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## NORTH AYRSHIRE COUNCIL

22nd March 2023

### Planning Committee

Locality	North Coast and Cumbraes
Reference	23/00070/PP
Application Registered	2nd February 2023
Decision Due	2nd April 2023
Ward	North Coast

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<b>Recommendation</b>	Approved subject to Conditions
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<b>Location</b>	Former Coal Terminal Hunterston West Kilbride Ayrshire
<b>Applicant</b>	XLCC Fao Mr David Kelly
<b>Proposal</b>	Variation of conditions 9 and 18 of planning permission N/22/00133/PPPM relating to the construction of a high voltage sub-sea cable manufacturing facility

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### 1. Description

Planning Permission (ref. 22/00133/PPPM) was granted 29th June 2022 for 'Planning Permission in Principle for the erection of a high voltage cable manufacturing facility, including detailed planning permission for the construction of a 185m high extrusion tower with associated factories, research and testing laboratories, offices with associated stores, transport, access, parking and landscaping with on-site generation and electrical infrastructure and cable delivery system.'

The permission was subject to 21 conditions including Conditions 9 and 18 which are as follows:

Condition 9, which relates to the Planning Permission in Principle and states: "That further application(s) for approval under the terms of Condition 1 shall be accompanied by a scheme to treat surface water arising from the or otherwise affecting the site, prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C7453, published November 2015) and the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, and certified by a suitably qualified person, shall be submitted to North Ayrshire Council, as Planning Authority, for written approval.

Any scheme approved shall include details of proposed ground levels, finished floor levels, and pre & post development overland flows that shall demonstrate that people and property would not be put at flood risk during the designed storm event (1 in 200 return period plus an allowance for climate change and urban creep) when the capacity of the proposed infrastructure is exceeded. In accordance with the recommendations of the submitted FRA, finished floor levels shall be set a minimum of 6m AOD, threshold levels shall be raised a minimum of 150mm above external ground levels, and all key external infrastructure shall be elevated by at least 150mm or protected by bunds."

Condition 18 which relates to detailed planning permission for the construction of the 185m high extrusion tower, and states: "The prior to the commencement of the development of the tower, that a scheme to treat surface water arising from the or otherwise affecting the site of the tower, prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C7453, published November 2015) and the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, and certified by a suitably qualified person, shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Thereafter, the certified scheme shall be implemented prior to the completion of the development of the tower and maintained thereafter to the satisfaction of North Ayrshire Council, as Planning Authority.

Any scheme approved shall include details of proposed ground levels, finished floor levels, and pre & post development overland flows that shall demonstrate that people and property would not be put at flood risk during the designed storm event (1 in 200 return period plus an allowance for climate change and urban creep) when the capacity of the proposed infrastructure is exceeded. In accordance with the recommendations of the submitted FRA, finished floor levels shall be set a minimum of 6m AOD, threshold levels shall be raised a minimum of 150mm above external ground levels, and all key external infrastructure shall be elevated by at least 150mm or protected by bunds."

This application seeks to delete the final sentence from both conditions - "In accordance with the recommendations of the submitted FRA, finished floor levels shall be set a minimum of 6m AOD, threshold levels shall be raised a minimum of 150mm above external ground levels, and all key external infrastructure shall be elevated by at least 150mm or protected by bunds." This would remove reference to a finished floor level (FFL). The applicant considers that FFLs do not need to be 6m AOD and consider they could be between 4.7m AOD and 6m AOD.

In support of the application an addendum to the previously submitted Flood Risk Assessment (FRA) has been provided.

The site is some 51ha in area, including existing access roads and jetty. The site is a former coal yard, which has been vacant since 2016. The development would make use of an existing access and the existing jetty and port. The site is identified in the Local Development Plan (LDP) as part of the Hunterston Strategic Development Area and suitable for business and industrial development. The Southannan Sands Site of Special Scientific Interest ("the SSSI") is some 85m to the west. The Hunterston House Tree Preservation Order ("the TPO") runs along the eastern boundary of the site.

The relevant policy of the Local Development Plan adopted November 2019 (LDP) is considered to be Policy 23: Flood Risk Management.

National Planning Policy 4 (NPF4) was adopted 13th February 2023. NPF4 identifies Hunterston as a Strategic Asset. NPF4 is considered to be a material consideration for this application. The relevant policy is considered to be Policy 22.

Other planning applications have been submitted to provide details required by other conditions (ref: 22/00712/MSCM) and to vary Conditions 11 and 12 (ref: 23/00131/PP).

## **2. Consultations and Representations**

The application was subject to statutory neighbour notification procedures including an advert in the local press. No representations have been received.

**SEPA** - No comment.

*Response: Noted.*

**NAC Flooding** - No objections. The 6m AOD FFL level had been recommended by the originally submitted FRA. Specific justification including appropriate flood risk mitigation will still be required in order to discharge the condition.

*Response: Noted.*

Fairlie Community Council - will seek independent advice from a hydrologist. However, no further comments were received.

*Response: Noted.*

## **3. Analysis**

Policy 23 of the LDP stated that support will be given to development which is in accordance with relevant flood risk strategies. Development should avoid locations of flood risk and should not lead to a significant risk of flooding elsewhere.

Policy 22 of NPF4 states that development at risk of flooding or in a flood risk area will only be supported in certain circumstances.

The site is not at risk from fluvial or coastal flooding. SEPA offer no comments but noted in the original application that the development would be limited to land not likely to flood. NAC Flooding has no objection. The specific details of any surface water mitigation would still be required to be submitted and approved under the amended conditions.

The applicant's submission that the FFL has been considered in more detail following the grant of planning permission 22/00133/PPPM is noted, as are SEPA and NAC Flooding comments. The applicant would still have to provide sufficient details to demonstrate that surface water would be appropriately dealt with. The removal of the reference to 6m AOD would allow the applicant more flexibility to develop an appropriate drainage scheme but would not diminish the Council's ability, as Planning Authority, to assess and approve/refuse any such details as may be submitted. The proposal would remain in accordance with Policy 23 of the LDP and Policy 22 of NPF4.

It is therefore recommended that planning permission be granted with the original 21 conditions but with Conditions 9 and 18 amended as follows.

Condition 9, which relates to the Planning Permission in Principle would now state: "That further application(s) for approval under the terms of Condition 1 shall be accompanied by a scheme to treat surface water arising from the or otherwise affecting the site, prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C7453, published November 2015) and the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, and certified by a suitably qualified person, shall be submitted to North Ayrshire Council, as Planning Authority, for written approval.

Any scheme approved shall include details of proposed ground levels, finished floor levels, and pre & post development overland flows that shall demonstrate that people and property would not be put at flood risk during the designed storm event (1 in 200 return period plus an allowance for climate change and urban creep) when the capacity of the proposed infrastructure is exceeded."

Condition 18 which relates to detailed planning permission for the construction of the 185m high extrusion tower, would now state: "The prior to the commencement of the development of the tower, that a scheme to treat surface water arising from the or otherwise affecting the site of the tower, prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C7453, published November 2015) and the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, and certified by a suitably qualified person, shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Thereafter, the certified scheme shall be implemented prior to the completion of the development of the tower and maintained thereafter to the satisfaction of North Ayrshire Council, as Planning Authority.

Any scheme approved shall include details of proposed ground levels, finished floor levels, and pre & post development overland flows that shall demonstrate that people and property would not be put at flood risk during the designed storm event (1 in 200 return period plus an allowance for climate change and urban creep) when the capacity of the proposed infrastructure is exceeded."

#### **4. Full Recommendation**

Approved subject to Conditions

#### **Reasons for Decision**

##### **Condition**

1. That the permission is for a high voltage cable manufacturing facility with associated factories, research and testing laboratories, offices with associated stores, transport, access, parking and landscaping with on-site generation and electrical infrastructure and cable delivery system only and planning permission would be required for any other use within Class 5 of the Town and Country Planning (General Permitted Development) (Scotland) Order, as amended.

##### **Reason**

In recognition of the special justification for the tower and to retain control over the site and re-assess the need for the tower in the event of a different operation.

**Condition**

2. That the approval of North Ayrshire Council, as Planning Authority, with regard to the siting, design and external appearance of all building and external plant or machinery, including landscaping, means of access, internal roads, external lighting, sustainable travel plan and low and zero carbon technology, shall be obtained before the development permitted in principle is commenced.

**Reason**

In order that these matters can be considered in detail.

**Condition**

3. That further application(s) for approval under the terms of Condition 1 shall be accompanied by an assessment of on-site heat recovery and re-use, or a heat network infrastructure plan, or demonstrable evidence that such schemes have been explored but are not feasible for technical or economic reasons.

**Reason**

In order that the future proofing of the site for heat networks is properly considered as required by Policy 31 of the LDP.

**Condition**

4. That further application(s) for approval under the terms of Condition 1 shall be accompanied by a Construction Management Plan and Code of Practice, including details for monitoring and action against non-compliance. For the avoidance of doubt this shall include an assessment of use of the rail and port connections as a first principle and the prohibition of the use of the A78 through Fairlie, the B780/B781, the C26 and all local non-classified roads by construction vehicles and details of management of impact on the core path and cycle rout network.

**Reason**

To ensure proper management of the construction process, including impact on the road network.

**Condition**

5. That further application(s) for approval under the terms of Condition 1 shall be accompanied by details of an appointed Ecological Clerk of Works (ECoW). The details shall include contact details, the scope and responsibilities of the ECoW as well as confirmation of their power to halt or otherwise stop works which are not in accordance with the mitigation measures identified in the EIA or others, as may be approved.

**Reason**

To ensure appropriate oversight of the construction of the development

**Condition**

6. Prior to development commencing the applicant shall implement the measures detailed under Mitigation Measures Adopted as Part of the Project in Chapter 9 Hydrogeology, Geology and Ground Conditions of the submitted EIA report dated February

2022. All documentation be verified by a suitably qualified Environmental Consultant and submitted to the satisfaction of North Ayrshire Council, as Planning Authority.

**Reason**

To ensure proper consideration is given to ground conditions and ground water.

**Condition**

7. That further application(s) for approval under the terms of Condition 1 shall be accompanied by a Dust Management Plan. This shall include the measures detailed under Mitigation Measures Adopted as Part of the Project in Chapter 13 Air Quality of the submitted EIA report dated February 2022. All documentation be verified by a suitably qualified Environmental Consultant and submitted to the satisfaction of North Ayrshire Council as Planning Authority.

**Reason**

To ensure proper management of dust throughout the construction period.

**Condition**

8. That further application(s) for approval under the terms of Condition 1 shall be accompanied by an assessment of the details in terms of the rated noise level, as defined in 'BS4142:2014+A1:2019, from the operation of the facility. The assessment must demonstrate that the noise from the operation of the facility will not exceed the background noise level at the curtilage of any existing or consented noise sensitive property at the time of application and include details of a monitoring scheme for the first 12 months of operation of the facility.

**Reason**

To ensure proper consideration of potential noise from the development.

**Condition**

9. That further application(s) for approval under the terms of Condition 1 shall be accompanied by a scheme to treat surface water arising from the or otherwise affecting the site, prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C7453, published November 2015) and the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, and certified by a suitably qualified person, shall be submitted to North Ayrshire Council, as Planning Authority, for written approval.

Any scheme approved shall include details of proposed ground levels, finished floor levels, and pre & post development overland flows that shall demonstrate that people and property would not be put at flood risk during the designed storm event (1 in 200 return period plus an allowance for climate change and urban creep) when the capacity of the proposed infrastructure is exceeded.

**Reason**

To ensure proper consideration of surface water drainage.

**Condition**

10. That further application(s) for approval under the terms of Condition 1 shall be accompanied by a habitat survey dated not more than 1 year prior to the date of the submission of the application.

**Reason**

To ensure habitat and protected species considerations are of an appropriate date.

**Condition**

11. Prior to commencement of the development of the tower, details of a financial bond to be secured with the landowner for the removal of the tower in the event of redundancy shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Any such bond shall be retained through the life of the development with confirmation to be provided to North Ayrshire Council, as Planning Authority, on a yearly basis following completion of the tower.

**Reason**

To ensure steps are in place to remove the tower should the site become redundant, in the interest of visual amenity, and in recognition of the landowner being ultimately responsible for compliance with any conditions.

**Condition**

12. Should the tower become redundant, it shall be removed within 6 months of redundancy. For the avoidance of doubt, redundancy means the factory not becoming operational within 3 years of construction of the tower or the factory ceasing to operate for a period of more than 1 year after first becoming operational.

**Reason**

To ensure the timely removal of the tower should the site become redundant, in the interest of visual amenity.

**Condition**

13. The prior to commencement of the development of the tower, details of the external finish shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. The development will thereafter be undertaken in accordance with any details as may be approved and the tower maintained with those details unless otherwise agreed in writing with the Planning Authority.

**Reason**

To ensure an appropriate external finish for the tower in the interest of visual amenity.

**Condition**

14. The prior to the commencement of the development of the tower, a Dust Management Plan for the control of dust from the construction of the tower shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Thereafter the development shall be undertaken in accordance with any Plan as may be approved.

**Reason**

To ensure proper management of dust throughout the construction period.

**Condition**

15. That prior to the commencement of the development of the tower, a Construction Management Plan and Code of Practice, including details for monitoring and action against non-compliance shall be submitted to North Ayrshire Council, as Planning Authority, for approval. Thereafter the construction shall be carried out only as approved by the Plan and

Code of Practice. For the avoidance of doubt this shall include an assessment of use of the rail and port connections as a first principle and the prohibition of the use of the A78 through Fairlie, the B780/B781, the C26 and all local non-classified roads by construction vehicles and details of management of impact on the core path and cycle rout network.

**Reason**

To ensure proper management of the construction process, including impact on the road network

**Condition**

16. That prior to the commencement of the development of the tower, details of an appointed Ecological Clerk of Works (ECoW) shall be submitted to North Ayrshire Council, as Planning Authority, for approval. The details shall include contact details, the scope and responsibilities of the ECoW as well as confirmation of their power to halt or otherwise stop works which are not in accordance with the mitigation measures identified in the EIA or others, as may be approved. The development will thereafter be undertaken only with the oversight of the appointed ECoW.

**Reason**

To ensure proper oversight of the construction of the tower.

**Condition**

17. The rated noise level, as defined in `BS4142:2014+A1:2019, from the operation of the tower must not exceed the background noise level at the curtilage of any existing or consented noise sensitive property at the time of application.

**Reason**

To ensure the operation of the tower does not cause undue noise disturbance or sterilise the wider area for further development.

**Condition**

18. The prior to the commencement of the development of the tower, that a scheme to treat surface water arising from the or otherwise affecting the site of the tower, prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C7453, published November 2015) and the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, and certified by a suitably qualified person, shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Thereafter, the certified scheme shall be implemented prior to the completion of the development of the tower and maintained thereafter to the satisfaction of North Ayrshire Council, as Planning Authority.

Any scheme approved shall include details of proposed ground levels, finished floor levels, and pre & post development overland flows that shall demonstrate that people and property would not be put at flood risk during the designed storm event (1 in 200 return period plus an allowance for climate change and urban creep) when the capacity of the proposed infrastructure is exceeded.

**Reason**

To ensure the proper treatment of surface water.



**Condition**

19. Prior to the commencement of the tower, confirmation that the basement proposals are sufficiently flood resilient/resistant, including an accompanying certified flood management plan suitably addresses residual flood risk at the site from all sources of flooding, certified by a suitable qualified person, shall be submitted in writing for the written approval of North Ayrshire Council, as Planning Authority.

**Reason**

To ensure the risk of flooding to basement level proposal is suitable addressed.

**Condition**

20. In the event that the works to commence the tower are not undertaken within 1 year of the date of this permission, an updated habitat survey dated not more than 1 year prior to the date of commencement shall be submitted to North Ayrshire Council, as Planning Authority, for written approval prior to the commencement.

**Reason**

To ensure habitat and protected species considerations are of an appropriate date.

**Condition**

21. Prior to the commencement of the development, details of omni-directional red aviation warning lights to be fitted to the tower shall be submitted to North Ayrshire Council, as Planning Authority, for approval in consultation with Prestwick Airport, Air Traffic Control and the Ministry of Defence. The lighting will thereafter be fitted and retained thereafter in accordance with any details as may be approved.

**Reason**

To meet the requirements of the relevant Air Authorities.

**James Miller**  
**Chief Planning Officer**

For further information please contact Mr Iain Davies on 01294 324320.

## Appendix 1 – Location Plan

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