

Cunninghame House,
Irvine.

2 March 2017

Planning Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 8 MARCH 2017** at **2.00 p.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

1. Declarations of Interest

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

2. Minutes (Page 7)

The accuracy of the Minutes of meetings of the Committee held on 7 February 2017 and will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

3. North Coast and Cumbraes

Submit report on the following application:

17/00034/PPM: Hunterston Construction Yard, Fairlie (Page 13)

Variation of planning condition No. 1 of a Planning Permission (ref. 14/00164/PPM) to extend the operational time period of the National Offshore Wind Turbine Testing Facility until 14th October 2019 (copy enclosed).

4. **Garnock Valley**
Submit report on the following application:

16/00793/PP: Site To North Of Knowes Farm, Beith (Page 37)
Code of Practice, required in accordance with Condition 22 of Planning Permission 16/00793/PP (copy enclosed).
5. **The Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016 (Page 55)**
Submit report by the Executive Director (Economy and Communities) on the amendments to the Town and Country Planning (Use Classes) (Scotland) Order 1997 and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 for betting operators and pay day lenders (copy enclosed).
6. **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 148 Main Street, Largs KA30 8JN (Page 61)**
Submit report by the Executive Director (Economy and Communities) seeking approval to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of flagpole from front elevation of property at first floor level, 148 Main Street, Largs KA30 8JN (copy enclosed).
7. **Notice under Regulation 24 of the Town & Country Planning (Control of Advertisements) (Scotland) Regulations 1984: 116 Main Street, Largs KA30 8JN (Page 67)**
Submit report by the Executive Director (Economy and Communities) seeking approval to serve a Notice under Regulation 24 of the Town & Country Planning (Control of Advertisements) (Scotland) Regulations 1984 requiring removal of an unauthorised advertisement (copy enclosed).
8. **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Site to South of River Cottage, Montgreenan, Kilwinning (Page 73)**
Submit report by the Executive Director (Economy and Communities) seeking approval to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of a log cabin from field to south of River Cottage, Montgreenan, Kilwinning (copy enclosed).
9. **Tree Preservation Order: Castlewalk Plantation, Fairlie (Page 79)**
Submit report by the Executive Director (Economy and Communities) on a proposed Tree Preservation Order on all the trees and woodland on land within the boundary of Castlewalk Plantation (copy enclosed).
10. **Scottish Government Consultation on the High Hedges (Scotland) Act 2013 (Page 87)**
Submit report by the Executive Director (Economy and Communities) on the Call for Evidence by the Scottish Ministers on the operation of the High Hedges Act (copy enclosed).

- 11. Scottish Government Consultation Papers: Unconventional Oil and Gas, and Fees for Monitoring Surface Coal Mines(Page 117)**
Submit report by the Executive Director (Economy and Communities) on two Scottish Government consultation papers: Unconventional Oil and Gas, and Fees for Monitoring Surface Coal Mines (copy enclosed).

- 12. Local Development Plan 2 - Progress Update (Page 223)**
Submit report by the Executive Director (Economy and Communities) on the Development Plan Scheme (copy enclosed).

Planning Committee

Sederunt: Matthew Brown (Chair)
John Ferguson (Vice-Chair)
Robert Barr
John Bell
John Bruce
Ian Clarkson
Joe Cullinane
Ronnie McNicol
Tom Marshall
Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

Planning Committee
8 February 2017

Irvine, 8 February 2017 - At a Meeting of the Planning Committee of North Ayrshire Council at 2.00 p.m.

Present

Matthew Brown, John Ferguson, John Bell, John Bruce, Joe Cullinane, Tom Marshall and Robert Steel.

In Attendance

A. Hume, Senior Development Management Officer (Planning) and L. Kirk, Active Travel and Transport Manager (Economy and Communities); J. Law, Solicitor (Contracts and Licensing) (Legal Services), A. Little, Committee Services Officer and E. Gray, Committee Services Support Officer (Chief Executive's).

Chair

Councillor Brown in the Chair.

Apologies for Absence

Robert Barr and Ronnie McNicol.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors.

2. Minutes

The Minutes of meetings of the Committee held on 7 December 2016 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

3. Proposed Section 11 Exemption Order under the Land Reform (Scotland) Act 2003 for the Aberdeen Asset Management Scottish Open

Submitted report by the Executive Director (Economy and Communities) which provided information on an application from the organiser of the Aberdeen Asset Management Scottish Open Championship to be held at Dundonald Links between 12 and 16 July 2017, for a Section 11 Exemption Order under the Land Reform (Scotland) Act 2003.

The Land Reform (Scotland) Act 2003 provides a right of responsible access to most land and inland water in Scotland. Section 11 of the Act provides Access Authorities with the power to exempt areas of land or inland water from the access rights for a fixed period. The main purpose of these powers is to enable the exemption of land for short periods of time in connection with admission to events. This would exempt the Dundonald Links golf course from the access rights between 26 June and 17 July 2017. The purpose of this is to enable a charge to be made for admission and provide for public safety and security prior to, during and after the Scottish Open event. The application was provided at Appendix 1 to the report. Appendix 2 to the report illustrated area of the proposed exclusion of access rights. The draft public notice and proposals for consultation was detailed in Appendix 3.

Any objections and representations received will be considered and resolved wherever possible. Scottish Ministers require to be furnished with the details of the consultation undertaken and copies of all objections and representations. They will then consider any objections or representations prior to confirming the Order and may cause an inquiry to be held for the purposes of enabling them to decide whether or not to do so. The Council will subsequently be advised by letter if the Order is confirmed. A public notice would require to be issued confirming the Order at that stage.

The Committee agreed to (a) issue a public notice of and consult on the proposed order; (b) report the outcome of the consultation to Scottish Ministers; and (c) issue a public notice of the Order if it is confirmed by Scottish Ministers.

4. Isle of Arran

16/01233/PP: Site to South of Largiemeanoch, Whiting Bay

Mr Michael Taylor, Dippenhead Farm, Dippenhead, Isle of Arran has applied for the deletion of Condition 1 of Planning Permission N/02/00072/PP relating to occupancy restriction at the site to the south of Largiemeanoch, Whiting Bay, Arran.

The Committee agreed to grant the deletion of Condition 1 of Planning Permission N/02/00072/PP relating to occupancy restriction at the site to the south of Largiemeanoch, Whiting Bay, Arran, subject to no significant objections being received before the 10 February 2017.

5. Three Towns

16/01186/PP: Site To South West of Ardrossan Park Parish Church, Dalry Road

CTIL and Vodafone Limited, Vodafone House, The Connection, Newbury, Berkshire have applied for planning permission to install a 17.5m high streetworks monopole accommodating three antennas and two 0.3m transmission dishes within a GRP shroud, two equipment cabinets and one meter cabinet at the site to the south west of Ardrossan Park Parish Church, Dalry Road, Ardrossan.

The Committee agreed to grant the application, subject to the condition that within six months of becoming obsolete or redundant the mast, antennas and equipment cabinets shall be removed and the site reinstated to its previous condition to the satisfaction of North Ayrshire Council as Planning authority.

6. Kilwinning

16/01162/PPM: Site to north of Corsehillhead Farm, Kilwinning

Cunninghame Housing Association, 82 Glasgow Street, Ardrossan have applied for planning permission for the erection of a residential development providing 64 new dwellings, together with associated parking, landscaping and services infrastructure at a site to the north of Corsehillhead Farm, Kilwinning. Four letters of representation were received and detailed in the report.

The Committee agreed (a) to grant the application, subject to the following conditions:-

1. That the existing tree/hedgerow belt along the south western site boundary shall be retained. Prior to any site operations, details of tree/hedgerow protective fencing shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the protective fencing as may be approved shall be erected for the duration of all site excavations, land engineering and construction operations until the completion of the development and to the satisfaction of North Ayrshire Council as Planning Authority.
2. That, prior to the commencement of the development, hereby approved, the developer shall secure the implementation of a programme of archaeological works in accordance with a written scheme of investigation for submission by the applicant and approved by North Ayrshire Council Planning Authority in consultation with the West of Scotland Archaeology Service. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of North Ayrshire Council Planning Authority in consultation with the West of Scotland Archaeology Service.
3. That, prior to and throughout engineering and construction operations associated with the planning permission hereby approved, the recommendations contained within the Ground Investigation Report by Johnson Poole & Bloomer dated April 2016 and submitted with the application shall be implemented by the site contractors to the satisfaction of North Ayrshire Council as Planning Authority.

4. That, prior to and throughout engineering and construction operations associated with the planning permission hereby approved, the recommendations contained within the Ecology Report by Applied Ecology Ltd dated November 2016 and submitted with the application shall be implemented by the site contractors to the satisfaction of North Ayrshire Council as Planning Authority.
5. That, prior to the commencement of the development, hereby approved, confirmation shall be submitted in writing to North Ayrshire Council as Planning Authority and certified by a suitably qualified person that a scheme to treat the surface water arising from the site has been prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C753, published November 2015). Thereafter, the certified scheme shall be implemented prior to the completion of the development and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.
6. That, prior to the erection of any of the dwellinghouses hereby approved, a detailed schedule of the proposed external finishes for each of the dwellinghouses together with a plan and schedule of the surface treatments to be used on the roads and footpaths within the site shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the houses, roads and footpaths shall be constructed only in accordance with such details as may be approved to the satisfaction of North Ayrshire Council as Planning Authority.
7. That, prior to the erection of any of the dwellinghouses hereby approved, details of all boundary treatments within the development, including:
 - plot boundaries;
 - site perimeter boundaries, to include the replacement hedgerow on Weirston Road;
 - boundaries around the open space; and
 - boundaries around the SuDs area.

shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, all means of enclosure as may be approved shall be erected prior to the occupation of each dwellinghouse, prior to the open space being made available for use and prior to the use of the SuDS area for surface water management, all to the satisfaction of North Ayrshire Council as Planning Authority.

8. That, prior to the erection of any of the dwellinghouses hereby approved, a scheme of hard and soft landscaping for the site shall be submitted for the written approval of North Ayrshire Council as Planning Authority as follows:
 - (a) hard landscaping details shall be presented on a plan of the site with accompanying drawings/specifications together with details of long term management/maintenance.

- (b) soft landscaping details shall be presented on a plan of the site showing areas to be turfed, grass seeded or planted with shrubs/trees together with an accompanying schedule providing comprehensive details of soil treatment, the planting specification, phasing, aftercare and long term management/maintenance. Thereafter, the landscaping works shall be implemented only in accordance with such details as may be approved and fully completed in tandem with each successive phase of development to the satisfaction of North Ayrshire Council as Planning Authority. Any plants, trees or shrubs which subsequently die, are removed, become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species until the landscaping is established to the satisfaction of North Ayrshire Council as Planning Authority.
9. That prior to the occupation of any of the dwellinghouses and where Council adoption of open space and landscaped areas is not to be pursued, details of the proposed factor or management agency for all areas of open space and landscaping within the site shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the areas of open space and landscaping shall be maintained and managed in accordance with the details as may be approved under the terms of Condition 8 above.
10. That, prior to the occupation of any of the houses within blocks 1 - 4, the grass verge adjacent to Weirston Road shall be replaced with a 2m wide pedestrian footway which shall connect the development to the existing footway adjacent to 12 Weirston Road to the satisfaction of North Ayrshire Council as Planning Authority.
11. That the presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of Environmental Health. Thereafter a suitable investigation strategy as agreed with North Ayrshire Council shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site, all to the satisfaction of North Ayrshire Council as Planning Authority.
- (b) to recommend that the Executive Director (Place) (i) investigate an extension of the 30mph speed limit on Weirston Road to (1) the junction with Corsehill; and (2) to the junction with Irvine Road, Kilwinning; and (ii) also examine, with the applicant, the provision of play equipment within the local area of the development.

7. Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: ASDA car park, Rivergate, Irvine

Submitted report by the Executive Director (Economy and Communities) which provided information on the unauthorised siting of a second hand clothes recycling cabin in the car park of ASDA, Rivergate.

Cash 4 Clothes and the land owner, Rivergate Property 2 Ltd, have been advised that the siting of the cabin for the clothes recycling facility is unauthorised and that a planning application would not be supported. They have been advised to cease the use and remove the cabin. To date this has not been done and both parties have been advised that the Council is considering the issue of a formal enforcement notice.

It is considered that the facility harms the visual amenity of the area by way of its siting, design and visual appearance. The cabin has the appearance of a temporary structure more akin to a building site or industrial area rather than a retail area. It is covered in adverts which further harm visual amenity and is sited in a prominent location next to New Street, a main route for vehicles exiting the town centre. The use is therefore held to be contrary to criterion (a) Siting, Design and External Appearance of the General Policy of the LDP. The use also takes up 3 parking spaces. Given the loss of parking it is also considered that the development does not meet parking requirements and is contrary to criterion (d) Access, Road Layout, Parking Provision of the General Policy of the LDP.

In the interest of the visual amenity of the area and parking provision in the town centre, it was recommended that the Committee approve the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require (i) cessation of the use of the clothes recycling facility, removal of the cabin and associated apparatus; and (ii) reinstate the ground to its former condition as part of the car park.

The Committee agreed to grant authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring cessation of the use of the land for the siting of a second hand clothes collection facility/cabin, 'Cash 4 Clothes', within the car park of ASDA, Rivergate, Irvine.

The meeting ended at 2.55 p.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

Planning Committee

8 March 2017

Locality	North Coast and Cumbraes
Reference	17/00034/PPM
Application	17.01.2017
Registered	
Decision Due	17.03.2017
Ward	Dalry And West Kilbride

Recommendation **Grant with Conditions contained in Appendix 1**

Location Hunterston Construction Yard
Fairlie
Largs

Applicant SSE Generation Limited

Proposal Variation of planning condition No. 1 of a Planning Permission (ref. 14/00164/PPM) to extend the operational time period of the National Offshore Wind Turbine Testing Facility until 14th October 2019

1. Description

On 14 February 2012, the Planning Committee granted conditional planning permission (ref.11/00679/PPM) for a test facility for up to three off-shore wind turbines with a maximum blade tip height of 198.5 metres at the Marine Construction Yard, Hunterston. On 23 April 2014, the Planning Committee agreed to a variation of this planning permission to i) revise the wording of condition 7 to enable assessment of compliance with noise limits and condition 9 to revise the timescale for dealing with complaints about noise nuisance; and ii) to revise condition 10 to identify measures to reduce turbine noise where agreed levels have been exceeded (ref. 14/00164/PPM)

To date one Siemens and one Mitsubishi wind turbine have been erected. Condition 1 was imposed in order to restrict the overall timescale in which the development could remain on site on the basis of the temporary consent for the test turbines. The applicants original application proposed a 5 year time limit from the date of commissioning of the first turbine. Condition 1 states:

'That the site shall be used as a facility for the testing of a maximum of 3 off-shore wind turbines at any given time for a period of 5 years from the date of operation of the first turbine, prior notification of which commencement date of operation of the first turbine shall be submitted in writing to North Ayrshire Council as Planning Authority; at the expiry of the 5 year period or 14th October, 2017 whichever is the earlier, the wind turbines and associated infrastructure shall be removed and the land restored to its former condition within 6 months, in accordance with a Decommissioning Method Statement to be agreed in writing with North Ayrshire Council as Planning Authority prior to the commencement of the development. If planning permission for the proposed multi-fuel power station at Hunterston is granted, the wind turbine test facility shall not be operational at the same time as the testing or operational phases of the multi-fuel power station.'

The first generation from a turbine was made on 1st March 2014. The applicant proposes to vary Condition 1 to extend the operational time period of the National Offshore Wind Turbine Testing Facility (NOWTTF) until 14th October 2019 to allow continued testing of the Siemens wind turbine and testing of the Mitsubishi turbine. The remaining conditions would be unchanged.

In support of the application the applicant has provided the following reports:

Environmental Statement Update and appendix

An update of the original Environmental Statement (dated 2011), where i) there has been or likely to be an increase in the magnitude of impact as a result of the time extension of the development; ii) the baseline conditions are greater than the original assessment; and/or, iii) elements of the proposal could introduce new impacts.

The applicants Non-Technical Summary summarises the key points from the ES update and confirms that any changes to the original Environmental Statements baseline conditions would be minor with no changes to the assessment. Both documents also provide a summary on particular topics such as Planning Policy, Landscape and Visual effects, Ecology, Ornithology, Ground Conditions, Heritage, Transport, Noise, Social Economics and other issues.

Economic Appraisal

The Economic Appraisal summarises the economic benefit derived from the NOWTTF, through the development and construction phase and ongoing operations, maintenance and training phases. The report highlights that the test turbines have become a key economic asset for the Scottish offshore wind energy sector. It states that the turbine manufacturers have also benefitted from an increased operational understanding of the maintenance requirements and performance issues of the turbines, which should lead to longer term cost reductions for the production of offshore wind energy.

The report indicates that the NOWTTF has contributed to the local and national economies through its development and operation. The impact in the construction and professional services sector from the initial £21.0 million investment in development and construction supported 19 job years and £2.6 million Gross Value Added (GVA) in North Ayrshire, and 75 job years and £9.2 million GVA in Scotland. The site has secured the employment of 55 employees of the core partners in Scotland whose jobs are dependent on the NOWTTF.

The report also states that the NOWTTF also has an impact on the companies in the local area that are able to supply goods and services to ensure the operation of the site as part of its £1.7 million annual operational spend. A map of those operational suppliers is provided within the body of the report.

Planning Statement

The Statement assesses the key planning considerations arising from the application, its need and benefits, and compliance with the Development Plan and relevant material considerations. The statement focuses on the economic benefits of the proposal to date and potential benefits for the future as provided within the above noted Economic Appraisal.

The statement indicates that the NOWTTF retains a strong need to continue to operate from the site. The continuation of the testing of offshore wind turbines is vital to support and enable the offshore wind industry to develop. The current Siemens turbine on the site is on test for usage on the 588 MW Beatrice Offshore Farm in the Moray Firth, which is due to commence construction in 2017, and has influenced DONG Energy to purchase this turbine for the 1.2 GW Hornsea offshore wind farm in the North Sea. It states that there is an imperative need for this testing to continue to ensure that the offshore wind energy industry continues to develop.

The continued testing of the Mitsubishi turbine and further investment on the site will also enable further understanding of offshore wind turbines, to enable turbine designs to be refined and developed, and for the training opportunities. The statement indicates that the importance of the NOWTTF nationally is likely to last well beyond the proposed extension of the operational time period for a further two years. The extension of the operational period would allow the applicant to develop further options for the site, which may also include energy storage and new forms of technologies that will further support the Scottish energy industry, and the local and national economies. The NOWTTF is of national importance, which should weigh heavily in favour of the development.

The statement concludes with an assessment of the development against the Local Development Plan, Scottish Planning Policy, NPF3 and other energy policies.

Statement of Community Consultation

The statement provides a summary of consultation meetings that the applicant has undertaken prior to the submission of the application. Whilst not a statutory requirement the applicant is aware of the benefits of ongoing consultation with communities to draw out and address potential issues. The statement indicates that the following meetings were undertaken:

- Hunterston Liaison Group - 8th November 2016;
- Fairlie Community Council - 5th December 2016;
- West Kilbride Community Council - 9th December 2016
- Cumbrae Community Council - 12th December 2016; and
- Largs Community Council - 15th December 2016.

The statement summarises the issues raised through each consultation meeting and how these have been addressed. Following the neighbour notification process the applicant provided a statement responding to particular points raised by representees. The purpose of the document was to provide clarity on any concerns raised.

Within the North Ayrshire Local Development Plan the site is located within an industrial area where Policies IND1 (Strategic Business Locations) and IND2 (Hunterston: Development in the National Interest) specifically apply. Policies ENV 8 (Coastal Zone), ENV 9 (Nature Conservation), PI 9 (Renewable Energy), HE2 (Listed Buildings). All development proposals require to be assessed against the relevant criteria of the General Policy of the LDP.

2. Consultations and Representations

The application has been subject to the standard neighbour notification procedures and was advertised in the local press on the 25 January 2017. Nine letters of objection, two comments and six letters of support were received. The following concerns can be summarised as follows.

1. The original 2004 Public Inquiry in Fairlie clearly states that the Hunterston Peninsula is not a suitable location for wind turbines. The 2012 Planning Consent was granted on a temporary 5 year basis. The developer proposes a more permanent test turbine facility on the site.

Response: Planning application 03/00076/PP for 13 wind turbines at the marine construction yard and adjoining land was refused on appeal. The turbines were 111m in height. On 14 February 2012, the Planning Committee agreed to grant conditional planning permission (ref.11/00679/PPM) for a test facility for up to three off-shore wind turbines with a maximum blade tip height of 198.5 metres at the Marine Construction Yard, Hunterston. This application proposes a time extension of 2 years to complete the testing of the existing turbines on site. Whilst the applicant does make reference to potential future development at the site, these matters are not material to this application.

2. The development is contrary to the North Ayrshire Supplementary Landscape Wind Capacity Study of June 2013. The site is very visible from all aspects of the Clyde. As such there is a significant loss of visual amenity affecting the mainland from Skelmorlie to Fairlie; To the Isle of Cumbrae; and to anyone enjoying offshore leisure activity in the area. The application is not in keeping with the local plan.

Response: The original and updated Environmental Statements (ES) assess that significant effects would be experienced in four of the 26 landscape character areas and one of the seascape areas. The turbines would be visible from some distance from the site - the ES assesses a significant impact to occur within 9km. Given however the ongoing temporary nature and extended duration of the development by 2 years, it is not considered that the development would have a significant adverse impact on tourism.

3. The current stand alone planning application is submitted without an accompanying Environmental Impact Assessment (EIA) and Environmental Statement (ES). Since the original test facility was consented there has been a great deal of new scientific and medical evidence and understanding of the dangers to human health that large wind turbines present. It is not possible for North Ayrshire Council's Planning Committee to properly consider this application without a fully up to date EIA/ES. The site is close to an outstanding wildlife area of SSSI and has the potential to impact on resident porpoises and dolphins. Any proposed change to number or height of turbines or diameter of blades will require a new environmental assessment because of variety of wildlife close to the site.

Response: There is not any change to the turbines and the conditions of the original consent can be applied in order to continue the protection of wildlife and the local environment. As an extension of time to the existing development a full EIA or ES was not required.

4. The Mitsubishi Sea Angel turbine has led to numerous complaints of dizziness and nausea from the villagers of Fairlie. The tests make absolutely no attempt to measure the 'amplitude modulation' associated with the infrasound generated by the test turbines. The Noise Survey provided is incorrect. The noise levels of existing turbines have been of concern to many in the local community. The existence of powerful vortices downwind of such huge windmills is documented and could reconcentrate the low level radioactive emissions from the neighbouring nuclear reactor and nuclear waste fuel rod storage area. Any change in height or diameter should require a new sound and environmental assessment.

Response: Noted. The applicant stated that there is not any substantive evidence that turbines have long term health or medical impacts. Environmental Health has not objected to the findings of the submitted noise survey. The conditions of the previous consent can be applied.

5. Statements from the developer that the NOWTTF site would lead to local employment opportunity are unfounded. Any employment spin-off occurs elsewhere. A proposal for a training site is a red herring.

Response: The applicant has provided an independent economic appraisal which states the extend of social economic benefits both locally and nationally. This appraisal refers to benefits for companies within North Ayrshire. A training centre is not being considered as part of this application.

6. Consent was originally granted for 5 years. The Council should stand by their original condition and refuse this application.

Response: Noted. Refer to Analysis regarding justification for further time extension.

7. The developer has stated that the Hunterston wind turbines are approximately 2.5 Kilometres from the village of Fairlie. This is not correct and is highly misleading.

Response: Noted. The applicant's location plan highlights the location of the existing turbines and neighbouring settlements.

Those comments in support of the proposal can be summarised as follows:

1. Renewable energy developments are extremely valuable in order to help the UK meet its climate change targets.

Response: Noted.

2. A company, based in Irvine, relies on windfarm development which has brought employment and local supply chain benefits. This development supports local jobs and the local economy. Keeping the site open at Hunterston sends a clear message that North Ayrshire is open for business. The site at Hunterston Construction Yard offers a location that is among the best in Scotland for lidar testing activities. The exposure of the site suggests a suitable wind climate. It is sufficiently close to equipment depots and company offices in Glasgow. The continued use of Hunterston Construction Yard brings direct economic benefits to the wind industry sector and promotion of job creation for wind energy services, and research and development activities within Scotland.

Response: Noted. The applicant has provided an Economic Appraisal which summarises the economic benefit derived from the NOWTTF to date through the development and construction phase and through ongoing operations, maintenance and training phases. The report highlights that the test turbines have become a key economic asset for the Scottish offshore wind energy sector.

3. The proposal is in line with Clydeport's overall aim for the continued use of the site. The development complies with the Local Development Plan policy outlined in Policy IND 2. The site is identified in the N-RIP programme at National Level as a site of importance. It is also to be noted employment levels at Hunterston have been affected by the reduction in the supply of coal to power stations in Scotland, a loss of 90 jobs, which further necessitates the need to maximise the options at Hunterston's Construction Yard for new sources of use and employment.

Response: Noted.

4. Ayrshire College advises that there has been initial discussion around partnership working on the site and the potential benefits within Ayrshire. The discussions involve the College's current City and Guilds Wind Turbine Technician course and students would benefit from regular access to a working turbine site providing valuable skills and experience not available elsewhere, which would benefit potentially 530 students currently studying across the 3 main campuses.

Response: Noted. The applicant has provided an Economic Appraisal which summarises the economic benefit derived from the NOWTTF to date through the development and construction phase and through ongoing operations, maintenance and training phases.

Consultations

Environmental Health - No objections.

Response: Noted

Fairlie Community Council - Fairlie Community Council formally objects on the following grounds:

1. Public Inquiry Outcome 2004. The Reporter presiding over the original 2004 Fairlie Public Inquiry clearly concluded that the Hunterston peninsula is not a suitable location for wind turbines on environmental grounds.
2. Clear five year temporary planning permission granted in 2012. The 2012 Planning Consent for the Hunterston NOWTTF site recognises that the development breaches numerous planning regulations on the environmental front, but justified it on the basis that it would be a strictly temporary facility that would only be in place for a five year period. The current planning application seeks to extend that five years by a further two years but, by the developer's own admission, these two years would also be used to justify a planning application to convert this into a permanent facility.
3. Unsuitability of location in regard to visual impacts and impacts on tourism. the proposal is contrary to the North Ayrshire Supplementary Landscape Wind Capacity Study of June 2013.
4. The current stand alone planning application is submitted without an accompanying Environmental Impact Assessment (EIA) and Environmental Statement (ES). We believe that for North Ayrshire Council's Planning Committee to properly consider this application, SSE should commission a fully up to date EIA and ES.
5. The reliability of recent 'audible noise' test results. FCC question the validity of these test results, especially as justification for the turbines remaining in place. FCC believe that the emissions of the Mitsubishi Sea Angel turbine have led to complaints of dizziness and nausea from the villagers of Fairlie, which cannot be ignored. Similarly, the tests have not measured the 'amplitude modulation' (AM), associated with the infra-sound generated by these test turbines.
6. Growing evidence that wind turbines can adversely affect peoples' health. These wind turbines are not designed for on land operation, and the risks to local residents' health, no matter how poorly researched, have to be taken seriously.
7. Misrepresentation of proximity of Fairlie to the wind turbines. The developer has stated that the Hunterston wind turbines are approximately 2.5 Kilometres from the village of Fairlie. This is not correct and is highly misleading. The nearest human habitation in Fairlie to the nearest turbine is barely 1 Kilometre as the crow flies, as dangerous sound waves do not use the trunk road system.
8. Lack of an economic case to continue the NOWTTF site. FCC question if there has been any local economic benefit since 2012. The community benefit fund spilt between four communities, has not been sufficient to provide any tangible benefit to Fairlie to date.

Response: Noted. The points raised by Fairlie Community Council have been addressed above. The matters regarding community benefit are not material planning considerations.

Largs Community Council - No objection.

Response: Noted

West Kilbride Community Council - No objection. West Kilbride Community Council would point out that the original consent was for 5 years for the construction of a Temporary Offshore Wind Turbine Test Facility. During the erection of the second turbine there was a significant increase in road vehicle movements. There has been concerns raised mainly by Fairlie residents regarding the low frequency noise associated with the second turbine that was erected. There are no proposals to erect a third turbine.

Response: Noted.

3. Analysis

In relation to an application under Section 42 of the Town and Country Planning (Scotland) Act 1997, the Planning Authority shall consider only the question of the conditions subject to which permission should be granted. The applicant proposes to vary condition No. 1 of a Planning Permission (ref.14/00164/PPM) in order to extend the operational time period of the National Offshore Wind Turbine Testing Facility (NOWTTF) until 14th October 2019. The main determining issue in this case is whether the proposed time extension would accord with the provisions of the development plan, and whether there are any other material planning considerations, which would not permit the extension of time. In this case, the adopted North Ayrshire Local Development Plan (LDP) is the development plan. The original application was determined against the Ayrshire Joint Structure Plan (AJSP) and the previous North Ayrshire Local Plan (excluding Isle of Arran) (NALP). North Ayrshire Council's current Local Development Plan (LDP) was considered to be a material consideration.

It was considered in 2012 that as the development is fully reversible, the effects would not undermine the primary purpose of the Local Plan. The development would be consistent with one of the principal aims of the Development Plan, namely, the continued economic development of the site at Hunterston, the safeguarding of land for nationally important development requiring deep water facilities and the support of National Renewable Energy Policy. Given the overall conformity with the objectives of NPF2 and the Development Plan, the Council's Economic Development and Regeneration Strategy (EDRS), the uniqueness of the proposal for a national test centre limited to an operational life of five years, the short term and reversible impacts, the potential for downstream manufacturer investment and opportunities for job creation at Hunterston, the Scottish Government's desire to develop Scotland's renewable energy potential to address climate change and the identification of Hunterston as the best location in Scotland for a test centre, the application was recommended for approval.

In consideration of the current proposal to extend the operational time period of the National Offshore Wind Turbine Testing Facility (NOWTTF) until 14th October 2019, the applicant has provided both economic and planning statements which refer primarily to the current social economic benefits derived from the development, and the potential future benefits which may occur should the time extension be granted.

Policy STRAT2 states that the LDP will contribute to the Council's aim of creating new jobs by 2020 by safeguarding key business and industrial sites at Ardeer and Hunterston. At the time of adoption of the LDP Hunterston was highlighted, at national level, as having potential for major employment generating development including wind turbine testing. NPF2 identified Hunterston as a National Development location for a clean coal fired power station, container transshipment hub, maritime construction and decommissioning yard and associated energy and industrial development. It was not site specific but identified the location of the National Development as "adjoining the existing bulk handling terminal and marine construction yard at Hunterston, Ayrshire".

NPF3 replaced NPF2 and is the spatial expression of the Scottish Governments Economic Strategy and of the Government's plans for infrastructure investment. A key ambition of NPF 3 is to achieve at least an 80% reduction in greenhouse gas emissions by 2050. Hunterston is not any longer identified as a national development, but forms part of an area of co-ordinated action to provide energy hubs throughout Scotland. NPF3 states that the low carbon agenda forms a crucial part of the strategy and in regard to Hunterston NPF3 states that it should aim to make sustainable use of its key assets, including its deep water access.

A key driver for the low carbon agenda is the implementation of the National Renewables Infrastructure Plan (N-RIP). N-RIP is a key action identified in the Scottish Government's Renewables Action Plan published in June 2009. The Government's aim is to maximise the sustainable economic growth potential of a Scottish based offshore renewables industry that delivers offshore wind, wave and tidal energy with devices that are "made in Scotland". The objective of the N-RIP is to make sure that appropriate sites are available in the right locations to provide the platform for the growth of the renewables industry.

The existing planning permission for the 3 test turbines concluded that at that time the temporary use of the marine construction yard for this purpose would not conflict with the future development of the site. This consent predated NPF3.

Scottish Planning Policy (SPP) introduced a new presumption in favour of sustainable development. The presumption in favour of sustainable development does not change the statutory status of the development plan. The SPP sets out a series of principles whereby development could be considered to be sustainable. For this application, the most relevant are: giving due weight to net economic benefit; supporting delivery of infrastructure; and, supporting climate change mitigation.

NPF3 states that Planning must facilitate the transition to a low carbon economy, and help to deliver the aims of the Scottish Government spatial strategy to facilitate the development of generation technologies that will help to reduce greenhouse gas emissions from the energy sector, which includes terrestrial and marine planning to facilitate development of renewable energy technologies, link generation with consumers and guide new infrastructure to appropriate locations. It further states that renewable energy also presents a significant opportunity for associated development, investment and growth of the supply chain, particularly for ports and harbours identified in the National Renewables Infrastructure Plan.

With respect to the Local Development Plan the proposal requires to be assessed against Policies IND1, IND2, ENV 8, ENV 9, PI 9, HE2 and the General Policy of the LDP. Policy IND1 identifies Hunterston as a Strategic Business Location for nationally important development as identified in Policy IND2. The supporting text does state that the site is the preferred location for the establishment of a Test Centre for off-shore wind turbines and that the development of two new grid links would offer support. However the LDP predates NPF3 where the use of the marine construction yard for testing of off-shore turbines is not listed in the description of development for Hunterston.

Policy IND2 sets out a list of developments that shall accord with the LDP including a wind turbine test centre of national significance, and the criteria against which such developments require to be assessed. In this regard the site has a quayside location, it has the capability of importing/exporting turbines by sea and the applicants have demonstrated that infrastructure can be provided to feed into the national grid. The applicant has failed to demonstrate that the development would complement the development of Hunterston as an integrated manufacturing site for renewables and proposes to extend the ongoing use of the site for a further 2 years. It is therefore considered that the principle of the development would not comply with all of the provisions of Policy IND2 and would therefore fail to meet Policies IND1 or IND2.

With regard to Policy ENV8 the site lies within the Developed Coast where development which requires a coastal location and which would enhance the developed coast shall accord with the LDP. The applicant states that proposal requires a coastal location to closely reflect as far as possible the off-shore environment and would benefit from such a location as it would allow for the delivery and removal of wind turbine components to the site by sea thereby minimising disruption on the road network. While the consented scheme was granted permission on the basis of the temporary and reversible nature of the development this proposal would further extend the visual impact of the development by a further 2 years.

As noted within the original planning application the adverse impact of the proposed turbine on the setting of Hunterston Castle, Hunterston House and views from the Historic Gardens or Designed Landscape at Kelburn Castle, was considered to be temporary and fully reversible. The increase in length of time of operation would continue to have a significant impact on these key historical assets. The proposal would therefore conflict with Policies HE2 (Listed Buildings) and HE5 (Historic Landscapes).

ENV 9 states that proposals for development which would affect national designations such as Sites of Special Scientific Interest shall not accord with the LDP. The site is located in close proximity to Southannan Sands SSSI which comprises a coastal section, subdivided into three discrete areas, which together support one of the best examples of intertidal sandflats habitat on the Clyde coastline. The nearest turbine would be located approximately 40m west of the boundary of the SSSI. The original application was not considered to have a significant impact on the SSSI, and subject to the previous conditions, the temporary nature of the proposal would comply with Policy ENV9.

Policy PI 9 relates to Renewable Energy and requires assessment of the impact of renewable energy against a range of criteria. These are explored below:

In relation to criteria (a) (b) and (c), the proposed scale of the development is significant. The previous LVIA submitted in support of the previous application (ref.11/00679/PPM), found significant effects within 4 of the 26 landscape character areas and one of the seascape areas. The areas in which significant effects were identified were the Raised Beach in which the development would be located and the adjacent Coastal Fringe with Agriculture, Rugged Moorland Hills and Valleys and Rolling Farmland with Estates. Significant effects were predicted on the Sensitive Landscape Character Area of North Ayrshire. Significant effects were not predicted in relation to landscapes of national importance in the study area, Loch Lomond and Trossachs National Park or the Isle of Arran National Scenic Area.

Twelve of the 22 viewpoints provided in the previous LVIA were assessed to be significantly affected in terms of both visual amenity and landscape character. Of these 12 viewpoints, 6 would also be subject to significant cumulative effects when considered in relation to existing and consented turbines in the study area.

Criterion (d) relates to impacts on the natural, built, cultural or historic heritage of the locality and is considered above where it is found that the development would be contrary to Policies HE2 (Listed Buildings) and HE5 (Historic Landscapes). Criterion (f) considers impact on radar and telecommunication systems. The MOD, NATS safeguarding, Glasgow Airport and Prestwick Airport did not raise concerns regarding the original application and as no changes are proposed to the height or location of the existing consented turbines the proposal would comply with criterion (f). Criterion (g) is not directly relevant to this application as the grid connection currently exists for the Consented Scheme.

In considering the LVIA it is considered that the long term effects of the proposal would have a significant impact on a number of landscape character areas and the wider seascape character area. The long term use of the site for turbine testing would not accord with the guidance contained in the approved Landscape Capacity Study and would be unacceptable in terms of landscape and visual appearance, resulting in an unacceptable cumulative visual impact and accordingly result in failure to comply with criteria (a), (b), (c) and (h) of policy PI9. However as the application proposes a time extension of 2 years, it would be considered that the significant visual impacts would be mitigated by the temporary nature of the development.

With respect to the General Policy of the LDP, the relevant criteria in this case are (a) siting, design and external appearance, (b) amenity, (c) landscape character and (d) access, road layout, and parking provision. With regard to siting, design and external appearance, as discussed above, it is considered that the long term use of the site for turbine testing would not be satisfactory within the context of the surrounding landscape as it would result in a significant impact on the wider landscape visible from both land and sea. With regard to amenity the applicant has provided a noise assessment which considers the current operational noise of the development. Environmental Health has not raised any objection to the proposal. Concern has been raised regarding infrasound. The applicant has previously stated that there is no evidence of health effects from infrasound or low frequency noise, citing a number of studies undertaken both nationally and internationally, Environmental Health has not raised any concerns on these matters.

The applicant also provided a shadow flicker assessment as part of the original planning application (ref. 11/00679/PPM), which did not raise any significant concerns. Subject to the original conditions, the proposal would comply with criteria (b) and would not have a detrimental impact on the amenity of the neighbouring properties.

In relation to (c), the proposal is not considered to comply with this criterion for the reasons given above, however given the limited timeframe of the development, although significant, the impact is not permanent.

In relation to (d), the applicant has indicated within the updated ES statement that no significant changes to the operation of decommission transport are proposed. Again given the temporary nature of the proposal and restrictions placed within the original planning application the development is considered to comply with this criteria.

The original application for the development of the test turbine site 11/00679/PPM highlighted within the Environmental Statement that job opportunities would be created for 10-20 workers during the construction phase with further supply chain gains for the local economy through the establishment of supply chain lines with a represented investment of around £10 million with the potential to generate a range of economic opportunities for local businesses, employment opportunities and local spending.

The applicant's economic statement indicates that the NOWTTF has contributed to the local and national economies through its development and operation. The impact in the construction and professional services sector from the initial £21.0 million investment in development and construction has supported 19 job years and £2.6 million Gross Value Added (GVA) in North Ayrshire, and 75 job years and £9.2 million GVA in Scotland. The site has secured the employment of 55 employees of core partners in Scotland whose jobs are dependent on the NOWTTF. The applicants supporting information also states that the development has an impact on the companies in the local area that are able to supply goods and services to ensure the operation of the site as part of its £1.7 million annual operational spend.

The applicant has indicated that the consented has resulted in the diversification of commercial activities at the development site, without compromising its ability to utilise the deep water facilities for further development. The applicant states that the testing of offshore wind turbines is a crucial stage in developing a reliable supply chain to deliver the programme of development for offshore projects in the UK and since undergoing testing and achieving type certification at Hunterston. The applicant indicates that since undergoing testing and achieving type certification at Hunterston, the 6 MW and 7 MW variants of the Siemens STW turbine have become Europe's market leading offshore wind turbines. Siemens has received 4.5 GW of orders for the 6 MW and 7 MW variants of the turbine in the UK alone, accounting for over 80% of announced UK orders. The applicant indicates that the extra 2 years would allow further testing of the components of the Siemens turbine to assess durability, and allow commissioning and testing of the Mitsubishi turbine.

It is considered that although the current development continues to have a significant impact on the landscape character of the area, and any long term plans for the continuation development would not be supported, the proposed timeframe of 2 years would allow for the ongoing testing of the turbines in line with the 5 years timescale, which was requested in 2012. This decision to extend the timeframe by a further 2 years would not raise any longer term effects on the visual amenity of the area.

It is considered that the applicant has provided sufficient social and economic justification for the proposal however, beyond the proposed 2 years, any long term proposals for retention of the test turbine site would not comply with the wider aspirations of NPF3 or the National Renewables Infrastructure Plan (N-RIP), with regards to the future manufacturing and servicing potential of Hunterston.

4. Full Recommendation

See Appendix 1.



KAREN YEOMANS
Executive Director (Economy and Communities)

Cunninghame House, Irvine
9 February 2017

For further information please contact , on

APPENDIX 1

RECOMMENDATION FOR PLANNING APPLICATION REF NO 17/00034/PPM

Grant subject to the following conditions:-

1. That the site shall be used as a facility for the testing of a maximum of 3 off-shore wind turbines at any given time for a period up until 14th October, 2019 following which the wind turbines and associated infrastructure shall be removed and the land restored to its former condition within 6 months, in accordance with a Decommissioning Method Statement to be agreed in writing with North Ayrshire Council as Planning Authority prior to the commencement of the development. If planning permission for the proposed multi-fuel power station at Hunterston is granted, the wind turbine test facility shall not be operational at the same time as the testing or operational phases of the multi-fuel power station.
2. That prior to the commencement of the development the applicants shall submit for the written approval of North Ayrshire Council as Planning Authority exact details of the siting, design and finishes to all ancillary buildings, temporary buildings and structures and prior to the erection of each wind turbine the applicants shall submit for the written approval of North Ayrshire Council as Planning Authority exact details of the siting, design and finish of the wind turbine.
3. That unless North Ayrshire Council as Planning Authority gives written consent to any variation, all turbine components shall be transported to and removed from the site by sea by way of the existing jetty at the Marine Construction Yard, to the satisfaction of North Ayrshire Council as Planning Authority.
4. That prior to the commencement of the development the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a Transport Management Plan which shall include matters such as identification of the routes for delivery of construction materials to the site and times of day when the deliveries can be made; the Traffic Management Plan shall be implemented in accordance with the approved details to the satisfaction of North Ayrshire Council as Planning Authority.
5. That prior to the commencement of the development the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a Construction Method Statement which shall detail measures to be put in place to avoid any materials or contaminants being released into Portencross SSSI and which shall examine specific aspects of the proposals, e.g., piling for turbine base foundations, storage of fuel which may pose higher pollution risks, general on site procedures for dealing with accidental pollution incidents; the agreed Construction Method Statement shall be provided at least two months prior to work commencing on site and the measures contained in the approved Construction Method Statement shall be implemented throughout the duration of the construction and operation of the site, to the satisfaction of North Ayrshire Council as planning authority.
6. That at the reasonable request of North Ayrshire Council as Planning Authority or following a valid complaint to the Planning Authority relating to noise immissions, ie. the sound heard by the observer, arising from the operation of the wind turbines, the operator shall employ a suitably qualified acoustic consultant or other competent person to measure the level of noise immission from the wind turbines at the property to which the complaint relates. The measurement and calculation of noise levels shall be undertaken in accordance with pages 102-109 of

ETSU-R-97 (ETSU-R-97 the Assessment and Rating of Noise from Wind Farms) including the type, classification and calibration of the measuring equipment, the location of the microphone, the relevant weather conditions and the analysis and presentation of the measured noise data or such other method agreed in writing by the Environmental Health Service of North Ayrshire Council. Where the operation of the wind turbines, when assessed at any noise sensitive premises is likely to result in audible tones, the noise immission level shall be rated as detailed in ETSU-R-97 pp 104-109, all to the satisfaction of North Ayrshire Council as Planning Authority.

7. That during night hours defined in ETSU-R-97 as 2300 to 0700 on all days, the wind turbine noise immission level at any property lawfully existing or with planning permission at the time of the consent shall not exceed the LA90, 10min levels as detailed in table "11.7: Night Time Noise Limits" of the "Hunterston National Off Shore Wind Turbine Test Facility Volume 1: Environmental Statement" or the measured existing LA90, 10min noise level (to be calculated from data measured from the Background Noise Survey referenced in "Hunterston National Off Shore Wind Turbine Test Facility Volume 1: Environmental Statement") plus 5dB(A), whichever is the greater. In the case of locations not included in table 11.7, the limit for the nearest location listed shall apply, unless otherwise agreed in writing with North Ayrshire Council as Planning Authority.

8. That during Quiet Waking Hours, defined in ETSU-R-97 as 1800 to 2300 on all days, plus 1300 to 1800 on Saturdays and 0700 to 1800 on Sundays, the wind turbine noise immission level at any property lawfully existing or with planning permission at the time of this consent shall not exceed the ETSU-R-97 derived daytime noise limit of 35db LA90, 10min or the measured existing LA90, 10min noise level (as detailed in table "11.5: Daytime Operational Noise Limits" of the "Hunterston National Offshore Wind Turbine Test Facility Volume 1: Environmental Statement") plus 5dB (A), whichever is the greater. In the case of locations not included in table 11.5 of the "Hunterston National Offshore Wind Turbine Test Facility Volume 1: Environmental Statement", the limit for the nearest location listed shall apply, unless otherwise agreed in writing with North Ayrshire Council as Planning Authority.

9. That in respect of the 24 hour contact number to which complaints about noise nuisance can be made which has been supplied by the applicants, on receipt of any complaint directly made to the applicants, the applicants shall acknowledge receipt of the complaint to the complainant by telephone and shall notify North Ayrshire Council as planning authority both of the complaint and of the acknowledgement, all within 72 hours of receipt of the complaint. On confirmation by North Ayrshire Council as planning authority that a noise complaint, whether received directly by the Council or via the applicants, is valid Condition 6 shall apply. The result of the investigation required under Condition 6 shall be communicated to North Ayrshire Council as planning authority and to the complainant within 30 days of receipt of the complaint.

10. That in the event that the noise levels specified in Table 11.18 and Table 11.19 of the Environmental Statement are shown to be exceeded as a result of Condition 6, the operator or manufacturer(s) of the turbine(s) shall identify and implement such measures as are necessary to reduce the levels to no greater than those specified in Table 11.18 and Table 11.19. Such measures may include temporary cessation of the turbine(s) operation.

11. That within the first four weeks following commissioning of each wind turbine, the operator shall employ a suitably qualified acoustic consultant or other competent person to record and measure the level of noise immission from the wind turbines at

a minimum of four locations, to be agreed in writing with North Ayrshire Council as Planning Authority prior to the commencement of such monitoring. The locations shall be as close as possible to noise monitoring locations presented in Figure 11.1 of the Environmental Statement. The measurement and calculation of noise levels shall be undertaken in accordance with pages 102 - 109 of ETSU-R-97 (ETSU-R-97 The Assessment & Rating of Noise from Wind Farms) including the type, classification and calibration of the measurement equipment, the location of the microphone, the relevant weather conditions and the analysis and presentation of the measured noise data, or such other method agreed in writing with North Ayrshire Council as Planning Authority. Where the operation of the wind turbines, when assessed at any noise sensitive premises, is likely to result in audible tones, the noise immission level shall be rated as detailed in ETSU-R-97 pp 104-109. In the event that the limits set out in conditions 7 and 8 are not met the operator or manufacturer(s) shall identify and implement such measure as are necessary to comply with the limit.

12. That the recommendations contained in the document "Hunterston NOWTTF Environmental Statement: Volume III, Technical Appendices, Appendix 9.1 - Hydrology and Ground Conditions Desk Study, Item 7 Conclusions and Recommendations" regarding the proposed contaminated land strategy shall be implemented and the subsequent findings submitted for the written approval of North Ayrshire Council as Planning Authority; contaminated land issues arising from the proposal on nearby natural and farmed shellfish beds shall be included in the scope of the contaminated land strategy, to the satisfaction of North Ayrshire Council as Planning Authority.

13. That the presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of Environmental Health. Thereafter a suitable investigation strategy as agreed with North Ayrshire Council shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site, all to the satisfaction of North Ayrshire Council as Planning Authority.

14. That except with the prior written agreement of the Environmental Health Service of North Ayrshire Council (e.g. by means of an application under Section 61 of the Control of Pollution Act 1974), construction works likely to give rise to noise audible at the curtilage of any nearby noise sensitive premises shall be carried out only during the following times: Mondays - Fridays (excluding public holidays) 0800-1800 hours and Saturdays 0800-1300 hours; plant, machinery and operating methods shall be selected and used in accordance with BS 5228: Noise Control on Construction and Open Sites and the Control of Pollution Act 1974 to minimise nuisance from noise and vibration, all to the satisfaction of North Ayrshire Council as Planning Authority.

15. That the welfare facilities (toilets) provided on site shall be connected to the public mains sewerage system; otherwise prior to the commencement of the development the applicants shall submit for the written approval of North Ayrshire Council as Planning Authority proposals to demonstrate how foul sewerage from the development can be disposed of without causing nuisance.

16. That all mitigation measures detailed in Volume 1 of the Environmental Statement shall be implemented in accordance with the details described therein, to the satisfaction of North Ayrshire Council as Planning Authority.

17. That prior to the commencement of the development, the applicants shall

agree a Detailed Emergency Response Plan with North Ayrshire Council as Planning Authority in consultation with the Nuclear Site Licensees, Emergency Planning Consultative Committee and the Ayrshire Civil Contingencies Team which shall include details of all emergency planning requirements for the site during construction and operational phases and options for consultation meetings if required. The Detailed Emergency Response Plan shall also provide details of plant location, heights and sizes, alerting and notification arrangements, muster points, shelter areas, emergency evacuation routes, arrangements with emergency services and emergency contact numbers etc., all to the satisfaction of North Ayrshire Council as Planning Authority.

18. That prior to the commencement of the use of the turbines and meteorological masts, they shall be fitted with 25 candela omni-directional red lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point, to the satisfaction of North Ayrshire Council as Planning Authority.

19. That unless otherwise agreed in writing with North Ayrshire Council as Planning Authority, all phases of construction shall take place out-with October to February inclusive.

20. That prior to the commencement of the development the applicant shall submit a report to demonstrate any effects that turbulence might have on dust and to mitigate any adverse effects, for the written approval of North Ayrshire Council as Planning Authority. Thereafter any such mitigation measures shall be implemented, prior to the operation of the wind turbines, all to the satisfaction of North Ayrshire Council as Planning Authority.

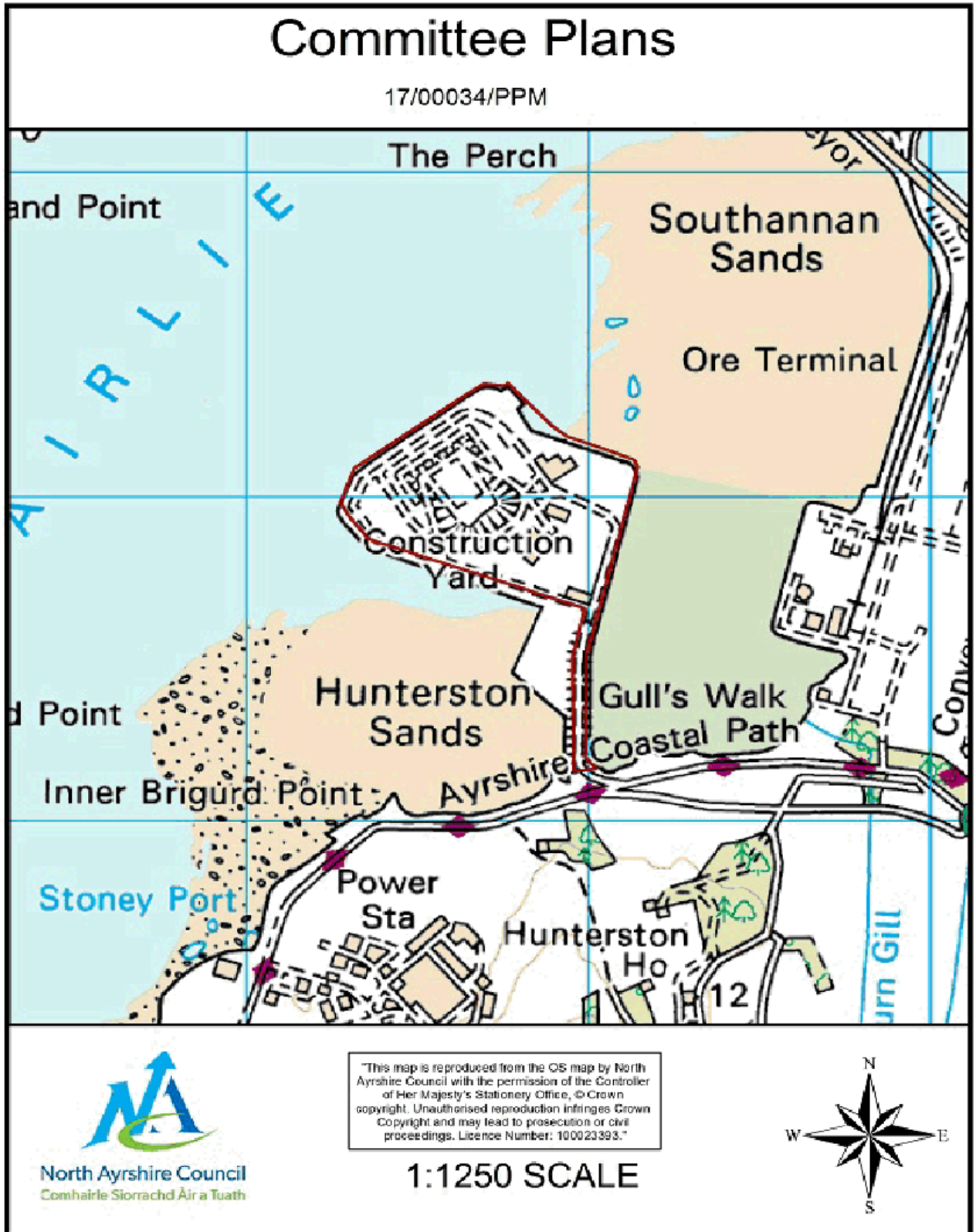
The reason(s) for the above condition(s) are:-

1. To restrict the development to the terms of its justification/special need and to meet the requirements of SEPA.
2. In the interest of the amenity of the area.
3. To minimise disruption on the road network.
4. To minimise disruption during peak traffic and to local residents along the road network.
5. To meet the requirements of Scottish Natural Heritage/To meet the requirements of the Scottish Environment Protection Agency.
6. To meet the requirements of Environmental Health.
7. To meet the requirements of Environmental Health.
8. To meet the requirements of Environmental Health.
9. To deal with noise complaints timeously.
10. To monitor and minimise noise.
11. To monitor and minimise noise.

12. To meet the requirements of Environmental Health.
13. To meet the requirements of Environmental Health.
14. To meet the requirements of Environmental Health.
15. To meet the requirements of Environmental Health.
16. In the interest of the amenity of the area.
17. In the interest of safety
18. To meet the requirements of the Ministry of Defence.
19. To minimise disturbance to wintering birds.
20. In the interest of the amenity of the area.

Reason(s) for approval:

1. The proposal complies with the relevant provisions of the Local Development Plan and there are no other material considerations that indicate otherwise.



NORTH AYRSHIRE COUNCIL

Agenda Item 4

Planning Committee

8 March 2017

Locality

Garnock Valley

Reference

16/00793/PP

Application

N/A

Registered

Decision Due

N/A

Ward

Kilbirnie and Beith

Recommendation **To approve the 'Code of Practice' in accordance with Condition 22 of Planning Permission (ref. 16/00793/PP).**

Location Site To North Of Knowes Farm
Beith
Ayrshire

Applicant Smith Skip Limited

Proposal Code of Practice, required in accordance with
Condition 22 of Planning Permission 16/00793/PP

1. Description

- 1.1 Planning permission was granted on 7th December 2016 (ref: 16/00793/PP) for the variation of a condition of a previous planning permission, which permitted the continued operation of the site for landfill for a further 10 years. The use is now permitted to operate until 20th August 2026 (see Appendix 1). The permission is subject to several conditions and includes Condition 22, as follows;

That within 3 months of the date of the decision, a draft Code of Practice for vehicle movements will be submitted for approval of North Ayrshire Council, as Planning Authority. The draft Code of Practice will include the issues listed on page 4 of the letter dated 14th November 2016, submitted by the AED Planning and Development on behalf of the applicant as part of this application. The development will thereafter be carried out in accordance with any Code of Practice agreed by the Council.

The reason for the condition is to establish a code of practice for vehicle movements to and from the site to mitigate any impact on other road users.

- 1.2 A draft Code of Practice ("the Code") has now been submitted (see Appendix 2). Amendments have been made to the Code following advice from both Planning, and Active Travel and Transportation Officers. The details required by other conditions within the Permission are being currently prepared and are subject to ongoing discussion with Planning Officers.

2. Consultations and Representations

Regeneration (Active Travel and Transport) is satisfied with the Code, subject to specific times of permitted delivery to be added to the Code and that all haulier/drivers be required to sign and acknowledge the documents.

Response: The Code has been amended in line with these recommendations.

3. Analysis

- 3.1 The Code of Practice comprises of sections relating to the operation of haulage to/from the site. The factors which have been considered are as follows;
- 3.2 **Traffic Management** - All hauliers/drivers would be issued with a copy of the Code of Practice and required to adhere to it. The Code would require hauliers to comply with the permitted delivery hours (as set out in Condition 4 of the planning permission) and ensure all loaded HGV's are sheeted. Drivers would be required to drive at a speed appropriate to the conditions of the road, take appropriate action to avoid adverse braking and practice the utmost courtesy when encountering other vehicles or pedestrians. Drivers would be required to slow down considerably when cyclists, pedestrians and horses are on the road and must be prepared to stop and give way to other road users. Drivers must be perceptive to the needs of other road users, ensure they keep off verges and pavements and ensure the regular servicing of their vehicle.
- 3.3 The site office would seek to ensure that vehicles leave the site individually to avoid convoying on the public highway. HGV's would not be permitted to park outside the gates when the site is closed. Hauliers/drivers who fail to adhere to the Code of Practice would be given a written warning. Persistent breaches of the Code would lead to the haulier/driver responsible being refused access to the site.

- 3.4 **Liaison Committee** - The operator has offered to establish a Liaison Committee should it be desired by local residents. Such committees can be a worthwhile and valuable means of providing information and addressing legitimate local concern. It would be the aim to meet regularly to provide an opportunity for queries to be considered and information given out. Discussion of the ongoing effectiveness of the Code could be undertaken. The applicant has written to Local Members to enquire of their interest in such a committee.
- 3.5 **Driver Training and Driver Induction Handbook** - The Site Management Contractor, Malcolm Construction Services, operate their own in-house driver training. Their drivers undertake five days of training per annum. The Code would form part of the commitment to on-going training and would be discussed and reviewed as part of the training programme. Other haulage contractors would be encouraged to commit to ensure the Code is incorporated into the own training. Consideration would also be given to incorporating Practical Cycle Awareness into training. All new drivers engaged by the operator or the Site Management Contractor would be provided with a copy of the Code as part of their Driver Induction Handbook.
- 3.6 **Site Signage and Vehicle Servicing** - Signage would be erected within the site, adjacent to the access road, to remind drivers to comply with the Code. All hauliers are required to undertake preventative fleet maintenance to ensure road worthiness. Most hauliers utilising the site operate a maintenance schedule of 4-6 weeks for inspections and repair.
- 3.7 **Site Access Improvements/Road Cleaning** - The site entrance would be resurfaced and adequately drained within 3 months of any approval of the Code. The site access would be inspected daily and remedial works undertaken as necessary. Such inspections and works would be recorded in a log book. A review of existing wheel-cleaning equipment undertaken and any deficiencies addressed. A wheel bath would be retained on site for the wheels of departing vehicles to be cleaned. These steps would be undertaken to ensure that deleterious material is not carried onto the road (as required by Condition 18 of the planning permission).
- 3.8 **Beith Cemetery** - The operator shall seek to establish liaison with North Ayrshire Council's Bereavement Services. This contact would seek to establish communication for the operator to be informed of any funerals likely to generate larger than usual traffic numbers. With 3 working days notice, the operator would temporarily suspend traffic along Kings Road, where practicable.

- 3.9 **Traffic Routing** - The routing of vehicles to and from the site would be kept under constant review. This measure is to seek to minimise the use of Kings Road. The review would be managed by the Site Management Contractor. This management would take into consideration factors including size of vehicle, vehicle location/destination, suitability of road width, location of road bends and height restrictions. The effectiveness of route management can be considered at meetings of the Liaison Committee.
- 3.10 **Complaints Procedure** - Should complaints be made to the site management relating to condition of the public road, they would be recorded, investigated immediately and, where necessary and appropriate, remediation measures implemented to the satisfaction of the Council as Roads Authority. Complaints, and their outcomes, would be recorded in a log held at the site and available for inspection by the Council, as Roads or Planning Authority on request. The Liaison Committee would also be advised of complaints and the outcome. The applicant has advised that this procedure would also be in place for the reporting of drivers who are alleged to be in breach of the Code.
- 3.11 It is considered that the draft Code has taken cognisance of the issues listed in page 4 of the letter dated 14th November 2016, submitted by the AED Planning and Development, as required by Condition 22. Issues raised by the Planning Committee, when permission was granted, such as the impact on Berth Cemetery and wheel-washing have also been considered and addressed in the Code. It is considered that adoption of the Code would help to mitigate any impact on other road users. Should local residents choose to take up the offer of the operator to establish a Liaison Committee, it is also considered that adopting the Code would help improve communication.

4. Full Recommendation

- 4.1 Approve the Code of Practice in accordance with Condition 22 of Planning Permission 16/00793/PP.



KAREN YEOMANS
Executive Director (Economy and Communities)

Cunninghame House, Irvine
22 February 2017

For further information please contact Iain Davies , on 01294 324 320



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

KAREN YEOMANS : Executive Director – (Economy & Communities)

No N/16/00793/PP

CONDITIONAL PLANNING PERMISSION

Type of Application: Local Application

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997,
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)
REGULATIONS 2013

To : Smith Skip Limited
c/o AED Planning & Development Fao Alan Doak
PO Box 29990
Glasgow
G67 9EP

With reference to your application received on 17 August 2016 for planning permission under the above mentioned Acts and Orders for :-

Variation of condition 2 of permission ref. N/99/00036/PP to enable operations to continue for a further 10 years

at Site To North Of Knowes Farm
Beith
Ayrshire

North Ayrshire Council in exercise of their powers under the above-mentioned Acts and Orders hereby grant planning permission, in accordance with the plan(s) docquetted as relative hereto and the particulars given in the application, subject to the following conditions and associated reasons :-

- | | | |
|-----------|----|--|
| Condition | 1. | That the landfill operations at the application site shall at all times be carried out in accordance with the working method statement, drawings and supporting information hereby approved, and there shall be no change in the operation or working method without the written approval of North Ayrshire Council, as Planning Authority. |
| Reason | 1. | To ensure the operations are only carried out as approved, in the interest of amenity. |
| Condition | 2. | That by the 20th August 2026 the operations hereby approved shall cease and the site shall be restored to the satisfaction of North Ayrshire Council, as Planning Authority. |
| Reason | 2. | To secure the proper completion of the development in the interest of amenity. |
| Condition | 3. | That in the event of operations ceasing on the site prior to the date specified in Condition 2, within six months of the cessation of operations all buildings ancillary to the landfill operations shall be removed and the entire site restored to the satisfaction of North Ayrshire Council, as Planning Authority. Operations will be held to have ceased in the event of no in-fill operations being carried out for 6 months. For the avoidance of doubt, any voids not completed shall be covered over with top soil and grass seeded. |
| Reason | 3. | To ensure restoration of the site in the event of in-filling ceasing prematurely, in the interest of amenity. |
| Condition | 4. | Deliveries to the site shall be made only within the hours of 07.00 to 18.00 Monday to Friday and 07.00 and 14.00 Saturday. The operation of the site shall take place only within the hours of 07.00 to 19.00 Monday to Saturday and 08.00 to 16.00 Sundays, except in the |

- case of emergencies to be agreed as soon as practicable with North Ayrshire Council, as Planning Authority.
- Reason 4. To prevent late night and early morning working or Sunday deliveries from causing disturbance to nearby properties and properties on delivery routes, in the interest of neighbouring residential properties.
- Condition 5. That within 3 months of the date of the decision, detailed site drawings of the phasing operations for in-fill in the remaining cell areas shall be submitted to North Ayrshire Council, as Planning Authority, for approval. Thereafter operations shall be carried out in accordance with the approved details.
- Reason 5. To ensure a detailed phasing scheme for which the in-fill operations will be carried out.
- Condition 6. That within 3 months of the date of the decision the applicant shall submit for the written approval of North Ayrshire Council, as Planning Authority, details of a financial bond secured with SEPA to ensure the restoration of the site to agricultural use in the event that the applicant is unable to implement the restoration works approved under Condition 3 above.
- Reason 6. To ensure adequate funds for restoration in the event of the cessation of works on site.
- Condition 7. That within 3 months of the date of the decision, confirmation of the location and size of the topsoil stockpile shall be submitted to, and approved in writing by North Ayrshire Council, as Planning Authority.
- Reason 7. To ensure appropriate positioning of the topsoil stockpile in the interest of visual amenity.
- Condition 8. That all topsoil and soil forming material to be removed shall be stored within the land shown on the approved drawings as being in the applicant's ownership and shall not be taken off site without the written consent of North Ayrshire Council, as Planning Authority.
- Reason 8. To ensure adequate topsoil and soil forming materials are retained on site in the interest of proper restoration.
- Condition 9. That the topsoil and soil forming material stockpiles shall be kept free of weeds and shall be seeded to the satisfaction of North Ayrshire Council, as Planning Authority.
- Reason 9. To avoid the development site falling into an unsatisfactory condition in the interest of visual amenity.
- Condition 10. That within 3 months of the date of the decision, details of measures to prevent and control the emission of dust from the site shall be submitted to, and approved in writing by, North Ayrshire Council, as Planning Authority
- Reason 10. To prevent unacceptable emission of dust from the site in the interest of amenity of the area.
- Condition 11. That in the event of dust produced by the tipping operations hereby approved or by vehicles passing to and from the site constituting nuisance, measures will be taken by the operator to control the dust emissions to the satisfaction of North Ayrshire Council, as Planning Authority.
- Reason 11. To prevent unacceptable emission of dust from the site in the interest of amenity of the area.
- Condition 12. That all leachate shall be constrained within the site and treated in accordance with the requirements of the Scottish Environmental Protection Agency to the satisfaction of North Ayrshire Council as Planning Authority.
- Reason 12. To prevent pollution of watercourses.
- Condition 13. That within 3 months of the date of the decision, an assessment of the volume and toxicity of the leachate generated by the current operations at the existing landfill, including an assessment of the risk this may present to natural systems, including a worst case scenario should the containment system fail, shall be submitted to North Ayrshire Council, as

- Planning Authority for their written approval, which report shall demonstrate that the water treatment proposals are adequate to eliminate any pollution risk.
- Reason 13. To prevent pollution from leachate at the site.
- Condition 14. That the operator shall take all necessary measures to control vermin at the site of the operations hereby approved to the satisfaction of North Ayrshire Council, as Planning Authority.
- Reason 14. To reduce any vermin risk from the site in the interest of amenity.
- Condition 15. That there shall be no burning of material on the site at any time.
- Reason 15. To prevent smoke or odour harm to amenity from burning.
- Condition 16. That within 3 months of the date of the decision, an updated landscape impact assessment supported by a costed programme of mitigation and screening shall be submitted to North Ayrshire Council, as Planning Authority, for their written approval.
- Reason 16. To ensure adequate screening of the in-filling operations in the interest of visual amenity.
- Condition 17. That any further planting comprised in the approved details submitted under Condition 16 above shall be carried out in the first planting season following the commencement of the development and any trees which, within the lifetime of the operations, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless North Ayrshire Council, as Planning Authority, gives written consent to any variation.
- Reason 17. To ensure adequate screening of the in-filling operations in the interest of visual amenity.
- Condition 18. That the operator shall seek to ensure that no loose material is carried out onto the C25 public road and any which is deposited shall be removed to the satisfaction of North Ayrshire Council, as Roads Authority.
- Reason 18. To prevent material being deposited on the road in the interest of road safety.
- Condition 19. That within 3 months of the date of the decision, confirmation of the separation of the surrounding surface drainage from that draining the operational area, which includes a method of interception and diversion of the existing surface water drainage, shall be submitted to, and approved in writing by North Ayrshire Council, as Planning Authority.
- Reason 19. To prevent pollution of watercourses.
- Condition 20. That within 3 months of the date of the decision, an updated scheme for the restoration of the site which fully details the backfilling and topsoil replacement operations, the construction of drains, ponds, footways and details of all plant species including their planting density, shall be submitted to and approved in writing by North Ayrshire Council, as Planning Authority. This restoration scheme shall be accompanied by a detailed aftercare management plan which shall set out a five year programme of works to ensure the successful implementation of the restoration scheme.
- Reason 20. To ensure the restoration of the site following completion of in-fill operations in the interest of amenity.
- Condition 21. That the restoration scheme and aftercare programme submitted under Condition 20 shall be implemented to the satisfaction of North Ayrshire Council, as Planning Authority, in accordance with the approved documents.
- Reason 21. To ensure the restoration of the site following completion of in-fill operations in the interest of amenity.
- Condition 22. That within 3 months of the date of the decision, a draft Code of Practice for vehicle movements will be submitted for approval of North Ayrshire Council, as Planning Authority. The draft Code of Practice will include issues listed on page 4 of the letter dated 14th November 2016, submitted by the AED Planning and Development on behalf of the

		Planning Authority for their written approval, which report shall demonstrate that the water treatment proposals are adequate to eliminate any pollution risk.
Reason	13.	To prevent pollution from leachate at the site.
Condition	14.	That the operator shall take all necessary measures to control vermin at the site of the operations hereby approved to the satisfaction of North Ayrshire Council, as Planning Authority.
Reason	14.	To reduce any vermin risk from the site in the interest of amenity.
Condition	15.	That there shall be no burning of material on the site at any time.
Reason	15.	To prevent smoke or odour harm to amenity from burning.
Condition	16.	That within 3 months of the date of the decision, an updated landscape impact assessment supported by a costed programme of mitigation and screening shall be submitted to North Ayrshire Council, as Planning Authority, for their written approval.
Reason	16.	To ensure adequate screening of the in-filling operations in the interest of visual amenity.
Condition	17.	That any further planting comprised in the approved details submitted under Condition 16 above shall be carried out in the first planting season following the commencement of the development and any trees which, within the lifetime of the operations, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless North Ayrshire Council, as Planning Authority, gives written consent to any variation.
Reason	17.	To ensure adequate screening of the in-filling operations in the interest of visual amenity.
Condition	18.	That the operator shall seek to ensure that no loose material is carried out onto the C25 public road and any which is deposited shall be removed to the satisfaction of North Ayrshire Council, as Roads Authority.
Reason	18.	To prevent material being deposited on the road in the interest of road safety.
Condition	19.	That within 3 months of the date of the decision, confirmation of the separation of the surrounding surface drainage from that draining the operational area, which includes a method of interception and diversion of the existing surface water drainage, shall be submitted to, and approved in writing by North Ayrshire Council, as Planning Authority.
Reason	19.	To prevent pollution of watercourses.
Condition	20.	That within 3 months of the date of the decision, an updated scheme for the restoration of the site which fully details the backfilling and topsoil replacement operations, the construction of drains, ponds, footways and details of all plant species including their planting density, shall be submitted to and approved in writing by North Ayrshire Council, as Planning Authority. This restoration scheme shall be accompanied by a detailed aftercare management plan which shall set out a five year programme of works to ensure the successful implementation of the restoration scheme.
Reason	20.	To ensure the restoration of the site following completion of in-fill operations in the interest of amenity.
Condition	21.	That the restoration scheme and aftercare programme submitted under Condition 20 shall be implemented to the satisfaction of North Ayrshire Council, as Planning Authority, in accordance with the approved documents.
Reason	21.	To ensure the restoration of the site following completion of in-fill operations in the interest of amenity.
Condition	22.	That within 3 months of the date of the decision, a draft Code of Practice for vehicle movements will be submitted for approval of North Ayrshire Council, as Planning Authority. The draft Code of Practice will include issues listed on page 4 of the letter dated 14th November 2016, submitted by the AED Planning and Development on behalf of the

Site To North Of Knowes Farm Beith Ayrshire
No N/16/00793/PP

applicant as part of this application. The development will thereafter be carried out in accordance with any Code of Practice agreed by the Council.

- Reason 22. To establish a code of practice for vehicle movements to and from the site to mitigate any impact on other road users.
- Condition 23. The types of waste permitted to be deposited on site will be restricted to those permitted by SEPA in the Pollution Prevention Control permit for the site, or any future regulatory permit by the authorised environmental protection body, excluding residual domestic waste. Any changes to the types of waste permitted by SEPA will be forwarded to North Ayrshire Council, as Planning Authority, within 7 days of the change being agreed by SEPA.
- Reason 23. To provide clarity over the waste types to be deposited on site in the interest of the amenity of the area.

Reason(s) for approval 1. The proposal complies with the relevant provisions of the Local Development Plan and there are no other material considerations that indicate otherwise.

Dated this : 7 December 2016


.....
for the North Ayrshire Council

Appendix 2



PO Box 29990, Glasgow, G67 9EP
07710 594708 adoak@aedplanningdevelopment.co.uk
www.aedplanningdevelopment.co.uk

Smith Skip Limited

Site To North Of Knowes Farm, Beith - PLANNING PERMISSION REF: 16/00793/PP

CONDITION 22 – CODE OF PRACTICE FOR HAULAGE

Condition 22 - That within 3 months of the date of the decision, a draft Code of Practice for vehicle movements will be submitted for approval of North Ayrshire Council, as Planning Authority. The draft Code of Practice will include issues listed on page 4 of the letter dated 14th November 2016, submitted by the AED Planning and Development on behalf of the applicant as part of this application. The development will thereafter be carried out in accordance with any Code of Practice agreed by the Council.

We have set out below those issues listed on page 4 of the aforementioned letter, dated 14th November 2016 submitted by AED Planning and Development on behalf of Smith Skip Limited.

Extract from page 4

- Ensuring all hauliers are issued with a copy and be required to adhere to the Code.
- Drivers failing to adhere to the Code of Practice will be given a written warning. Drivers who persistently breach the Code of Conduct will be refused access to the site.
- Ensure compliance with permitted hours of haulage.
- Ensure all loaded HGV's are sheeted.
- Issue instructions to ensure HGV's drive at a speed appropriate to the conditions of the road.
- Avoid the need for adverse braking.
- Practice the utmost courtesy when encountering other vehicles or pedestrians.
- Be prepared to stop and give way to other road users.
- Slow down considerably when cyclists or pedestrians are on the road.
- Be perceptive to the needs of other road users at all times.
- Keep off verges.
- Regular servicing of vehicles.
- Complaints procedure / register and appropriate point of contact established.
- Road cleaning.
- Routing will be examined, where practicable minimise the use of Kings Road.

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1.0 Code of Practice - Traffic Management

- 1.1 All drivers and hauliers using the site will be issued with a copy of the Appendix attached to this Code of Practice and will be required to adhere to the Code. The Code will be reviewed by Site Management on a six monthly basis.
- 1.2 Drivers failing to adhere to the Code of Practice will be given a written warning. Drivers who persistently breach the Code of Conduct will be refused access to the site.
- 1.3 Deliveries to the site shall be made only within the hours of 07.00 to 18.00 Monday to Friday and 07.00 and 14.00 Saturday. The operation of the site shall take place only within the hours of 07.00 to 19.00 Monday to Saturday and 08.00 to 16.00 Sundays, except in the case of emergencies to be agreed as soon as practicable with North Ayrshire Council, as Planning Authority.

The aforementioned hours are in accordance with the requirements of Condition 4 of the relevant planning permission.

- 1.4 All loaded HGVs entering the site will be sheeted.
- 1.5 The site office will seek to ensure that vehicles leave the site individually to avoid convoying on public highway.
- 1.6 Under no circumstances are HGVs to park outside the site gates when the site is closed.
- 1.7 All drivers, at all times, will:
 - Drive at a speed appropriate to the conditions of the road;
 - Avoid the need for adverse braking;
 - Practice the utmost courtesy when encountering other vehicles or pedestrians;
 - Be prepared to stop and give way to other road users;
 - Slow down considerably when cyclists, pedestrians or horses/riders are on the road;
 - Be perceptive to the needs of other road users at all times; and
 - Keep off verges and pavements.

2.0 Liaison Committee

- 2.1 As part of the planning application process my client offered to establish a Liaison Committee, should such a Committee be desired by local interests. It being recognised that such committees are a worthwhile and valuable means of providing information and addressing legitimate local concerns. It would be the aim to meet regularly to provide an opportunity for queries to be considered and for information about future activities to be given to those concerned.

Planning, Minerals & Development

Director: Alan E Doak BA(Hons) MPhil MRTPI MRICS FIQ

AED Planning & Development Limited Company No. 430675 Registered Office: 76 Dumbarton Rd., Clydebank, Glasgow G81 1UG



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2.2 Discussion of the on-going effectiveness of the Code of Practice shall be undertaken as part of the liaison group meetings to ensure that best possible practices are maintained at all times.

2.3 Site Management shall seek to ensure effective communication with neighbouring properties through letter / leaflet drops to advise when specific wide loads or similar transport requirements are scheduled thus ensuring that clear access is achieved and potential damage to parked vehicles is mitigated. It is envisaged that such requirements will be infrequent.

3.0 Driver Training

3.1 Practical Cycle Awareness Training – consideration will be given to ensuring, where practicable, awareness training will be included into hauliers training requirements.

3.2 The Site Management Contractor, Malcolm Construction Services (MCS), operate their own in-house driver training and specifically cover this and similar topics. MCS drivers undertake five days per annum of training. This Code will form part of the commitment to on-going training and will be discussed and reviewed as part of the training programme. The other haulage contractors will be encouraged to commit to ensuring that the Code is incorporated into their own driver training.

4.0 Site Signage

4.1 Signage will be erected within the site adjacent to the access road to remind drivers/hauliers to comply with the Code of Practice.

5.0 Vehicle Servicing

5.1 It is a requirement for all hauliers to undertake preventative fleet maintenance (PFM) to ensure road worthiness and to have vehicles MOT tested annually. Presently most hauliers utilising the site operate on a PFM basis of between 4 – 6 weeks for maintenance, inspection and repair.

6.0 Site Access Improvements

6.1 The following measures will be undertaken to ensure that no deleterious material is carried onto the public road:

- the site entrance will be resurfaced and adequately drained within 3 months of this document.
- the access road will be maintained in a good condition.
- a review of existing wheel-cleaning equipment will be undertaken and any deficiencies addressed.

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- the site entrance and access road will be inspected daily and remedial works will be undertaken as necessary, a log book detailing site entrance and access road inspections will be kept at the site office.
- the site entrance and access roads will be cleaned, as required, by a road sweeper.

6.2 It is anticipated that the proposed improvements to the site access will be undertaken within a period of approximately six months.

6.3 The entrance and road network within the site to the wheelcleaning, visitor car-park and weighbridge will be surfaced in either tarmac or concrete where vehicle traffic is prevalent.

7.0 Road Cleaning

7.1 A wheel-bath will be retained on-site and utilised as necessary, the wheels of all vehicles departing the site will be cleaned.

7.2 In terms of the frequency of the road sweeper employed at the site during operational hours this shall be utilised as appropriate in order to supplement the effectiveness of the wheel-bath.

8.0 Beith Cemetery, Kings Road

8.1 With respect to funerals at Kings Road Cemetery, the operator shall seek to establish contact with the Bereavement Services (01294 310000) (bereavementservices@north-ayrshire.gov.uk). The operator shall if possible establish liaison with the Service with a view to being provided with advance notice where it is anticipated that known funerals are likely to generate larger than usual traffic numbers.

8.2 Where advance notification is given of funeral arrangements [a minimum of 3 working days is considered reasonable] involving anticipated larger than usual traffic numbers site vehicles leaving the site along Kings Road past the cemetery will be temporarily suspended, where practicable.

9.0 Traffic Routing

9.1 The routing of vehicles travelling both to and from the site will be kept under constant review in order to ensure, where practicable, that the use of Kings Road is minimised. This review and assessment of alternative routes will be managed by the Site Management Contractor. In undertaking this ongoing assessment the Site Management Contractor will take into consideration the following matters; size of vehicle, vehicle location/destination, suitability of road width to accommodate vehicle size, location of bad/unsuitable bends and also height restrictions on local road network, as well as any other relevant factors.

9.2 The effectiveness of route management will be considered at the Liaison Committee meetings.

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10.0 Driver Induction Handbook

10.1 Smith Skip Limited and MCS will seek to ensure that any new drivers engaged with the respective companies are provided with a copy of the Code of Practice as part of their Driver Induction Handbook.

11.0 Complaints Procedure

11.1 Should complaints be made to the site management relating to the condition of the public road in the vicinity of the site access, then these will be immediately investigated and, where necessary and appropriate, remediation measures will be implemented to the satisfaction of the local roads authority.

11.2 All such complaints, and any action undertaken as a result of the investigation, will be recorded in a log held at the Knowes Landfill Site office which will be available for inspection by the local Roads Authority and /or Planning Authority on request.

11.3 The Liaison Committee will be advised of any complaints received, the results of any investigation and any action taken.

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Appendix -1

To be Issued to Hauliers / Drivers

Planning, Minerals & Development

Condition 22

TO BE ISSUED TO ALL HAULIERS AND DRIVERS

- All hauliers/drivers operating at Knowes Landfill Site will be issued with a copy and be required to adhere to the Code.
- Hauliers/drivers failing to adhere to the Code of Practice will be given a written warning. Hauliers/drivers who persistently breach the Code of Practice will be refused access to the site.
- All hauliers/drivers will be required to comply with the permitted hours of haulage.

07.00 to 18.00 Monday to Friday and 07.00 and 14.00 Saturday

- All hauliers/drivers entering the site will be required to ensure that all loaded HGV's are sheeted.
- All hauliers/drivers travelling to and from the site will be required to drive at a speed appropriate to the conditions of the road.
- All hauliers/drivers will take appropriate action in order to avoid the need for adverse braking.
- All hauliers/drivers travelling to and from the site will be required to practice the utmost courtesy when encountering other vehicles or pedestrians or other non-motorised road users.
- All hauliers/drivers travelling to and from the site must be prepared to stop and give way to other road users.
- All hauliers/drivers travelling to and from the site will be required to slow down considerably when pedestrians or other non-motorised road users are on the road.
- All hauliers/drivers traveling to and from the site will be required to be perceptive to the needs of other road users at all times.
- All hauliers/drivers travelling to and from the site will be required to ensure that they keep off verges and pavements.
- All hauliers/drivers travelling to and from the site will be required to ensure the regular servicing of their vehicles.

Signature:

Date:

NORTH AYRSHIRE COUNCIL

Agenda Item 5

8 March 2017

Planning Committee

Title: **The Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016**

Purpose: To make the Committee aware of the amendments to the Town and Country Planning (Use Classes) (Scotland) Order 1997 and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 for betting operators and pay day lenders.

Recommendation: Agree to note the amendments.

1. Executive Summary

- 1.1 On 10th February 2017, the Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016 came into force. The order amends the Town and Country Planning (Use Classes) (Scotland) Order 1997 and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 to exclude changes to pay day loan shops and betting offices from changes within any use class and allows for a change of use from a betting office or pay day loan (PDL) shop to a shop (Class 1) or for financial, professional and other services (Class 2).

2. Background

- 2.1 In June 2014, a revised Scottish Planning Policy was published that reflected concerns about the number and clustering of betting offices and pay day loan (PDL) shops. In November 2014, the Cabinet approved the submission of the consultation response to the Scottish Government on whether changes to the Use Classes Order would be an appropriate way of regulating pay day loan shops (PDL) and betting offices. The response agreed that the proposed changes would contribute to tackling the underlying problem of debt associated with pay day lending and betting offices as part of a wider package of measures as described in the Government's Action Plan. The conclusion of the consultation was published in February 2015 where the recommendations were that Scottish local authorities should continue to use existing planning mechanisms to address payday lenders and bookmakers, and in particular Local Development Plan Policies which guide local changes of use.

- 2.2 The Amendment Order supports the policy aim of June 2014. The Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order came into force on 10th February 2017. The effect of the Amendment Order is to amend the Town and Country Planning (Use Classes) (Scotland) Order 1997 to remove betting offices from class 2 (financial, professional and other services) and to add both betting offices and PDL shops to the list of uses excluded from the various use classes (sui-generis). Any material change of use of premises to such offices or shops would require planning permission.
- 2.3 The Amendment Order also amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 to ensure that, as at present, a change of use from a PDL shop or a betting office to a use in Class 2 or in Class 1 of the Use Classes Order, does not require planning permission.
- 2.4 The definition of a betting office follows section 150(e) of the Gambling Act 2005, is a premises licensed under Act for "the provision of facilities for betting, whether by making or accepting bets, by acting as a betting intermediary or by providing other facilities for the making or accepting bets."
- 2.5 The Amendment Order would not apply if the change of use to a betting office occurs before 10th February 2020 where at the time, the building to be used for such provision, has been issued a betting premises licence under Part 8 of the Gambling Act 2005, before 10th February 2017.
- 2.6 The definition of a PDL shop is premises from which high -cost short-term credit is provided principally to visiting members of the public and includes premises from which such credit is provided in addition to other financial or professional services which would fall within Class 2 (financial, professional and other services).
- 2.7 High-cost short-term credit is defined in the Financial Conduct Authority Handbook as a borrower-lender agreement or a peer to peer agreement where the APR is equal to or exceeds 100% and where the credit is to be provided for any period for a maximum of 12 months. Further information on the definition of high-cost short-term credit is contained within the April 2014 edition of the Financial Conduct Authority's Handbook (See Appendix 1.)

3. Proposals

- 3.1 That the amendments are noted.

4. Implications

Financial:	There may be additional change of use applications which would result in additional fees, however it is not expected to be significant.
Human Resources:	The increase in application numbers can be addressed with existing resources.
Legal:	N/A
Equality:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	The Town Centre Policy contained within LDP2 should reflect these changes.
Community Benefits:	N/A

5. Consultation

None required.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference : FK1

For further information please contact Fiona Knighton on 01294 324313

Background Papers

[FCA Handbook High-Cost Short-Term Credit Definition](#)

Appendix 1

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Financial Conduct Authority



high-cost short-term credit

a *regulated credit agreement* :

- (a) which is a *borrower-lender agreement* or a *P2P agreement*;
- (b) in relation to which the *APR* is equal to or exceeds 100%;
- (c) either:
 - (i) in relation to which a *financial promotion* indicates (by express words or otherwise) that the *credit* is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the *credit* is to be provided for a short term; or
 - (ii) under which the *credit* is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the *credit* is advanced;
- (d) which is not secured by a mortgage, charge or pledge; and
- (e) which is not:
 - (i) a *credit agreement* in relation to which the lender is a *community finance organisation*; or
 - (ii) a *home credit loan agreement*, a *bill of sale loan agreement* or a *borrower-lender agreement* enabling a *borrower* to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.

NORTH AYRSHIRE COUNCIL

Agenda Item 6

8 March 2017

Planning Committee

Title: **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 148 Main Street, Largs KA30 8JN**

Purpose: To seek authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of flagpole from front elevation of property at first floor level, 148 Main Street, Largs KA30 8JN

Recommendation: Agree to grant authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of flagpole from front elevation of property at first floor level, 148 Main Street, Largs KA30 8JN

1. Executive Summary

- 1.1 A flagpole, protruding over the public highway, has been erected at first floor level on a property known as 148 Main Street, Largs. The property is a three storey building with a public house at ground floor level and four flats above on the first and second floors. The flagpole, which is used to facilitate the display of a national flag, is understood to have been erected in connection with one of the flats in the upper floors. The site is located within an area identified as part of the settlement of Largs by the Adopted North Ayrshire Local Plan.
- 1.2 The flagpole, by way of its prominent location at high level on a residential property sited on the main southern access road to Largs Town Centre, is held to harm amenity.
- 1.3 Given the above and in particular, the adverse impact of the unauthorised development on visual amenity, it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be approved. An Enforcement Notice would require removal of the flagpole and any associated fixings. The Enforcement Notice would take effect not less than 28 days from the date on which it is served, unless an appeal is lodged before it takes effect. The Enforcement Notice would require to be in full compliance within 6 weeks of the date that it takes effect. There is a right of appeal against an Enforcement Notice, but not on the grounds that planning permission ought to be granted.

2. Background

- 2.1 The owners of the flatted properties on the first and second floor have been advised that the flagpole is unauthorised and that a planning application would not be supported. They have been advised to remove the flagpole. However, to date this has not been done. As such, the owners have been advised that the Council is considering the issue of a formal enforcement notice. No owner of any of the flats has responded to take responsibility for the flagpole.
- 2.2 A complaint regarding the flagpole was first received from the local MP in August 2016. From the Council's records it can be determined that the flagpole was installed sometime between May 2014 and September 2014. The flagpole has therefore been in situ for less than 4 consecutive years and is therefore not immune from planning control.
- 2.3 It is considered that the flagpole harms the visual amenity of the area by way of its high level siting, its prominence in the streetscene, a main route into and out of the Town Centre, and its incongruous appearance on the host building. The flagpole is therefore held to be contrary to criterion (a) Siting, Design and External Appearance of the General Policy of the LDP.

3. Proposals

- 3.1 In the interest of the visual amenity of the area, it is recommended that Committee approves the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:-
 - i) Removal of the flagpole from first floor level of the building.

4. Implications

Financial:	The Council can take direct action against non-compliance with an enforcement and seek any costs incurred from the land owner or lessee.
Human Resources:	N/A
Legal:	The proposed Enforcement Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council, as Planning Authority, could report such an offence to the Procurator Fiscal.
Equality:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	The proposed Enforcement Notice supports the Council Plan priority - "Protecting and enhancing the environment for future generations."
Community Benefits:	N/A

5. Consultation

- 5.1 Finance and Corporate Support has been advised of the report in terms of its budgetary provision



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference : 16/00115/COUB

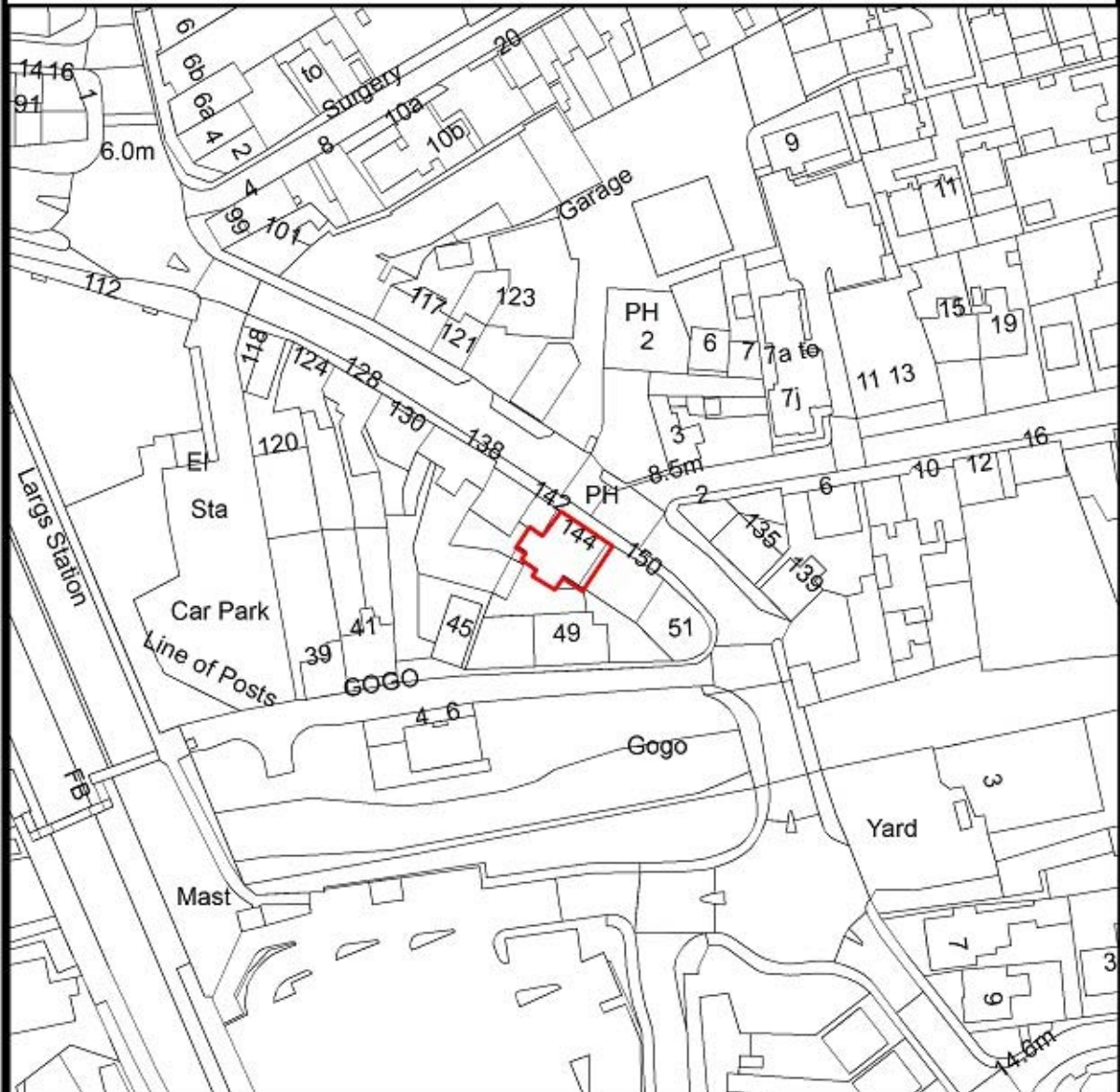
For further information please contact Iain Davies on 01294 324320

Background Papers

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Location Plan

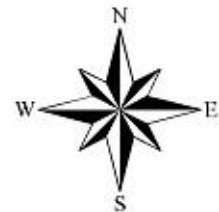
Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 148 Main Street, Largs KA30 8JN



North Ayrshire Council
Comhairle Siorrachd Air a Tuath

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1:1250 SCALE



NORTH AYRSHIRE COUNCIL

Agenda Item 7

8 March 2017

Planning Committee

Title: Notice under Regulation 24 of the Town & Country Planning (Control of Advertisements) (Scotland) Regulations 1984: 116 Main Street, Largs KA30 8JN

Purpose: To seek approval to serve a Notice under Regulation 24 of the Town & Country Planning (Control of Advertisements) (Scotland) Regulations 1984 requiring removal of an unauthorised advertisement.

Recommendation: Agree to grant authority to serve a Notice under Regulation 24 of the Town & Country Planning (Control of Advertisements) (Scotland) Regulations 1984 to abate the adverse impact the advertisement is having on public safety, as detailed in the report

1. Executive Summary

- 1.1 This report recommends the service of a Notice under Regulation 24 of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 ("Advertisement Enforcement Notice") in relation to land at 116 Main Street, Largs, KA30 8JN. An Advertisement Enforcement Notice allows the Council, as Planning Authority, to serve on the owner, lessee and occupier of land and any other person known to the Planning Authority to be displaying the unauthorised advertisement, a notice requiring the removal of an unauthorised advertisement.
- 1.2 116 Main Street is sited in Largs Town Centre. It is on the southern side of Main Street, adjacent to the entrance to the train station car park, and in close proximity to the roundabout connecting Main Street, Fraser Street, Aitken Street and the taxi rank outside the train station. Main Street itself is part of the A78 trunk road. The property is in use as a delicatessen.
- 1.3 A Piaggio Ape three wheeled light commercial vehicle has been installed on the roof of the property. The purpose of the vehicle is to act as a device for the purpose of advertising the premises. As such it constitutes an advertisement under the above Regulations. An application for advertisement consent for a similar advertisement was refused September 2016. The vehicle was installed following refusal of that application.

- 1.4 The Regulations limit the exercise of powers to control advertisements solely to amenity and public safety considerations. The advertisement, by virtue of its siting and design, has an adverse impact on road safety with the potential to cause unnecessary distraction to drivers on the trunk road. The advertisement is visible in viewpoints from the north and east, across the trunk road and the adjacent roundabout junction.

2. Background

- 2.1 Advertisement consent was sought in 2016 for the installation of a Piaggio Ape three wheeled light commercial vehicle on flat roof with 'Deli il Cardo,' the name of the delicatessen, written on the sides and rear. This application was refused 21st September 2016 (ref: 16/00679/ADC). The reason for refusal was that the proposal by way of its sitting, design and illumination it was held to have an adverse impact on road safety with the potential to cause unnecessary distraction to drivers on the trunk road, at a roundabout junction where there would be an intensification of turning manoeuvres. This decision followed a consultation response from Transport Scotland, as Trunk Road Authority, that the application should be refused on the grounds of road safety.
- 2.2 A complaint was received that the Piaggio Ape had been installed on the roof. The owner was written to and advised that it constituted an advertisement for which consent had not been granted. The advertisement was unauthorised and should be removed given its impact on road safety. The owner responded stating that it was not considered that the vehicle was an advertisement as it was neither illuminated nor had any writing on it.
- 2.3 Under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, an advertisement is any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of advertisement, announcement or direction. The Council advised the owner that the vehicle is a device for advertising the delicatessen upon which it sits. The owner was asked to clarify why the vehicle was on the roof if not for the purposes of advertisement. The owner responded that they did not consider they had been given an opportunity to approach Transport Scotland with an amended proposal. They would not be removing the vehicle and would be consulting with Transport Scotland regarding their concerns.
- 2.4 Transport Scotland has commented on a similar advertisement in the same location and consider it to be hazard to users of the A78. The advertisement by virtue of its siting and design, has an adverse impact on road safety with the potential to cause unnecessary distraction to drivers on the trunk road.

3. Proposals

3.1 In the interest of the public safety of the area, it is recommended that Committee approves the service of a Notice under Regulation 24 of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 to require the following:-

- i) Removal of the advertisement comprising a Piaggio Ape vehicle from the roof of the building.

4. Implications

Financial:	The Council can take direct action against non-compliance with an advertisement enforcement and seek any costs incurred from the land owner or lessee.
Human Resources:	N/A
Legal:	The proposed Advertisement Enforcement Notice is in accordance with Statutory Regulations.
Equality:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	The proposed Enforcement Notice supports the Council Plan priority - "Supporting all of our people to stay safe, healthy and active"
Community Benefits:	N/A

5. Consultation

5.1 Finance and Corporate Support has been advised of the report in terms of its budgetary provision



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference : 16/00148/ADV

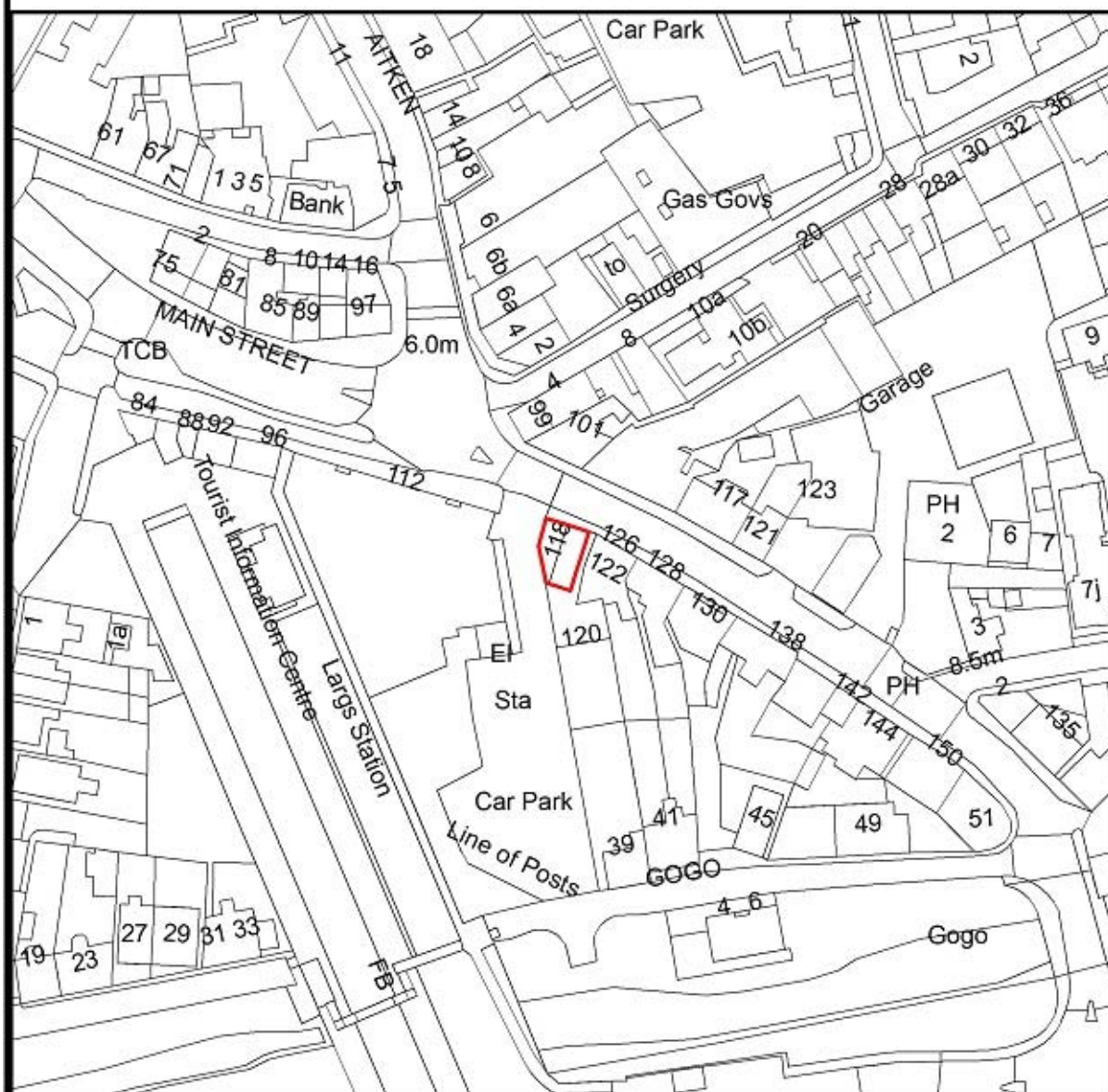
For further information please contact Iain Davies on 01294 324 320

Background Papers

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Location Plan

Notice under Regulation 24 of the Town & Country Planning
(Control of Advertisements) (Scotland) Regulations 1984:
116 Main Street, Largs KA30 8JN



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1:1250 SCALE



NORTH AYRSHIRE COUNCIL

Agenda Item 8

8 March 2017

Planning Committee

Title: Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Site to South of River Cottage, Montgreenan, Kilwinning

Purpose: To seek authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of a log cabin from field to south of River Cottage, Montgreenan, Kilwinning

Recommendation: Agree to grant authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of a log cabin from field to south of River Cottage, Montgreenan, Kilwinning

1. Executive Summary

- 1.1 A log cabin has been erected in a field at Montgreenan, Kilwinning south of a property known as River Cottage. The log cabin is not considered to be necessary non-residential development associated with agriculture, forestry operations or other established rural business. It is also held to have an adverse visual impact on the surrounding area due to its incongruous design and suburban character. An application for planning permission to retain the log cabin was refused on 30th May 2016 (ref: 16/00290/PP). The refusal was confirmed on appeal to the Local Review Body ("LRB") 25th November 2016.
- 1.2 Given the above it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be approved. An Enforcement Notice would require removal log cabin and the return of the land to its condition prior to its erection. The Enforcement Notice would take effect not less than 28 days from the date on which it is served, unless an appeal is lodged before it takes effect. The Enforcement Notice would require to be in full compliance within 6 weeks of the date that it takes effect. There is a right of appeal against an Enforcement Notice, but not on the grounds that planning permission ought to be granted.

2. Background

- 2.1 A log cabin has been erected in a field at Montgreenan, Kilwinning south of a property known as River Cottage. The field is approx. 4350sqm in area. The field slopes north to south with the cabin situated at the lowest point. The field is bounded to the south and east by the Lugton Water. To the west is the road which connects Montgreenan to the B778, with fields beyond. This road continues to the south, on the other side of the Lugton Water. To the north are residential properties. The site is located within an area identified as countryside by the Adopted North Ayrshire Local Development Plan
- 2.2 The log cabin was first brought to the Council's attention in December 2015, in addition to a shed, polytunnel and caravan, which had also been located on the site. An investigation found that the shed and polytunnel were both immune from planning control, by virtue of having been in situ for more than 4 years. The log cabin and the caravan were held to be unauthorised. The caravan was removed. The owner of the field was advised to also remove the cabin. The owner chose to apply for permission (ref: 16/00290/PP), as noted above.
- 2.3 From the Council's investigation it has been established that the log cabin was erected in 2014. The log cabin has therefore been in situ for less than 4 consecutive years and is not immune from planning control.
- 2.4 It is considered that the siting, design and external appearance of the log cabin has an adverse visual impact on the surrounding areas and rural landscape due to its incongruous design and suburban character, all to the detriment of the character and amenity of the countryside. The proposal is not considered to be necessary non-residential development associated with agriculture, forestry operations or other established rural business and no need for the development has been demonstrated at this location. The log cabin is held to be contrary to criterion (a) Siting, Design and External Appearance of the General Policy and Policy ENV1 of the LDP.

3. Proposals

- 3.1 In the interest of the visual amenity of the area and the character and amenity of the countryside, it is recommended that Committee approves the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:-
 - i) Remove the log cabin and return the land to its condition prior to the erection of the log cabin

4. Implications

Financial:	The Council can take direct action against non-compliance with an enforcement and seek any costs incurred from the land owner or lessee.
Human Resources:	N/A
Legal:	The proposed Enforcement Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council, as Planning Authority, could report such an offence to the Procurator Fiscal.
Equality:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	The proposed Enforcement Notice supports the Council Plan priority - "Protecting and enhancing the environment for future generations."
Community Benefits:	N/A

5. Consultation

- 5.1 Finance and Corporate Support has been advised of the report in terms of its budgetary provision



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference : 15/00136/COUR

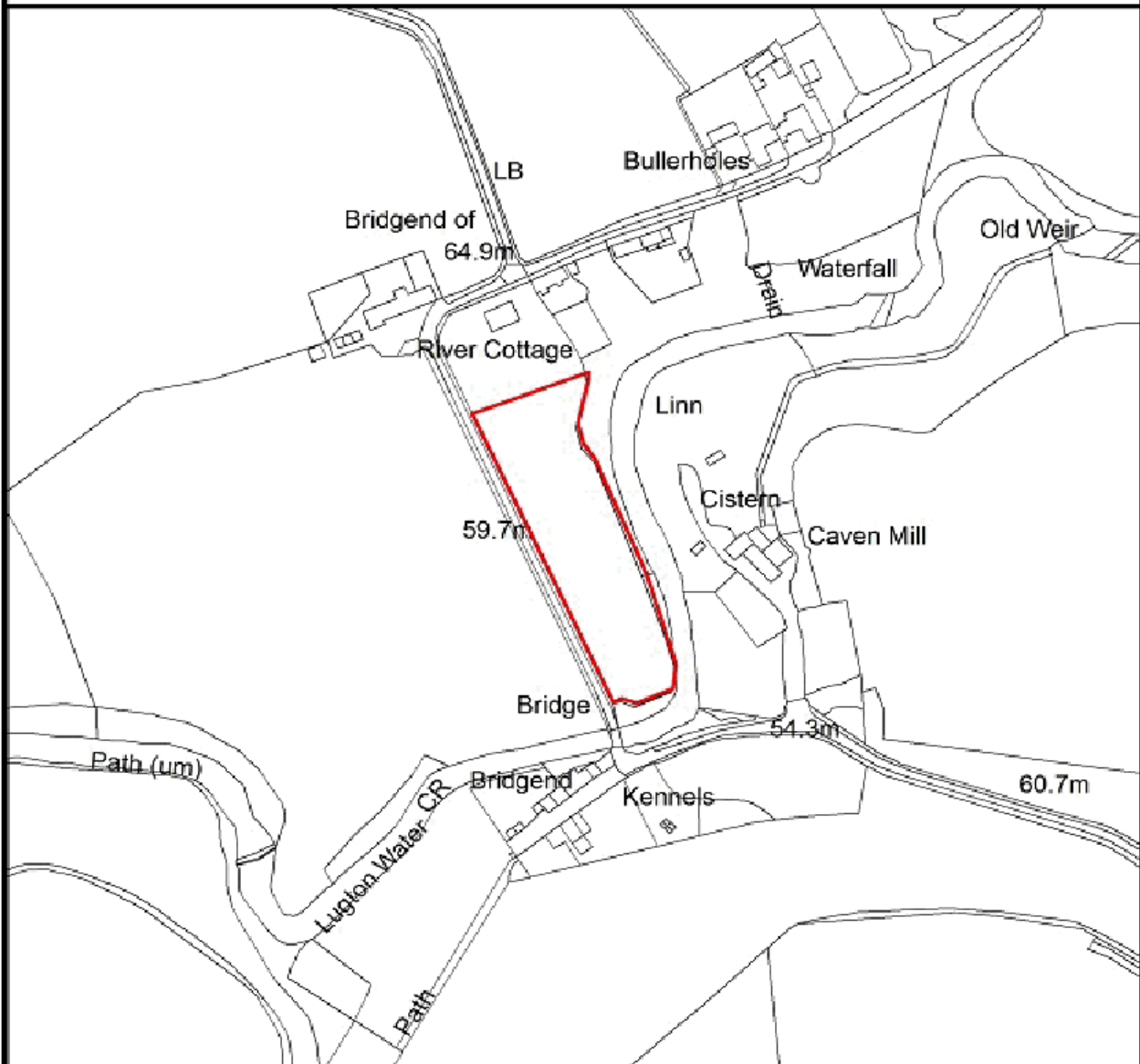
For further information please contact Iain Davies on 01294 324 320

Background Papers

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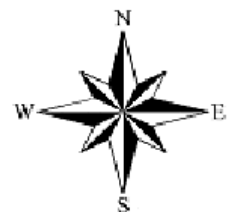
Location Plan

Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Site to South of River Cottage, Montgreenan, Kilwinning



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1:1250 SCALE



NORTH AYRSHIRE COUNCIL

Agenda Item 9

8 March 2017

Planning Committee

Title: **Tree Preservation Order: Castlewalk Plantation, Fairlie**

Purpose: To consider the designation of a Tree Preservation Order.

Recommendation: Agree to serve a Tree Preservation Order on all the trees and woodland on land within the boundary of Castlewalk Plantation (see Appendix 1).

1. Executive Summary

- 1.1 In December 2016, a request was received from a member of the public that consideration be given to the imposition of a Tree Preservation Order on an area to the east of Fairlie, comprising of Castlewalk Plantation, Fairlie Plantation and Fairlie Glen, and two smaller groupings at Glaisdale Burn (see Appendix 2).
- 1.2 Following consideration it is recommended that the Council make an Order to preserve the trees within the area outlined in the plan at Appendix 1, which is a mature woodland corridor that forms part of the Castlewalk Plantation to east of Fairlie between Keppenburn (to the north) and Fairlie Castle (to the south).

2. Background

- 2.1 Section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended) provides the Council, as Planning Authority, with the power to make provision for a Tree Preservation Order (TPO) on any tree, group of trees or woodland that have significant amenity value and/or historic or cultural significance.
- 2.2 In December 2016, a member of the public requested that consideration be given to the imposition of a Tree Preservation Order for an area to the east of Fairlie, comprising of Castlewalk Plantation, Fairlie Plantation and Fairlie Glen, and two smaller groupings at Glaisdale Burn (see Appendix 2).

2.3 In 2014, planning permission was granted for the renewal of an unexpired planning permission for the restoration and extension of Fairlie Castle to form a single dwelling house including double garage (Ref. 14/00199/PP). This proposal has been implemented and construction works are ongoing. In September 2015, planning permission was granted for the formation of a new access road and erection of 36 flats and 26 detached dwelling houses at a site to the North of Fairlie Primary School (Ref. 12/00159/PPM). The developer of the site, Dawn Homes, has commenced works and phase 1 of the development is due to complete in Autumn 2017. Dawn Homes has commenced a 12 week statutory, pre-application consultation on a proposed planning application for the development of approximately 100 dwelling houses to south of the site and to east of Castlepark Gardens, Fairlie (Ref. 16/01079/PREAPP).

2.4 The following provides an assessment of the request:

Castlewalk Plantation (Appendix 2, Area A) - The area forms an attractive green corridor, comprising mature woodland on either side of a path traversing the area and linking the historic Fairlie Castle with Keppenburn. The trees form a natural buffer providing enhanced amenity to walkers, and properties on Castle Park Drive, and the housing development. The woodland is primarily mature beech interspersed with sycamore and birch. The trees add to the landscape setting of Fairlie, visible from not only the immediate vicinity but from Clyde Muirshiel Regional Park and the A78 Trunk Road. Historic Ordnance survey maps indicate woodland in this area, meaning that the trees have historic and cultural significance, and is recognised by its designation as an ancient and semi-natural woodland. The Council's Arboricultural Officer advises that the mature beech trees are of significant value. Given their amenity value and historical significance it would be considered expedient to designate this area as a TPO.

Fairlie Plantation (Appendix 2, Area B) - The area forms part of Fairlie Plantation extending along Keppen Burn to the south and leading north, as illustrated in Appendix 2. The area falls within Clyde Muirshiel Regional Park, the Kelburn Historic Gardens and Designed Landscape, Kelburn and Fairlie Glen Local Nature Conservation Site and Special Landscape Area as defined by the Local Development Plan. The woodland contains examples of mature mixed trees not uncommon within the area. The site falls within the wider amenity, containing large areas of invasive rhododendrons and trees of limited merit. The area is not under any significant threat from future development and is protected from development by Local Development Plan designations. In addition, any substantial tree felling works would be controlled by the Forestry Commission Scotland in terms of a tree felling licence. For these reasons, it is considered necessary in either the interests of amenity or for cultural or historical significance that an Order can be supported. The area does not meet the statutory tests of Section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended) for a TPO.

Fairlie Glen (Appendix 2, Area C) - The area extends east up Fairlie Glen, from the south of Castlepark Drive. Within the first part of the site is located Fairlie Castle, which is currently being renovated. The area contains a mixture of mature and semi-mature trees many of which are self seeded and of limited value. Further up the glen the woodland is much more mature and contains an attractive band of Spruce trees on the southern bank of the Glen. The trees are of mixed health with damage having occurred from the elements or poor health. The mixture of trees and waterfalls provide an attractive setting. The glen falls within Clyde Muirshiel Regional Park, Special Landscape Area and Kelburn and Fairlie Glen Local Nature Conservation Site as defined by the Local Development Plan. Whilst it is not disputed that the glen and woodland provides a level of amenity it would not be considered expedient to designate the area as a TPO. The area is not under any significant threat from future development and is protected by Local Development Plan designations. In addition, any substantial tree felling works can be controlled by Forestry Commission Scotland through consideration of a tree felling licence. This area, therefore, does not meet the statutory tests of Section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended) for a TPO.

Two groupings at Glaisdale Burn (Appendix 2, Area D) - These two smaller grouping are located within Clyde Muirshiel Regional Park, Special Landscape Area and Kelburn and Fairlie Glen Local Nature Conservation Site as defined by the Local Development Plan. Due to their isolated and outlying position they offer limited amenity value. The trees are not of cultural or historical significance. This area, therefore, does not meet the statutory tests of Section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended) for a TPO.

3. Proposals

- 3.1 It is proposed that a Tree Preservation Order is served on the site owners in respect of all the trees and woodland within the boundary of Castlewalk Plantation (see Appendix 1) in order to protect existing trees and woodland both in the interests of amenity and their historic or cultural significance. The TPO would be effective from the date of service and would continue to be enforced until the end of six months or until the order is confirmed.
- 3.2 It is proposed to notify Dawn Homes as the developer for new housing development, which is located close to the Castlewalk Plantation. There will also be a statutory period for consultation, during which representations on the TPO can be made.

4. Implications

Financial:	The costs of serving the TPO can be met from existing budgets.
Human Resources:	N/A.
Legal:	The service of the TPO will mean that anyone wishing to lop, fell or remove a tree covered by the order will require permission from the Council, with the exception of an instance where there is an immediate danger to public safety.
Equality:	N/A.
Environmental & Sustainability:	The service of a TPO on the area of tree and woodland cover would ensure that the trees continue to provide an important contribution to the character and amenity of the local area and its nearby resident population, and protect their cultural and historical link with Fairlie.
Key Priorities:	The TPO accords with the Council Plan 2015 - 2020 priority of "protecting and enhancing the environment for future generations" by protecting trees and woodland of significant amenity value, and of historic or cultural significance.
Community Benefits:	N/A.

5. Consultation

Consultation has been undertaken with the Council's Arboricultural Officer.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference :

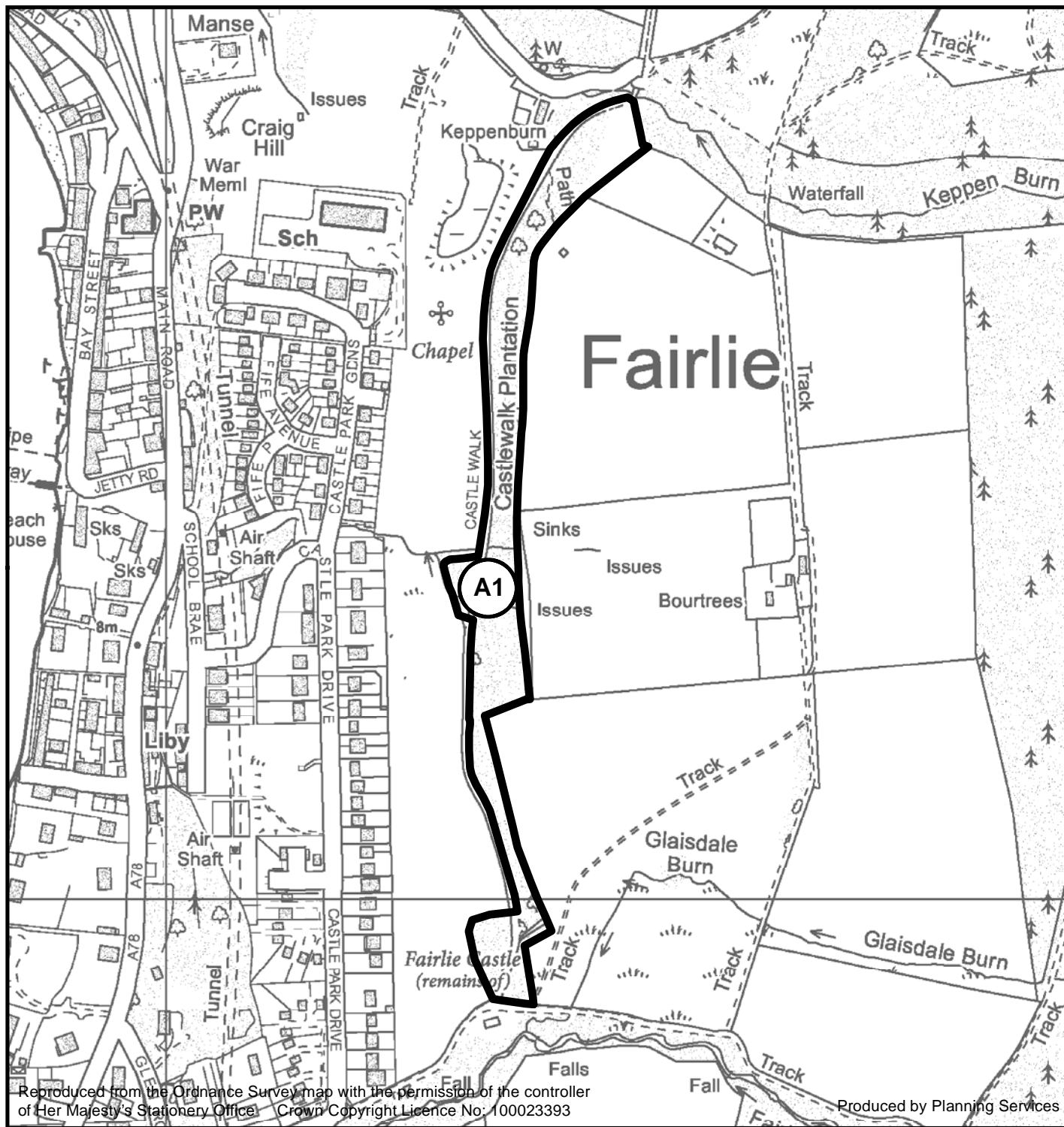
For further information please contact Andrew McNair, Planning Officer on 01294 324769

Background Papers

TREE PRESERVATION ORDER

Fairlie No.7

APPENDIX 1



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Produced by Planning Services

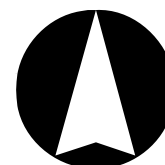
Address: Castlewalk Plantation & Fairlie
Glen, Fairlie

Grid Ref: NS 221309 655341

Area: A1 - 3.04Ha

Description: Mature Beech, Sycamore &
Birch trees

Date Confirmed



NORTH

Scale: 1:5,000

APPENDIX 2

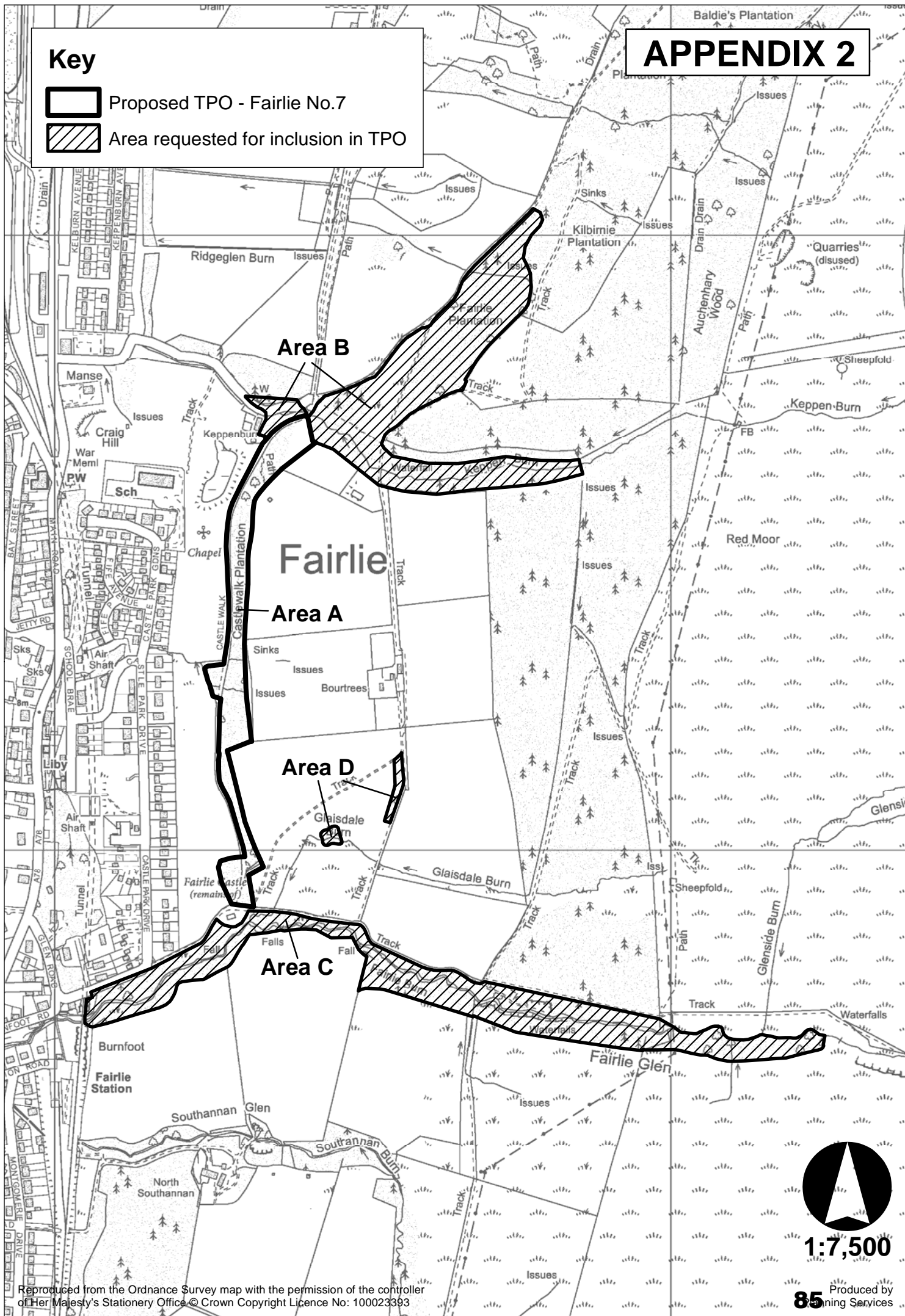
Key



Proposed TPO - Fairlie No.7



Area requested for inclusion in TPO



NORTH AYRSHIRE COUNCIL

Agenda Item 10

8 March 2017

Planning Committee

Title: Scottish Government Consultation on the High Hedges (Scotland) Act 2013

Purpose: To respond to the Call for Evidence by the Scottish Ministers on the operation of the High Hedges Act

Recommendation: Agree to the response at Appendix 1

1. Executive Summary

- 1.1 The Scottish Government's Local Government and Communities Committee on 6th February 2017 launched a call for written evidence from both individuals and organisations on how the High Hedges (Scotland) Act 2013 has worked in practice and whether it has achieved its stated objective of providing a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property. The deadline for submissions is Monday 20th March 2017.

2. Background

- 2.1 The High Hedges (Scotland) Act 2013 (see Appendix 2) came into force in April 2014 and aimed to provide a solution to the problem of high hedges which adversely affect an occupant's reasonable enjoyment of domestic property.
- 2.2 In cases where the parties have not been able to reach an amicable resolution, the Act allows the affected party to apply to the Council as an independent third party to investigate and to adjudge whether any action to reduce the height of the hedge is required. A High Hedge Notice specifying the initial and ongoing actions required can thereafter be served on the hedge owner. Where a Notice is not complied with, the Act also gives the Local Authority powers to intervene and carry out the required works itself and to recover any costs from the owner.
- 2.3 Section 32 of the Act required the Scottish Parliament to make arrangements for one of its committees or sub-committees to report on the operation of the Act within a five year review period which commenced with the Act coming into force.

2.4 The Act allows each Local Authority to set its own fee structure which should cover costs incurred and therefore be fee neutral. North Ayrshire Council fee for a High Hedge application is £382 with no concessionary fees. Applications are determined by the Senior Planning Services Manager under the Council's Scheme of Delegation

3. Proposals

3.1 The Consultation invites written responses to allow the Local Government and Communities Committee to review experiences thus far and consider any suggestions on how the Operation of the Act may be improved. A final report will then be published.

3.2 It is suggested that responses should cover six specific questions: (i) Has the definition of a high hedge as set out in the Act proved helpful?; (ii) Do you have experience of the appeals procedure set out in the Act?; (iii) Do you have any comments on the enforcement procedures under a high hedge notice?; (iv) Do you have any comments on fees and costs?; (v) Overall, are there any aspects of the Act which have had a positive or negative impact on your life?; (vi) Are there any other issues relating to the Act which you wish to bring to the attention of the Committee?

3.3 Previous applications and enquiries to the Council have been reviewed and a response covering the above points has been prepared (see Appendix 1). It is recommended that this response be submitted to the Scottish Government as the Council's response to the Call for Written Evidence.

4. Implications

Financial:	None
Human Resources:	None
Legal:	None
Equality:	None
Environmental & Sustainability:	None
Key Priorities:	The High Hedges Act contributes to the Council Plan objective of 'protecting and 'enhancing the environment for future generations'.
Community Benefits:	None

5. Consultation

None.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference :

For further information please contact Neil McAteer, Planning Officer on
01294 324316

Background Papers

1

Appendix 1

High Hedges (Scotland) Act 2013

Summary

Since the introduction of the Act in 2014, the Council has received five applications to serve a High Hedge Notice. Of these, two were returned to the applicants as not meeting the tests set in the Act of being a high hedge, and the remaining three were accepted as applications.

In two of the cases, high hedge notices were then served requiring the owners to take specified action to remedy the effect on the applicants' reasonable enjoyment of their domestic property. In the third case, the Council disagreed that the hedge caused the adverse effect claimed and no notice was therefore served.

Two of the decisions were then appealed to the Scottish Government; in one of the cases by both the hedge owner and the applicant. In both cases the Reporter upheld the Council's decisions (in one case to serve a notice and in the other, not to).

Numbers of pre-application enquiries by phone or email have not been formally recorded but have been of significant numbers. Most responses take the form of directing enquirers to the High Hedge Guidance page on the Council's website which covers the tests in the Act of what constitutes a high hedge and what evidence must support a formal application, including evidence of previous steps taken toward a resolution before the application to the Council was made.

Both notices served have been complied and the Council has not therefore been required to take any direct action or employ other enforcement action.

(i) Has the definition of a high hedge as set out in the Act proved helpful?;

The basic definition (ie. that a hedge has to be: "formed wholly or mainly by a row of two or more trees or shrubs"; "must rise to a height of more than 2 metres above ground level" and "must form a barrier to light") is quite clear. Page 11 of the accompanying guidance states that "the Act concerns hedges and is not designed to impact on woodlands or forests which as a general rule are not planted as hedges". Could the definition in the Act itself give more clarity on whether trees not initially planted or maintained as a hedge but which may have grown to take the form of a hedge (eg. Overgrown, self-seeded garden areas) fall within the scope of the Act as this seems to be a fairly common complaint?

(ii) Do you have experience of the appeals procedure set out in the Act?;

Yes. In the cases experienced, the Reporters' decision has been in line with the Council's conclusions on whether any remedial action was required, although with some differences in how the conclusions have been reached. Many Councils process high hedges cases through their Planning teams and initial cases seemed to show

inconsistency between what would normally be material considerations in planning cases and high hedges cases. Consistency has emerged through subsequent Appeal decisions that a key consideration on how cases should be considered is what constitutes 'reasonable enjoyment'. For example, in high hedge cases, a property may have been built or bought to benefit from a coastal view; it would therefore be 'reasonable' to expect that view to be maintained and this should be taken into account. In planning cases, it is long established that loss of a specific view is not a material consideration. This required an adjustment by LAs but has been consistently applied in appeal decisions.

(iii) Do you have any comments on the enforcement procedures under a high hedge notice?;

No. The powers in the Act appear sufficient but NAC has not been required to put these into action.

(iv) Do you have any comments on fees and costs?;

NAC set the application fee based on the expectation that the workload and therefore costs involved would be roughly commensurate with a planning application for a single house and this has been true in the limited applications received.

(v) Overall, are there any aspects of the Act which have had a positive or negative impact on your life?;

None.

(vi) Are there any other issues relating to the Act which you wish to bring to the attention of the Committee?

The operation of the Act has been fairly straightforward in the Council's opinion. The initial surge of interest, enquiries and applications which has now levelled off seems to indicate that the Act has been effective in resolving some long term disputes.

In terms of updates, the definition of a High Hedge could perhaps be strengthened to make it clearer that the Act only applies to a hedge row and not to woodlands, self-seeded tree areas etc. and to confirm that this determination is a matter for the Local Authority only to make.

In some cases, the canopy width of mature hedges may have as significant an effect in terms of shading as the height of the trees. Although common law would allow people to reduce trees which overhang their boundaries, would there be scope to introduce canopy width reduction as a required action in high hedge notices?



High Hedges (Scotland) Act 2013

2013 asp 6

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

£5.75



High Hedges (Scotland) Act 2013

2013 asp 6

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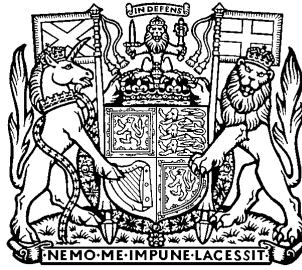
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High Hedges (Scotland) Act 2013

2013 asp 6

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 28th March 2013 and received Royal Assent on 2nd May 2013

An Act of the Scottish Parliament to make provision about hedges which interfere with the reasonable enjoyment of residential properties.

Meaning of “high hedge”

1 Meaning of “high hedge”

- (1) This Act applies in relation to a hedge (referred to in this Act as a “high hedge”) which—
 - (a) is formed wholly or mainly by a row of 2 or more trees or shrubs,
 - (b) rises to a height of more than 2 metres above ground level, and
 - (c) forms a barrier to light.
- (2) For the purposes of subsection (1)(c) a hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.
- (3) In applying this Act in relation to a high hedge no account is to be taken of the roots of a high hedge.

High hedge notices

2 Application for high hedge notice

- (1) Where subsection (2) applies, an owner or occupier of a domestic property (referred to in this Act as the “applicant”) may apply to the relevant local authority for a high hedge notice.
- (2) This subsection applies where the applicant considers that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have.

3 Pre-application requirements

- (1) Before making an application under section 2(1), the applicant must take all reasonable steps to resolve the matters in relation to the high hedge which would otherwise be the subject of the application.
- (2) In complying with the duty imposed by subsection (1) the applicant must have regard to any guidance issued by the relevant local authority under section 31(2)(a).

4 Fee for application

- (1) An application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.
- (2) An authority may fix different fees for different applications or types of application.
- (3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding an application under this Act.
- (4) A fee paid to an authority may be refunded by it in such circumstances and to such extent as it may determine.
- (5) An authority must publish information on the circumstances in which and the extent to which it may normally be considered appropriate for a fee paid to the authority to be refunded under subsection (4).
- (6) When publishing information in accordance with subsection (5), an authority must have regard to any guidance on the refund of application fees issued by the Scottish Ministers under section 31(1).

5 Dismissal of application

- (1) A relevant local authority must dismiss an application where the authority considers that—
 - (a) the applicant has not complied with the duty imposed by section 3(1), or
 - (b) the application is frivolous or vexatious.
- (2) As soon as is reasonably practicable after dismissing an application, the authority must notify the applicant of—
 - (a) its decision, and
 - (b) the reasons for its decision.

6 Consideration of application

- (1) This section applies where a relevant local authority does not dismiss an application under section 5.
- (2) The authority must give every owner and occupier of the neighbouring land—
 - (a) a copy of the application, and
 - (b) a notice informing the person to whom it is given of the matters mentioned in subsection (3).
- (3) The matters are—
 - (a) that the authority is required to make a decision under subsection (5),

- (b) that the person has a right to make representations to the authority in relation to the application before the expiry of the period of 28 days beginning with the day on which the notice is given,
 - (c) that the authority must give a copy of any such representations to the applicant,
 - (d) that the authority has power to authorise entry to the neighbouring land under section 18(1), and
 - (e) that it is an offence under section 21 intentionally to prevent or obstruct a person authorised to enter land from acting in accordance with this Act.
- (4) If any representations are received by the authority during the period mentioned in subsection (3)(b), the authority must—
- (a) give the applicant a copy of those representations, and
 - (b) take into account those representations in making its decision under subsection (5).
- (5) After the end of the period of 28 days referred to in subsection (3)(b), the authority must decide—
- (a) whether the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and
 - (b) if so, whether any action to remedy the adverse effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge (any action that is to be taken being referred to in this Act as the “initial action”).
- (6) If the authority decides under subsection (5)(b) that initial action should be taken, the authority must—
- (a) specify a reasonable period of time within which the initial action is to be taken (the “compliance period”), and
 - (b) decide whether any action to prevent the recurrence of the adverse effect should be taken by the owner in relation to the high hedge at times following the end of the compliance period while the hedge remains on the land (the “preventative action”).
- (7) In making a decision under subsection (5)(b), the authority must have regard to all the circumstances of the case, including in particular—
- (a) the effect of the high hedge on the amenity of the area, and
 - (b) whether the high hedge is of cultural or historical significance.
- (8) Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park, the authority must—
- (a) before making a decision under subsection (5)(b), consult the National Park authority for the National Park, and
 - (b) in making its decision under that subsection, take into account any representations made by that National Park authority.

7 Notice of decision where no action to be taken

- (1) This section applies where—

- (a) the relevant local authority decides under section 6(5)(a) that there is no adverse effect, or
 - (b) the relevant local authority decides under section 6(5)(b) that no action should be taken in relation to the high hedge.
- (2) As soon as is reasonably practicable after making its decision the authority must notify the persons mentioned in subsection (3) of—
- (a) the making of the decision,
 - (b) the reasons for it,
 - (c) the right to appeal under section 12(1).
- (3) Those persons are—
- (a) the applicant, and
 - (b) every owner and occupier of the neighbouring land.
- (4) Where the high hedge which is the subject of the application is situated on land which has been designated as a National Park and subsection (1)(b) applies, the authority must notify the National Park authority for the National Park of its decision.

8 High hedge notice

- (1) Where a relevant local authority decides under section 6(5)(b) that action should be taken, it must issue a high hedge notice as soon as is reasonably practicable after making that decision.
- (2) A high hedge notice is a notice—
- (a) identifying the high hedge which is the subject of the notice and the neighbouring land,
 - (b) identifying the domestic property in relation to which the authority has decided under section 6(5)(a) that an adverse effect exists,
 - (c) stating the date on which the notice is to take effect,
 - (d) stating the initial action that is to be taken by the owner of the neighbouring land and the compliance period for that action,
 - (e) stating any preventative action that is to be taken by the owner of the neighbouring land,
 - (f) informing the recipient that there is a right to appeal under section 12(2)(a),
 - (g) informing the recipient that the authority is entitled to authorise a person to take action under section 22 where there is a failure to comply with the notice and that the authority may recover the expenses of that action, and
 - (h) informing the recipient that it is an offence under section 24 intentionally to prevent or obstruct a person authorised to take action from acting in accordance with this Act.
- (3) The date referred to in subsection (2)(c) must be at least 28 days after the date on which the notice is given.
- (4) The authority must—
- (a) give the persons mentioned in subsection (5) a copy of the high hedge notice, and

- (b) notify those persons of the reasons for its decision.
- (5) Those persons are—
 - (a) the applicant, and
 - (b) every owner and occupier of the neighbouring land.
- (6) Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must give the National Park authority for the National Park a copy of the high hedge notice.

9 Effect of high hedge notice

A high hedge notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice.

10 High hedge notice: withdrawal and variation

- (1) After a relevant local authority issues a high hedge notice, it may—
 - (a) withdraw the notice, or
 - (b) vary the notice.
- (2) Before withdrawing or varying a notice under subsection (1), the authority must have regard to all the circumstances of the case, including in particular—
 - (a) whether, after the proposed withdrawal or variation, the height of the high hedge would adversely affect the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and
 - (b) the matters mentioned in section 6(7).
- (3) Where an authority withdraws a high hedge notice under subsection (1)(a), it must give the persons mentioned in subsection (4) notice of—
 - (a) the withdrawal,
 - (b) the reasons for the withdrawal, and
 - (c) the right to appeal under section 12(2)(b).
- (4) Those persons are—
 - (a) every owner and occupier of the domestic property identified in the notice, and
 - (b) every owner and occupier of the neighbouring land.
- (5) The withdrawal of a high hedge notice under subsection (1)(a) does not of itself prevent the issuing of a further high hedge notice in respect of the same hedge.
- (6) Where an authority varies a high hedge notice under subsection (1)(b), it must—
 - (a) issue a revised high hedge notice stating the date on which the revised notice takes effect,
 - (b) give a copy of the high hedge notice to the persons mentioned in subsection (4),
 - (c) notify those persons of the reasons for its decision, and
 - (d) notify those persons of the right to appeal under section 12(2)(b).
- (7) The date referred to in subsection (6)(a) must be at least 28 days after the date on which the revised notice is given.

- (8) Where the high hedge to which a high hedge notice relates is situated on land which has been designated as a National Park, the authority must—
 - (a) where it withdraws the high hedge notice under subsection (1)(a), give the National Park authority for the National Park notice of the withdrawal,
 - (b) where it varies the high hedge notice under subsection (1)(b), give the National Park authority for the National Park a copy of the revised notice.
- (9) Subsections (1) to (8) apply in relation to a revised high hedge notice issued by the authority under subsection (6)(a) as they apply in relation to a high hedge notice.

11 Tree preservation orders

- (1) Subsection (2) applies where a high hedge notice issued by a relevant local authority, relates to a high hedge which—
 - (a) includes a tree which is subject to a tree preservation order, or
 - (b) forms part of a group of trees or woodland which is subject to a tree preservation order.
- (2) The tree preservation order has no effect in relation to the initial action or any preventative action specified in the high hedge notice.

Appeals

12 Appeals

- (1) The applicant may appeal to the Scottish Ministers against—
 - (a) a decision by a relevant local authority under section 6(5)(a) that there is no adverse effect,
 - (b) a decision by a relevant local authority under section 6(5)(b) that no action should be taken in relation to the high hedge.
- (2) A person mentioned in subsection (3) may appeal to the Scottish Ministers against—
 - (a) the issuing by a relevant local authority of a high hedge notice, or
 - (b) the withdrawal or variation of a notice by a relevant local authority under section 10(1).
- (3) Those persons are—
 - (a) every owner and occupier of the domestic property identified in the high hedge notice, and
 - (b) every owner and occupier of the neighbouring land.
- (4) An appeal must be made before the end of the period of 28 days beginning with—
 - (a) in the case of an appeal under subsection (1), the date of the notification given by the authority under section 7,
 - (b) in the case of an appeal under subsection (2)(a), the date of the notification given by the authority under section 8(4),
 - (c) in the case of an appeal under subsection (2)(b), the date of the notification given by the authority under section 10(3) or (6).

13 Effect of appeal

- (1) This section applies during the period beginning with the making of an appeal and ending with its final determination, withdrawal or abandonment.
- (2) Where the appeal is made under section 12(2)(a), the high hedge notice has no effect.
- (3) Where the appeal is made under section 12(2)(b)—
 - (a) the high hedge notice has no effect, and
 - (b) the withdrawal or variation has no effect.

14 Determination of appeal

- (1) Where an appeal is made under section 12(1), the Scottish Ministers may—
 - (a) confirm the decision to which the appeal relates, or
 - (b) quash the decision of the authority under section 6(5)(a) or (b), with or without issuing a high hedge notice.
- (2) Where an appeal is made under section 12(2), the Scottish Ministers may—
 - (a) confirm the high hedge notice or decision to which the appeal relates,
 - (b) quash the high hedge notice or decision, or
 - (c) vary the high hedge notice issued under section 8(1) or, as the case may be, 10(6)(a).
- (3) A high hedge notice issued or varied under this section is to be treated as if issued or varied by the relevant local authority.

15 Person appointed to determine appeal

- (1) An appeal may be determined by a person appointed by the Scottish Ministers for that purpose instead of by the Scottish Ministers.
- (2) An appointed person has, in relation to the appeal, the same powers and duties as the Scottish Ministers have under this Act.
- (3) Where an appeal is determined by a person appointed by the Scottish Ministers, the decision is to be treated as if it were a decision of the Scottish Ministers.

16 Notice of determination

- (1) As soon as is reasonably practicable after determining an appeal the Scottish Ministers must—
 - (a) where they have made a determination in accordance with section 14(1)(b) and are to issue a high hedge notice—
 - (i) issue the high hedge notice,
 - (ii) give a copy of the high hedge notice to the persons mentioned in subsection (2), and
 - (iii) notify those persons of the reasons for their decision,
 - (b) where they have made a determination in accordance with section 14(2)(c)—
 - (i) issue a revised high hedge notice,

- (ii) give a copy of the revised notice to the persons mentioned in subsection (2), and
 - (iii) notify those persons of the reasons for their decision,
 - (c) where they have made any other determination, notify the persons mentioned in subsection (2) of their decision and the reasons for their decision.
- (2) Those persons are—
- (a) the relevant local authority,
 - (b) every owner and occupier of the domestic property identified in the high hedge notice or, as the case may be, the revised high hedge notice, and
 - (c) every owner and occupier of the neighbouring land.

17 Period for taking initial action following appeal

- (1) This section applies where an appeal under section 12(2) is—
 - (a) determined, or
 - (b) withdrawn or abandoned by the person making the appeal.
- (2) The compliance period for the initial action specified in the high hedge notice or revised high hedge notice is to be taken as beginning on—
 - (a) the day on which the appeal is determined, or
 - (b) such later day as is specified in the revised notice issued under section 16(1)(b).
- (3) Where the appeal is withdrawn or abandoned, the compliance period for the initial action specified in the high hedge notice is to be taken as beginning on the day on which the appeal is withdrawn or abandoned.

Powers of entry

18 Power to enter neighbouring land

- (1) A person authorised by a relevant local authority may enter the neighbouring land for the purpose of—
 - (a) obtaining information required by that authority to carry out the authority's functions under section 6 or 10,
 - (b) determining whether initial action or preventative action set out in a high hedge notice has been carried out.
- (2) A person may enter the neighbouring land for the purpose of obtaining information required to determine an appeal under section 14 if—
 - (a) the person is authorised to do so by the Scottish Ministers,
 - (b) the person is appointed under section 15(1), or
 - (c) the person is authorised to do so by a person appointed under section 15(1).
- (3) A person authorised to enter land by virtue of this section may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

19 Supplementary powers

- (1) A person authorised to enter land by virtue of section 18 (referred to in this section as an “authorised person”) may—
 - (a) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to fulfil the purpose for which entry is taken,
 - (b) take samples of any trees or shrubs that appear to the authorised person to form part of the high hedge,
 - (c) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.
- (2) A person mentioned in subsection (3) must give every owner and occupier of the land at least 14 days’ notice of the intended entry by the authorised person.
- (3) Those persons are—
 - (a) in the case of a person authorised by virtue of section 18(1), the relevant local authority,
 - (b) in the case of a person authorised by virtue of section 18(2)(a), the Scottish Ministers,
 - (c) in any other case, the person appointed under section 15(1).
- (4) An authorised person must on request produce written evidence of the authorisation.
- (5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

20 Warrant authorising entry

- (1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 18 to enter the land and if necessary to use reasonable force in doing so.
- (2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—
 - (a) that there are reasonable grounds for entering the land concerned,
 - (b) that—
 - (i) entry to the land has been refused,
 - (ii) such a refusal is reasonably expected, or
 - (iii) the land is unoccupied, and
 - (c) that the relevant local authority has or, as the case may be, the Scottish Ministers have complied with the notice requirements imposed by section 19(2).
- (3) A warrant must not authorise—
 - (a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,
 - (b) the use of force against an individual.
- (4) A warrant expires—

- (a) when it is no longer required for the purpose for which it is granted, or
- (b) on the expiry of such period as may be specified in it.

21 Offence

- (1) It is an offence intentionally to prevent or obstruct a person authorised to enter land under section 18 from doing anything which that person is authorised to do by virtue of this Act.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Local authority enforcement action

22 Power to take action

- (1) A person authorised by a relevant local authority (referred to in this section as an “authorised person”) may—
 - (a) enter the neighbouring land,
 - (b) take any initial action or preventative action which—
 - (i) is required to be taken by a high hedge notice, and
 - (ii) has not been taken in accordance with the high hedge notice,
 - (c) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the authorised person to take the required action, and
 - (d) do anything else which is reasonably required for the purpose of taking the required action.
- (2) The relevant local authority must give every owner and occupier of the neighbouring land at least 14 days’ notice of the intended entry by the authorised person.
- (3) An authorised person may enter a building which is for the time being occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.
- (4) An authorised person must on request produce written evidence of the authorisation.
- (5) On leaving neighbouring land which is unoccupied or from which all of the occupiers are temporarily absent, an authorised person must ensure that the land is as effectively secured against unauthorised entry as it was when the person entered it.

23 Warrant authorising entry by local authority

- (1) The sheriff or a justice of the peace may by warrant authorise any person entitled to enter the neighbouring land under section 22 to enter the land and if necessary to use reasonable force in doing so.
- (2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—
 - (a) that there are reasonable grounds for entering the land concerned,
 - (b) that—
 - (i) entry to the land has been refused,

- (ii) such a refusal is reasonably expected, or
 - (iii) the land is unoccupied, and
- (c) that the relevant local authority has complied with the notice requirements imposed by section 22(2).
- (3) A warrant must not authorise—
 - (a) entry to a building which is for the time being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge,
 - (b) the use of force against an individual.
- (4) A warrant expires—
 - (a) when it is no longer required for the purpose for which it is granted, or
 - (b) on the expiry of such period as may be specified in it.

24 Local authority action: offence

- (1) It is an offence intentionally to prevent or obstruct a person authorised by a relevant local authority under section 22 from doing anything which that person is authorised to do by virtue of this Act.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Expenses of enforcement action

25 Recovery of expenses from owner of land

- (1) A relevant local authority may recover from any person who is an owner of the neighbouring land—
 - (a) any expenses reasonably incurred by the authority in taking action under section 22,
 - (b) any administrative expenses (including registration fees) reasonably incurred by it in connection with recovering those expenses, and
 - (c) interest, at such reasonable rate as it may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.
- (2) The date specified under subsection (1)(c) must be after the date on which a demand for payment is served by the authority.
- (3) Each owner of the neighbouring land is jointly and severally liable for the expenses and interest mentioned in this section.

26 Notice of liability for expense of local authority action

- (1) A relevant local authority may apply to register a notice (a “notice of liability for expenses”) specifying the matters mentioned in subsection (2).
- (2) The matters are—
 - (a) the amount of the expenses payable in accordance with section 25(1)(a) and (b),
 - (b) whether interest is payable under section 25(1)(c),
 - (c) the action taken under section 22 to which those expenses relate,

- (d) a description of the neighbouring land in respect of which an owner is liable under section 25,
 - (e) the effect of section 27 in relation to a new owner of that land, and
 - (f) the name and address of the local authority.
- (3) For the purposes of subsection (2)(d) the description must—
- (a) in the case of land registered in the Land Register of Scotland, include the title number of the land,
 - (b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.

27 Recovery of expenses from new owner of land

- (1) Subsection (2) applies where—
- (a) a notice of liability for expenses is registered in relation to the land, and
 - (b) the notice was registered at least 14 days before the date on which a person (the “new owner”) acquires right to the neighbouring land.
- (2) The new owner is severally liable with any former owner of the neighbouring land for any expenses and interest for which the former owner is liable under section 25(1).

28 Continuing liability of former owner

- (1) An owner of the neighbouring land who is liable for expenses and interest under section 25 does not, by virtue only of ceasing to be such an owner, cease to be liable for the expenses and interest.
- (2) Where a new owner pays any expenses and interest for which a former owner of the land is liable, the new owner may recover the amount so paid from the former owner.
- (3) A person who is entitled to recover an amount under subsection (2) does not, by virtue only of ceasing to be the owner of the land, cease to be entitled to recover that amount.

29 Notice of discharge

- (1) This section applies where liability for expenses and interest to which a registered notice of liability for expenses relates has been discharged.
- (2) The relevant local authority must apply to register a notice (a “notice of discharge”) specifying the matters mentioned in subsection (3).
- (3) The matters are—
- (a) the date of registration or recording of the notice of liability for expenses to which the notice of discharge relates,
 - (b) the action taken under section 22 to which that notice of liability relates,
 - (c) a description of the neighbouring land in respect of which an owner was liable under section 25,
 - (d) that the liability for the expenses and interest has been discharged,
 - (e) the name and address of the local authority.

- (4) For the purposes of subsection (3)(c) the description must—
 - (a) in the case of land registered in the Land Register of Scotland, include the title number of the land,
 - (b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land by reference to that deed.
- (5) On registration, the notice of discharge discharges the notice of liability for expenses to which it relates.

30 Receipt of notices by the Keeper

- (1) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in a notice of a type mentioned in subsection (2) which is submitted for registration is accurate.
- (2) The notices are—
 - (a) a notice of liability for expenses,
 - (b) a notice of discharge.

General

31 Guidance

- (1) The Scottish Ministers may, after consulting such persons as they consider appropriate, issue guidance about this Act.
- (2) A local authority may, after consulting such persons as the authority considers appropriate, issue guidance on—
 - (a) the duty imposed by section 3(1),
 - (b) any other provision of this Act.
- (3) A local authority must have regard to any guidance issued under subsection (1) when—
 - (a) issuing guidance under subsection (2),
 - (b) carrying out its functions under this Act.

32 Report on operation of Act

- (1) The Scottish Parliament must make arrangements for one of its committees or sub-committees to report to the Scottish Parliament on the operation of this Act during the review period.
- (2) In this section, the “review period” means the period—
 - (a) beginning on the day on which section 2 comes into force, and
 - (b) ending 5 years after that day or on such earlier date as may be determined by the committee or sub-committee making the report under subsection (1).
- (3) A report under subsection (1)—
 - (a) may be made in such form and manner as the committee or sub-committee considers appropriate, but
 - (b) must be made no later than 18 months after the end of the review period.

- (4) The Scottish Parliament must publish a report made under subsection (1).

33 Service of documents

- (1) If, having made reasonable inquiries, a person is unable to ascertain the name or address of a person to whom a notice relating to land is to be given under this Act, the notice may be given by—
- (a) addressing it to the person concerned by name or by a description of the person's interest in the land, and
 - (b) delivering it by—
 - (i) leaving it in the hands of a person who is or appears to be resident on the land or employed on the land, or
 - (ii) fixing it to a building or object on, or to a conspicuous part of, the land (or, where that is not practicable, to a building or object near that land).
- (2) Where a document is delivered as mentioned in subsection (1)(b)(ii) it is to be taken to have been given on the day on which it is fixed on or near the building, object or land, unless the contrary is shown.

34 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “applicant” has the meaning given by section 2(1),
- “compliance period” has the meaning given by section 6(6)(a),
- “domestic property” means—
- (a) any part of a building in Scotland which is occupied or intended to be occupied as a separate dwelling, and
 - (b) a yard, garden, garage or outhouse in Scotland which belongs to such a building or is usually enjoyed with it,
- “high hedge” has the meaning given by section 1,
- “high hedge notice” has the meaning given by section 8(2),
- “initial action” has the meaning given by section 6(5)(b),
- “neighbouring land”, in relation to a high hedge, means the land on which the high hedge is situated,
- “new owner” has the meaning given by section 27(1),
- “notice of discharge” has the meaning given by section 29,
- “notice of liability for expenses” has the meaning given by section 26,
- “office-holder in the Scottish Administration” is to be construed in accordance with section 126(7) of the Scotland Act 1998 (c.46),
- “owner” in relation to any property, means a person who has right to the property whether or not that person has completed title; but if, in relation to the property (or, if the property is held *pro indiviso*, in relation to any *pro indiviso* share in it) more than one person comes within that description of owner, then “owner” means such person as most recently acquired such right,

“preventative action” has the meaning given by section 6(6)(b),

“register”, in relation to a notice of liability for expenses and a notice of discharge, means register the information contained in the notice in question in the Land Register of Scotland or, as the case may be, record the notice in question in the General Register of Sasines; and “registered” and other related expressions are to be construed accordingly,

“relevant local authority” means the local authority in whose area the high hedge is situated,

“tree preservation order” has the meaning given by section 160(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

“vary”, in relation to a high hedge notice, means—

- (a) remove initial action or preventative action from the notice,
 - (b) amend initial action, the compliance period or preventative action in the notice,
 - (c) add further initial action (with a compliance period) or preventative action to the notice,
 - (d) correct a defect, error or misdescription in the notice.
- (2) References in this Act to a high hedge include references to part of a high hedge.
 - (3) References in this Act to enjoyment of domestic property include references to enjoyment of part of the property.
 - (4) Where domestic property is for the time being unoccupied, references in this Act to the reasonable enjoyment of that property are to be read as if they were references to the reasonable enjoyment of an occupant of the property if the property were occupied.

35 Power to modify meaning of “high hedge”

- (1) The Scottish Ministers may by regulations modify the meaning of “high hedge” for the time being in section 1 by—
 - (a) adding a type of tree or shrub to, or removing a type of tree or shrub from, section 1(1)(a),
 - (b) increasing or reducing the height above ground level specified in section 1(1)(b) and (2),
 - (c) modifying or adding to the effect of a hedge specified in section 1(1)(c).
- (2) Regulations under this section may—
 - (a) make different provision for different cases,
 - (b) include such supplementary, incidental, consequential, transitory or transitional provision or savings as the Scottish Ministers consider appropriate,
 - (c) modify any enactment (including any other provision of this Act).
- (3) Regulations under this section are subject to the affirmative procedure.

36 Ancillary provision

- (1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under this section may modify this or any other enactment.
- (3) An order under this section containing provision which adds to, replaces or omits any part of the text of an Act, is subject to the affirmative procedure.
- (4) Otherwise an order under this section is subject to the negative procedure.

37 Crown application

- (1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (2) Despite subsection (1), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.
- (3) The powers conferred by sections 18, 19 and 22 are exercisable in relation to Crown land only with the consent of the appropriate authority.
- (4) For the purposes of subsection (3), land is “Crown land” if an interest in the land—
 - (a) belongs to Her Majesty in right of the Crown or in right of Her private estates,
 - (b) belongs to an office-holder in the Scottish Administration or to a Government department,
 - (c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department.
- (5) In subsection (3) “appropriate authority” means—
 - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners,
 - (b) in the case of any other land belonging to Her Majesty in right of the Crown, the office-holder in the Scottish Administration or, as the case may be, Government department having the management of the land,
 - (c) in the case of land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
 - (d) in the case of land belonging to an office-holder in the Scottish Administration or to a Government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a Government department, the office-holder or Government department.
- (6) Any reference in this section to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).
- (7) If a dispute arises in relation to the meaning of “appropriate authority” in the case of any land—
 - (a) it is for the Scottish Ministers to determine the appropriate authority, and
 - (b) the Scottish Ministers’ decision is final.

- (8) In this section “Government department” means a department of the United Kingdom Government.

38 Commencement

- (1) This section and sections 34, 36 and 39 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may contain transitory or transitional provision or savings.

39 Short title

The short title of this Act is the High Hedges (Scotland) Act 2013.

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NORTH AYRSHIRE COUNCIL

Agenda Item 11

8 March 2017

Planning Committee

Title: **Scottish Government Consultation Papers:
Unconventional Oil and Gas, and
Fees for Monitoring Surface Coal Mines**

Purpose: To (1) consider the consultation papers and (2) support the introduction of fees for monitoring surface coal mines and recommend their introduction to other mineral sites.

Recommendation: Agree to support the introduction of fees for monitoring surface coal mines and request the introduction of such fees for other mineral sites.

1. Executive Summary

- 1.1 The Scottish Government has issued consultation papers on Unconventional Oil and Gas (see Appendix 1) and Fees for Monitoring Surface Coal Mines (see Appendix 2).
- 1.2 The consultation on Unconventional Oil and Gas seeks views on the evidence regarding the extraction of shale oil and gas by unconventional means such as through hydraulic fracturing ('fracking'), or coal bed methane. Following the consultation period a recommendation on the future of unconventional oil and gas will be made to the Scottish Parliament on the future of such development.
- 1.3 The consultation on Fees for Monitoring Surface Coal Mines proposes the introduction of fees, paid by the operator, for monitoring of surface coal mining sites. The fees would be paid per visit made by the Planning Authority, up to 8 a year, in order to check compliance with planning conditions. There are currently not any surface coal mining sites within North Ayrshire.

2. Background

- 2.1 The consultation on Unconventional Oil and Gas identifies the most likely areas for extraction of unconventional oil and gas in Scotland, an area known as the Midland Valley, covering parts of Lanarkshire, Falkirk, Fife and the Lothians. This area is the site of Scotland's most notable shale oil and gas deposits and many coal deposits. Therefore any unconventional extraction would likely occur within these areas. The Consultation Paper states that only around 2% of the known deposits are likely to be commercially viable for production.

- 2.2 The consultation seeks response to specific questions including; What are your views on the potential social, community and health impacts of an unconventional oil and gas industry in Scotland?; what are your views on the community benefit schemes that could apply, were an industry to be developed?; what are your views on the potential impact on Scotland's economy and manufacturing sector? and; what are your views on the potential role of unconventional oil and gas in Scotland's energy mix?. It is not considered that any of the questions have a direct impact on the Council, as Planning Authority. The Council area has not been identified by the British Geological Survey as having geological potential for unconventional gas and oil extraction. A point acknowledged in the Monitoring Statement for the Local Development Plan 2.
- 2.3 Should unconventional oil and gas extraction be permitted in the future, the Council, as Planning Authority, would be expected to consider planning applications for all surface works, which would include the design, construction, operation, maintenance and decommissioning. These aspects would be similar to the considerations the Council, as Planning Authority, make in relation to other energy developments.
- 2.4 The consultation on Fees for Monitoring Surface Coal Mines seeks views on the Scottish Government's proposal to enable planning authorities to charge operators for undertaking monitoring of surface coal mining permissions, including planning conditions; legal agreements and restoration financial guarantees. The consultation follows a previous consultation and the work of the Scottish Government's Opencast Coal Task Force, set up in response to the liquidation of major opencast coal operators. The previous consultation recognised that mineral planning permissions are unique in that they are implemented progressively as minerals are extracted.
- 2.5 It is proposed to introduce regulations to require payment from an operator of surface coal mining site, following a site visit by the Planning Authority, which would require a payment of £500 for an active site and £250 for an inactive site. The payment would be made within 30 days of receipt of a monitoring report. The Planning Authority must issue such a report within 10 days of a visit. A maximum of 8 visits per year would be permitted for active sites and 1 visit per year for inactive sites. Surface coal mining sites would be defined as land to which a surface coal mining permission relates. A surface coal mining permission would be defined as planning permission for development consisting of the winning and working of coal and associated minerals, including the depositing of mineral waste and the restoration and re-establishment of a beneficial after use.

- 2.6 The consultation on Fees for Monitoring Surface Coal Mines seeks response to specific questions regarding; the definition of a site; the level of proposed fee; and the time limit for issuing a report. Further responses are sought on specific questions relating to the guidance for issues such as monitoring and invoicing.
- 2.7 As stated above, North Ayrshire does not currently have any sites which meet the proposed definition, or indeed any sites for which coal is permitted to be extracted. However, there are currently 17 sites within North Ayrshire for which mineral extraction has been permitted/was formerly permitted and/or for which restoration is to be undertaken. Many of these sites have permissions containing conditions requiring ongoing compliance.

3. Proposals

- 3.1 That the consultation on Unconventional Oil and Gas and the implications for the Council, as Planning Authority, be noted.
- 3.2 That the consultation on Fees for Monitoring Surface Coal Mines be noted. That the Council, as Planning Authority, respond broadly supporting the proposals and requesting that consideration be given to the introduction of similar monitoring fees for other mineral sites.

4. Implications

Financial:	N/A
Human Resources:	N/A
Legal:	N/A
Equality:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	N/A
Community Benefits:	N/A

5. Consultation

5.1 None



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference : ID1

For further information please contact Iain Davies on 01294 324 320

Background Papers

Scottish Government Consultation Paper *Unconventional Oil and Gas*
January 2017

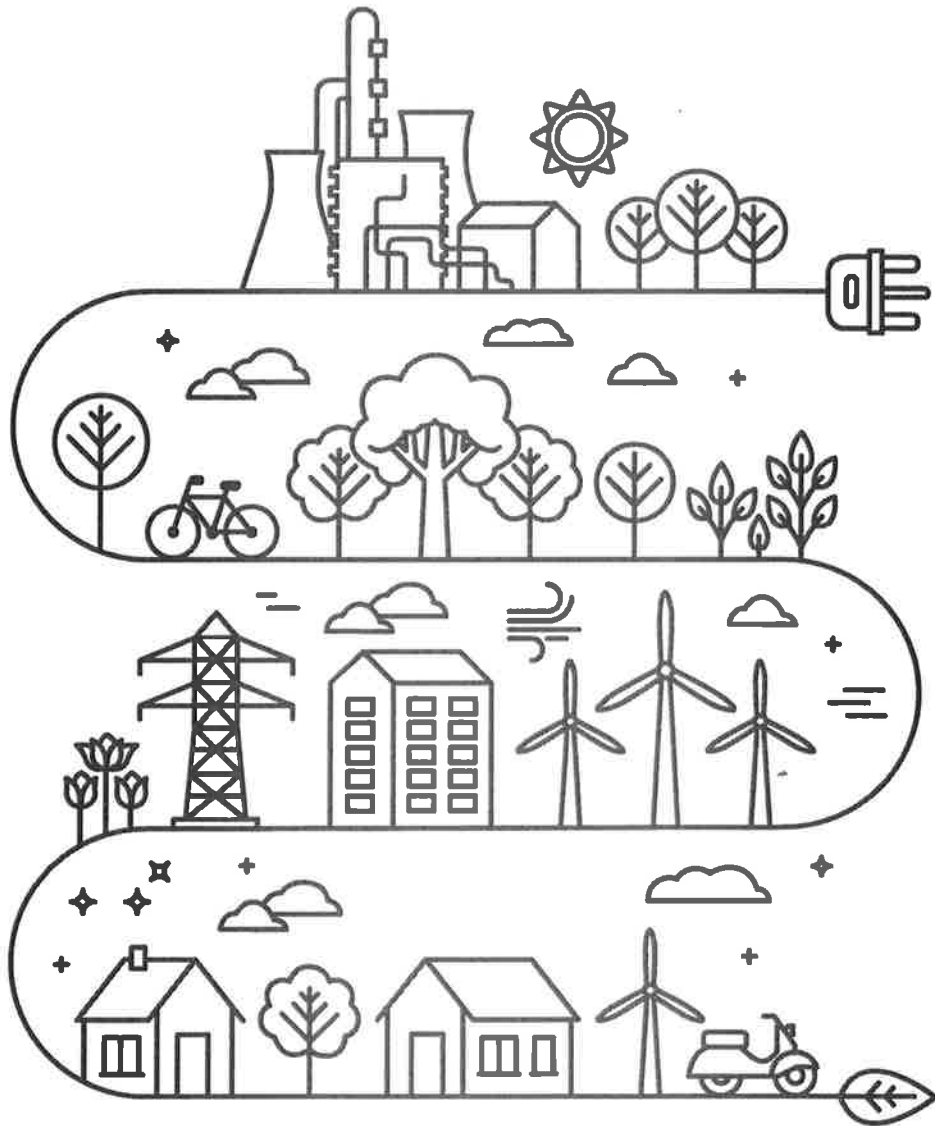
Scottish Government Consultation Paper *Fees for Monitoring Surface Coal*
Mines January 2017

North Ayrshire Council, *Monitoring Statement for LDP2* January 2017

British Geological Survey, Midland Valley of Scotland survey

Talking “Fracking”

A Consultation on Unconventional Oil and Gas



Talking “Fracking”

A Consultation on

Unconventional Oil and Gas

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Ministerial foreword



PAUL WHEELHOUSE MSP
Minister for Business, Innovation and Energy

The future of unconventional oil and gas in Scotland has proven both complex and controversial. It is also an issue that has stimulated intense debate, motivated by deeply held and sincere views on all sides. Now we want to understand your views.

The Scottish Government's position is to take a cautious, evidence-led approach while we gather and consider evidence. In January 2015, the Scottish Government put in place a moratorium on unconventional oil and gas development in Scotland, which prevents hydraulic fracturing for shale oil and gas, and coal bed methane extraction taking place while the Scottish Government has investigated evidence on potential impacts. We also ensured that no further unconventional oil and gas licences were issued by the UK Government for sites in Scotland.

Most of Scotland's unconventional oil and gas deposits occur in and around former coalfields and oil shale fields in Scotland's central belt, which contains some of the most densely populated areas of the country, as well as in the area around Canonbie, Dumfriesshire.

As an advanced economy, Scotland needs to ensure it has access to safe, clean, reliable and affordable energy to underpin our economic competitiveness and to contribute to the wider wellbeing of our society. As a responsible, progressive nation, Scotland must also continue to demonstrate its strong leadership on climate change; an issue in which everyone across Scotland has an interest and on which there is a strong consensus across civic Scotland and the political spectrum. This is why it is vitally important that we not only consult local communities in the central belt and Dumfriesshire, but that we give communities, business and interest groups from across Scotland an opportunity to put

their views across, given the potential for the generation of any new source of emissions to impact upon Scotland's transition to a low carbon economic model.

To establish a comprehensive evidence base on which to consider the future of unconventional oil and gas in Scotland, in 2013 the Scottish Government asked an Independent Expert Scientific Panel to examine unconventional oil and gas. When the Panel reported in July 2014, they identified a number of key gaps in the evidence base and so, to address these gaps, we commissioned a suite of expert reports to examine specific issues in more detail, and these key studies were published in November 2016.

Throughout this process we have sought to present impartial, independent information on unconventional oil and gas in order to encourage informed dialogue and debate.

Your view is important and so this consultation invites your participation in determining the future of unconventional oil and gas in Scotland. The consultation does not set out or advocate a preferred Scottish Government position or policy. Instead, we want to create space for dialogue and allow different perspectives to come forward.

The Scottish Government has a very important decision to make in determining the future of unconventional oil and gas in Scotland. Once the consultation closes and the responses have been independently analysed, we will then consider the full range of evidence, and make our recommendation. In doing so, we will give careful consideration to the extraction methods for both shale oil and gas, and coal bed methane.

We will then ask the Scottish Parliament to vote on our recommendation, and we will come to a final decision by the end of 2017 on whether or not unconventional oil and gas has a role in Scotland's energy mix.

Definitions

BARREL	A unit of volume measurement used for oil and its products.
BOREHOLE	A hole drilled in to the earth. Boreholes can be used to remove core samples of rock for geologic analysis. A borehole that is used to extract oil or gas or water is sometimes called a well.
CARBON CAPTURE AND STORAGE (CCS)	Carbon capture and storage is a technology that can capture the carbon dioxide emissions produced from the use of fossil fuels, preventing the carbon dioxide from entering the atmosphere.
COAL BED METHANE	Coal bed methane is considered to be an unconventional source of gas because the gas is absorbed in the coal rather than being held in pore spaces.
CONVENTIONAL OIL AND GAS	Oil and gas that is recovered by drilling a well in porous rock, with the oil or gas flowing out under its own pressure.
DECOMMISSIONING	The process to remove all the equipment used for production of unconventional oil and gas and return the site to its original condition and use.
DRILLING PAD	A hard standing area for development of drilling wells and production of gas and oil.
DRILLING RIG	The equipment used to drill holes into the earth called boreholes and wells.
ETHYLENE CRACKER	A piece of equipment used in the petrochemical industry to convert hydrocarbons into ethylene which will then be used in manufacturing.
FUGITIVE EMISSION	Emissions of gasses or vapours from industrial equipment due to leaks or other unintended or irregular releases, during industrial activities.
GREENHOUSE GAS	A greenhouse gas is any gaseous compound in the atmosphere that is capable of absorbing infrared radiation, thereby trapping and holding heat in the atmosphere.
HAZARD/RISK	A hazard is a potential source of harm, e.g. electricity, chemicals, stress. A risk is the likelihood, or chance, that something will cause harm.

HYDRAULIC FRACTURING	A drilling technique, commonly referred to as 'fracking', that fractures rock to release the oil and gas contained in the rocks.
HYDROCARBON	A compound containing the elements hydrogen and carbon. May exist as a solid, a liquid or a gas. The term is mainly used in a catch-all sense for oil, gas and condensate.
LIQUIFIED NATURAL GAS	Gas, chiefly methane, liquefied for transportation.
MORATORIUM	A temporary prohibition in an activity.
NATURAL GAS	Natural gas is a source of energy. It is typically composed of a mixture of hydrocarbons such as methane, hydrogen, carbon monoxide, carbon dioxide and nitrogen.
NATURAL GAS LIQUIDS	The portions of gas from a reservoir that can be liquefied. Ethane, propane, butane, isobutane, and pentane are all natural gas liquids.
OIL	A mixture of liquid hydrocarbons.
OPERATOR	The company that has legal authority to drill wells and to access hydrocarbons.
PETROCHEMICALS	Chemical products obtained from petroleum/natural oil and gas. Companies supply petrochemicals for use in manufacturing and production.
PETROLEUM	A generic name for hydrocarbons, including crude oil, natural gas liquids, natural gas and their products.
RESERVE	The amount of technically and economically recoverable oil and gas in a particular location.
RESOURCE	The amount of estimated oil and gas in a particular location.
SEISMIC ACTIVITY	Vibration of the ground or earthquakes due to natural or artificial causes.
SHALE GAS	Shale gas is a form of natural gas trapped within shale rock.
SHALE ROCK	Shale is an impermeable rock from which natural oil and gas can be extracted.
WELL	The hole drilled by a drilling rig to explore for or develop oil and/or natural gas.

SUMMARY OF EVIDENCE ON UNCONVENTIONAL OIL AND GAS

THE MOST COMMON HEATING FUEL IN SCOTLAND IS GAS WITH AROUND 1.9 MILLION SCOTTISH HOUSEHOLDS (78%) USING MAINS GAS AS THEIR PRIMARY HEATING FUEL.

TOTAL ANNUAL GAS CONSUMPTION IN SCOTLAND IS CURRENTLY AROUND 150 BILLION CUBIC FEET PER YEAR.

SCOTLAND HAS SIGNIFICANT SHALE RESOURCES

The Midland Valley (central Scotland) is estimated to hold at least 49.4 trillion cubic feet of shale gas.

BUT IT IS LIKELY THAT ONLY SOME OF IT COULD BE EXTRACTED

Under a central production scenario, around 2% of this resource (947 billion cubic feet*) is likely to be commercially viable for production.

DEVELOPING THESE RESOURCES COULD LEAD TO...

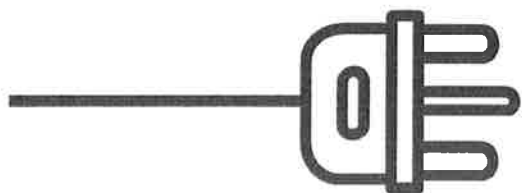
	CHALLENGES OR RISKS	OPPORTUNITIES AND SAFEGUARDS
SOCIAL	<p>As with other developments, communities would experience disturbances (short and/or longer term), including increased traffic, noise, and visual impacts.</p> <p>Available studies are inadequate for determining risks to public health.</p>	<p>The planning system and environmental regulation is designed to consider and mitigate impacts.</p> <p>Community benefit schemes could fund local investment.</p>
ECONOMIC	<p>Unlikely to have an impact on household energy costs.</p>	<p>Could generate £1.2 billion (in total) for Scotland's economy, and create 1,400 jobs.</p> <p>Could increase security of gas supply, particularly for high energy use industries.</p> <p>Potentially important raw material for Scotland's petrochemical sector, which is a significant employer.</p>
ENVIRONMENT	<p>Strong, coordinated regulation would be required to reduce or eliminate adverse impacts.</p> <p>An unconventional oil and gas industry is likely to lead to increased greenhouse gas emissions, which would make it more challenging to achieve Scottish climate change targets.</p>	<p>Scotland has a rigorous regulatory framework, and research had shown how this framework could be strengthened further.</p>

*Figures based on the central production scenario in the economic research project (page 40).

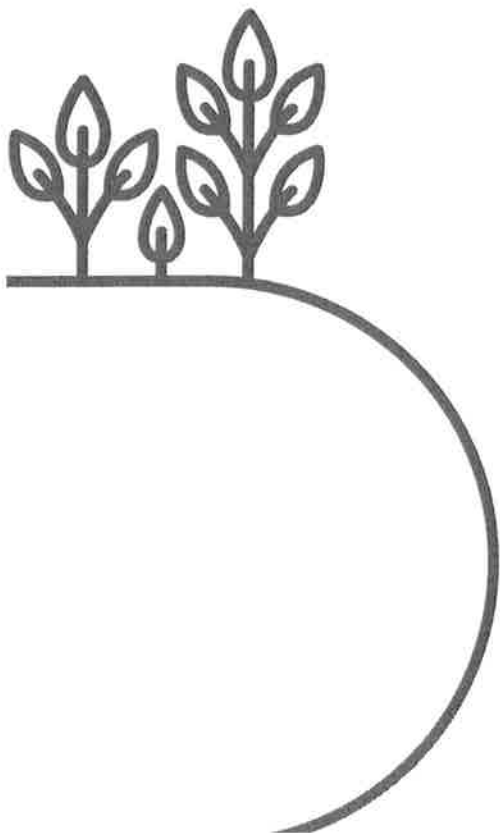


PART ONE

Introducing the consultation
and the issues



+



About this consultation

This section sets out the steps the Scottish Government is taking to conduct an open and inclusive consultation that gives everyone with an interest in unconventional oil and gas an opportunity to get involved in the discussion and put their views across.

WHY WE ARE CONSULTING

Studies have shown that Scotland's geology, and in particular a stretch of land through Scotland's central belt (referred to as the Midland Valley), contains significant quantities of shale gas and oil, and coal bed methane. The central belt is also one of Scotland's most populated regions, supporting important industries and business.

Accessing these resources would require the use of technologies such as hydraulic fracturing (commonly referred to as 'fracking'). This has led to a widespread debate on potential environmental, health and economic impacts, and on compatibility with Scotland's ambitious climate change targets.

The Scottish Government's approach to unconventional oil and gas is therefore one of caution while we gather and consider evidence, encourage dialogue, and give you an opportunity to set out your views.

This consultation does not set out or advocate a preferred Scottish Government position or policy. Instead, this consultation is an opportunity for the people of Scotland and our stakeholders to consider the evidence, and to present views on that evidence and the future of this industry in Scotland.

WHAT WE ARE CONSULTING ON

This is a consultation about onshore unconventional oil and gas. It covers the potential processes and technologies that would be involved in extracting shale oil and gas, including hydraulic fracturing, or coal bed methane. Evidence on potential impacts is discussed under the following themes: community, economic, environmental.

To support this consultation, the Scottish Government has compiled a comprehensive evidence-base. This has included commissioning a report by an Independent Expert Scientific Panel, and commissioning a series of research projects to explore certain issues in more detail. We also recognise that there may be other information and evidence that you may wish to draw on when responding to this consultation.

Conventional onshore and offshore oil and gas are outside the scope of this consultation. The difference between conventional and unconventional oil and gas is discussed on page 16.

The future of unconventional oil and gas is relevant to wider energy issues, and our climate change ambitions. The launch of this consultation has therefore been coordinated with the publication of our third Climate Change Plan and our consultation on Scotland's draft Energy Strategy.

More information on Scotland's draft Climate Change Plan can be found at: <http://www.gov.scot/Publications/2017/01/2768>

More information on Scotland's draft Energy Strategy can be found at: <https://consult.scotland.gov.uk/energy-and-climate-change-directorate/draft-energy-strategy/>

The consultation on Scotland's draft Energy Strategy explores the supply of safe, clean, reliable and affordable energy that will both underpin the Scottish economy and contribute to the wellbeing of our society.

Views on unconventional oil and gas should be directed through this consultation, whereas views on wider energy matters should be submitted through the draft Energy Strategy consultation.



HOW WE ARE CONSULTING

The Scottish Government has listened carefully to the views of stakeholders on conducting a fair and impartial consultation. In undertaking this consultation, the Scottish Government is committed to:

- **evidence-led policy making**, and using the evidence of public views gathered in this consultation as part of the pool of evidence;
- providing the public with **impartial** information on the issues, and supporting open and informed **dialogue**;
- **supporting a fair and balanced debate** on the issues that creates space for different perspectives and arguments to be presented and considered;
- transparency throughout the consultation process **and giving all contributions fair and due consideration**;
- **actively seeking participation from a broad cross-section of the Scottish population, including individuals**, businesses and interest groups.

To encourage wide participation, the Scottish Government has created a number of ways for you to engage in the consultation.

In addition to publishing this consultation document, we have launched a temporary unconventional oil and gas website: www.talkingfracking.scot

The site has been designed to provide a user-friendly route to accessing all the materials and evidence that support this consultation. We encourage those wishing to explore the issues further to visit this site.

A discussion pack has been designed and prepared to help communities and stakeholders to explore and discuss the issues in groups. This can be accessed through our unconventional oil and gas website.

The results of those discussions can be submitted to the Scottish Government and will be treated as a formal response to this consultation.

The consultation is also available in alternate formats on request, including Easy Read, large print, Braille, BSL and other languages. You can request these by emailing us at requestalternativeconsultation@gov.scot or calling us on 0131 244 9380. We are also happy to receive responses in alternative formats, e.g. spoken responses, other languages.

RESPONDING TO THIS CONSULTATION

We are inviting responses to this consultation by 31 May 2017. Please respond using the Scottish Government's consultation platform, Citizen Space. You can view and respond to the consultation online at: <https://consult.scotland.gov.uk/energy-and-climate-change-directorate/fracking-unconventional-oil-and-gas/>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 31 May 2017. If you are unable to respond online, please complete the Respondent Information Form (see 'Handling your Response' below) and send it to:

Consultation on Unconventional Oil and Gas
Onshore Oil and Gas Team
The Scottish Government
3J South
Victoria Quay
Edinburgh
EH6 6QQ
uogconsultation@gov.scot

You can also download our discussion pack and submit a group response to the consultation.

HANDLING YOUR RESPONSE

If you respond using Citizen Space you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made under the Act for information relating to responses made to this consultation exercise.

NEXT STEPS

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be independently analysed and the consultation analysis report will be considered alongside the full suite of evidence gathered. The analysis of your responses will be published in full.

On 8 November 2016, the Minister for Business, Innovation and Energy confirmed that:

- a recommendation on the future of unconventional oil and gas will be made after the consultation closes and the responses have been independently analysed;
- the Scottish Parliament will then be asked to vote on this issue; and
- the Scottish Government will then come to a considered judgment on the future of unconventional oil and gas in Scotland.

If you have any comments about how this consultation exercise has been conducted, please send them to:

Onshore Oil and Gas Team
The Scottish Government
3J South
Victoria Quay
Edinburgh
EH6 6QQ
uogconsultation@gov.scot

Introduction and context

The future of unconventional oil and gas is an important issue for the country, which has proven to be both complex and controversial.

This section describes Scottish Government policy and our evidence-led approach to unconventional oil and gas. We have also provided background information on unconventional oil and gas resources in Scotland and the technologies involved in extraction.

A CAUTIOUS AND EVIDENCE-LED APPROACH

Unconventional oil and gas has sparked intense debate. Some have highlighted the impact that shale developments in North America have had on their energy and chemicals industries, and advocated that Scotland pursue similar opportunities.

Others have highlighted concerns over potential environmental impacts, the location of the reserves, which are mainly across Scotland's populated central belt (between Glasgow and Edinburgh) and issues on compatibility with Scotland's ambitious climate change targets, and called for an outright ban.

The Scottish Government has therefore adopted a cautious and evidence-led approach to unconventional oil and gas. On 28 January 2015, the Scottish Government put in place a moratorium on developments involving hydraulic fracturing or coal bed methane. This means that that no such developments can take place.

The Scottish Government has undertaken an extensive and comprehensive period of evidence-gathering that examines the issues, challenges and opportunities presented by unconventional oil and gas.

This included commissioning an Independent Expert Scientific Panel to examine unconventional oil and gas in 2013, and then commissioning a series of research projects in 2016 to examine specific issues in more detail.

This evidence is summarised and considered in Part Two of this consultation.

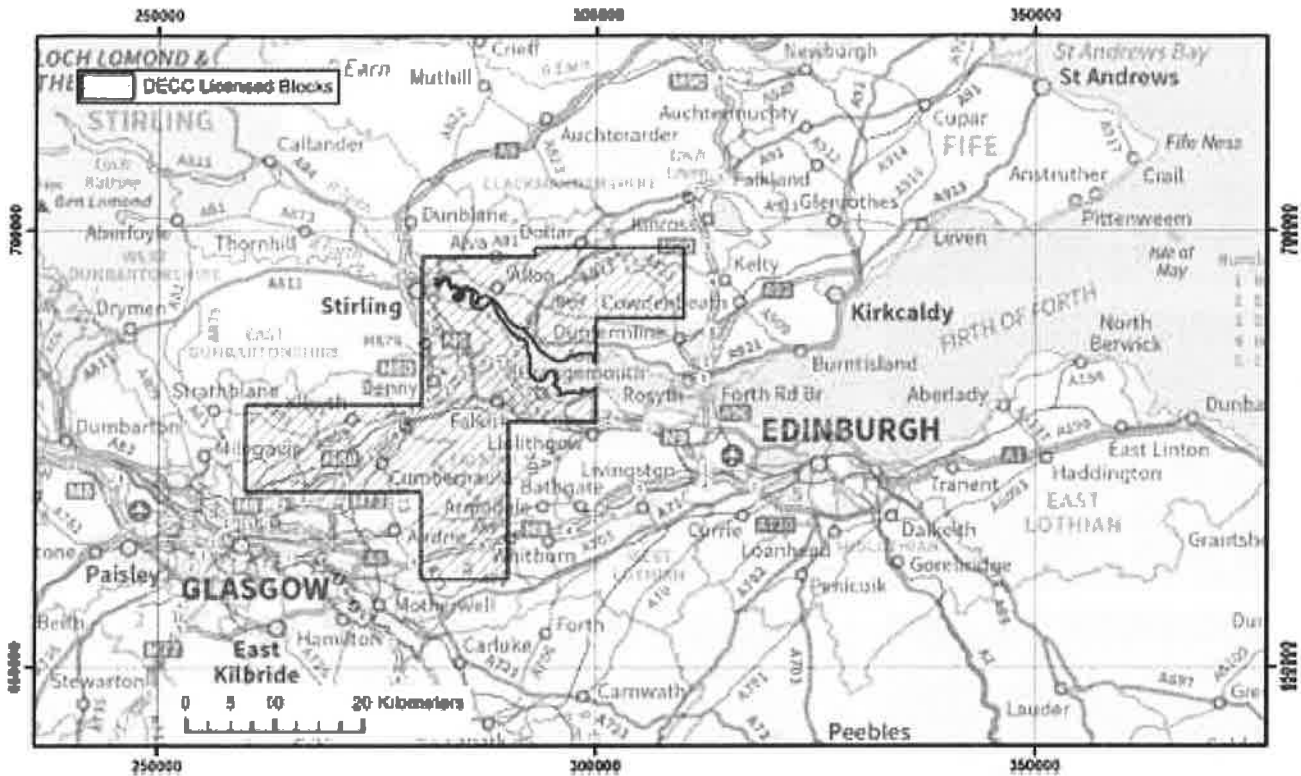
UNCONVENTIONAL OIL AND GAS LICENCES AND ROLES

Exclusive rights to oil and gas in a given area are governed by a licensing system. There are currently three licences for unconventional oil and gas in Scotland, all of which were issued by the UK Government (Figure 1).

The licences, known as Petroleum Exploration and Development Licences, grant the right to search for and extract oil and gas in a given area.

The licences do not give the licence-holder automatic permission to commence operations. A range of additional planning and environmental permits are required before a development can commence.

Figure 1 Map of PEDL areas in Scotland licensed by the Department of Energy and Climate Change (DECC).



A number of organisations would be involved in assessing and regulating proposals for unconventional oil and gas developments. These organisations and their roles are summarised in Figure 2.

More information on the regulatory framework is provided on page 50. Information on opportunities for community involvement in prospective developments is provided on page 32.

In line with the Scottish Government's cautious and evidence-based approach to unconventional oil and gas, in 2014 the Scottish Government asked the UK Government not to issue any further licences in Scotland.

The Scotland Act 2016 passes responsibility for onshore oil and gas licensing to Scottish Ministers. These powers are due to be transferred in Spring 2017. The use of these powers will be informed by a suite of evidence, including this consultation.

Figure 2 Responsibilities of organisations involved in assessing and regulating unconventional oil and gas developments.

Oil and Gas Authority (devolution to Scottish Government underway)	<ul style="list-style-type: none">• Regulates the terms and conditions of licences that confer exclusive rights to explore for, and produce, petroleum; issues licences.• These powers and responsibilities are due to transfer to Scottish Ministers.
Local Authority/ Planning Authority	<ul style="list-style-type: none">• Planning authorities consider planning applications for all surface works associated with an unconventional oil and gas development (design, construction, operation, maintenance, decommissioning.)• Local Authorities are responsible for Environmental Health matters, which includes protecting the public from the harmful exposures they may encounter in the environment and with improving its health.
Scottish Environment Protection Agency	<ul style="list-style-type: none">• Regulates specific activities that may cause pollution or that pose other risks to the environment throughout the life cycle of an unconventional oil and gas development (design, construction, operation, maintenance, decommissioning).
Health and Safety Executive (reserved*)	<ul style="list-style-type: none">• Regulates to ensure the operator is managing the health and safety risks appropriately throughout the life cycle of an unconventional oil and gas development (design, construction, operation, maintenance, decommissioning).

* Reserved means that these powers are the responsibility of the UK Parliament.

The technologies involved

This section describes unconventional oil and gas technologies, what they involve in practice, what is located at a typical site and the scale of the resource in Scotland.

CONVENTIONAL VERSUS UNCONVENTIONAL OIL AND GAS

The oil and gas industry use a range of techniques to extract oil and gas from underground reserves.

Conventional oil and gas reserves can be exploited by drilling a well, with oil or gas then flowing out under its own pressure.

Conventional deposits are contained in porous rocks with interconnected spaces, such as limestone and sandstone. These interconnected spaces give rise to permeability that allows oil or gas to effectively flow through the reservoir to the well.

Unconventional oil and gas deposits are contained in impermeable rocks, such as shale or coal deposits. In these cases, the oil or gas cannot easily flow through the reservoir. To extract the oil and gases, techniques such as hydraulic fracturing (commonly referred to as fracking) or coal bed methane are used (Figure 3).

WHAT IS HYDRAULIC FRACTURING?

Hydraulic fracturing (or 'fracking') is a drilling technique that is used to fracture rock to release the oil and gas contained in those rocks. It is most commonly used to extract oil and gas from shale.

The rock is fractured by injecting pressurised fluids into the rock to prise open small spaces in the rocks, which release the oil or gas.

Hydraulic fracturing is used extensively in North America for extracting oil and gas from shale reserves. By 2015, the number of hydraulically fractured wells in the United States reached 300,000¹. Hydraulic fracturing is also used by other industries, as outlined in Box 1.

BOX 1: OTHER USES OF HYDRAULIC FRACTURING

Hydraulic fracturing is not a new technology. It is used to increase the permeability of subsurface rocks and may be undertaken for a variety of purposes outside of unconventional oil and gas developments, including:

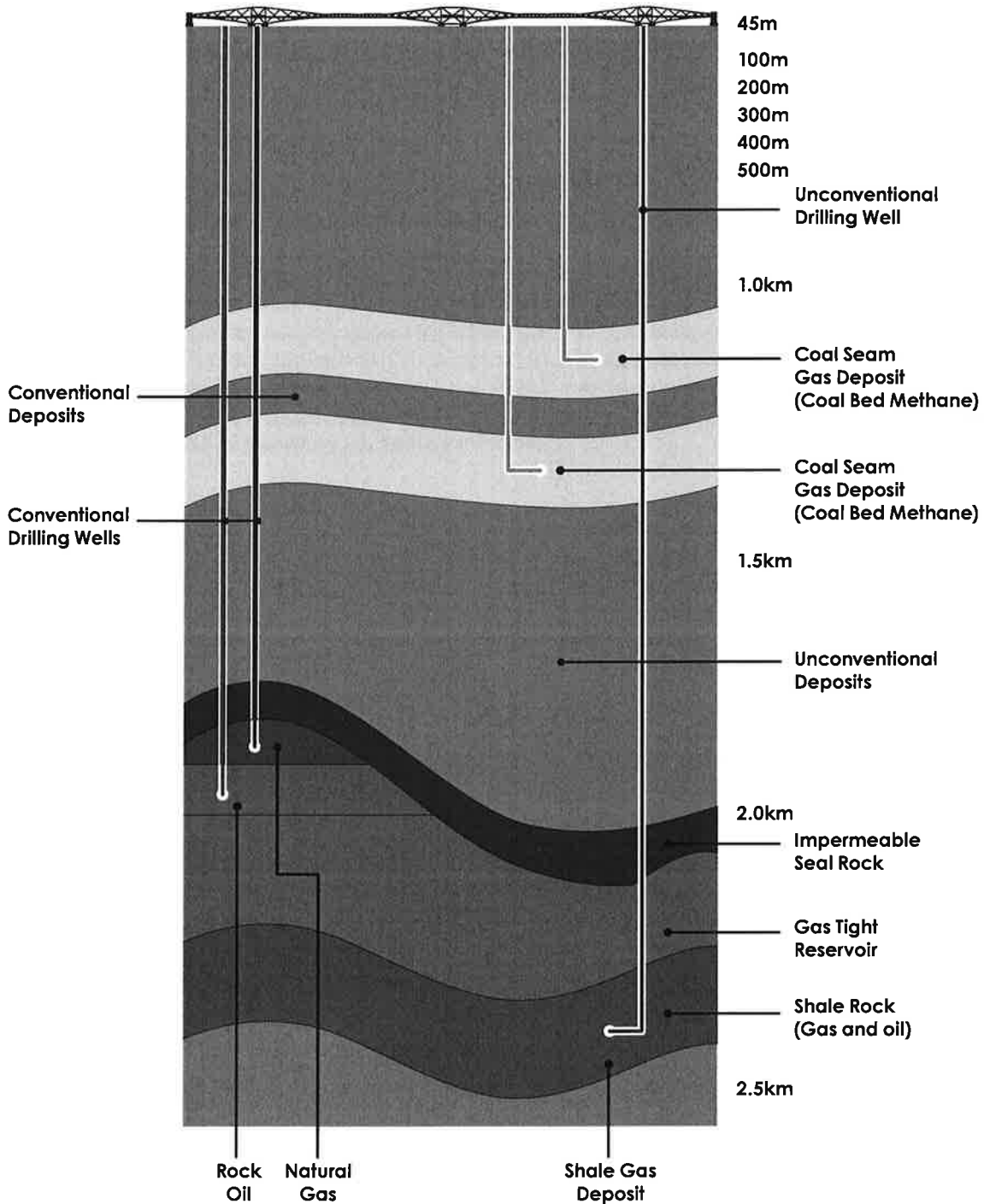
- to stimulate groundwater wells;
- to stimulate conventional oil and gas deposits, for instance in the North Sea;
- to measure stress in the Earth; and
- as part of a deep geothermal project.

The specific processes and technologies involved (for instance the duration and depth of the activity, whether wastewater is produced or whether chemicals are used) will vary depending on the purpose and form of the hydraulic fracturing.

¹ U.S. Energy Information Administration. [Oil Production in the United States 2000-2015](#).

Figure 3 Conventional versus unconventional deposits².

The use of the Forth Bridge is for scale only, and does not indicate a potential geographical drilling location.



2 KPMG 2016. Unconventional Oil and Gas; Economic Impact Assessment and Scenario.

HOW IS HYDRAULIC FRACTURING CARRIED OUT?

A well drilled for hydraulic fracturing for unconventional oil and gas is usually between 1 and 3 kilometres deep. The well, which has concrete and steel casings, is drilled vertically until it has reached the shale rock, at which point it will curve horizontally into the shale.

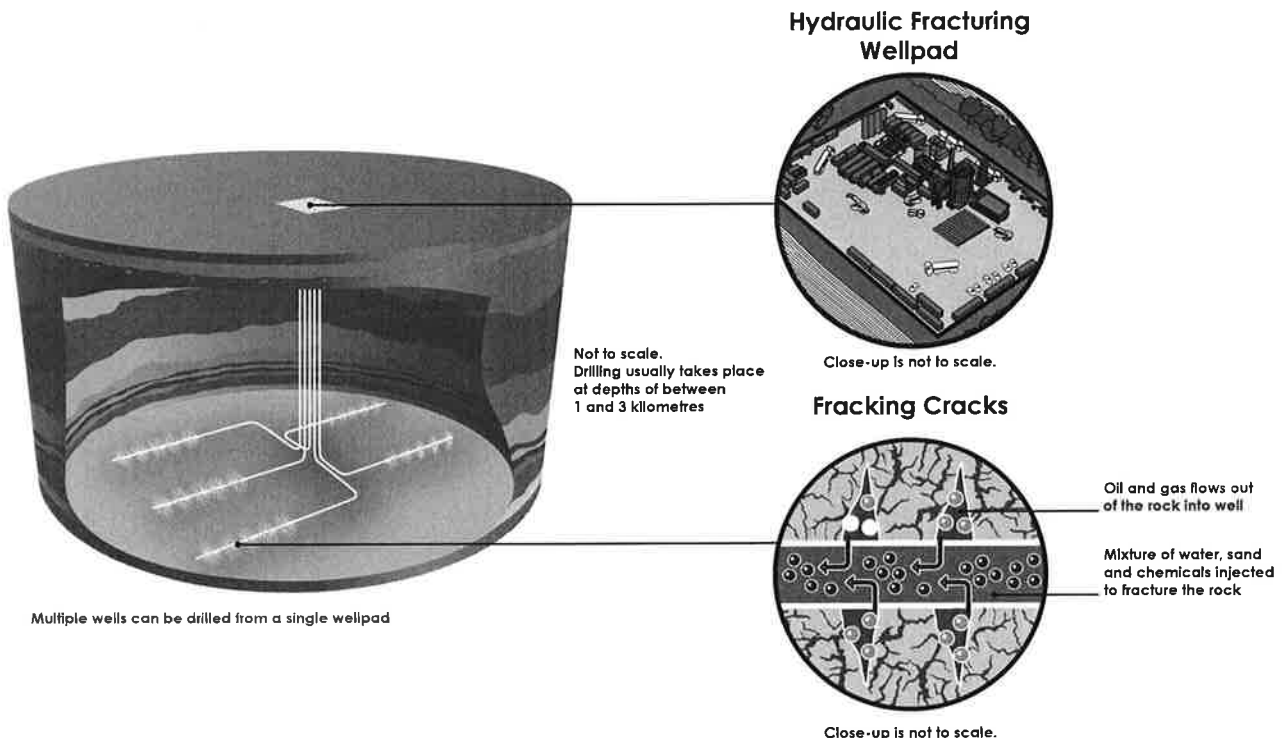
Water is injected into the shale at high pressure to create, or enlarge, existing tiny fractures in the rock that may only be a few fractions of a millimetre in width.

The injected water contains proportions of sand (around 5%) to help hold open the fractures. Chemicals are also used (less than 1%) to reduce friction and protect the drilling equipment from corrosion, and to remove the accumulations of microorganisms and mud from drilling equipment.

The number and type of chemical additives used will depend on the characteristics of the water and geology. The chemicals used in hydraulic fracturing is one of the issues examined by the Health Impact Assessment, which is described on page 34.

Some fluid will return to the surface once the shale has been fractured. This fluid is known as flowback water, and it is stored, treated and disposed of at a suitable waste treatment facility.

Figure 4 Illustration of hydraulic fracturing.



WHAT IS COAL BED METHANE?

Coal bed methane is also considered to be an unconventional source of gas. This is because the gas is present in the coal rather than being held in pore spaces.

To extract the gas, water is drained from the coal seam to release pressure (known as dewatering). This may be undertaken with or without hydraulic fracturing, depending on local geological conditions.

HOW IS COAL BED METHANE EXTRACTED?

The majority of the gas in a coal seam is absorbed within the microscopic pores in the coal. Water contained in the seam is removed to encourage gas to flow from the microscopic pores in the coal.

To do this, boreholes are drilled and water from the coal seam is pumped from those boreholes. Gas then travels to the borehole along the main fractures in the coal. Horizontal boreholes may be used to encourage maximum flow of gas into the borehole.

The gas can then be collected at the surface and dispatched to surface facilities for processing and use. The pumped water is stored, treated and disposed of at a suitable waste treatment facility.

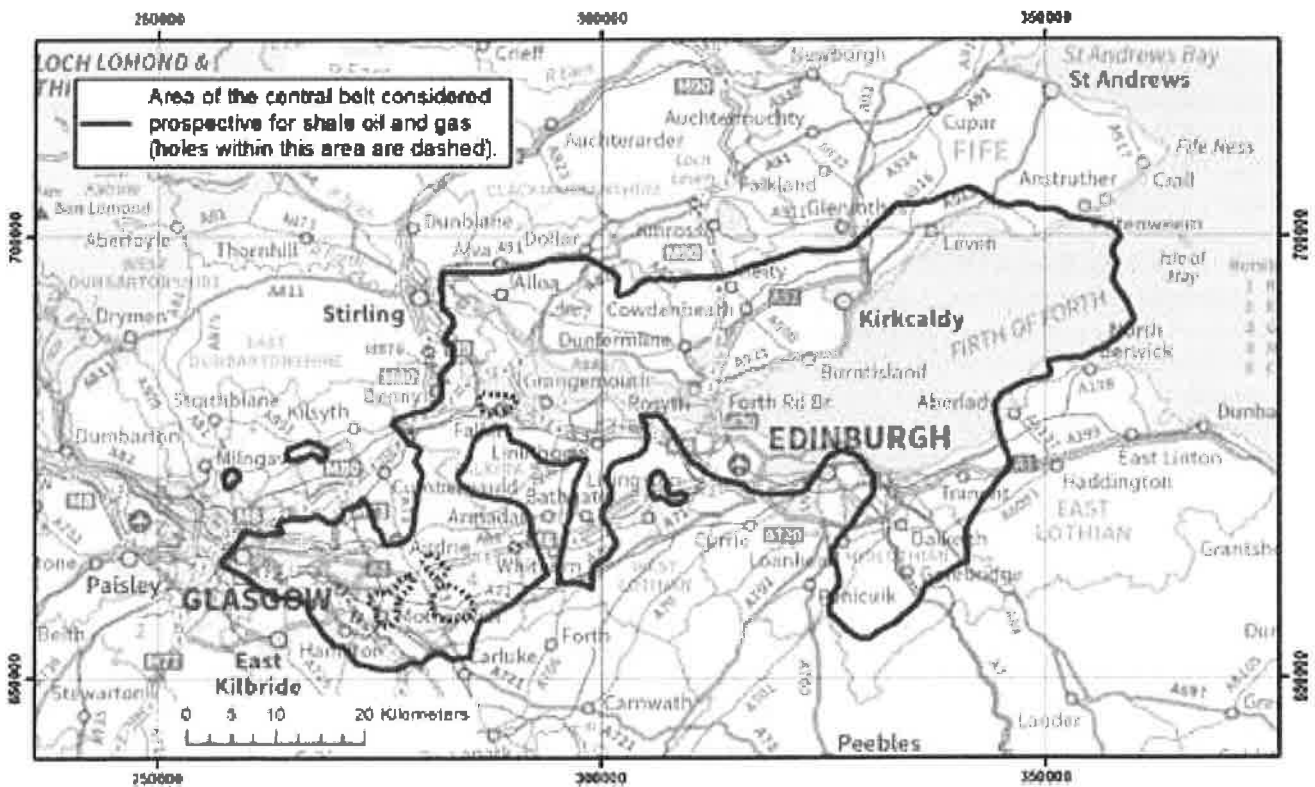
WHERE ARE UNCONVENTIONAL OIL AND GAS RESOURCES?

Shale deposits are mainly found at depths greater than 1 kilometre, and in Scotland they are usually located at depths of between 1 and 3 kilometres.

There are a number of shale deposits in Scotland, most notably across an area of Scotland's central belt known as the Midland Valley (Figure 5). An analysis of the potential shale resources was published by the British Geological Survey in 2014³.

There are also coal deposits from which coal bed methane could be extracted in the Midland Valley and in south-west Scotland.

Figure 5 Shale oil and gas resources in the Midland Valley according to the British Geological Survey (BGS) Report.



3 Monaghan, A.A. 2014. *The Carboniferous shales of the Midland Valley of Scotland: geology and resource estimation*. British Geological Survey.

HOW MUCH UNCONVENTIONAL OIL AND GAS IS THERE?

The BGS estimate that the Midland Valley holds between 49.4 – 134.6 tcf (trillion cubic feet) of shale gas. By comparison, the Bowland Basin in Lancashire, England is estimated to hold between 822 tcf and 2,281 tcf of shale gas. For comparison, total annual gas consumption in Scotland in 2014 was estimated to be 150 billion cubic feet/year (0.15 tcf)⁴.

Only a proportion of these resources is likely to be commercially viable for development or production. Exploratory work would be required to better understand how much oil and gas could be economically and technically recovered.

The research to examine economic impacts commissioned by the Scottish Government has identified three potential unconventional oil and gas production scenarios in Scotland. These are discussed further on page 29.

WHAT TAKES PLACE AT A TYPICAL SITE?

A prospective development would usually undergo four stages (Figure 6). The moratorium on unconventional oil and gas means that only boreholes to take core samples are currently permitted in Scotland (Box 2).

BOX 2: BOREHOLES FOR CORE SAMPLING

Drilling a borehole for core sampling is a standard method of investigating what is underground. It produces a core of rock that allows the features of what is underground to be examined. Boreholes are drilled regularly across Scotland for a variety of purposes, including civil engineering projects, water supply, and geothermal energy. It is estimated that over 5,000 boreholes are drilled each year in Scotland.

In line with our evidence-led approach to unconventional oil and gas, the Scottish Government supports scientific work to improve our understanding of oil and gas resources in Scotland. In October 2015, the Scottish Government confirmed that boreholes for core sampling are not included under the terms of the moratorium.

A drilling pad is a base built to provide space for the drilling rig, piping and storage equipment, and other site facilities such as mobile cabins for workers. Pads are usually around the size of a football pitch (5,000-8,000 square metres).

The average height of a typical drilling rig is about 38 metres, which is equivalent to a 10 or 11 storey building. Drilling rigs are temporary features of a site, and are on-site while drilling takes place.

Further details of what takes place at a typical site for hydraulic fracturing are provided in Figure 7.

4 Department for Business Energy and Industrial Strategy, 2016. *Digest of UK Energy Statistics*.

Figure 6 Stages of a typical unconventional oil and gas development. Timeframes are indicative and do not include the time taken to secure relevant planning or environmental consents.

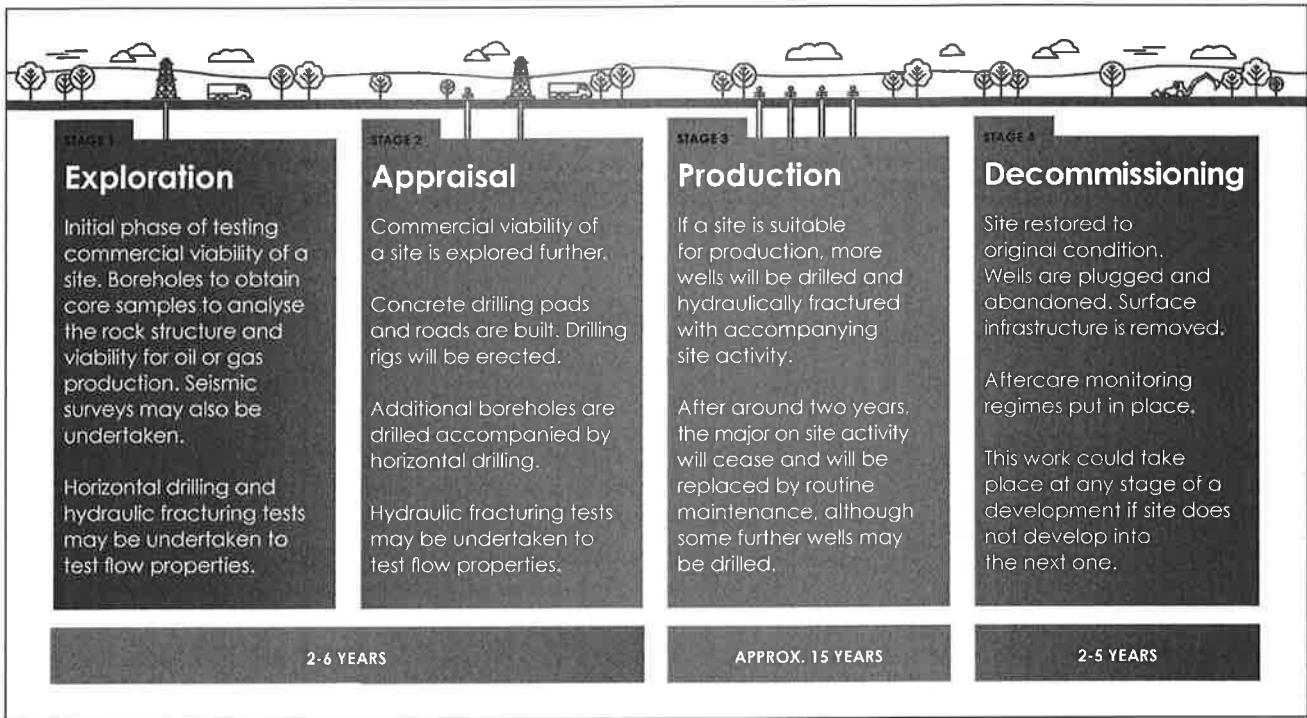
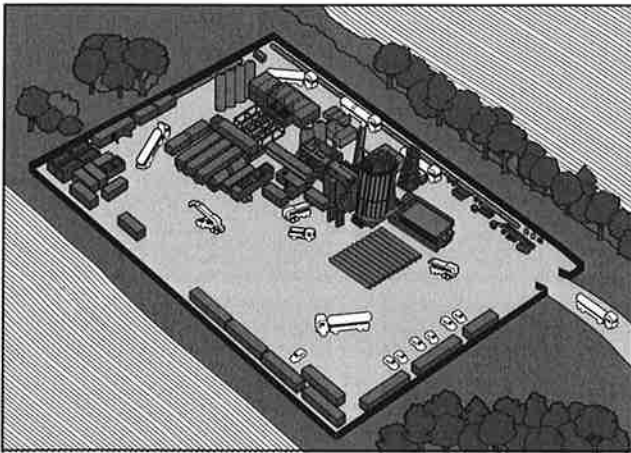


Figure 7 Examples of what takes place at a typical site.

STAGES OF AN UNCONVENTIONAL OIL AND GAS DEVELOPMENT

A prospective unconventional oil and gas site typically undergoes four stages of development. The total estimated lifespan of a site can be up to 20-30 years depending on whether the site is suitable for production. The main activities that take place during the different phases of an unconventional oil and gas development are summarised here:



EXPLORATION AND APPRAISAL PHASE

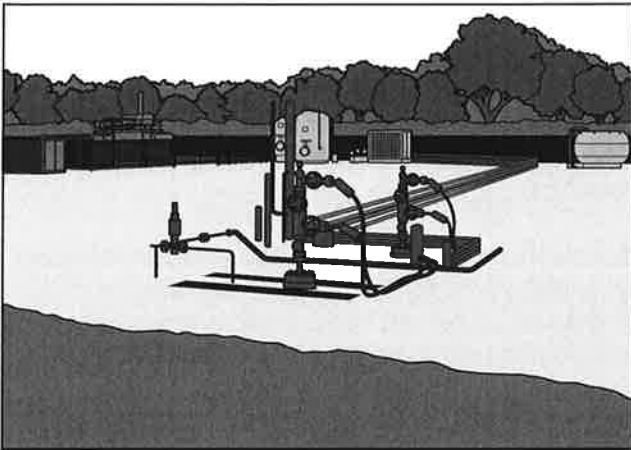
'Exploration and appraisal' refers to the initial phases of testing the commercial viability of a site. Boreholes are drilled to obtain core samples to analyse the rock structure and viability for oil or gas production. Seismic surveys may be undertaken. Horizontal drilling and hydraulic fracturing tests may be undertaken.

The exploration and appraisal phase typically lasts between two and six years. Drilling pads and roads must first be built (and maintained). A drilling pad is roughly the size of a football pitch. Drilling rigs would be erected at a height of around 38 metres.

The total time required to drill and complete a well is four to five weeks depending on target depth and underlying geological conditions.

Flood lights may be mounted on the drilling rig and other lighting to support safe working at night may be put in place. The site would also house generators, sealed container units for chemicals and waste materials and fluids. Portable offices and work amenities would be located on-site.

A number of goods and materials would be transported on and off site, including equipment, drill cuttings, fluids and chemicals. The transport impacts research estimated that a well pad could require traffic movements to be sustained at around 190 per week for a period of approximately two years during the exploration and appraisal phase. For comparison, a warehouse/distribution centre may be expected to generate approximately 5,000 two-way HGV movements per week (further details on transport impacts are outlined on page 35).



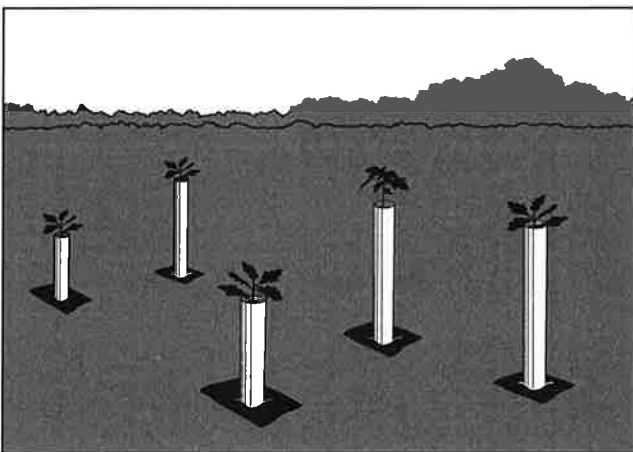
PRODUCTION PHASE

If a site is suitable for production, more wells would be drilled and hydraulically fractured with accompanying site activity. After around two years, the major on-site activity would cease and would be replaced by routine maintenance, although some further wells may be drilled.

The initial phase of production would entail similar activities to an exploration and appraisal phase.

Once these activities cease, the primary activities at a site would be maintenance and movement of goods from the site, although further wells may be drilled. The production phase typically lasts around 15 years. The pad would remain in place, alongside some small pieces of surface infrastructure and equipment.

During the production phase, the transport impacts research predicts that traffic movements would be significantly lower than during the exploration and appraisal phase.



DECOMMISSIONING PHASE

The site is restored and wells are plugged and decommissioned. Surface infrastructure is removed. This work could take place at any stage of a development if a decision is taken not to move to the production phase.

All sites should be restored to their prior condition as soon as possible after drilling is complete. Wells are filled with cement and pipes are cut and plugged at around 2 metres from the ground. The pad is removed.

HOW COULD THE OIL AND GAS BE USED?

The main product from unconventional oil and gas reserves is natural gas, which is a source of energy for heating, cooking, and electricity generation. More information on the role of gas in Scotland's energy mix is provided on page 41.

The natural gases from shale deposits may also have a high content of natural gas liquids, which are gases that can be converted or processed as liquids at the surface, and include substances like ethane, propane or butane.

Natural gas liquids such as ethane are important raw materials for the petrochemical and manufacturing industry. They have applications in a wide range of high-value products including plastics, detergents, clothing and solvents (Table 2).

Not all shale deposits hold large quantities of natural gas liquids, such as ethane. Further exploratory work would be required to understand whether Scottish shale deposits contain high levels of ethane or methane that are economically and technically viable for industry.

Some shale deposits may also release shale oils, also known as tight oils, which are a form of light crude oil. Shale oils have similar properties to crude oils extracted by conventional methods, for instance in the North Sea. They can be refined to produce heating oils, naphtha, diesel, kerosene, gasoline, liquid petroleum gas and other commodities used in industry and manufacturing.

Table 2 Uses of natural gas liquids⁵.

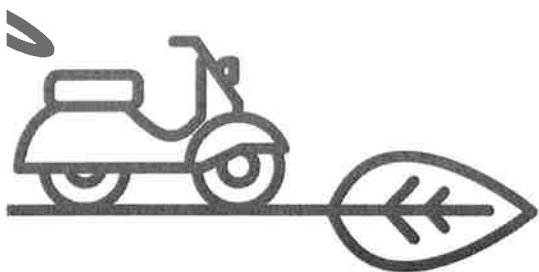
NATURAL GAS LIQUID	APPLICATIONS	END-USE PRODUCTS	PRIMARY SECTORS
Ethane	Ethylene for plastics production; petrochemical feedstock	Plastic bags; plastics; anti-freeze; detergent	Industrial
Propane	Residential and commercial heating; cooking fuel; petrochemical feedstock	Home heating; small stoves and barbeques; LPG	Industrial, residential, commercial
Butane	Petrochemical feedstock; blending with propane or gasoline	Synthetic rubber for tyres; LPG; lighter fuel	Industrial, transportation
Isobutane	Refinery feedstock; petrochemical feedstock	Alkylate for gasoline; aerosols; refrigerant	Industrial
Pentane	Natural gasoline; blowing agent for polystyrene foam	Gasoline; polystyrene; solvent	Transportation
Pentane Plus	Blending with vehicle fuel; exported for bitumen production in oil sands	Gasoline; ethanol blends; oils and production	Transportation

5 KPMG, 2016. *Unconventional Oil and Gas: Economic Impact Assessment and Scenario*.



PART TWO

Exploring the evidence



OUR EVIDENCE-LED APPROACH

The Scottish Government has undertaken an extensive and comprehensive period of evidence-gathering that examines the issues, challenges and opportunities presented by unconventional oil and gas.

This work began in 2013 with the establishment of the Independent Expert Scientific Panel ('the Expert Panel') to investigate unconventional oil and gas. More information on the work of the Expert Panel can be found at: <http://www.gov.scot/Publications/2014/07/1758/0>

A summary of the Expert Panel's remit and main findings is provided in Box 3.

After considering the Expert Panel's findings, the Scottish Government commissioned a series of research projects in 2016 to examine specific issues in more depth. Box 4 describes the steps that were taken to deliver impartial and robust evidence.

A number of the projects focused on issues identified by the Expert Panel, which included gaps in the framework for decommissioning, the role of Health Impact Assessments, and potential climate change implications.

The following research studies were commissioned in 2016:

- Economic impacts and scenario development (undertaken by KPMG)
- Climate Change impacts (undertaken by the Committee on Climate Change)
- Understanding and monitoring induced seismic activity (undertaken by the British Geological Survey)
- Transport – Understanding and mitigating community level impacts (undertaken by Ricardo)
- Decommissioning, site restoration and aftercare – obligations and treatment of financial liabilities (undertaken by AECOM)
- Health impact of unconventional oil and gas in Scotland (undertaken by Health Protection Scotland)

The research reports were published in full on 8 November 2016. The research reports can be read in full at:

<http://www.gov.scot/Topics/Business-Industry/Energy/onshoreoilandgas/EvidenceGathering>

The findings from these studies are summarised and considered in the proceeding sections under the following themes:

- Community considerations
- Economic considerations
- Environmental considerations.

Table 3 Summary of economic scenarios prepared by the economic study.

PRODUCTION SCENARIO	SHALE	COAL BED METHANE
Central	20 pads 15 wells per pad 15-year life span	2 pads 15 wells per pad 12-year life span
High	31 pads 30 wells per pad 15-year life span	2 pads 15 wells per pad 12-year life span
Low	10 pads 10 wells per pad 15-year life span	10 pads 10 wells per pad 12-year life span

The research to examine economic impacts commissioned by the Scottish Government identified three potential unconventional oil and gas production scenarios in Scotland: high, central, and low. These scenarios informed the economic study and have been used or referred to in the other research studies.

The scenarios were based on estimates of potentially accessible oil and gas resources, and were informed by discussions with stakeholders, including those representing industry and environmental interests. Table 3 outlines the scenarios.

This consultation mainly discusses the central production scenario. Please refer to the economic study's final report for more information on the other scenarios.

BOX 3: INDEPENDENT EXPERT SCIENTIFIC PANEL

The remit of the Expert Panel was to deliver:

- a robust, well-researched evidence base relating to unconventional oil and gas upon which the Scottish Government can reliably base future policy in this area;
- a well-developed narrative on the environmental and regulatory issues associated with the potential development of unconventional oil and gas in Scotland;
- an assessment of the potential resources available to Scotland.

The Expert Panel made a number of observations, including:

- Suitable petrochemical feedstocks from the North Sea are declining, in particular ethane and other light hydrocarbons. The potential availability of these feedstocks from unconventional oil and gas resources in Scotland could have a beneficial impact on Scotland's petrochemical industry in the long term.
- Although further exploratory drilling will be required, Scotland's geology suggests that there could be significant reserves of unconventional oil and gas – the greatest potential reserves are likely to be in the Midland Valley of Scotland.
- There are a number of technical challenges associated with unconventional oil and gas extraction, though it is the Expert Panel's view that none of these are insurmountable. The technology exists to allow the safe extraction of such reserves, subject to robust regulation being in place.
- The regulatory framework is largely in place to control the potential environmental impacts of the production of unconventional oil and gas in Scotland, although there may be gaps to address.

- The high population density of those parts of Scotland most likely to host significant unconventional oil and gas resources would be a challenge for any form of re-industrialisation, and will thus be so for any future unconventional oil and gas industry.
- Public concerns around unconventional oil and gas development include concerns about technical risk such as water contamination, public health and seismicity, but also wider issues such as social impacts on communities, effect on climate targets and trust in operators, regulators and policymakers.
- Many of these social and environmental impacts can be mitigated if they are carefully considered at the planning application stage. Added to which, there are already considerable legislative safeguards to ensure such impacts are not realised.
- Early consultation with communities on unconventional oil and gas developments is vital to identify potential impacts on the community, to scope potential benefits and develop plans to mitigate the impacts and enhance the benefits.

BOX 4: DELIVERING IMPARTIAL AND ROBUST EVIDENCE

To support the Scottish Government's commitment to gathering robust and impartial evidence on the potential impacts of unconventional oil and gas, the research projects were awarded following Scottish Government procurement guidelines, and subject to confirmation that there were no conflicts of interest in carrying out the work.

The studies that examine climate change and health impacts were undertaken by public bodies with particular expertise (described below). All the other projects were awarded through competitive tender.

The Committee on Climate Change is the independent body tasked with advising UK and devolved governments on meeting their emissions targets and reporting on progress made in reducing greenhouse gas emissions and preparing for climate change.

Health Protection Scotland is part of NHS Scotland and they provide advice, support and information to health professionals, national and local government, the general public and a number of other bodies that play a part in protecting health.

Community considerations

The location of unconventional oil and gas resources in Scotland means that some communities in populated areas of Scotland would be in close proximity to developments.

With emphasis on the research we commissioned to examine potential health and transport impacts, this section explores the potential social and health implications of unconventional oil and gas developments.

COMMUNITY IMPACTS

Most of Scotland's unconventional oil and gas deposits occur in and around former coalfields and oil shale fields in Scotland's central belt, which are amongst the most densely populated parts of the country.

The Expert Panel noted that there are a range of public concerns around unconventional oil and gas developments, including concerns about technical risk such as water contamination, public health and seismicity, but also wider issues. The Expert Panel also noted the importance of sustained and meaningful community engagement.

The Scottish Government is committed to listening to the views of communities, and to encouraging community involvement in local decision making. This consultation is part of that process.

The presence, scale and nature of potential impacts, and steps that can be taken to mitigate or minimise impacts, vary across the different stages of an unconventional oil and gas development.

Regulatory controls provide a framework for assessing and mitigating potential impacts, and for consulting communities on specific development proposals. The section on regulation (page 50) discusses these issues further.

COMMUNITY INVOLVEMENT IN PROSPECTIVE DEVELOPMENTS

The Scottish Government is committed to involving people in the decisions that affect them and to making information and data accessible.

The EU's Public Participation Directive provides a legal framework for doing this, including in relation to any plans to extract oil and gas for commercial purposes. The Directive requires public participation in decision-making and regulation, including through access to information and consultation.

Before Petroleum Exploration and Development Licences can be offered for award, the licensing authority (currently the Oil and Gas Authority, but the responsibilities are transferring to the Scottish Government) must conduct a Strategic Environmental Assessment of their plan.

Effective public engagement lies at the heart of Strategic Environmental Assessment, and is a legal requirement within it, ensuring that those with an interest or likely to be affected by a plan have an opportunity to help shape it. An environmental assessment is first conducted, and the findings are captured within an Environmental Report which is published alongside the plan, for public consultation.

Once an operator has a Petroleum Exploration and Development Licence they can make a planning application.



Everyone has the right to comment on any planning application that is being considered by a planning authority. Community councils have a formal role in the planning system as they are consulted during the pre-application consultation by the developer, and later when the planning application has been submitted.

The planning system provides an early and direct role in considering and mitigating potential community impacts. In considering a planning application, the Planning Authority (and developer) would need to consider and address a range of factors, including:

- disturbance, disruption and noise, and potential pollution of land, air and water;
- impacts on local communities, houses, hospitals, schools, dwellings and businesses;
- benefits to the local and national economy;
- how the impacts would add to those already in place from other mineral or landfill sites in the area;
- effects on natural heritage, habitats and the historic environment;
- transport, landscape and visual impacts; and
- restoration and aftercare (including any benefits which may arise from areas being improved from their original state following decommissioning).

The Scottish Environment Protection Agency (SEPA) consult with the public at certain parts of the regulatory process, for example, they may consult when making changes to permits for protecting the environment from pollution.

All the regulatory bodies that would be involved in any unconventional oil and gas development in Scotland make a range of information publically available. This includes:

- information about Petroleum Exploration and Development Licences, drilling consents and drilling activity. This information is currently published by the Oil and Gas Authority, and will be published by the Scottish Government when powers are transferred;
- applications for access to coal are publicised for 30 days by the Coal Authority, who also maintain a list of all applications which is available to the public;
- registers containing details of permits and authorisations issued by SEPA are maintained by SEPA and are open to public inspection; and
- the Health and Safety Executive make details available in the event of taking enforcement action against a company, including issuing a notice or prosecuting.

The regulatory regimes that apply to unconventional oil and gas developments are discussed further in the section on regulation, which begins on page 50.

RESEARCH FINDINGS: POTENTIAL HEALTH IMPLICATIONS

One of the most prominent concerns for communities is potential impacts on human health.

The Scottish Government asked Health Protection Scotland to undertake a rigorous and robust assessment of the available evidence on the health impacts arising from unconventional oil and gas extraction. We also asked Health Protection Scotland to review evidence on potential wider health-related issues, including on issues such as physical and mental wellbeing.

To carry out the assessment, Health Protection Scotland drew on the expertise of others including NHS Health Scotland and SEPA. The Health Impact Assessment was peer-reviewed by a panel of four reviewers, three of which were nominated by stakeholders representing community, environmental and industry interest.

The findings of this Health Impact Assessment are summarised below.

What are the potential risks to health associated with exploration for, and exploitation of, shale oil and gas and coal bed methane?

- The overall conclusion of the Health Impact Assessment is that the evidence considered was 'inadequate' as a basis to determine whether development of shale oil and gas or coal bed methane would pose a risk to public health.
- **Inadequate means:** 'The available studies are of insufficient quality, consistency or statistical power to allow a conclusion to be drawn regarding the presence or absence of an association between unconventional oil and gas-related activities and health outcomes, or activities and exposure above health based limits. Or there were no studies available.'

- In this context, a risk to public health is the probability that unconventional oil, and gas-related activities would result in exposure of the public to environmental hazards above recognised health-based limits that could lead to adverse health effects.
- Individual conclusions were drawn on particular types of unconventional oil and gas-related hazards; and specific types of health outcome.

What are the wider health implications of deploying the technology necessary for the exploration and exploitation of shale oil and gas and coal bed methane?

- The evidence reviewed on the wider implications of unconventional oil and gas on health was primarily qualitative. This identified varied views in the studied communities on the perceived positive and negative impacts of unconventional oil and gas development. The review focused on self-reported concerns, anxieties and stress and possible economic benefits.

What options could there be to mitigate any potential adverse impacts that are identified?

- The study concluded that the evidence reviewed, while lacking in quantity, quality and consistency, would justify adopting a precautionary approach if unconventional oil and gas development were to be allowed in Scotland in the future.
- The study also noted that a precautionary approach should be proportionate to the scale of the hazards and potential health impacts, both adverse and beneficial.

- The study noted that within environmental public health, adopting a precautionary approach can take a number of forms. It is not unusual for a precautionary approach to be adopted in order to allow the development of a technology, where it is considered that realistic, practical opportunities can be identified to control potentially hazardous exposures, or to mitigate any potential adverse impacts on health.
- The study summarises the approaches taken to unconventional oil and gas by other countries/governments, ranging from bans to supporting industry. The study concludes that a precautionary approach in Scotland could be based on adopting a range of mitigation measures involving operational best practice, regulatory frameworks and community engagement.
- The health impact assessment identifies areas where there was a consensus among experts that the current regulatory framework for development in Scotland could be strengthened, including in respect of planning and environmental regulation and in relation to local health impact assessment.

RESEARCH FINDINGS: POTENTIAL TRANSPORT IMPLICATIONS

One of the potentially most significant and visible impacts for communities could be increased traffic volumes on certain nearby roads, in particular from Heavy Goods Vehicles (HGV). Possible further impacts could include increased noise and local air pollution and the potential for an increased number of traffic incidents.

To examine these issues further, we commissioned research to better understand the potential for local increases in traffic volume during an unconventional oil and gas development.

The research also explored how traffic volumes and impacts might vary by location (such as remote rural or urban centres) as well as the duration of impacts, that is, whether the impacts are short term or longer lasting.

A summary of the main research findings is provided below.

How would traffic volumes in and around sites change during the different stages of unconventional oil and gas development?

- The additional traffic movements associated with unconventional oil and gas developments are unlikely to be significant or detectable at a regional (i.e. local authority) or national scale, in view of the much greater numbers of traffic movements resulting from other activities.
- Each well pad could require traffic movements to be sustained at around 190 per week for a period of approximately two years during the development (exploration and appraisal) phase. For context, a warehouse/distribution centre may be expected to generate approximately 5,000 two-way HGV movements per week. A wind farm construction can require 800-1,000 two-way movements at its peak.
- The main factor affecting traffic flows is the requirement for transportation of water. If that can be avoided (e.g. by use of pipelines or re-using wastewater) the impacts can be significantly reduced.

What are the potential impacts of increased traffic and what steps could be taken to mitigate impacts on communities?

- Any increase in vehicle movements could result in an increase in noise, vehicle emissions, road damage or traffic accident risks, which may be identified as negligible, or may require mitigation.
- Provided the planning and Environment Impact Assessment system is properly implemented, any significant impacts would be avoided through the use of appropriate mitigation measures.
- However, even with mitigation and guidance in place, local communities would experience an increase in traffic numbers, potentially for a number of years.

POTENTIAL COMMUNITY BENEFITS

There are a number of examples of schemes that help communities who host industrial activity to share in the economic benefits of those developments. An example is community benefit schemes for onshore wind development, where operators provide a voluntary contribution to local communities affected by wind energy developments.

Another example is Scotland's Landfill Communities Fund, which recognises that those living close to landfill sites may experience loss of amenity and other impacts as result of the storage, treatment and handling of waste close to their communities. The Scottish Landfill Communities Fund allows landfill operators to fund local environmental and community projects.

A number of proposals have been made by the industry and the UK Government on reinvesting the proceeds of unconventional oil and gas developments in local communities.

The onshore industry trade body (UK Onshore Oil and Gas) has published a charter for community benefits, which voluntarily commits operators to providing communities with a £100,000 payment per exploratory (hydraulically fractured) well site and a community revenue stream of (no less than) 1% of revenues during the production stage.

The economic impact analysis examines potential contributions to communities from voluntary industry commitments. Table 4 sets out the total community benefits that would arise from a community benefit payment of 4% of revenues. The analysis is based on production scenarios described on page 29. The research noted that a licence-holder in Scotland announced in 2014 that it would give 6% of the shale gas revenues to homeowners, landowners and communities close to its wells.

In the Autumn Statement 2015, the UK Government announced that it will commit up to 10% of shale gas tax revenues to a Shale Wealth Fund – this is projected to invest up to £1 billion in the North of England and other shale producing areas over the next 25 years.

Table 4 Community benefit payments under different industry scenarios⁶.

		CENTRAL	HIGH	LOW
Shale gas	£m	187	578	63
Associated liquids	£m	30	85	1
Total	£m	217	663	64

In August 2016 the UK Government launched a Shale Wealth Fund consultation in which it set out proposals for how the Fund is to be managed and who will benefit. The consultation includes a proposal that local communities as well as regions affected should gain directly from the benefits of shale development.

Whilst the licensing of onshore production has been devolved, the fiscal regime remains reserved.

SCOTTISH GOVERNMENT OBSERVATIONS ON THE EVIDENCE

Correspondence received by the Scottish Government highlights the depth of concern many communities and individuals feel toward unconventional oil and gas.

Our evidence-led approach has provided new and important sources of information on potential benefits and risks, and the safeguards in place to manage those risks.

Proposed development sites would be located across Scotland's heavily populated central belt, and the Scottish Government is committed to involving people in the decisions that affect them and to making information and data accessible.

There are gaps in the evidence-base on health impacts, and in view of that we acknowledge the precautionary approach outlined by Health Protection Scotland and that this should be proportionate to the scale of the hazards and potential health impacts, both adverse and beneficial.

While this period of consultation and deliberation takes place, Health Protection Scotland will monitor new health studies and keep the evidence-base (domestic and international) under continuous review to ensure their assessment of health impacts reflects the current state of knowledge.

CONSULTATION QUESTIONS

This section discussed potential social, community and health implications of an unconventional oil and gas industry in Scotland, and the findings from the evidence we have commissioned to examine these issues.

In answering the following questions, please consider whether, in your view, there are any specific gaps in the evidence presented.

Q1: What are your views on the potential social, community and health impacts of an unconventional oil and gas industry in Scotland?

Q2: What are your views on the community benefit schemes that could apply, were an unconventional oil and gas industry to be developed in Scotland?

⁶ KPMG 2016. [Unconventional Oil and Gas: Economic Impact Assessment and Scenario](#).

Economic considerations

Unconventional oil and gas has had a major impact on manufacturing and energy in North America. This section discusses the potential economic implications of unconventional oil and gas in Scotland, including in the context of Scotland's energy and manufacturing industries.

ECONOMY AND DRAFT ENERGY STRATEGY

Scotland's Economic Strategy sets out an overarching framework for achieving a more productive, cohesive and fairer Scotland. It is underpinned by four priorities for sustainable growth:

- investing in our people and our infrastructure in a sustainable way;
- fostering a culture of innovation and research and development;
- promoting inclusive growth and creating opportunity through a fair and inclusive jobs market and regional cohesion; and
- promoting Scotland on the international stage to boost our trade and investment, influence and networks.

Sustainable growth also means securing the transition to a more resource-efficient, lower carbon economy, which will reduce the cost to the economy of climate change.

Our actions to tackle climate change by reducing greenhouse gas emissions represent a fundamental transition in all sectors of the economy, including energy.

Scotland needs safe, clean, reliable and affordable energy to underpin the Scottish economy and contribute to the wellbeing of our society. This is why the Scottish Government has consistently made better energy provision a guiding objective.

On 24 January 2017, we published the draft Scottish Energy Strategy for consultation. The draft Strategy sets out our long-term vision for the future of the energy system in Scotland:

- a modern, integrated, clean energy system, delivering reliable energy supplies at an affordable price, in a market that treats all consumers fairly; and
- a strong, low carbon economy – sharing the benefits across our communities, reducing social inequalities and creating a vibrant climate for innovation, investment and high-value jobs.

The Strategy's central approach is 'systems-based' – that is, an integrated view of the challenges of meeting Scotland's heat, power and transport needs.

The Strategy recognises the importance of maintaining a flexible outlook on the combination of energy sources available to us as we transition towards a decarbonised energy system. This will allow Scotland's energy system to react and respond to changes in supply and demand, and to market conditions.

The draft Energy Strategy also considers the overall role of hydrocarbons in Scotland's energy mix (Box 5).

More information on Scotland's draft Energy Strategy can be found at: <https://consult.scotland.gov.uk/energy-and-climate-change-directorate/draft-energy-strategy/>



BOX 5: DRAFT ENERGY STRATEGY: EXPLORING THE ROLE OF ENERGY SOURCES

Advances in technology mean that new and innovative ways of using hydrocarbons are emerging, and will continue to do so in the decades ahead. Some of these advances could have a transformative impact on the energy system and lead to lower net carbon emissions, such as:

- Production of hydrogen as a low carbon energy carrier; in stationary power and Combined Heat and Power (CHP), in the gas mains supply for heating, or to power fuel cells in cars, vans, buses or even marine vessels; and
- Liquid Natural Gas, Compressed Natural Gas and Liquid Petroleum Gas – in particular, biomass-derived versions of these – to join liquid biofuels as options for replacing fossil diesel and petrol as cleaner fuels in internal combustion engines.

To support the emergence of new technologies and energy sources in a way that maximises their benefits to the economy, for consumers, and in an environmentally sound way, the Scottish Government will draw on the range of powers available to it to support this transformation, including the planning system, energy consenting and licensing.

In some cases, the Scottish Government may choose not to support particular technologies, on environmental or social grounds, or because of their potential negative impact on greenhouse gas emissions. Underground Coal Gasification is an example of a technique the Scottish Government has chosen not to support, following a thorough assessment of the scientific evidence⁷, and it is proposed that UCG will have no place in Scotland's energy mix⁸.

The Scottish Government is committed to examining the evidence and engaging with the citizens of Scotland to gather their views and understand their needs and perspectives. Our approach to evaluating the potential impact of unconventional oil and gas is an example of this evidence-led and measured approach.

The Scottish Government also recognises the importance of understanding how new energy sources and industries can be developed or introduced in a way that promotes economic opportunity, while minimising any significant additional long-term pressure on meeting Scotland's climate change targets, or other sectors.

⁷ [October 2016 Professor Campbell Gemmill, Independent Review of Undergrounded Coal Gasification – Report](#)

⁸ [Paul Wheelhouse statement on Underground Coal Gasification, October 2016](#)

RESEARCH FINDINGS: POTENTIAL ECONOMIC IMPLICATIONS

Shale gas has also had a considerable impact on the North American energy market; gas production had plateaued in the early 1970s at around 24 trillion cubic feet per year, and has risen dramatically since the mid-2000s to an all-time high of 33 trillion cubic feet in 2015⁹.

The Expert Panel also noted that in North America the development of shale gas has led to investment in the chemical and manufacturing industry of over \$100 billion. As a result, US chemical products are now nearly half the price of similar European products.

There has been no unconventional oil and gas production in Scotland, and therefore very few studies examining the potential impact of unconventional oil and gas on Scotland's economy have been conducted.

To gain a better understanding of the potential economic implications in Scotland, we commissioned research to examine the impact that unconventional oil and gas could have on jobs and the wider Scottish economy under a range of potential production scenarios. The scenarios developed through this project are described on page 29.

A summary of the main research findings are as follows:

Under different production scenarios, what is the potential cumulative impact of unconventional oil and gas development on the Scottish economy?

Gas and oil production through to 2062

- Under their central scenario¹⁰, the study estimated that total, cumulative gas production through to 2062 would be 947 bcf (billion cubic feet), equivalent to around 5.5 years of Scottish consumption at current levels.
- The study estimated that total associated liquid (oils) production through to 2062 would be 17.8 mmbbl (million barrels of oil equivalent) in their central scenario.

Potential economic impacts

- In their central scenario, the study estimates that the total, cumulative industry expenditure in Scotland would be £2.2 billion through to 2062.
- The study estimates that this would add £1.2 billion to Scotland's economy over this period, which is approximately equivalent to 0.1% of Scottish GDP – a measure of Scotland's economic output – per year over the lifetime of the industry.
- In their central scenario, it is estimated the industry would support 1,400 jobs in Scotland at its peak. This includes indirect jobs in the supply chain and jobs created in other sectors of the economy, for instance hotel and taxi businesses.
- In their central scenario, the study estimates that the cumulative, additional tax receipts (for the UK and not including coal bed methane) would be £1.4 billion.

⁹ U.S. Energy Information Administration. *Oil Production in the United States 2000-2015*

¹⁰ The high and low scenario estimates are set out in the research report, KPMG 2016. *Unconventional Oil and Gas: Economic Impact Assessment and Scenario*.

Market conditions

- The study observes that if oil and gas prices were to remain at today's historically low levels, it would be unlikely that unconventional oil and gas resources in Scotland would be economically viable to develop at scale.
- The study also notes that exploration work would be required to determine the commercial feasibility and production potential of the resources contained in the Midland Valley of Scotland.

With reference to the potential economic impact of unconventional oil and gas in Scotland, what sectors and groups are likely to be affected?

- The study observes that Grangemouth petrochemical facility has been unable to operate at full capacity due to lack of feedstock.
- The study notes that a number of petrochemical companies could see a positive impact on their supply chain if unconventional oil and gas is developed as they would avoid the costs of importing/transporting their primary input.
- The study also considers a number of other economic factors, including potential impacts on local house prices, road use, agriculture, visual amenity, environmental costs and health costs. The study sets out a number of potential issues and costs reported in the literature, alongside concerns raised by stakeholders, and highlights some of the uncertainties associated with assessing these costs.

What is the potential nature and extent of any community benefit payments?

- As discussed on page 37, in their central scenario, the study estimates that the cumulative value of community benefit payments through to 2062 would be £217 million. This is based on an assumed contribution of 4% of revenues to local communities.

THE ROLE OF NATURAL GAS IN SCOTLAND'S ENERGY MIX

Total annual gas consumption in Scotland in 2014 is estimated to be 150 billion cubic feet/year¹¹.

As outlined in our draft Energy Strategy, the consumption of heat accounts for 53% of the energy consumed by Scotland's homes and businesses. Around 1.9 million Scottish households (79%) use mains gas as their primary heating fuel.

These figures show that Scotland currently relies on natural gas to supply the bulk of energy demand for heat, and natural gas will be an important part of Scotland's energy mix for the foreseeable future. Gas is also central to the global energy mix, with demand forecast to increase until 2040. Addressing this demand represents a key challenge for the future in balancing the needs of consumers with a lower carbon secure energy system.

The majority of the UK's domestic sources of natural gas historically came from the North Sea. The production of natural gas from the North Sea is declining. By 2025, the UK is expected to be importing 67% of its gas from outside the UK¹³.

11 Department for Business Energy and Industrial Strategy, 2016. [Digest of UK Energy Statistics](#).

13 Department for Energy and Climate Change, 2016. [UKCS Oil and Gas Production Projections 2016](#)

Our current supplies of gas are a mixture of gas from North Sea gas fields and imported supplies from pipelines within continental Europe, or from liquefied natural gas from international markets.

Our future demand for gas is likely to change as we move towards a largely decarbonised energy system. For instance, in the short to medium term (<20 years), increased emphasis on energy efficiency and heat networks is likely to lower demand for gas. A key challenge in this longer-term transition is finding cost-effective substitutes for energy and manufacturing, without increasing our dependence on imports.

Longer term, trends in supply and demand are more difficult to forecast. The pace of innovation in hydrogen and biogas as new gas grid sources, alongside energy storage, are likely to play a significant role in the future of gas. Furthermore, the commercial viability of Carbon Capture and Storage will have a considerable bearing on the long-term role of gas.

In terms of a role for unconventional oil and gas, the economic study estimates that total production up to 2062 under their central scenario would be 947 bcf (billion cubic feet), which is equivalent to around 5.5 years of Scottish gas consumption at current levels. Under the low and high production scenarios, the economic study estimates that production would be 316 bcf (about two years of Scottish gas consumption) and 2,934 bcf (about 20 years of Scottish gas consumption).

The economic study concludes that the volumes of natural gas that are likely to be recoverable from unconventional oil and gas reserves in Scotland would not have an impact on global gas prices. This suggests that there would be no noticeable effect on energy costs for households.

However, the research also notes that there may be opportunities for natural gas from unconventional oil and gas developments to provide a cost-effective gas supply to local energy networks, particularly for high energy-use industries.

POTENTIAL MANUFACTURING IMPLICATIONS

The economic impact study highlights that natural gas liquids produced from shale reserves can be an important feedstock (a raw material to supply or fuel an industrial process) in manufacturing industries.

Manufacturing can play a crucial role in boosting Scotland's productivity. The sector can support inclusive growth, a central part of our economic strategy, by helping to address regional imbalances through local spillovers and supply chain linkages, whilst providing jobs that are typically high-skilled and well-paid.

However, energy-intensive manufacturing and petrochemicals sectors require certainty that energy and feedstocks will be secure and competitive. This is an important factor for investment decisions. The long-term decline of local supplies of natural gas liquids presents a challenge.

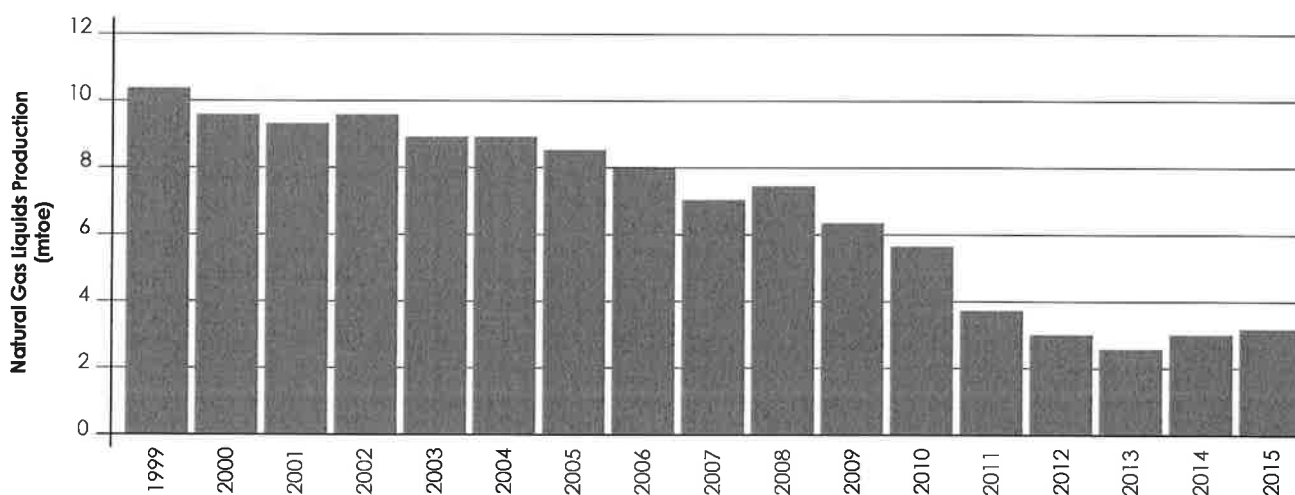
As shown in Figure 8, North Sea natural gas liquids production has fallen from 10.3 million tonnes of oil equivalent (mtoe) in 1999 to 2.9 mtoe in 2015, with the quality/blend of North Sea Natural Gas Liquids also diminishing over this period.

As outlined on page 25, shale reserves can hold quantities of natural gas liquids, such as ethane. Exploratory work would be required to understand whether Scottish shale contains high levels of ethane or methane that are economically and technically viable for industry.

The economic impact study discusses the Scottish chemicals manufacturing sector. It highlights that in Scotland there are 150 manufacturing companies involved in the manufacture of chemicals and chemical products supporting around 3,500 direct jobs.

These companies are involved in the manufacture of primary chemicals, chemical products for industrial applications, pharmaceuticals, and plastic manufacturing. The chemical sciences industry is estimated to support a direct employment of 9,000 in Scotland and around 70,000 people are employed in dependent services¹⁴.

Figure 8 Trend in natural gas liquid production from the North Sea¹⁵.



Most of these companies are large and well-established organisations, and include Scotland's largest petrochemical refinery in Grangemouth (Box 6). The 10 million tonnes of chemical products produced annually at Grangemouth are used in the manufacture of a range of everyday consumer goods such as emulsion paint, car fuel tanks, plastic bottles, wrappers, food film, carpets, cabling, water pipes and camping gas¹⁶.

There is also a large ethylene plant in Fife which was the first plant specifically designed to use natural gas liquids from the North Sea as feedstock. This has an annual capacity of 83,000 tonnes of ethylene and around 50% of this is distributed via the UK ethylene pipeline network¹⁷.

The economic study observes that the development of unconventional oil and gas could provide a positive effect on the petrochemical industry in Scotland.

14 Scottish Enterprise, *Skills Investment Plan for Scotland's Chemical Sector*.

15 Scottish Government, 2016, *Oil and Gas Production Statistics 2015-16*.

16 Chemical Industries Association, 2012, *Advantage Scotland*.

17 Chemical Industries Association, 2012, *Advantage Scotland*.

BOX 6: GRANGEMOUTH ETHANE SUPPLY PROJECT

INEOS, the owner of the Grangemouth petrochemical facility, has recently begun importing ethane from North American hydraulically-fractured shale reserves, and has stated publicly that a cost-effective and long-term supply of ethane is vital to their long-term plans for Grangemouth.

The Grangemouth site received £450 million of investment by INEOS to build a storage facility and gas import terminal. Even after factoring in the transportation costs of shipping the ethane across the Atlantic, INEOS has stated publicly that it is a competitive source of raw material.

This new source of ethane has enabled the ethylene cracker at Grangemouth to move from operating at half of its capacity to full capacity. The Grangemouth facility has one of only four gas crackers in Europe capable of using ethane gas to manufacture ethylene.

SCOTTISH GOVERNMENT OBSERVATIONS ON THE EVIDENCE

The amount of unconventional oil and gas that could be economically or technically recovered in Scotland is not known. Further exploratory work (including core sampling) would be required to better understand the resources that could be commercially exploited.

The total economic impact of unconventional oil and gas is estimated to be relatively low, and is not comparable to the current offshore industry in Scotland.

An unconventional oil and gas sector in Scotland could provide a cost-effective gas supply for local energy networks, and increase security of supply, particularly for high energy use industries.

However, as the scale of production in Scotland would be relatively low in comparison to European or international gas production, it would be unlikely to have an impact on global gas supply prices, and therefore on consumer energy costs.

Scotland's petrochemical sector is a major employer and contributor to Scotland's economy. In response to declining domestic sources of natural gas liquids, imported ethane is enabling the petrochemicals sector to significantly expand production. An unconventional oil and gas sector in Scotland could provide important benefits to Scotland's petrochemical sector.

CONSULTATION QUESTIONS

This section has discussed the potential economic implications of an unconventional oil and gas industry in Scotland, including in the context of Scotland's energy and manufacturing industries. The findings from the evidence we have commissioned to examine these issues has also been discussed.

In answering the following questions, please consider whether, in your view, there are any specific gaps in the evidence presented.

Q3: What are your views on the potential impact of unconventional oil and gas industry on Scotland's economy and manufacturing sector?

Q4 What are your views on the potential role of unconventional oil and gas in Scotland's energy mix?

Environmental considerations

The extraction of unconventional oil and gas is an industrial process and, as with most industrial processes, if not appropriately undertaken and controlled, it could result in adverse impacts to the environment and to local communities.

This section summarises and discusses the studies we commissioned in 2016 to examine climate change, decommissioning and risks of induced seismicity. The section also discusses regulation and how it could be strengthened.

UNCONVENTIONAL OIL AND GAS, AND CLIMATE CHANGE

The Scottish Parliament has set ambitious climate change targets to reduce emissions of greenhouse gases by 80% by 2050, from 1990 levels.

As of 2014, we have delivered a 45.8% reduction from baseline levels¹⁸ meeting our annual target for that year and exceeding our 2020 target for a 42% reduction, six years early.

The Scottish Government's third Climate Change Plan, which was published in draft on 19 January 2017, shapes and sets out our approach to tackling climate change and paving the way for Scotland's transition to a low carbon economy.

More information on Scotland's draft Climate Change Plan can be found at:
<http://www.gov.scot/Publications/2017/01/2768>

The current policy on unconventional oil and gas is a moratorium, pending a decision after this public consultation. As such, the draft Climate Change Plan does not consider the potential role of, or emissions from, unconventional oil and gas.

Greenhouse gas emissions can occur at different stages of an unconventional oil and gas development. Some of these emissions will be carbon dioxide (CO₂), and others will be methane. The UK Committee on Climate Change note that the Fourth Assessment of the Intergovernmental Panel on Climate Change indicates that a tonne of methane emitted is equivalent to 25 tonnes of CO₂ in terms of its warming potential.

The Committee on Climate Change have identified the following main sources of emissions from an unconventional oil and gas development:

- **Fugitive emissions**, which include both vented emissions and unintentional leaks. Vented emissions are a result of planned releases, where permitted, as a result of maintenance operations and safety concerns. Unintentional methane leaks include those from valves and pipe joints, compressors, well heads, and accidental releases above and below ground from the well, through to injection into the grid or before being put to use.
- **Combustion emissions** that occur from on-site burning of fossil fuels. The emissions come from engines, such as those used for drilling and hydraulic fracturing, as well as from any flaring of gas.
- **Indirect emissions** that result from transporting materials and waste to and from a site.
- **Land-use change emissions**, which include the CO₂ released when land is converted from one use to another, as well as any emissions relating to land remediation during decommissioning.

¹⁸ Based on emissions adjusted for trading in the EU-Emissions Trading Scheme.



RESEARCH FINDINGS: POTENTIAL CLIMATE CHANGE IMPLICATIONS

In response to the potential significance of emissions from unconventional oil and gas to Scotland's ambitious climate change agenda, we asked the Committee on Climate Change to provide us with advice on the potential impact of unconventional oil and gas on Scottish and global greenhouse gas emissions.

To examine these issues, the Committee on Climate Change used the production scenarios developed by the study exploring economic impacts, which are discussed on page 29.

A summary of the main research findings is provided below.

What would be the impact of unconventional oil and gas production in Scotland on our greenhouse gas emissions?

- The Committee on Climate Change's assessment is that exploiting unconventional oil and gas reserves on a significant scale is not compatible with Scotland's climate change targets unless:
 - Emissions are limited through tight regulation. Within this, much greater clarity is necessary over the respective roles of different actors in the regulatory system, particularly around fugitive emissions.
 - Fossil fuel consumption remains in line with the requirements of Scottish emissions targets. Scottish unabated fossil energy consumption must be reduced over time within levels previously advised by the Committee. This means that Scottish unconventional oil and gas production must displace imported gas rather than increasing domestic consumption.
- Emissions from production of unconventional oil and gas are offset through reductions in emissions elsewhere in the Scottish economy.
- Central estimates are for emissions from unconventional oil and gas to reach 2.6 Mega tonnes per year (Mt) CO₂ equivalents in 2035 for unregulated production under the economic impact and scenario development High Production scenario. Emissions fall to 1.6 Mt under a 'minimum necessary regulation' scenario, and to 1.1 Mt with fuller technical mitigation.
- Under the central production scenario, emissions are estimated to be 0.6 Mt per year in 2035 if the minimum necessary regulation were adopted.
- To put these figures into context, the annual emissions target in 2032 is 26.4 Mt of CO₂ equivalents.
- The high level of ambition embodied in Scottish annual emissions targets means that finding offsetting effort elsewhere in order to accommodate even moderate additional emissions from unconventional oil and gas production or other sources (e.g. aviation) would be challenging.
- The implications for greenhouse gas emissions of unconventional oil and gas exploitation are subject to considerable uncertainties, both regarding the size of any future industry and the emissions footprint of production. The research sets out a number of potential emission trajectories under a number of different scenarios.

What would be the impact of unconventional oil and gas production in Scotland on global greenhouse gas emissions?

- The overall emissions footprint of Scottish shale gas, if tightly regulated, is likely to be broadly similar to that of imported gas. Tightly-regulated domestic production may provide an emissions saving when displacing imports of liquefied natural gas, and would provide greater control over the level of emissions associated with supply.
- Initial evidence suggests that tightly-regulated shale gas production is likely to have a broadly neutral impact on global emissions, with emissions savings due to switching from higher-carbon fossil fuels approximately offsetting emissions increases due to increased use of unabated gas.
- Within the context of a world committed to decarbonisation, it is likely that domestic production of hydrocarbon liquids would displace high-cost production elsewhere in the world, rather than increasing overall oil product consumption or driving fuel switching.

How might these impacts vary over time?

- The emissions relating to production grow over time, broadly in line with the growth in hydrocarbons produced, peaking slightly after 2035 under each scenario.

RESEARCH FINDINGS: DECOMMISSIONING AND AFTERCARE

Recent experience with the remediation of open-cast coal sites in Scotland has highlighted the importance of robust decommissioning and restoration regimes. Robust regimes mean ensuring operators comply with their obligations, and communities and the public sector aren't left to deal with restoration and aftercare issues and costs.

The Expert Panel report summarised the key issues relating to decommissioning and remediation, including potential risks arising from well integrity. The Expert Panel report also highlighted potential gaps in aftercare requirements and long-term monitoring.

To understand these issues in more detail we commissioned research to tell us more about potential environmental risks, industry best practice, and the adequacy of regulatory controls over decommissioning, including for long-term monitoring.

A summary of the main research findings is provided below.

What steps can be taken to ensure decommissioning, site restoration and aftercare can be undertaken in a way that minimises impacts on communities and the environment?

- Scotland has a mature framework for the regulation and control of unconventional oil and gas development which is at least the equal of those examined in other countries or other industries. With appropriate regulatory oversight and monitoring, the framework is sufficient to manage risks of well leakage consistent with the aim of providing suitable protection for communities and the environment.
- The risk of leakage from abandoned wells is likely to be low, and international experience suggests that long-term well integrity can be achieved by implementing best practice during well construction and abandonment operations under a strong regulatory regime.
- There is a risk that a small proportion of wells may fail. Leaks may occur from these wells if there is a source of oil or gas under pressure (which is generally not the case). Therefore it may be appropriate to monitor for leakage from decommissioned wells for as long as Scottish Environment Protection Agency consider necessary.

What forms of financial guarantee provide robust security against liabilities?

- It is essential that unconventional oil and gas operators have sufficient funds available to cover liabilities associated with the abandonment and decommissioning of wells.
- Taking lessons from open cast coal mining there are financial mechanisms available which can minimise the risk of operators failing to honour their commitment to decommissioning.

RESEARCH FINDINGS: RISK OF INCREASED SEISMICITY

Many activities involve small amounts of induced seismicity (ground vibrations or earthquakes) including construction, quarrying and many commonly occurring drilling operations.

The Expert Panel also noted that data compiled from American sources suggests that induced seismicity from hydraulic fracturing is typically minor and unlikely to be felt by individuals. Nevertheless, a more significant seismic event was attributed to hydraulic fracturing operations in Lancashire in north-west England in April and May 2011.

Experience from North America suggests that disposing of wastewater from hydraulic fracturing by re-injecting it into the ground can result in an increased risk of seismic activity.

We therefore commissioned research to develop a better understanding of the risks of seismic activity that could be presented by unconventional oil and gas developments in Scotland.

A summary of the main research findings is provided below.

What levels of induced seismic activity could be associated with unconventional oil and gas developments in Scotland?

- Hydraulic fracturing is accompanied by seismic events of low magnitude. The magnitudes of these events are usually less than 2.0 making them too small to be felt by people.
- The process of hydraulic fracturing as presently implemented poses a low risk of inducing felt, damaging or destructive earthquakes.

What regulatory and non-regulatory actions can be taken to mitigate any noticeable effects on communities?

- Recent increases in earthquake rates and significant earthquakes in many areas of the United States where hydraulic fracturing is undertaken have been linked to the disposal of wastewater by injection into deep wells rather than hydraulic fracturing itself.
- In the UK, following induced seismicity near Blackpool in 2011, the UK Government put steps in place to mitigate risks. This included identifying a limit of 0.5ML where operations should be halted. An event of this magnitude is unlikely to be felt, does not pose any seismic hazard, and would only be detected by sensitive monitoring equipment in the vicinity of the epicentre.
- The study concludes that a dense network of monitoring stations is essential for reliable detection and discrimination of induced seismic events, and to allay public concern.

REGULATION OF UNCONVENTIONAL OIL AND GAS

As outlined by the Expert Panel, the existence of a potential impact does not mean that it will occur, and effective regulation, best practice and other assessments can reduce, or eliminate, adverse occurrences.

A regulatory framework already exists in Scotland, which covers the vast majority of activities requiring control and monitoring as part of unconventional oil and gas developments. Figure 9 summarises some of the main controls.

The Expert Panel observed that this framework is generally well coordinated between the main regulatory bodies.

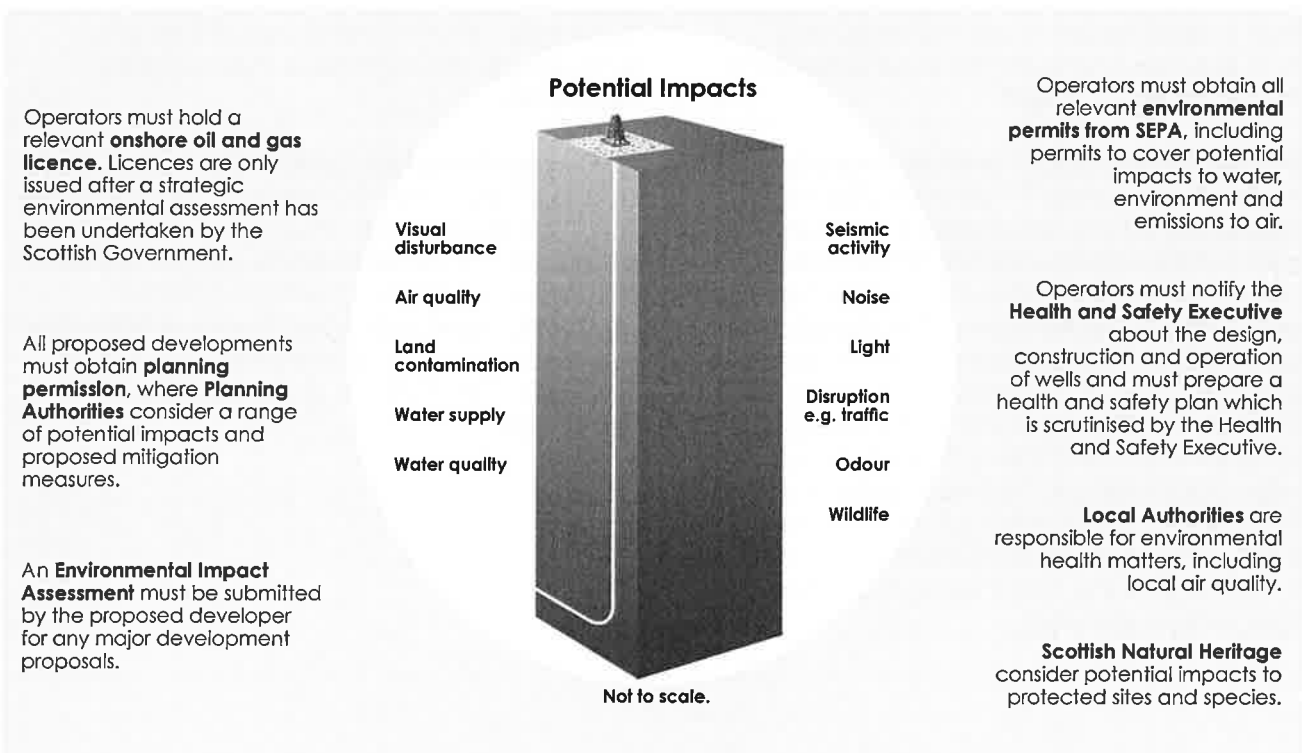
The following section provides information on the current regulatory framework for unconventional oil and gas developments. This is followed by a discussion of areas where the framework could be strengthened.

The current regulatory framework

As discussed on page 13, rights to oil and gas in a given area are governed by a licensing system. There are currently three licences for unconventional oil and gas in Scotland, all of which were issued by the UK Government. The Scottish Government moratorium means that there is no unconventional and gas activity in these areas.

The licences do not give the licence-holder automatic permission to begin exploration, appraisal or extraction as a range of other planning and environmental permits are required before a development can commence.

Figure 9 Examples of regulatory controls to minimise or mitigate impacts.



The focus of the planning system is on determining whether a proposal is an appropriate use of land, but other regulatory regimes covering health and safety and environmental protection would be relevant to the consideration of an application or planning permission.

Underground operations as well as above ground development can only be undertaken once planning permission has been granted. Planning Authorities are responsible for considering planning applications for works associated with an unconventional oil and gas development. Further information on factors considered during a planning application is provided on page 33.

The Scottish Environment Protection Agency (SEPA) regulate specific activities that may cause pollution or pose other risks to the environment. For example, SEPA consider applications for licences under the Pollution Prevention and Control (Scotland) Regulations 2012, to control emissions to air, land and water and the Water Environment (Controlled Activities) (Scotland) Regulations 2011, to control borehole construction, abstraction of water from surface water or groundwater, and activities that are liable to cause pollution of the water environment.

The Health and Safety Executive regulate to ensure the operator is managing the health and safety risks appropriately throughout the life cycle of an unconventional oil and gas development. Operators must notify the Health and Safety Executive about the design, construction and operation of wells and must prepare a health and safety plan which sets out how health and safety risks are managed on-site. Health and Safety Executive specialist inspectors scrutinise the information provided by the operator and further information provided each week during the abandonment process to ensure that the well is being abandoned to the correct standards.

Local Authorities are responsible for Environmental Health matters, which includes protecting the public from the harmful exposures they may encounter in the environment. Local Authorities also require waste to be managed in a way that minimises risk to human health and the impact on the environment, and are regularly required to review and assess air quality against the objectives contained in the Air Quality Strategy for England, Scotland, Wales and Northern Ireland.

Scottish Natural Heritage consider potential impacts to wildlife, protected species, and scenic and special conservation areas.

The Scottish Government has prepared a more extensive overview of the current regulatory framework, which can be found at: <http://www.gov.scot/Resource/0050/00509369.pdf>.

Areas where the regulatory framework could be strengthened

The Expert Panel concluded that 'The regulatory framework is largely in place to control the potential environmental impacts of the production of unconventional oil and gas in Scotland, although there may be gaps to address'.

The Expert Panel highlighted the strength and quality of regulation in Scotland, and that there are considerable legislative safeguards to ensure that potential impacts are not realised. The Expert Panel also identified specific regulatory issues that could create gaps in the regulatory framework and where regulation could be strengthened or transparency enhanced.

In response to the Expert Panel's conclusion, and to inform this consultation, the research projects commissioned by the Scottish Government were asked to examine relevant regulatory issues and lessons from international best practice. The Scottish Government also hosted a workshop in October 2016 with the main regulators to discuss regulation and the issues identified by the research projects and the Expert Panel.

A summary of the workshop, which includes a summary of areas where regulation could be strengthened (BOX 7), can be found at:

<http://www.gov.scot/Resource/0051/00510364.pdf>

BOX 7: EXAMPLES OF AREAS WHERE REGULATION COULD BE STRENGTHENED

Air Quality: The Independent Expert Scientific Panel noted that some air emissions, including fugitive emissions, may not be fully regulated under current arrangements. The Committee on Climate Change also observe that greater clarity is necessary over the respective roles of different bodies to ensure full coverage of greenhouse gas emissions.

The Scottish Government considers that amendments to legislation to bring overarching coherence to the regulatory framework for air emissions would be necessary, which could include a single or lead competent authority to regulate all sources of emissions across the lifetime of a project.

Decommissioning: The decommissioning study noted that there is currently no power to require specific arrangements for well decommissioning and aftercare if a company fails financial tests after consent to drill a well has been given. The study observed that financial strength tests could be run regularly, with greater emphasis on testing the sufficiency of funds to cover decommissioning and restoration costs. Where a company fails a financial test, provisions such as Parent Company Guarantees, insurance, bonds or letters of credit or payment into escrow accounts could be required.

The study also observed that there is a low probability of well failure. If such a failure did occur, long-term insurance products, or a mutual-fund, could be required to cover the costs of repairing wells that fail following decommissioning, and any accompanying remediation.

Induced Seismic Events: The UK Government has issued guidance that operations should cease if seismic events of 0.5ML or greater are induced. The study examining seismicity notes that existing monitoring networks are not capable of reliable detection and location of these magnitude levels, and that improved monitoring and measurement are required to implement the system successfully.

Further observations from the research on how regulation could be strengthened:

A Health Impact Assessment, Environmental Impact Assessment and Traffic Management Plan could be required for all planning applications relating to unconventional oil and gas developments.

Improved engagement with the local community could be required, including release of data to enable communities to scrutinise operational standards, and increased transparency of chemicals used.

Improved baseline monitoring of environmental and health data to allow any environmental and health impacts to be effectively identified.

Establishment of appropriate setback distances, in order to minimise risks to residents and to address risk perception issues.

The delegates at the workshop held in October 2016 agreed that the following points should guide any future analysis of the regulatory framework:

- the observations on regulation made by the researchers and during the workshop would form a basis for organising work to examine how regulation could be strengthened if that was to be required;
- that an effective approach, in the event that it is required, to advancing such work would be the formation of an Expert Regulatory Group, chaired by the Scottish Government with representation from the regulators present at the workshop; and
- the group would require access to technical and legal resource, would make use of existing professional networks and would consider community impacts and involvement.

SCOTTISH GOVERNMENT OBSERVATIONS ON THE EVIDENCE

An unconventional oil and gas sector in Scotland is likely to have a broadly neutral impact on global greenhouse gas emissions if it is tightly regulated.

However, within the context of Scotland's climate change legislation, an unconventional oil and gas industry would create challenges in meeting Scotland's ambitious and world-leading climate change targets.

In respect to environmental regulation, the research project findings are broadly consistent with the findings of the Independent Expert Scientific Panel, which concluded that 'The regulatory framework is largely in place to control the potential environmental impacts of the production of unconventional oil and gas in Scotland, although there may be gaps to address'.

The study examining seismicity concludes that the risk of felt earthquakes from unconventional oil and gas developments is low. However, where disposal of wastewater by reinjection into a hydraulically-fractured well has been permitted in North America, there is evidence it has increased the risk of earthquakes. We note that this form of wastewater disposal is not a practice that has been proposed by industry in the UK.

We are committed to undertaking all relevant statutory assessments in coming to a final position on unconventional oil and gas, including undertaking a Strategic Environmental Assessment, which would be required regardless of the form of our final decision.

The regulators are confident that the research we have commissioned has provided a clear analysis of where regulation could be strengthened in key areas.

CONSULTATION QUESTIONS

This section discussed potential environmental and climate change implications of an unconventional oil and gas industry in Scotland, and the findings from the evidence we have commissioned to examine these issues.

In answering the following questions, please consider whether, in your view, there are any specific gaps in the evidence presented.

Q5: What are your views on the potential environmental impacts of an unconventional oil and gas industry in Scotland?

Q6: What are your views on the potential climate change impacts of unconventional oil and gas industry in Scotland?

Q7: What are your views on the regulatory framework that would apply to an unconventional oil and gas industry in Scotland?



PART THREE

A choice for Scotland



Concluding remarks

The section summarises Scottish Government observations on the evidence-base and outlines actions taken on unconventional oil and gas by other countries or jurisdictions.

SCOTTISH GOVERNMENT OBSERVATIONS ON THE EVIDENCE

The Scottish Government is committed to presenting impartial information, without passing judgement on that evidence or the industry, so that you can openly explore the issues, and present your views to the Scottish Government.

As such, this consultation does not set out or advocate a preferred Scottish Government position on unconventional oil and gas.

To aid consideration of the future of this industry, the Scottish Government has highlighted throughout this document key aspects of the evidence on unconventional oil and gas that we believe are important. A summary of these observations is presented below.

Community considerations (pages 32 to 37)

- Correspondence received by the Scottish Government highlights the depth of concern many communities and individuals feel toward unconventional oil and gas.
- Our evidence-led approach has provided new and important sources of information on potential benefits and risks, and the safeguards in place to manage those risks.
- Proposed development sites would be located across Scotland's heavily-populated central belt, and the Scottish Government is committed to involving people in the decisions that affect them and to making information and data accessible.
- There are gaps in the evidence-base on health impacts, and in view of that we acknowledge the precautionary approach outlined by Health Protection Scotland. This should be proportionate to the scale of the hazards and potential health impacts, both adverse and beneficial.

- While this period of consultation and deliberation takes place, Health Protection Scotland will monitor new health studies (domestic and international) and keep the evidence-base under continuous review to ensure their assessment of health impacts reflects the current state of knowledge.

Economic considerations (pages 38 to 45)

- The amount of unconventional oil and gas that could be economically or technically recovered in Scotland is not known. Further exploratory work (including core sampling) would be required to better understand the resources that could be commercially exploited.
- The total economic impact of unconventional oil and gas is estimated to be relatively low, and isn't comparable to the current offshore industry in Scotland.
- An unconventional oil and gas sector in Scotland could provide a cost effective gas supply for local energy networks, and increase security of supply, particularly for high energy use industries.
- However, as the scale of production in Scotland would be relatively low in comparison to European or international gas production, it would be unlikely to have an impact on global gas supply prices, and therefore on consumer energy costs.
- Scotland's petrochemical sector is a major employer and contributor to Scotland's economy. In response to declining domestic sources of natural gas liquids, imported ethane is enabling the petrochemicals sector to significantly expand production. An unconventional oil and gas sector in Scotland could provide important benefits to Scotland's petrochemical sector.



Potential environmental implications (pages 46 to 53)

- An unconventional oil and gas sector in Scotland is likely to have a broadly neutral impact on global greenhouse gas emissions if it is tightly regulated.
- However, within the context of Scotland's climate change legislation, an unconventional oil and gas industry would create challenges in meeting Scotland's ambitious and world leading climate change targets.
- In respect to environmental regulation, the research project findings are broadly consistent with the findings of the Independent Expert Scientific Panel, which concluded that 'The regulatory framework is largely in place to control the potential environmental impacts of the production of unconventional oil and gas in Scotland, although there may be gaps to address'.
- The study examining seismicity concludes that the risk of felt earthquakes from unconventional oil and gas developments is low. However, where disposal of wastewater by reinjection into a hydraulically fractured well has been permitted in North America, there is evidence it has increased the risk of earthquakes. We note that this form of wastewater disposal is not a practice that has been proposed by industry in the UK.
- We are committed to undertaking all relevant statutory assessments in coming to a final position on unconventional oil and gas, including undertaking a Strategic Environmental Assessment, which would be required regardless of the form of our final decision.
- The regulators are confident that the research we have commissioned has provided a clear analysis of where regulation could be strengthened in key areas.

EXAMPLES OF ACTION TAKEN BY OTHERS

In response to their own evidence and circumstances, other countries or jurisdictions have taken a range of positions on unconventional oil and gas.

Some countries or jurisdictions, notably France, Bulgaria, and Victoria (Australia), have instituted indefinite bans on unconventional oil and gas developments on the basis of environmental concerns. In North America, a number of counties and some states have moved toward banning hydraulic fracturing for shale.

Other countries or jurisdictions, including New York State, Nova Scotia and Holland have invoked moratoriums or advised not proceeding until further evidence becomes available. Northern Ireland, the Republic of Ireland and Wales have all introduced some form of moratorium or position to allow further evidence to be collated and considered.

In 2013, the German Advisory Council on the Environment published a review into hydraulic fracturing, and recommended that, in view of 'serious knowledge gaps' hydraulic fracturing should not be used for commercial production of shale gas.

The Council acknowledged, however, that the evidence base relating to the local German context could be improved by permitting pilot projects with subsequent systematic interpretation of (openly available) data on the environmental impact of permitted activities. This option was also advocated as a possible means of enabling engagement with local communities in the evidence evaluation process. In 2016, the German Government moved to ban hydraulic fracturing for shale gas for an indefinite period, but with some exceptions for pilot or scientific studies.

England, a number of states (or provinces) in North America, Australia and Canada, and some other European countries (notably Poland) have actively promoted unconventional oil and gas developments through policy or fiscal incentives. The main commercial unconventional oil and gas developments are in Australia and North America.

Around 10% of Australia's gas production is exploited through coal bed methane or similar technologies. By 2015 the number of hydraulically-fractured wells in the United States reached 300,000, producing around two-thirds of US natural gas¹⁹.

A number of US states have used buffer zones to control where development can take place in the vicinity of water supplies and surface water. The size of buffer zones varies considerably between states. For example, Ohio requires a 50-foot setback for streams, while Pennsylvania requires a 300-foot setback.

A CHOICE FOR SCOTLAND

The Scottish Government has maintained a cautious and evidence-led approach to unconventional oil and gas.

It is the job of government to base decisions on evidence – including scientific, expert opinion and views of the public – and to seek a collective way forward.

We believe that the research we have commissioned and presented provides a strong basis upon which to consider and debate the future of unconventional oil and gas in our country.

Some will conclude that the research shows the economic impact is low and the risks and costs associated with mitigating climate change impacts are too great, where others may argue that the risks can be managed and that gas is an important part of the low-carbon transition or that the potential economic gain cannot be ignored. We want to hear all views, whether in favour or in opposition.

As outlined on the previous page, a variety of options are available to the Scottish Government to guide or determine the future of unconventional oil and gas in Scotland.

Once the consultation closes and the results have been independently analysed and published we will make our recommendation on the future of unconventional oil and gas to the Scottish Parliament. We will then ask the members of the Scottish Parliament to vote on our recommendation, and then the Scottish Government will make their decision.

¹⁹ U.S. Energy Information Administration. [Oil Production in the United States 2000-2015](#).

CONSULTATION QUESTIONS

This document has set out a range of evidence available to Scottish Ministers to guide or determine the future of unconventional oil and gas in Scotland.

Q8: Overall, and in light of the available evidence, what do you think would be the main benefits, if any, of an unconventional oil and gas industry in Scotland?

Q9: Overall, and in light of the available evidence, what do you think would be the main risks or challenges, if any, of an unconventional oil and gas industry in Scotland?

Q10: If you have any other comments on the issues discussed in this consultation, please provide them here.

Respondent Information Form

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

If you are responding on behalf of an organisation, please select a type/sector that best describes your organisation.

- Business / industry
 Academic / research
 Professional / trade body
 Public body
 Third sector / NGO
 Community group
 Other (please provide further details below)

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

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Fees for monitoring surface coal mines



FEES FOR MONITORING SURFACE COAL MINES

Introduction

1. This consultation seeks views on the Scottish Government's proposal to enable planning authorities to charge operators for undertaking monitoring of surface coal mining permissions, including planning conditions; legal agreements and restoration financial guarantees. The proposal takes account of previous consultations¹ and the work of the Opencast Coal Task Force during 2013-2015. It also fulfils our commitment to consult further with stakeholders on the scope of a new fees regime. The intention is to lay Regulations in the Scottish Parliament in due course.

Summary

2. The main points to note in this paper are that the proposal:
- is only aimed at surface coal mining;
 - sets a fee of £500 for each monitoring visit to an active site and £250 for an inactive site;
 - allows planning authorities some level of flexibility when gauging the number of site visits required each year;
 - limits the amount of chargeable visits to 8 per year for an active site and to once a year for an inactive site;

Policy context

3. The Scottish Government's five strategic objectives – to make Scotland *wealthier and fairer; smarter; healthier; safer and stronger; and greener* – focus on increasing sustainable economic growth. Activity in the surface coal mining industry across the UK remains modest whilst coal prices remain depressed. Coal continues to be extracted in Scotland principally providing fuel for specialist industrial and domestic markets. Whilst employment related to coal production has declined the restoration of former surface coal mines continues to provide valuable local employment in areas such as Ayrshire, Dumfries & Galloway, South Lanarkshire and Fife. With a focus on site restoration, the consultation supports the national outcome that '*We value and enjoy our built and natural environment and protect it and enhance it for future generations*'. Coal extraction must be carefully managed so that impacts on local communities and the environment are minimised.

4. The role of development planning and development management is to guide development to appropriate locations and then to regulate those operations whilst they are being undertaken. Planning application procedures provide an important

¹ <http://www.gov.scot/Publications/2013/12/7688>

opportunity to ensure that those most likely to be affected by coal extraction are involved in decisions that affect them

5. If approved, this type of development would normally be subject to planning conditions and associated legal agreements, which seek to minimise impacts on local communities and the environment. Responsibility for ensuring development complies with conditions ultimately rests with the landowner. Operators too should comply with conditions and planning authorities should monitor conditions to ensure they are met and if necessary, appropriate enforcement action is taken. The Planning etc. (Scotland) Act 2006 includes provisions that strengthen the powers of planning authorities to take effective enforcement action where it is in the public interest to remediate a breach of planning control.

6. In order to establish that the developer meets the conditions of their consent, they may be monitored. In the past, routine and comprehensive monitoring has not been fully funded because the planning application fee has not been sufficient to cover both the processing and post-consent costs. As recommended in the final report to the Opencast Coal Task Force (2015) introducing Monitoring fees would provide for the partial recovery of monitoring costs from operators, in order to meet the monitoring expectations placed on a planning authority. It would also include a commitment to provide publicly available site visit reports.

7. Planning permissions issued for surface coal mining operations are often associated with a legal agreement under section 75 of the Town and Country Planning (Scotland) Act 1997 ('the 1997 Act') which provides for matters that cannot be dealt with by condition. The legal agreement is commonly the "vehicle" used to secure a financial restoration guarantee. It is important that both the terms of the agreement and of the guarantee are also monitored during the life of the development.

Background

8. The Scottish Government's 2003 consultation paper *Monitoring and Enforcing Mineral Permissions*² recognised that mineral planning permissions are unique in that they are implemented progressively as minerals are extracted. Development often lasts many years and can have a range of environmental, economic and social impacts if not regulated and controlled through a comprehensive suite of planning conditions and legal agreements. These conditions must be carefully monitored. Planning authorities cannot currently charge fees for undertaking this monitoring. This consultation paper signals the Scottish Government's intention to enable planning authorities to recover some of these costs from operators ensuring that they have sufficient resources to undertake monitoring duties effectively.

² <http://www.gov.scot/Publications/2003/10/18360/28106>

Conclusions from 2003 consultation

9. The Scottish Government's 2003 proposals were widely welcomed by planning authorities and communities. However, concern was expressed by the wider minerals industry that the proposals were neither proportionate nor flexible enough to deal with the broad range of minerals developments. The main issues arising from responses to the consultation, which are still relevant today, include:

- section 75 agreements have an important, and continuing, contribution to make to securing adequate arrangements for monitoring new proposals;
- best practice suggestions made in the overview of responses to the 2003 consultation paper including the need for community engagement, were broadly welcomed;
- dormant/inactive sites and those at the restoration and aftercare stage should be monitored less frequently;
- views differed over what action should be taken against operators that fail to pay the fee;
- support for the fees regime to be extended to other forms of development, particularly waste facilities/landfill sites;
- costs should recognise the need to balance effective monitoring activity with ensuring that unnecessary burdens are not imposed on operators.

10. The 2003 proposals were overtaken by an increase in planning application fees across the board, to focus on raising performance. Nevertheless the points raised remain relevant.

11. Following the collapse of Scottish Coal and ATH Resources in 2013, the report by the Opencast Coal Task Force into the operation of the planning system revealed issues arising from an unsystematic approach to compliance monitoring as well as practice by operators which had fallen far short of the expectations placed upon them. Recommendations in a report to the Scottish Opencast Coal Task Force sub group concluded that a consultation on monitoring fees should take place. The report stated:

Benefits include:

- cost-recovery for planning authority monitoring input,
- potential lump sum available for specialist services,
- an assurance to communities that the Scottish Government is prepared to act – proportionately,
- across the board - a strengthened regulatory approach to environmental stewardship,
- partial parity in monitoring and inspection control between England and Scotland that the polluter pays.

Disbenefits include:

- Risk (potentially low) of a fees regime turning away future surface coal mine investment,
- The time it would take to implement a regulatory instrument,
- The regulatory burden upon operators,
- More effective arrangements can be secured through existing planning legislation (Section 75 agreements).

Scope of monitoring regime

12. Many forms of development such as waste management facilities, other minerals sites and onshore wind farms can benefit from regular monitoring during their lifetime and it is recognised that this can place pressure upon local authority resources. However, there are particular benefits of phased monitoring for complex developments like surface coal mining operations and this, together with the recent failures in the surface coal mining sector, has led to this consultation.

13. At present the Scottish Government considers that fees for monitoring are merited in order to recover some of the on-going costs of ensuring that conditions imposed to mitigate impacts are properly implemented and monitored. This includes associated legal agreements and financial guarantees including restoration bonds. The Scottish Government has no current plans at this time to widen the scope of the proposed regime beyond surface coal mining operations. However, there is a wider consultation on planning fees as part of independent review of planning.

Way forward

14. In response to the Coal Task Force, the Scottish Government believes that a limited statutory fees regime for surface coal mining operations should be introduced. The proposed fee regime is not intended to replace other measures, such as those set out in extant Section 75 agreements, that are put in place to ensure that activities at surface coal mining sites are properly monitored. For example, the appointment of a compliance assessor, paid for by the developer but accountable to the planning authority, provides a means of ensuring that compliance is tailored to the needs of a particular site.

15. Conditions should also be used to require an operator to monitor specific on-site activities, maintain records and report findings to the planning authority. However it may also be that legal agreements require monitoring, where it is essential that operational or restoration provisions have the potential to result in significant adverse effects if not properly implemented. In the case of a financial guarantee containing review milestones and a flexible value linked to the cost of restoration over time, it is right to expect parties to be open about its accuracy in case it needs to be recalculated, supplemented by additional financial provision or called in. It is evident that monitoring has become a complex operation, requiring appropriate resourcing and experienced professionals. However, it is considered that a dedicated fees regime, and associated site visits by planning officials, will not only provide additional assurances but ensure that robust monitoring takes place.

16. The intention is to keep regulatory burdens to a minimum, enabling planning authorities to undertake their monitoring functions with consistency and certainty while allowing a certain level of flexibility for different monitoring requirements at individual sites. New on-line guidance would be required once the proposal for a monitoring regime has been established. Draft guidance is referred to in Part II of this consultation.

17. Powers in the Planning etc. (Scotland) Act 2006 enable the Scottish Ministers to make regulations which provide for the payment of fees to be made to planning authorities for the performance of their functions. It is therefore intended to use these powers to make the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017.

- Part I of this consultation considers, and seeks comments on the Scottish Government's draft legislative proposals.
- Part II considers what further guidance should be given to planning authorities and operators to support the implementation of the new regime.
- Part III presents a Business and Regulatory Impact Assessment (BRIA).

PART I: LEGISLATIVE PROVISIONS

18. The intention is to lay Regulations - Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 (the “draft Regulations”) before the Scottish Parliament setting out how certain components of the fees regime would operate. A copy of the draft regulations is provided in Annex A.

19. This part of the consultation paper explains the intention of the Scottish Government’s proposed legislative provisions. The provisions are limited to those considered necessary to ensure planning authorities have the appropriate means to undertake monitoring visits whilst allowing for some level of flexibility and discretion to recognise that scrutiny levels may vary from site to site.

20. It is proposed that the following definitions are covered in the Regulations:

- A. Surface coal mining permission;
- B. Surface coal mining site;
- C. Site Monitoring visit;
- D. Monitoring report;
- E. Active and inactive sites;

Question 1: Do you agree with the list definitions that are to be included in the Regulations?

Question 2: If not, on what basis do you disagree?

A Surface coal mining permission

21. The intention is to define “**surface coal mining permission**” as “*planning permission for development consisting of the winning and working of coal and associated minerals, including the depositing of mineral waste, and the restoration and re-establishment of a beneficial after-use consisting of the planning permission certificate and planning conditions; associated with Section 75 legal agreements and restoration financial guarantee/s*”

22. The “winning and working of minerals” is not defined in the Regulations or other planning legislation but has come to be known as the extraction and primary processing (e.g. grading and crushing) of minerals. The “depositing of mineral waste” is defined in the Town and Country Planning (Scotland) Act 1997 as “any process whereby a mineral working deposit is created or enlarged and “depositing of refuse or waste materials” includes the depositing of mineral waste.”

Question 3: Do you agree with the proposed definition of surface coal mining permissions?

Question 4: If not, what amendments do you consider necessary?

B Surface coal mining sites

23. The intention is to define “**surface coal mining site**” as “*land to which either a single surface coal mining permission relates or the aggregate of land to which two or more permissions relate where the aggregate of the land is worked as a single site or would be treated as a single site for the purposes of a review under Schedules 9 or 10 of the Town and Country Planning (Scotland) Act 1997*”.

24. This definition provides the means to allow an area of land, irrespective of the number of planning permissions relating to it, to be defined as a single site, and therefore subject to a single monitoring visit. It is expected that the vast majority, if not all, of the surface coal mining sites to be monitored under this regime would be those where there are one or more specific planning permissions granted subject to a number of planning conditions. These sites may also have the benefit of limited permitted development rights, i.e. for ancillary working rights.

25. Some surface coal mining operations may rely for supply on one or more “satellite” sites at which coal is extracted and at which waste may be deposited. The resulting coal may then be sent to a dedicated processing facility for secondary treatment i.e. Wash plant. Some “satellite” sites may be active, whilst others may be held in reserve to be brought into production in the future.

26. Whether or not “satellite” sites should be grouped with the main extraction site and regarded as one mining site or several different mining sites depends upon factors such as:

- their location;
- their distance from each other and from the main extraction site;
- whether it is clear that the various sites form part of a co-ordinated surface coal mining operation; and
- whether it makes practical sense to monitor them all at the same time or separately.

27. In most cases, what constitutes a site should be clear from the planning history of the development. Ultimately it is for the planning authority to define the area of the site and the extant permissions to be monitored, having agreed with the operator the most appropriate and efficient aggregation of areas and permissions.

Question 5: Do you agree with the proposed definition of surface coal mining site?

Question 6: If not, what amendments do you consider necessary?

C Active and inactive sites

28. An “**active site**” is one where “*development to which a surface coal mining permission relates or, other works to which a condition attached to the permission relates, is being carried out to any substantial extent*”. An inactive site is any other site and includes dormant sites.

29. An active site can therefore include those sites which are “mothballed” but may be subject to on-going restoration or aftercare. Fees will cease to be charged for monitoring visits on the completion of the period of aftercare required by a condition of the planning permission. An inactive site includes both a dormant surface coal mining site and a “mothballed” site where no restoration and aftercare is being carried out to any substantial extent. Where an active site is “mothballed” but subject to restoration works, then the site should receive fewer monitoring visits than an active site where mineral extraction or processing is being carried out.

30. Planning authorities would have to charge a reduced fee for monitoring visits to inactive sites and could only charge for one site visit in any twelve month period.

Question 7: Do you agree with the proposal to treat active and inactive sites differently with regards to the required frequency of monitoring visits?

Question 8: If not, do you consider they should be subject to the same level of monitoring and why?

D Site monitoring visit

31. The definition of site visit, in terms of the planning authority’s existing powers to enter a site for enforcement purposes, is taken from Section 156 of the Town and Country Planning (Scotland) Act 1997. This states a site visit is restricted to those cases where a planning authority, or any person duly authorised in writing by a planning authority, enters the surface coal mining site to monitor compliance with planning control, to consider whether enforcement action should be taken, and to ensure compliance with any such action. Whilst the definition of a site visit provides the legal basis for officers entering a surface coal mining site, the rationale for monitoring visits is for authorities and operators to work together constructively to review compliance with permissions in the light of the stage of development reached and possible changing operational circumstances and needs. In this way problems can be avoided and formal enforcement action is less likely to be necessary.

32. Planning authorities undertaking a site visit should check compliance with surface coal mining permissions. Monitoring the alignment of the restoration financial guarantee with the progress through the coal mining operation is a specialist area requiring expertise. The monitoring report should contain sufficient information relating to the extent of the void (quantum of the void) created by the mining operations and overburden material stored for use in the final restoration that will enable an assessment of maximum financial exposure to be determined and

ensure that the guarantee can provide sufficient resources in the event of a default. Those matters are best addressed by specialist compliance officers retained by the planning authority and funded by the operator. The site visit should also provide the opportunity to record any actual or potential material variations to working methods in order that the mine programme or progress plans can be amended and where necessary, new or amended financial guarantees secured. This can be seen as a de-risking exercise.

33. A fee is only payable when planning authorities enter a surface coal mining site for the purpose of monitoring compliance with surface coal mining permissions and a monitoring report identifying the outcome of any visit is provided to the operator within 10 working days of the visit. A “drive by” assessment or any assessment by a planning authority or appointed agent at a site which is not followed by entry to that site would not be deemed a site visit for which a fee is charged.

Question 9: Do you agree with the proposed definition of site monitoring visit?

Question 10: If not, what other definition do you consider necessary?

E Fees

34. The fees regulations in England are not considered to provide an appropriate benchmark for the calculation of fees that would apply in Scotland. In England the current fee for a site visit is £331 where the whole or part of the site is active, or £110 in any other case. However, the true costs of undertaking the monitoring of surface mining sites exceeds £331. It is considered that a more appropriate fee level is £500 for a site visit where the whole or part of the site is active and £250 in any other case.

35. In the Scottish Government’s view, this is considered the best approach for setting an appropriate fee levels in Scotland where the costs of monitoring sites is likely to vary considerably depending on the complexity of individual sites and length and complexity of associated legal agreement content and financial guarantees. The time invested in a site monitoring visit are outlined in the partial Business and Regulatory Impact Assessment that forms part of this consultation. The suggested fee level may or may not represent full cost-recovery of the monitoring process but needs to take into account the time spent on the visit, the size of the site, the seniority of the official making the visit and the time it takes to write up the monitoring report. A ‘time sheet’ is suggested at the end of the model form for a surface coal mine site visit (Annex C).

Question 11: Do you agree with the proposed fee levels?

Question 12: If not, what level do you consider to be appropriate?

Question 13: What mechanisms should be put in place to ensure that future fee levels recover the costs of planning authorities’ monitoring functions?

F Who is liable to pay the fee?

36. Ownership and operation of mining sites can be complicated. There may be one or more owners of the land who may or may not also be owners of the extraction interest and who may or may not be the site operator. Planning permission may be sought by either an owner of the land or of the mineral interest, or an operator. It is also possible that there might be one or more operators with an interest in respect of a planning permission (e.g. through subletting). Monitoring is intended to ensure compliance with operating conditions attached to permissions and with planning agreements. In addition, there is a need to ensure that no unauthorised development is taking place. As a result, the **operator** should pay the fee for the monitoring, even though it is possible that, in some cases, the permission will have been granted to a different person – e.g. the owner – and that it is the owner against whom the authority has ultimate sanction in enforcement proceedings.

37. The proposed definition of an “operator” confirms that a single operator of a surface coal mine is liable to pay the monitoring fee. Alternatively, where there is more than one operator on a site then the operator in overall control of the site, which may be the head lessee or head licensee, would be liable to pay the fee. In most cases, there is either one operator or one person in overall control of the site. For sites in multiple operation, any operator in overall control may choose to make separate arrangements for recouping a contribution towards the fees from subsidiary operators. Subsidiary operators include any person who is carrying out surface coal mining development but is not in overall control of the site.

38. The proposed definition of “operator” also confirms that if there is no person who falls within the definition of operator (as described above), liability to pay the monitoring fee rests with the owner.

Question 14: Do you agree with proposals to make the operator responsible, in the first instance, for paying the fee?

Question 15: If not, who in the first instance do you consider should pay the fee?

G Monitoring Reports

39. Better awareness of surface coal mining activity, and greater transparency of monitoring processes, is clearly in the public interest. Enhanced reporting processes are therefore proposed within the draft regulations which, define “monitoring report” as a report prepared by a planning authority setting out the results of a site visit. Regulation 5 connects the ability of a planning authority to charge a fee with the provision of a monitoring report to the operator within 10 days of the site visit. Regulation 4 requires the planning authority to provide a copy of this report to the Scottish Environment Protection Agency (SEPA), the Coal Authority, the Health and Safety Executive and to the Scottish Ministers and to make it publicly available. Such reports should provide confirmation to operators of the outcome of site visits. Draft Regulation 3(1) confirms that the operator must pay the fee within 28 days of receipt of the monitoring report.

Question 16: Do you agree that monitoring reports should be issued within 10 days of the site visit to the parties set out above and that this should be the trigger for generating a fee paid by the operator?

Question 17: If not, what other time period do you suggest for submission of monitoring reports and what alternative mechanism for triggering a fee invoice do you recommend?

PART II: DRAFT GUIDANCE ON IMPLEMENTING THE FEES REGIME

Preface

The Scottish Government intends to produce online guidance in 2017 to support the implementation of the Regulations. It is recognised that new legislation has to provide the necessary flexibility to allow planning authorities to take account of the different requirements for specific sites. This part of the paper therefore seeks views on what should be included in this guidance.

Introduction

40. The Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 provide an important opportunity to secure improved arrangements for monitoring surface coal mining permissions. These permissions are generally subject to a considerable number of detailed conditions and associated legal agreements that are intended to control potentially negative impacts on neighbouring communities and the environment. Effective monitoring of conditions is necessary to ensure on-going operations are in line with the planning permission and to encourage high environmental standards. The associated legal agreements and financial guarantees for restoration purposes also require routine monitoring in order to ensure that they too are sufficient and capable of providing the necessary funds to undertake the restoration of the mining operations in the event of a default by the site operator.

41. The aim of the Regulations is to support the development of local procedures that promote a positive relationship between planning authorities, operators and communities. Regular site visits can support an atmosphere of on-going dialogue where issues can be discussed openly and constructively. This should enable difficulties to be addressed quickly and increase the potential for identifying and addressing any problems before they escalate and lead to conflict. Site specific measures should be tailored to individual sites but measures should always aim to put in place a systematic, documented, periodic and objective evaluation of how well each site is performing.

42. The Regulations do not prescribe how monitoring is to be undertaken in practice given that there is a need for flexibility to take into account of the specific circumstances of individual sites. The purpose of this guidance is to consider how the regime might work in order to achieve its purpose of securing good practice in undertaking monitoring. However, final decisions on implementing the scheme would rest locally with planning authorities and should be tailored to the specific requirements of individual sites. Planning authorities may wish, therefore, to produce their own guidance on local operational issues to supplement this more general guidance.

Preliminary considerations

43. Prior to implementing the requirement of the new regulations, planning authorities should consider what internal staffing resources are necessary to enable effective monitoring to take place (i.e. adapting existing staffing structures; changing the responsibilities of existing staff; employing new staff or appointing consultants). The Regulations do not prevent authorities from working jointly so that monitoring functions could be carried out by a team operating across planning authority boundaries. If an authority intends to appoint a private consultant to undertake monitoring, then fees that can be recovered from the operator would be capped at the level set out in the Regulations.

44. The Scottish Government is working with Heads of Planning Scotland and the local authority Improvement Service on training, joint working, benchmarking and options concerning the best use of available skills and expertise. Operators and local communities are entitled to expect that functions are carried out to a high standard and authorities should, therefore, consider the following good practice recommendations:

- authorities should regularly review the range of skills needed to monitor compliance effectively;
- monitoring should be undertaken by either planning authority staff or consultants with appropriate expertise and experience;
- senior staff should visit problem sites and be involved in discussions with operators;
- planning committee members should be given opportunities to accompany monitoring officers to give an appreciation of operational issues and what is involved in monitoring work;
- adequate supporting staff resources should be provided (e.g. clerical and technical);
- specialist advice may need to be sought to monitor more complex issues such as noise, hydrology or landscape impacts;
- adequate powers should be delegated to officers to act promptly on breaches of planning control.

45. Early consideration should also be given to how best to involve local communities in the monitoring process. The need for doing so, including liaison and complaints mechanisms, is likely to vary from site to site and influenced by the presence of both formal and informal community groups representing the interests of those living nearby, including already established site liaison groups. The intention should be for local groups and individuals (including political representatives) to be aware of opportunities to contribute to the monitoring process. Such involvement should foster positive relationships between communities and operators which could

be enhanced by providing opportunities for a community representative to attend site visits.

Question SG1: What guidance should be given on the arrangements needed to ensure effective structures and mechanisms are in place to support monitoring activities?

Agreeing the number of visits

46. Planning authorities should contact surface mining site operators to discuss and agree with them the number of visits to be undertaken annually and publicise that on local authority websites on their Planning homepage in an easily accessible and recognisable format. The following factors should be taken into account when agreeing this:

- size and type of development;
- number and complexity of conditions;
- number of issues, including any relevant Section 75 agreement or restoration financial guarantee that require monitoring;
- stage of development. For example, more frequent visits to surface coal mines are likely to be needed during initial site preparation (e.g. construction of site access and wheel washing equipment, installation and commissioning of processing plant/offices), soil stripping and replacement and the creation of soil storage and screening mounds, restoration planting and the final removal of plant equipment on completion of restoration;
- progressive nature of working/restoration;
- sensitivity of sites in relation to local communities and environmental designations;
- breaches of planning control observed;
- complaints received for a site which has proven to be justified.

47. When discussing how these factors relate to individual sites, planning authorities may wish to consider adopting indicative thresholds to be applied for establishing the number of visits to all sites within their area. The consultation paper sets out the Scottish Government's recommendations for the initial number of site visits to be undertaken in the first year dependent on the phase of operation at individual sites. Authorities should consider sending their own guide to operators within their areas with an indication of how they propose to categorise their site. Clear reasons should be given and the operator's agreement to the assessment should be sought. The planning authority has ultimate responsibility for setting the number of visits. If an operator considers that they are being subjected to an excessive number, their recourse would be to follow the planning authority's

complaints procedures. Where the operator is unhappy with the outcome, it may ask the Scottish Public Services Ombudsman to investigate.

48. When setting the number of annual site visits, past performance can be taken into account. Whilst it is only one of a number of factors that could be considered, it would clearly be justifiable for planning authorities to increase the number of visits in cases of serious and justifiable complaints, accidents, incidents or serious occurrences of non-compliance that arise throughout the year.

49. The number of annual site visits can be decreased or increased to take account of the outcome of visits. Planning authorities should consider undertaking more visits to sites where the risk of non-compliance is higher, or where operators fail to comply with certain planning conditions e.g. geotechnical instabilities requiring emergency remedial action, without agreement in advance with planning authorities. While the Regulations specify a maximum of 8 chargeable annual site visits to active sites (additional visits can be undertaken but fees would not be payable by the operator), it is likely that, on average, active sites should be inspected at least quarterly. However, the actual number of visits should be determined on the basis of an assessment of a number of factors. Consistently compliant sites should expect fewer visits than those sites where breaches of planning control have been a feature, including where complaints about operations have revealed a number of breaches of planning control.

50. More than 4 visits in a year would only be needed at particularly sensitive stages of a site's development, or where the authority has concerns about compliance. Minor breaches of control at an otherwise consistently compliant site would not normally attract an increased frequency of visits in the following year. A general guide on the recommended initial frequency of site visits is provided in Annex B.

51. Inactive sites require no more than one visit for which a fee will be payable each year. Any additional visits cannot be charged.

Question SG2: Is the proposed guidance on setting the number of site visits appropriate?

Question SG3: If not, what other guidance would you welcome?

Reduction in number of site visits

52. Section 24 of the Planning etc. (Scotland) Act 2006 introduced provisions relating to good neighbour agreements (GNAs). These are voluntary agreements entered into by operators and community bodies and in some instances individuals. Although GNAs do not remove the need for effective monitoring of planning conditions they could be considered as relevant when setting the number of annual visits and be used to reaffirm the operator's obligations in relation to the community and to ensure that local people have an on-going role in site activities. These objectives are consistent with the Scottish Government's desire for engagement between communities and operators; delivering higher environmental standards; and providing communities with the capacity to resolve local issues. In such circumstances, good neighbour agreements may be able to provide local communities with a transparent and accountable route that gives important reassurances that site activities comply with planning permissions.

53. Many operators belong to trade associations which require their members to adhere to Environmental Codes of Practice. Many larger minerals companies also operate Environmental Management Schemes both for their organisations and for individual operations for example ISO 14001³ accreditation with schemes such as these should be considered a relevant factor when agreeing the number of annual monitoring visits. The Scottish Government supports these initiatives.

Question SG4: Should the annual number of site visits be reduced if good neighbour agreements and/or self-regulating schemes such as ISO 14001 are in place?

Question SG5: If so, please explain your reasoning and recommendation.

Undertaking monitoring

54. Fees are chargeable for site visits to monitor surface coal mining permissions (from their initial implementation to the end of the period of aftercare required by a condition of the planning permission) and any planning agreements or restoration financial guarantees relating to:

- the winning and working of coal by surface mining methods and associated ancillary operations.

55. The amount of time spent on monitoring a site can depend on the number and type of planning conditions or aspect of the operations that are being monitored. Individual visits may be tailored to monitor specific aspects of operations but, over the year, planning authorities should ensure that all the following (where applicable) are monitored:

- all planning conditions;

³ <http://www.iso.org/iso/home/standards/management-standards/iso14000.htm>

- development permitted under the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1995;
- the operation of mining waste facilities;
- planning agreements;
- good neighbour agreements;
- the adequacy of the financial guarantee to address restoration;
- compliance with Environmental Management Schemes such as ISO 14001;
- boundary limits;

56. Planning authorities should ensure appropriate arrangements are in place to avoid as far as possible duplication with the responsibilities of the Scottish Environment Protection Agency and the Health and Safety Executive. The assumption should be that other control regimes are being properly applied and enforced and should not be controlled or monitored using planning conditions. Operators should not be billed twice for monitoring the same matters. This may require liaison between planning authority and SEPA to ensure that there is no duplication of regulatory control or monitoring effort.

57. The final annual visit should include a meeting to discuss operational progress over the year and to set the number of chargeable monitoring visits for the following year.

Question SG6: Is the proposed guidance on monitoring appropriate?

Question SG7: If not, what do you consider would be appropriate?

Reporting

58. A written site monitoring report should be completed by the planning authority and sent to the operator after every visit. The draft Regulations require that site visit reports must be made available to the operator within 10 days of the inspection visit and subsequently made available to the Scottish Environment Protection Agency, the Coal Authority, the Health and Safety Executive and to the Scottish Ministers within a further 10 days. Thereafter they should be publicly available. This can be achieved routinely on local authority website planning pages. The report should detail the matters reviewed, the points arising, including identifying agreed improvements in working practices, any breaches of conditions, and the action required by both the operator and the planning authority, including timescales.

59. In most cases therefore the site visit report should be available to the public (allowing for 5 working days to upload onto websites) no more than 25 days in arrears from the date of the site visit.

60. The completion of a proforma may be appropriate. A suggested model form for a surface coal mine site is provided at Annex C. Where a red, amber, green code is used to indicate what action can be taken, a description of the actions and timing underlying red and amber factors should be given. For example if enforcement action, such as a stop notice is intended it should be clear that red indicates immediate action. Amber might indicate an activity would most likely occur within a month or on the next available committee cycle. Whatever is chosen, it should be clear to the reader what parameters apply to proposed actions.

Question SG8: Is the proposed guidance on reporting appropriate?

Question SG9: If not, what do you consider would be appropriate?

Invoicing

61. A fee for a site visit should only be charged after the visit has occurred. A monitoring report should be provided to the operator within 10 days of the site visit. The fee should be paid by the operator within 28 days of receipt of the monitoring report. All local authorities should have established procedures for taking action against those who default on required payments and these should be used in relation to non-payment of monitoring fees. If an invoice is not issued within 28 days of the issue of the monitoring report then the planning authority is effectively waiving the right to charge a fee.

Question SG10: Is the proposed guidance on invoicing appropriate?

Question SG 11: If not, what do you consider would be appropriate?

**PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT
TOWN AND COUNTRY PLANNING (FEES FOR MONITORING SURFACE COAL
MINING SITES) (SCOTLAND) REGULATIONS 2016**

Question BR1: Do you have any comments on the Partial Business and Regulatory Impact Assessment?

1. TITLE OF PROPOSAL

1.1 This is a Partial Business and Regulatory Impact Assessment of proposals to introduce the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 (“the Regulations”).

1.2 This partial BRIA assesses the likely impacts of the proposals in the 2016 consultation paper. The proposals in the Regulations and this assessment may be revised to take account of comments received as a result of this consultation.

2. PURPOSE AND INTENDED EFFECT

Objectives

2.1 The new Regulations would enable planning authorities to recover the costs of carrying out their functions relating to the monitoring of surface coal mine permissions. The absence of charging powers contrasts with other regimes (Building Regulation, Scottish Environment Protection Agency) where a separate monitoring fee is paid. Monitoring functions, if undertaken, are currently funded from local authorities’ general revenue budgets and, in most instances, insufficient resources are committed to enable these duties to be undertaken to an appropriate standard.

2.2 The powers within the new Regulations are intended to provide a higher standard of monitoring at surface coal mines, in the most efficient way possible, without any unnecessary complexity or imposing significant burdens on planning authorities and site operators.

2.3 The Regulations affect operators of surface coal mines since they will be paying for a regulatory activity which may currently costs them nothing, unless provision has been secured through a Section 75 Agreement associated with the planning permission.

Background

2.4 The Scottish Government is committed to ensuring that planning performance is reflected through the level and frequency of monitoring fees. Planning authorities are currently not empowered to recover the costs of post-consent monitoring and enforcement of planning conditions. It is unclear whether this may have been the main reason in those cases where monitoring has not been conducted as effectively as it might have been in the past, but it is likely to have contributed.

Rationale for Government Intervention

2.5 Surface coal mine sites are unlike other forms of development since their impacts on local communities and the environment can take place over many years. Whilst the past experience of shortcomings in the monitoring of surface coal mining sites, as evidenced following the demise of the two largest surface coal mine operators in 2013 is behind us, non-compliance with existing permissions or default on restoration obligations is an on-going risk of potential national importance. Planning permission for such sites is subject to a substantial number of complex and technical planning conditions which seek to address these impacts.

2.6 Monitoring of surface coal mine permissions (and, where necessary, enforcement) is crucial if local communities are to be provided with reassurances that their interests have been properly factored into decisions and that on-going impacts on both communities and the environment are carefully considered and addressed. However, planning authorities are not funded for these costs. The Scottish Government's view is that such costs should be borne by operators and not by the public and that any charging regime must provide a clear indication of the standard of performance of individual sites.

3. CONSULTATION

3.1 Within Government, the proposals have been subject to consultation with the Directorate of Planning and Environmental Appeals, and the Energy and Finance Directorates. Public consultation took place in 2003 on the principles of a fees regime and comments are reflected in the new Regulations. The Regulations were subject to further consultation in 2008 and have been discussed with representatives from the minerals industry and Scottish planning authorities during 2014 and 2015 through the Scottish Opencast Coal Task Force.

3.2 Prior to undertaking this consultation we have sought the views of several stakeholders through informal discussions. The parties approached represented a variety of stakeholders including Heads of Planning Scotland, the Scottish Mines Restoration Trust and several surface mine operators. The views expressed during these informal consultations have been used to influence the final version of this consultation document.

3.3 After the consultation we will aim to develop a full BRIA to assess the costs and benefits of the proposed monitoring fees regime.

4. OPTIONS

4.1 This BRIA reflects on consultation that took place in 2003 which highlighted a range of possible options on how fees could be calculated. Those options raised concerns in relation to fairness, complexity and outputs. It is considered that those matters, whilst raised some 13 years ago remain relevant today. It is therefore considered that, for the purpose of this assessment, the following 3 options represent the most appropriate way forward:

- Option 1: **Do nothing.** Under this option, planning authorities would continue monitoring at the same level as at present and without making a charge although, in some instances, arrangements may be in place whereby operators have agreed to fund independent monitoring of sites.
- Option 2: **Self-regulation by operators.** This option would remove, to some extent but not all, responsibility of planning authorities to carry out the monitoring function in respect of sites with operators that have a good record of compliance with planning conditions and are accredited to industry schemes. Planning authorities would need to continue to monitor unaccredited sites and those with poorer performance.
- Option 3: **A fee regime** based on an average charge per visit, with planning authorities determining the frequency of visits. This option would enable planning authorities to tailor the number of monitoring visits to the monitoring requirements of individual sites.

Pros and Cons of the three options

5. The following benefits have been identified:

- Option 1: The only benefit of this option would be to operators, who would continue to be regulated without having to pay the cost of site visits. The present inadequate resourcing of monitoring for certain sites would continue. This could lead to impacts on local communities and the environment that might otherwise could have been resolved and addressed through regular monitoring visits.
- Option 2: Under this option operators with a proven track record of compliance with planning conditions and/or EMAS or ISO14001 accreditation would be entrusted with self-regulation. Planning authorities would need to carry out occasional quality control checks on these sites, and would need to respond to complaints, but the burden of the monitoring function and some of the associated costs would be lifted to some extent from planning authorities who could then devote more time and effort to monitoring and enforcement of unaccredited operations and poorer performers.

There would be financial implications for those operators entrusted with self-regulation, as they would need to establish transparent systems for monitoring their performance, which would need to be available to

planning authorities for checking as required. Sites run by unaccredited operators would need to be monitored by planning authorities and those run by poorer performers would be subjected to a higher level of monitoring but the costs for this would continue to be borne by planning authorities.

The option would be of benefit to reliable and accredited operators, who would not need to arrange a schedule of visits with planning authorities and would not need to pay the proposed fees. In 2003 there was insufficient evidence that EMAS and ISO14001 accreditation on its own is a clear guide to operational effectiveness, expressed as conformity with planning conditions. However, more recently documentation provided by operators demonstrates that an open and transparent approach to self-regulation consistent with ISO 14001 could be undertaken. It is clear that this option could present some difficulties and be complex to administer on a part self-regulation, part planning authorities monitoring basis. Yet this could be resolved through the proposal in Option 3 which would enable accreditation to be one of the factors that planning authorities could take into consideration when determining the number of site visits.

Planning authorities could then concentrate their efforts on monitoring those unaccredited sites and those with poorer performing operators with the resources freed up by not having to frequently monitor accredited sites. But there is a risk that the quality of self-regulating operator performance could gradually decline without regular independent planning authority monitoring, which could result in unacceptable impacts in some cases.

- Option 3: The benefits of this preferred option are that it would place the financial burden of this regulatory function on operators, supporting the 'polluter pays' principle. Although industry representatives have expressed the view that mineral and landfill waste operators are already paying for environmental improvements to their operations through, for example, the Landfill Tax and Aggregates Levy, these charges were not introduced to encourage environmental improvements at mineral and waste sites, which is the objective of monitoring. At Opencast Coal Task Force meetings, operators spoke about how statutory monitoring fees could be seen as a disincentive to invest any further in coal. The option would however ensure that planning authorities were able to recover some costs of a best practice level of monitoring in their areas and would bring about savings which could be used for other purposes. It would also support local community interests, ensuring potential future issues were identified earlier and addressed. Poorer performing operators would require higher levels of monitoring visits to ensure full compliance with conditions. Consequently a system that charged for each site visit could encourage poorer performers to improve their performance, thus reducing the number of visits and total costs, and freeing up more planning authority time to

devote to other issues. A regime based on a nationally-set fee for each visit has the merit of simplicity and equity.

Monitoring to a best practice level would lead to an improvement in compliance with planning permissions, particularly amongst any poorer performing operators. This should ensure that the unacceptable impact of surface coal mines could be minimised.

Costs

6. For the purpose of costs, it is estimated that there are approximately 24⁴ surface coal mining sites in Scotland that may be eligible for site visits attracting a monitoring fee under the new Regulations. The Regulations are likely to lead to an average cost, assuming a best practice approach in line with the Scottish Government's proposed guidance, of just over £2,000 per site per annum, making a total cost of around £48,000 to the various operators in the industry. Costs at individual sites may, however, vary to reflect the amount of monitoring that is considered necessary.

Option 1: This option would mean that the costs of the current, variable, level of monitoring would continue to be met through a planning authority's budget, thereby in theory saving individual operators £2,000 per annum, per site. As planning authorities can sometimes find themselves inadequately resourced to perform monitoring to a satisfactory level, it is likely that monitoring would remain below the level that would be reasonably expected. This could result in non-compliance with conditions with subsequent risk of negative impacts on communities and the environment. As there would be no regular liaison between authorities and operators there would be no incentive for operators to potentially raise their environmental standards.

Option 2: Under this option, planning authorities would still continue to fund the cost of monitoring. They would also need to carry out occasional quality control checks on accredited operators, and would need to respond to complaints concerning sites where operators are accredited, but the burden of the monitoring function would be lifted to some extent, resulting in some financial and time savings for local authorities, albeit unquantifiable for this purpose. This option would allow local authorities to devote more time and effort to the monitoring of unaccredited and poorer performing operators. Clearly there would be some costs implications for operators, arising from this approach and the carrying out of monitoring that had previously been performed by planning authorities. Greater self-regulation by accredited operators (if internalised) with less independent scrutiny by planning authorities run the risk of being accused of a lack of transparency/independent scrutiny.

Option 3: It is estimated that there are approximately 24 surface coal mining sites in Scotland in various stages of coaling, abandonment or restoration. It is estimated that the maximum cost of a best practice approach to

⁴ Active sites and those requiring restoration

monitoring these sites would be just over £4,000 per site per annum, making a total maximum cost of £96,000. There are a large number of inactive sites which are likely in practice to reduce the estimated business impact but as requirements can vary site to site this would be impossible to quantify. Basing a fee regime on a flat fee level would impact more on smaller sites although the expectation is that such sites would be visited less frequently. There would also be an incentive for operators to improve performance since this could lead to a reduction in monitoring visits and therefore costs.

Issues of equity and fairness

7.1 In this section, Option 1 has not been further explored, as it does not achieve the objective, but forms the baseline from which other impacts are measured.

7.2 Option 2 would allow operators, with a proven track record of compliance with planning conditions and/or EMAS or ISO14001 accreditation, to self-regulate, thus removing them from close planning authority monitoring, although there would be a residual requirement for quality control checks. Unaccredited operations would still need to be monitored to a best practice level and less compliant operators could be subjected to closer scrutiny by planning authorities, with the extra resources which would then be at their disposal. This option would only be acceptable and equitable if all parties, including planning authorities and local communities, had confidence that accreditation was an acceptable substitute for independent monitoring to a best practice level. Even with evidence of operators who conduct internal environmental audits this may not be the case.

7.3 The wider mineral and waste industry's view is that ISO14001 and EMAS accreditation are good measures of performance. Accreditation demonstrates the commitment of the operator to a high standard of performance and should be taken into account. Those with accreditation are audited both internally and externally and any non-compliance with planning conditions is flagged up. Planning authorities are more sceptical about the value of accreditation of management systems as a proxy for monitoring compliance with planning permissions. They feel that there is insufficient evidence that accreditation equates with operational effectiveness and compliance with planning conditions. There is clearly a relationship but one does not equal the other.

7.4 Under this option, the cost of quality checks at accredited sites and the cost of monitoring at unaccredited sites would remain with planning authorities, so in theory any polluter would not pay.

7.5 Option 3 would transfer the cost of monitoring compliance with planning conditions, legal agreements and restoration financial guarantees from the planning authority to the operator. Where the operator could demonstrate, through continued satisfactory compliance, that it was discharging its responsibilities in a reasonable manner, the planning authority could visit the site less often than those of less reliable operators and associated monitoring costs would reduce as consequence.

7.6 All conditions attached to a surface coal mine permission and matters arising from legal agreements and restoration financial guarantees should be complied with

in order to avoid unacceptable environmental or social impacts. Poorer performing operators would therefore receive more visits to ensure compliance and thereby incur more costs. A flat rate of charge, irrespective of the size of the operation and the level of turnover of the company, would impact more on smaller operators but would be deemed modest.

7.7 The proposed flat rate charge based on average costs, would be administratively easier to operate than a system based on actual costs, which would impact slightly differently on different types of operation. For example, smaller sites may take less time to monitor and require less frequent monitoring visits, whereas larger sites or more complex operations are likely to take longer and required more frequently due to the fact that the pace of change is often more rapid. Under the proposal, both the rationale for a flat rate charge based on average costs and its level would be kept under review.

7.8 There are no issues of equity and fairness arising in respect of rural areas or race equality. However the option is likely to have an impact on health and well-being because best practice monitoring can help to ensure full compliance with planning conditions. This, in turn, should ensure that polluting emissions, such as dust and noise, are minimised and that restoration progresses are in line with mine progress plans and programmes to the benefit of local communities and the environment.

SMALL FIRMS IMPACT TEST

8. There are a number of sites that are relevant to this proposal in Scotland and it is likely that those with tighter margins and lower turnover could find the costs of monitoring fees heavier than larger operators. However, in certain instances, these sites are likely to be quicker and easier to monitor so can keep costs down. The intention is to accompany the new Regulations with guidance which would recommend that such sites, where possible, could be monitored in a proportionate manner in line with their performance. In most instances, planning authorities will have a discretionary power whether to visit a site or not so long as it is conducted at least annually: a minimum which would also apply to inactive sites.

LEGAL AID IMPACT TEST

9. This test is not considered relevant to these Regulations.

“TEST RUN” OF BUSINESS FORMS

10. The Regulations do not contain business forms. A draft “monitoring report” was included with the Regulations and this will be included in Scottish Government guidance being issued to accompany the Regulations. It will take account of comments made during the consultation process.

COMPETITION ASSESSMENT

11. The surface coal extraction industry contains a limited range of operators of various sizes. Turnover can vary considerably, depending on the size of the site and the amount of winnable coal and associated minerals and the rate of extraction. The proposals subject all sites in Scotland to a flat-rate charge. Given the relatively small scale of the proposed charge per visit (£500) and the scope for minimising costs through a reduction in scheduled site visits as a result of compliance with the planning conditions, we would not expect the proposal to have a significantly adverse impact on the competitiveness of operators. Operators in England are already subject to a similar fees regime.

ENFORCEMENT SANCTIONS AND MONITORING

12. Each of the options would be dependent on planning authorities having a right of entry to land in order to carry out the monitoring function. They would be able to rely on the powers in primary legislation to do so. Enforcement of planning conditions would continue as at present, under planning legislation. A material divergence between the cost of restoration and the value of the financial guarantee is one of the most significant risks which robust monitoring can help alleviate. In the event of serious breaches of conditions, it would be possible for the planning authority to suspend operations. In the event of non-payment by the operator, recovery would be expected to be pursued by the planning authority as part of existing day-to-day debt recovery powers. Any disagreements between planning authorities and operators about the proposed number of monitoring visits each year could be resolved by the planning authority's internal complaints procedure.

MONITORING AND REVIEW

13. Charging for monitoring of surface coal mine permissions is a new concept within the planning system and the Scottish Government recognises that there would be a need to monitor the progress of the regime, to ensure that it operated effectively and to see if it needed to be improved in any way. Major indications of the effectiveness of any of the options are the level of compliance with planning permissions and the reduction in the number of complaints which prove to be justified. The appropriateness of the fee and whether it should be raised from time to time to take account of inflation will also need to be reviewed.

2017 No. (C.)

TOWN AND COUNTRY PLANNING

The Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017

<i>Made</i> - - - -	2017
<i>Laid before the Scottish Parliament</i>	2017
<i>Coming into force</i> - -	2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 252 of the Town and Country Planning (Scotland) Act 1997⁽⁵⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Fees for Monitoring Surface Coal Mining) (Scotland) Regulations 2017 and come into force on [2017].

Interpretation

2. In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997;

“active site” means a mining site where development or works relating to a mineral permission are being carried out to a substantial extent;

“inactive site” means a mining site which is not an active site;

“mineral permission” means planning permission for development consisting of, or including, surface coal mining;

“mining site” means—

(a) where two or more mineral permissions relate to one area of land, the area of land which is being—
worked as a single site; or

treated as a single site for the purposes of schedule 9 (review of old mineral planning permissions) or 10 (periodic review of mineral planning permissions) to the Act; and

(b) in any other case, the land to which a mineral permission relates;

“monitoring report” means a report prepared by a planning authority setting out the results of a site visit;

“operator” means—

⁽⁵⁾ 1997 c.8; section 252 was amended by section 31 of the Planning etc. (Scotland) Act 2006 (asp 17) and by section 55 of the Regulatory Reform (Scotland) Act 2014 (asp 3).

- (a) the person carrying out any development or works on the land to which a mineral permission relates;
- (b) where there is more than one person carrying out development or works, the person in overall control of the site; or
- (c) where there is no person who falls within the descriptions in sub-paragraph (a) or (b), the owner of the site; and

“site visit” means entry by a planning authority, or a person authorised in writing by a planning authority, on to a mining site to—

- (a) ascertain whether there is or has been any breach of planning control on the site;
- (b) determine whether, or to what extent, any of the powers conferred on a planning authority by Part 6 of the Act (enforcement) should be exercised in relation to the site;
- (c) ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the site;

“surface coal mining” means winning and working of coal by means of the extraction of coal from the earth by removal from an open pit or borrow.

3. —(1) Where a site visit is made to a mining site by a planning authority, the operator of the site must within 30 days of receipt of a monitoring report in respect of that site visit pay to the authority a fee in accordance with these Regulations.

- (2) The fee payable is—
 - where the site is an active site, £500; and
 - where the site is an inactive site, £250.

(3) The maximum number of site visits in respect of which a fee is payable under paragraph (1) during any period of twelve months is—

- (a) where the site is an active site, eight; and
- (b) where the site is an inactive site, one.

Exceptions

4. Regulation 3 does not apply where the planning authority has not within 10 days of the date of the site visit issued a monitoring report to the operator of the site in respect of that site visit.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2017

EXPLANATORY NOTE

2.(This note is not part of the Regulations)

These Regulations provide for fees to be paid to planning authorities in relation to site visits made for the purpose of monitoring compliance with surface coal mineral permissions.

Regulation 3 sets out the operator's obligation to pay. It provides for the fee amount and the maximum number of visits where a fee is payable in relation to active and inactive sites. Provision is made to account for situations where there is more than one operator and where two or more sites are grouped together for the purpose of monitoring.

Regulation 4 sets out the conditions under which the operator is exempt from having to pay a fee.

GENERAL GUIDE TO RECOMMENDED INITIAL FREQUENCY OF SITE VISITS

Category and description	Annual Visits
Category 1 – small sites with de minimis output that are compliant with planning permission.	1
Category 2 – dormant or inactive sites.	1
Category 3 – sites undergoing restoration and aftercare.	8
Category 4 – active sites.	8
Category 5 – active sites not operating in accordance with planning permission, particularly if there have been substantiated complaints or enforcement action is being considered/has been taken or those at initial preparation stage.	8

SITE NAME		DATE	TIME
OPERATOR			
CONTACT NAME AND PHONE NUMBER			
PLANNING PERMISSION No./Nos		WASTE FACILITY	Y / N
STATUS	NOT COMMENCED	SITE PREP	OPERATIONAL
	RESTORATION	AFTERCARE	INACTIVE
TYPE OF VISIT (ANNOUNCED/ UNANNOUNCED)		DATE AND TIME OF VISIT AND WEATHER	

CONDITIONS & SECTION 75 AGREEMENT

C = Compliant		R = Requires further investigation		X = Not Applicable	
N1, 2 or 3 = Non-compliant (1 = significant breach, 2 = material breach, 3 = minor breach)					
Pre commencement		Dust & litter control		Overburden storage	
End date		Sheeting of vehicles			
Site sign at gate		Noise control			
Hours of working					
HGV No. limits		Blasting		Soil placement	
Lorry routing		Bunding & planting		Restoration	
Mud on roads		Landscaping		Aftercare	
Access surface/drainage		Extent of consent/working		Restoration bond monitoring (appraisal of adequacy) and compliance	
Junction location/design		Soil stripping & storage			
Vehicle/wheel cleaning		Phasing/working direction			
Buildings and plant		Area & depth of working			
Display conditions/plans		Associated mineral types			
Lighting		Landscape maintenance			
Stockpiles		Restoration materials			
Permitted Development		Levels & landform			
Protection of features: Nature conservation, archaeology, footpaths, utilities, trees					

DESCRIPTION OF SITE VISIT MATTERS REQUIRING ATTENTION (applies to R, N1, N2 and N3 issues)

--

NON-COMPLIANCE

Issue	Action to be taken by operator including timescales
<p>A red, amber, green code can be applied to action that may be required to comply with conditions. If any form of enforcement action is envisaged this should be documented in the report with a likely timeline.</p>	

Planning officer	Signature	Phone number	Date

Activity	Time spent	Cost
Travel time		
Duration on site		
Preparation of report		

RESPONDING TO THIS CONSULTATION

We are inviting responses to this consultation by **6th April 2017**

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/special-projects/fees-for-monitoring-surface-coal-mines/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 6th April 2017.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Planning and Architecture
Area 2-H(South)
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them surfacecoalmines@gov.uk

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



FEES FOR MONITORING SURFACE COAL MINES RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No



Scottish Government
Riaghaltas na h-Alba
gov.scot

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W W W . G O V . S C O T

NORTH AYRSHIRE COUNCIL

Agenda Item 12

8 March 2017

Planning Committee

Title: Local Development Plan 2 - Progress Update

Purpose: To provide an overview of Development Plan Scheme and obtain Committee approval for the scheme's publication, and submission to Scottish Ministers.

Recommendation: That the Committee agrees to: (a) notes recent progress on preparation of North Ayrshire Local Development Plan 2; and (b) authorise publication of the Development Plan Scheme at Appendix 1.

1. Executive Summary

- 1.1 This report presents the third edition of the Development Plan Scheme, the Council's programme and timetable for preparation of the second North Ayrshire Local Development Plan (LDP2). The scheme is a statutory requirement of the plan-making process, and it must be reviewed and republished on an annual basis.
- 1.2. Over the last eight months, Officers have made significant progress on taking the plan-making process forward, including extensive stakeholder engagement, completing plan monitoring work and preparation and public consultation of the Main Issues Report. This progress ensures the Council's target timescale for plan adoption in 2019 remains well on track.

2. Background

- 2.1 The Development Plan Scheme (DPS) has a crucial role in coordinating public involvement on LDP2 and ensuring the plan-making process is project managed. It is a statutory document outlining the key stages in preparing LDP2 and when people can get involved. The document was first published in 2015, and with revisions made in 2016. Appendix 1 provides the proposed third edition of the DPS.

- 2.2 On page six of the DPS, the timetable states 'evidencing gathering' until late, last year. This work has been completed on time, and involved an extensive range of activities to identify the main planning issues for LDP2. Some of these activities include:
- **Undertaking the 'call for sites' consultation**, inviting communities, developers and individuals to suggest land for alternative uses (e.g. housing) in LDP2. Officers received over 80 site suggestions during the consultation in late summer 2016 and undertook an initial appraisal as part of the site selection process;
 - **Meeting landowners and representatives** from the national and local house-building sector, including, for example, Homes for Scotland, Registered Social Landlords and active developers;
 - **Engaging with Council services and government agencies** (Scottish Government, Transport Scotland, Historic Environment Scotland, Scottish Enterprise, NHS) who have a role in shaping and delivering LDP2;
 - **Establishing the 'Delivery' working group**, involving Council colleagues from education, housing, finance, health and social care, roads etc. to focus on the infrastructure aspects of the development plan;
 - **Working with Locality Planning Partnerships** - Senior officers participated in inaugural partnership meetings in September 2016, and also during March 2016, to discuss how LDP2 can support community planning priorities;
 - **Supporting baseline information** - This includes the draft 2016 Housing Land Audit, Housing Needs and Demand Assessment, national and local policy review, town centre audits, a monitoring statement as well as a strategic environment assessment to appraise the major development changes to North Ayrshire and to inform opportunities for change within the plan;
 - **Publicity** - Officers are publicising opportunities for stakeholder comment, using a range of techniques including press releases, public exhibitions across North Ayrshire, statutory notices, email, the Council's website and Twitter feed.
- 2.3 The product of evidence gathering is the Main Issues Report (MIR). Published within the DPS's target timescale of January 2017, the MIR sets out the Council's general proposals for key planning policies, and future development, giving options as to how the main planning issues might be addressed. The six week consultation period for the MIR is drawing to a close, ending on 10 March 2017. Public feedback on the MIR will inform the Proposed Plan, the next stage in the plan-process.
- 2.4 The DPS's stated timescales for the Proposed Plan (December 2017), independent examination (2018) and plan adoption (2019) remain unchanged from last year, reflecting that the plan remains on track.
- 2.5 In addition, the DPS includes a Participation Statement stating how and when the Council intends to engage on the new plan. Officers will continue to meet engagement commitments set by the DPS, with the aim of obtaining as many stakeholder views as possible to help build a better plan for North Ayrshire.

3. Proposals

- 3.1 The Committee is invited to: (i) note recent progress on preparation of North Ayrshire Local Development Plan 2; and (ii) authorise publication of Development Plan Scheme at Appendix 1.
- 3.2 Following this Committee's approval, copies of the documents will be placed on the internet and in every public library in North Ayrshire for public inspection. Copies will be distributed to Scottish Ministers, and to all Elected Members for their information. Other key stakeholders will also be notified.

4. Implications

Financial:	The resource costs of preparing LDP2 can be met from existing budgets.
Human Resources:	As above.
Legal:	Preparing the Development Plan Scheme is a statutory requirement of the Planning etc. (Scotland) Act 2006 and it must be produced annually and submitted to Scottish Ministers.
Equality:	At the Main Issues Report (MIR) stage, the new plan was subject to screening for a statutory equality impact assessment. This concluded that the development and policy proposals of the MIR are unlikely to have a detrimental impact on any particular protected equality group in North Ayrshire. The Proposed Plan for LDP2 will also undergo a similar assessment later this year.
Environmental & Sustainability:	LDP2 is undergoing a statutory strategic environmental assessment (SEA) - this is a means to consider, and mitigate, the significant impact of the plan on the environment. An interim Environmental Report has been published for consultation alongside the MIR, providing initial SEA findings. The SEA ensures LDP2 supports sustainable development, ensuring that the environment is integral to decision-making within plan-making process.
Key Priorities:	Through its vision and spatial strategy, LDP2 will assist with implementing several national and local priorities, including the Council Plan 2015-2020, the Ayrshire Growth Deal, the Single Outcome Agreement guiding and facilitating regeneration and sustainable development across North Ayrshire.
Community Benefits:	None.

5. Consultation

5.1 No consultations were required for this report.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference :

For further information please contact Andrew McNair, Planning Officer on
01294 324769

Background Papers

North Ayrshire Monitoring Statement - January 2017

North Ayrshire Main Issues Report - January 2017

North Ayrshire Local Development Plan 2 - Interim Environmental Report -
January 2017



**Development
Plan Scheme
March 2017**



YOUR PLAN YOUR FUTURE



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Introduction

What is the Development Plan Scheme?

The Development Plan Scheme (DPS) is an important document, which provides information about our second Local Development Plan (LDP). It sets out how and when we will involve communities, businesses and other interested groups in preparing the plan.

The DPS:

- Explains what the North Ayrshire LDP is
- Outlines the key stages in preparing the second LDP
- Sets out the timetable for this new plan; and
- Contains a participation statement, outlining when, how and with whom we will consult on the plan.

This DPS is the third edition for the new plan. We review and update the DPS every year. If there are any important changes to report, we will publish more updates to the scheme.

You can view the DPS at any public library in North Ayrshire and on our website at www.north-ayrshire.gov.uk/localplans.

We produced
our **1st** LDP
on **20 May**
2014
it covers
a **10-year**
period up to
2024

What is the North Ayrshire Local Development Plan?

Each local authority must prepare an LDP to guide the future development and land use in its area. We produced our first LDP on 20 May 2014. The North Ayrshire LDP replaced old-style 'local plans' and was one of the first of its kind to be prepared in Scotland.

The LDP identifies opportunities for new homes, business and industry, shops and community facilities while protecting places of value to people and wildlife. It provides guidance on what, where and how development should take place in North Ayrshire. The plan guides decisions on planning applications throughout North Ayrshire.

Why do we need a new LDP?

The current LDP covers a 10-year period up to 2024 and needs to be replaced every five years. We update the LDP to meet the future development needs of North Ayrshire. We review the LDP to look ahead beyond 2024, and to work out the best places for new homes, businesses and other forms of development.

How does the new LDP affect me and why should I get involved in preparing it?

Planning affects our lives in many ways. The LDP will affect the places we live in, and the way our surroundings look, from regenerating our towns and villages to building new schools, houses, shops, offices and so on.

The LDP has an important role to play in creating jobs and promoting growth that helps to make sure everyone can be included in their local community. It will set out planning policies guiding how places should and should not develop.

The LDP identifies opportunities for new homes, business and industry, shops and community facilities while protecting places of value to people and wildlife.

The LDP has an important role to play in creating jobs and promoting growth that helps to make sure everyone can be included in their local community.

We need your involvement to help us make the best plan for North Ayrshire and make sure the area continues to be the place where people, communities and businesses flourish.



Preparing the new Local Development Plan

What are the main stages in preparing the new LDP?

Stage 1: Gathering the evidence - (Complete)

We gathered and reviewed information from various sources to identify the main planning issues in the area.

We invited people to tell us about issues and suggest possible sites for development as part of the 'call for sites exercise'. We prepared a **monitoring statement** identifying the key changes to the area and the effects of the current LDP.

Stage 2: Main Issues Report - (Complete)

We used the evidence we collected to prepare the Main Issues Report (MIR). The MIR encouraged public discussion and feedback on our big ideas for future development and on what we should include in the new plan. The MIR gives options as to how we might deal with the main planning issues in the new plan. We undertook public consultation on the document between 30 January and 10 March, 2017.

Stage 3: Proposed Plan

By the end of 2017 we will publish a Proposed Plan taking account of the comments we received on the MIR. The Proposed Plan will set out our view on what the final LDP should contain. You will be able to give us your comments on the Proposed Plan during the consultation period. We will consider the comments we receive and make any necessary changes to the Proposed Plan. Further consultation will be needed if there are any significant changes.

Stage 4: Examination

We send the Proposed Plan to Scottish Ministers for 'examination'. This is an external review which considers whether the plan's content is appropriate and in the best interests of the area. A reporter, appointed by the Scottish Ministers, oversees the review. The reporter will prepare and publish a report with recommendations. The recommendations may suggest no change or they may suggest a change to deal with a particular issue. We must follow the reporter's recommendations except in very limited circumstances.

Stage 5: Adoption

We can adopt the plan after we have followed the recommendations in the examination report and received Scottish Ministers' approval.

When we adopt the Proposed Plan it becomes the Local Development Plan and the legal document for considering all planning applications in North Ayrshire.

Please also see the Local Development Plan timetable on page 6 of this document. This provides more information on what each stage involves, including when it is likely to start and end.

The timetable also highlights key dates in the political calendar which could impact upon the plan process.

What will be in the new plan?

Vision Statement

The Vision Statement is a clear view of what kind of North Ayrshire we are trying to achieve and what the area might look like in the future. It sets the high-level aims and objectives for the new plan.

The Spatial Strategy

This includes the policies and proposals that set out where and how certain types of development should happen (for example, housing, retail, business and industry), and the main factors for considering planning applications.

Proposal Maps

These are maps showing the specific locations of the policies and proposals.

Planning Guidance

This provides extra guidance on certain policies and proposals such as the design and location of new development. We will publish and consult on planning guidance separately from the new plan.

What will inform the content of the new plan?

Consultation

We involve the public, organisations, developers and anyone who has an interest in North Ayrshire, in a variety of ways. This is important as it makes us aware of:

- The views of communities, businesses and other interested groups
- The sites which are under pressure for development; and
- The sites that need protecting from development

Involving you will help us gain a greater understanding of potential and existing issues. This will make sure that the decisions taken in the new plan are well informed.

Other Strategies

We consider national strategies and policies when we prepare the new plan. The content of the plan will reflect and support our aims and the aims of our partners in:

- The Single Outcome Agreement
- The Council Plan
- The Local Housing Strategy
- The Economic Development and Regeneration Strategy; and
- Various other council strategies



The Local Development Plan timetable

The following timetable outlines the programme for preparing the new LDP. The consultation events that we plan to carry out are shown in blue. Details on public consultation will be well publicised, using posters, local press, leaflets, the internet and email.

	2016				2017				2018				2019			
	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
Stage 1: Gathering the evidence - (Completed)																
<ul style="list-style-type: none"> • Call for sites exercise • Stakeholder briefings • Councillor involvement • Pre-Main Issues survey • Development Plan forums • Community Council training • Review pressure and evidence for change • Strategic Environmental Assessment (SEA) begins 																
Stage 2: Main Issues Report - (Completed)																
<ul style="list-style-type: none"> • Publish Main Issues Report - January 2017 (*), Interim SEA Environmental Report, Monitoring Statement • Period for representations • Development Plan forums • Public exhibitions • Consider representations 																
Stage 3: Proposed Plan - (In progress)																
<ul style="list-style-type: none"> • Publish Proposed Plan - December 2017 (*), Proposed Action Programme, revisions to SEA Environmental report & Habitats Regulations Appraisal • Period for representations • Drop-in sessions • Changes may be made to Proposed Plan and further consultation may be needed • Consider representations • Consultation 																
Stage 4: Examination																
<ul style="list-style-type: none"> • Submit Proposed Plan - May 2018 (*), Proposed Action Programme, summary of unresolved issues, SEA Environmental report to Scottish Ministers • Reporter appointed to consider issues • Reporter's report published 																
Stage 5: Adoption																
<ul style="list-style-type: none"> • Publish plan incorporating reporter's recommendations • Submit plan to Scottish Ministers - February 2019 (*) • Adopt plan and publish Action Programme • Publish SEA Post-Adoption Statement 																

Your new plan needs you!

If you want to influence how the area will change, it is important to get involved in preparing the plan, particularly during the early stages when we are developing ideas and options.

The new LDP will affect where you live, work, shop, play and travel in North Ayrshire. Local people and organisations have useful knowledge, which can help us understand potential issues in North Ayrshire and build a better plan.

Who, when, and how?

Consultation is important to us. We want to involve as many people as possible. This section sets out who, when and how we will consult.

Who?

We will consult:

- The general public
- Community councils across North Ayrshire
- Locality partnerships
- Government consultees and agencies
- Businesses, landowners, developers, agents, residents' associations; and
- Other interested groups or individuals

When?

The LDP timetable on the previous page sets out the opportunities for you to be involved in deciding the content of the plan.

How?

We will carry out the following steps to encourage public involvement with the plan.

- Provide copies of consultation documents on our website, in every public library and in other Council offices
- Provide simple forms to make your views known
- Keep you informed of significant progress on the plan
- Ask for feedback on how we are involving you
- Publicise our contact information so you can ask questions and receive answers about the plan
- Make use of social media to reach a new audience
- Hold public meetings at convenient times and locations
- Make the information we send out as clear as possible
- Work closely with other Council services and volunteer groups to encourage people to get involved in planning
- Publicise the opportunities for public comment, using a wide range of publicity techniques, including adverts in the local press, statutory notices, our website, email, social media, posters and so on.

Our customer charter sets out the values and standards you should expect from us when involving you. This charter is available to view on our website at www.north-ayrshire.gov.uk/localplans.



Our contact details

For more information about the Local Development Plan, or if you would like us to add you to our database, please contact us:

Planning Services,
Economic Growth Services,
Economy and Communities,
North Ayrshire Council
Cunninghame House,
Irvine, KA12 8EE

Tel: 01294 310000

Email: ldp@north-ayrshire.gov.uk

www.north-ayrshire.gov.uk/localplans



YOUR PLAN YOUR FUTURE

This Development Plan Scheme is available in other formats such as on audio tape, on CD, in Braille and in large print. We can also provide it in other languages if you ask us to.

