHEME OF WORKING, EXCAVATION AREA B, HOUSE OF WATER OPENCAST COAL SITE, DALLEAGLES, NEW CUMNOCK.

APPLICATION BY THE SCOTTISH COAL COMPANY LIMITED

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 full planning application, which is to be considered by the Local Planning Committee under the scheme of delegation because it represents a variation and extension to an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan and is subject to objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 4.5 miles west of New Cumnock and lies within the secluded River Nith valley to the south of Dalgig Road. The application site lies within the existing consented operational opencast site at House of Water.

2.2 The application site extends to approximately 12 hectares and lies to the north and west of the permitted extraction area of Area B of the House of Water site. The Area B extraction area is south facing and falls from a level of 280 metres Above Ordnance Datum (AOD) to a level of 240 metres AOD in the south. The area is bounded to the north by a commercial forest, grazing land to the west, by the Beoch Lane to the south and by the Dalgig Road and the River Nith to the east.

2.3 Planning permission for the winning and working of coal by opencast method at the House of Water site was approved on 17 April 1996 (Ref. CD/94/0072/MIN). Under this application permission was granted for two distinct phases of development. Area A is almost complete in terms of coal extraction and significant operations for restoration are ongoing. Operations in Area B have now commenced with soil stripping operations.

2.4 The current application site lies wholly within the existing House of Water Opencast Site, with the total development area extending to some 473 hectares.

2.5 **Proposed Development:** Full permission is sought for a variation to the existing excavation limit in Area B of the current approved House of Water opencast coal development site. This will result in an extension to the existing excavation area of approximately 12 hectares and this variation is being sought to allow an overdig in the excavation along the northern and western boundaries of Area B to address an issue of geological instability, in the interests of site safety and stability. The extended excavation area will also yield some 200,000 additional tonnes of coal, giving the total output of coal from House of Water at 4.8 million tonnes.

2.6 The variation also results in revised locations for the associated overburden and soil storage areas, but these still lie within the same general areas to those previously approved in the current permitted scheme. Overburden will be stored on the western boundary of Area B with soil storage taking place generally on the southern part of the area with a soil bund located along the boundary of the site with Dalgig Road. Excavations will be undertaken in three cuts, commencing at the northern boundary of the revised Area B and progressing in a southerly direction.

2.7 The extension to Area B excavation area will not increase the overall period of site operations at House of Water and coaling within this area will take approximately 18 months to complete, giving an anticipated completion date of operations in November 2006. Progressive restoration will take place in line with the proposed cuts. The proposed amendment will not affect the existing restoration proposals for the House of Water site.

2.8 All other operational aspect of the proposed development would be undertaken in line with the provisions of the existing planning consents for the House of Water Opencast Site, including hours of operation, blasting and transportation of coal along existing agreed routes.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Roads and Transportation Division considers that additional maintenance spending will be required on the route to which the applicant will require to contribute. Clarification is required regarding the total tonnage, timescale and traffic volumes on the B741 route either side of Knockshinnoch depot. The Transport Protocol should be made a condition of this application.

The proposed 12 hectare extension to the excavation in Area B will result in the recovery of an additional 200,000 tonnes of coal with the operations taking 18 months to complete. The volumes of coal that would be directed either through Knockshinnoch Disposal Point or Killoch Disposal Point have not been given as this depends largely on markets, availability of trains and quality of coal produced.

It is considered that the concerns of the Roads and Transportation Division regarding a contribution from the applicant in respect of additional maintenance spending on the B741 public road can be addressed through an amendment to the existing Section 75 Agreement currently in place for the House of Water site. The participation of the applicant in the Transport Protocol can also be achieved through a further amendment to this Agreement.

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

Noted.

3.3 The Coal Authority, Power Systems and Scottish Water have no adverse comments to make on the proposed development.

Noted.

3.4 Scottish Natural Heritage does not object to the proposal as submitted, noting the limited ecological value of the proposed extension and the ongoing discussions with the Technical Working Group as regards the progressive restoration of the wider opencast site substantially towards a conservation based land use.

Noted.

3.5 National Air Traffic Services have no objections to the proposed development.

Noted.

3.6 The Scottish Environment Protection Agency has indicated that the site is the subject of an authorisation relating to the processing of coal. It appears that the extension is within the original application boundary but the applicant should contact SEPA direct to discuss any new requirements. The applicant should confirm that all contaminated site drainage will be dealt with through settlement in the existing consented lagoons. The Technical working Group should be consulted on the final re-instatement work.

Conditions covering the issues raised by SEPA are contained within the existing planning consent for the House of Water site. In any consent granted for the proposed development, the existing conditions would be applied similarly to the extension site. A note can be attached to any consent granted for the proposed development advising the applicant to make early contact with SEPA.

3.7 The Royal Society for the Protection of Birds and the River Nith Salmon Fisheries Board have not responded to the consultation letter.

Noted.

3.8 The West of Scotland Archaeology Service states that the original extraction area was subject to an archaeology survey and was amended to mitigate against the destruction of archaeological resource, by avoidance, prior to the granting of consent. The original archaeological report stated that a 50 metre zone be established around the fringes of Site 4, a graphite mine complex, where no excavation should take place. Site 4 falls within the extraction area in this proposed variation.

It is recommended that if it is impractical for operational reasons to exclude this site from the extraction area, that it is preserved by record. For this site this would entail the commissioning of a professional archaeological contractor to carry out an archaeological standing buildings survey of the adit entrance and blocking stones including a micro-topographic survey of the surrounding remains. WOSAS recommends the use of an appropriately worded condition to address this issue.

In addition the southern extent of the soil storage mound and overburden mound should be kept at least 30 metres away from the edge of the steep bank leading to the Beoch Burn in order that mining remains, including possible bell pits, are preserved in situ. WOSAS recommends the use of a condition to require the developer to bring forward a mitigation strategy for the preservation of these remains.

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

4. REPRESENTATIONS

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

4.2 We were told that the land would be restored as the working moved along. The only restoration we can see is some grass planted on a slope to the south of Dalgig Farm.

Progressive restoration of the House of Water site has been taking place. As operations move into the Area B extraction area, significant advances will be made in the restoration of Area A.

4.3 When we sold our business and moved here 14 years ago it was for the peace and tranquillity of the lovely valley. This house was a wreck sitting in an overgrown field and we poured our savings and hearts and souls into making it not only a home but also a way of life. Our property has been

completely devalued, our equity is zero. Who would want to buy this house when it is surrounded by opencast workings?

While noting the sentiments of the objector, alleged impact on property values is not a material consideration in the determination of this application. It should be noted that there is a current consent for the working in Area B of the House of Water site. The current proposal under consideration is for a modest extension to the excavation in Area B that lies wholly within the House of Water development site boundary. The proposed development will not result in operations encroaching any nearer to the objector's property than the operations previously approved.

4.4 Local government keeps harping on about tourism and investment. What tourist would want to come to East Ayrshire to see round this dumping ground? We invested our money and our lives when we came here to live and we are being repaid by being persecuted which is what this amounts to.

The comments of the objector are noted.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

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

East Ayrshire Opencast Coal Subject Plan

5.2 The application requires to be assessed against relevant pertinent policies promoted within this approved plan. *Note that in the following paragraphs some of the policies are summarised.*

(i) Policy MIN 1: 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 proposed site extension to Area B does not lie within a Potential Coal Extraction Area and therefore requires to be assessed against Policies MIN2 or MIN3.

(ii) Policy MIN 2: There will be a presumption of refusal of applications for 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 proposed development represents an extension to the existing House of Water operational opencast coal site and therefore requires to be assessed against Policy MIN3.

(iii) Policy MIN 3: Subject to detailed consideration the Council will generally be supportive of any proposal to extend the existing operative opencast coal site within the Potential Coal Extraction Areas either laterally or through an increase in the depth of existing workings provided that the following criteria are met:

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

The proposed development represents an extension to the existing operations and will be carried out as a sequential phase of the approved development in Area B of the House of Water site.

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

The proposed development will be carried out utilising existing site facilities and infrastructure.

- (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, rate of extraction and number of vehicle movements generated by the extended site operations will be commensurate with current site operations.

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

The proposed extension will not impact significantly on the restoration of the existing operational site.

In this case the proposed extension area lies outwith a Potential Coal Extraction Area.

However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, existing operative opencast sites were excluded on the basis that these sites were currently being worked. The House of Water site lies within a Potential Coal Extraction Area, but is not itself identified as such. It is therefore considered that the proposed development would represent a minor technical departure from Policy MIN3.

Outwith the Potential Coal Extraction Areas, the Council will assess any extension proposal on its own merits and against the above criteria, and will generally not be supportive of such development except where:

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

There will be no significant removal of existing areas of dereliction as a result of working in the extension area.

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

The coaling within the proposed extension area will safeguard the jobs of approximately 108 employees, contractors and service providers for a further year, over the current scheme being worked.

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

It is considered that the proposed development does not conflict with the other Subject Plan Policies as noted below.

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

The existing House of Water opencast site has a current consent for a period of 11 years (October 2007). The proposed operations will be undertaken within this current consented timescale. The applicant has indicated that the House of Water site is anticipated to be complete approximately 1 year prior to this date.

(iv) Policy MIN 4: 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 the following criteria:

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

It is considered that the impact on the landscape character and quality of the site will be minimal, particularly given the short-term nature of the proposed development and the relatively small extension area involved. Furthermore with the restoration proposed there will be a net benefit in landscape character and visual amenity of the site. No statutory or non-statutory natural or built environment interests will be affected by the proposals.

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

It is considered that in line with the existing controls imposed in the existing consents for the House of Water site, the proposed extension to Area B can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards.

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

It is considered that in line with the existing controls imposed in the existing consents for the House of Water site, the proposed extension can be operated in such a manner as to minimise any adverse impacts on residential properties and can be undertaken to environmentally acceptable standards. The proposed extension will not result in the workings coming any closer to residential properties in the vicinity of the site than the workings currently approved.

- (iv) 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;

The proposed extension operations and restoration will result in net ecological gains.

- (v) the opportunities to maximise transportation by rail;

Coals won from the House of Water site will be transported by road to the Knockshinnoch and Killoch railheads for onward dispatch to the power generation market, consistent with the existing operations.

(vi) any cumulative impact of the proposal in association with other existing or proposed opencast developments in the area, including any significant prejudice to restoration plans for any existing site;

The proposed extension to the Area B excavation area will result in no significant prejudice to the existing restoration plans for the site. It is not considered that there would be significant cumulative impact resulting from the proposed extension. The amended scheme for the working of Area B will be completed within a period of 18 months.

(vii) any impact on inward investment opportunities in the area; and

Given the short-term nature of the proposal, it is considered that it would have minimal impact on inward investment opportunities in the area.

(viii) the period of extraction.

The amended scheme for Area B will be undertaken within the current consented life of the House of Water site. Indeed, the anticipated completion of all operations is now November 2006 as opposed to the life of the consent, which expires in October 2007.

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

(i) constitute a third approved or operative site within 3 Kms of each other or within a 3 Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or

(ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or

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

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

The proposed development is not a new site but an extension to the existing House of Water site, wholly contained within the existing operational boundary of the site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12.

(vi) Policy MIN 15: All developers are required to restore their operational sites progressively to the highest possible standards. Developers will be required to provide for the creation of new habitats appropriate to the particular after uses of the site concerned as an integral part of their detailed restoration and aftercare proposals.

The restoration of the entire House of Water site is designed to improve the wildlife conservation value of the land that would provide for greater benefits to the area both in bio-diversity terms and also in general amenity terms.

(vii) Policy MIN 18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

Coals won from the proposed extension area will be dispatched by road to the existing railhead facilities at Knockshinnoch and Killoch Disposal Points.

(viii) Policy MIN 19: All haulage of extracted materials between the area of excavation and the point of dispatch from the opencast site should be via internal haul roads only.

All coals won from the proposed extension area will be taken to the coal preparation area via existing internal haul roads.

(ix) Policy MIN 20: 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.

As indicated in section 3.1 of this report, contributions by the operator to the maintenance of the B741 road can be secured through than amendment to the existing Section 75 Agreement for the House of Water site.

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

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

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

The existing House of Water opencast site is the subject of a Section 75 Agreement but does not currently contain an obligation in this regard. The existing Agreement can be amended to ensure the operator meets obligations regarding the protocol.

(xi) Policy MIN 23: In order to ensure that opencast operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council is likely to consider opencast developments unacceptable where:

- (i) a development has a boundary which encroaches within 500 metres of the community concerned.

The proposed extension area does not encroach within 500 metres of any settlement.

- (ii) the proposal involves a substantial area for extraction over an extraction period in excess of 10 years.

The proposed extension area extends to 12 hectares and all operations within Area B, as extended, will be completed within 18 months. It is considered that the proposed development does not conflict with this policy provision.

- (iii) the proposal is likely to be the subject of repeated extensions, perpetuating disturbance to local communities for a period substantially longer than 5 years.

The proposal under consideration is unlikely to be the subject of repeated extensions.

(xii) Policy MIN 25: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, group of dwellings or individual dwellinghouses not in the ownership or under the control of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where all of the following criteria are met:

(i) the Council is satisfied that there are no objections which cannot be overcome through the expeditious use of conditions or planning agreements from residents, owners, tenants or occupiers of properties located within 500 metres of the proposed working face of the site;

There are no residential properties, outwith the applicant's control, that lie within 500 metres of the working face of the site.

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

The proposed extension does not encroach within 100 metres of any residential properties or sensitive establishment.

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

The applicant has indicated a willingness to enter into a Section 75 Agreement in respect of the matters that may require to be subject of such an agreement.

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

The applicant is a significant contributor to the Mineral Trust Fund in respect of the existing House of Water opencast site and other sites operated by the applicant.

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

The existing House of Water opencast site is subject to a Section 75 Agreement encompassing the above matters.

It is therefore considered that the proposed development is generally consistent with the relevant EAOCSP policies pertinent to this application although it does represent a minor technical departure from Policy MIN3 as described above.

Ayrshire Joint Structure Plan

5.3 The Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the House of Water development site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads. The proposed development requires to be assessed against Policy E14 which states: -

Development opportunities for opencast coal working shall be directed to Preferred Areas of Search in East Ayrshire identified on the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.

The proposed extension site falls within a Preferred Area of Search.

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

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

It is considered that the proposed extension would not conflict with the stated criteria in terms of its operational conduct.

The current application is therefore considered to be in accordance with the Development Plans although it does represent a minor technical departure from Policy MIN3 as described above.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are NPPG 16 – ‘Opencast Coal and Related Minerals’, appropriate Planning Advice Notes, consultation responses, the representation received and relevant planning history.

National Planning Policy Guidelines

6.2 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.

6.3 Many of the provisions of NPPG 16 are addressed within the EAOCSP with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. The proposal is thus considered to be consistent with NPPG 16.

Planning Advice Notes

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

Planning History

6.5 The more relevant planning history of the House of Water site and other relevant information is as follows:

- (i) CD/94/0072/MIN: Winning and Working of Coal by opencast methods at House of Water: approved on 17 April 1996
- (ii) 96/0400/FL: Proposed Extension to Existing Permitted Opencast Coal Site including Diversion of River Nith at House of Water: approved on 19 June 1998.

Consultation Responses

6.6 There are no consultation responses that would suggest refusal of the application is appropriate.

Representations Received

6.7 It is considered that the representations received generally relate to the principle of opencast development in this area, which has already been established through the granting of previous consents. The proposed extension to Area B will not result in any greater impacts than those that may arise through the existing consented operations.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council associated with the determination of this application. It is considered that the proposed development will necessitate an amendment to the existing Section 75 Agreement relating to the House of Water site should the application be approved.

8. CONCLUSIONS

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

8.2 The proposed development is considered to constitute a minor departure from Policy MIN3 as it represents an extension to an existing operative site not falling within the identified Potential Coal Extraction Areas. However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, existing operative opencast sites were excluded on the basis that these sites were currently being worked. The House of Water site lies within a Potential Coal Extraction Area, but is not itself identified as such. Any extension to the House of Water site outwith the current site boundary would in all probability fall within a Potential Coal Extraction Area, but any extension within the confines of the existing site would not.

8.3 The proposed extension to Area B is modest in size and lies wholly within the existing House of Water operational boundary. The extension is being promoted to address geological issues pertaining to the site, to ensure a safe and stable working environment. It is also noted that the extended area will yield an additional 200,000 tonnes of coal.

8.4 The site is relatively remote with only a few residential properties and farmhouses located in proximity to the application site. It is considered that the modest extension to the excavation Area B will present no significant additional adverse impacts beyond those that may be expected as a result of the current consented operations.

8.5 The approval of the proposed extension will not have any impact on the timescale for completion of the House of Water development that is anticipated to be completed approximately 1 year earlier than the life of the current consent.

8.6 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the House of Water site has been amended encompass obligations covering the following matters:

- (iii) The securing of a contribution for the additional maintenance spending on the B741 public road that will be incurred as a result of additional coals being transported along this route; and
- (iv) The subscription of the applicant to the Council's 'Transportation of Coal by Road Protocol'.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal amendment to the agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matters described in Section 8.6 of this report.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application will not require to be referred to the Development Services Committee as it would not represent a significant departure from the Development Plan.

Alan Neish
Head of Planning and Building Control

30 September 2003
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory notices and certificates.
3. Consultation responses.
4. Letter of representation.
5. Adopted East Ayrshire Opencast Coal Subject Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).

7. Previous application CD/94/0074/MIN
8. Previous application 96/0400/FL
9. NPPG 16: Opencast Coal and Related Minerals.
10. PAN 50, Annexes A, B, C and D.

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

Implementation Officer: Dave Morris

NOTE TO APPLICANT

The applicant should make early contact with SEPA regarding any possible new requirements relating to the proposed development.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 555320.**