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## NORTH AYRSHIRE COUNCIL

24th May 2023

### Planning Committee

Locality	North Coast and Cumbraes
Reference	23/00131/PP
Application Registered	22nd February 2023
Decision Due	22nd April 2023
Ward	North Coast

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<b>Recommendation</b>	Approved subject to Conditions
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<b>Location</b>	Former Coal Terminal Hunterston West Kilbride Ayrshire
<b>Applicant</b>	XLCC F.A.O. Mr Alan Mathers
<b>Proposal</b>	Variation of condition 11 of planning permission N/22/00133/PPPM relating to the construction of a high voltage sub-sea cable manufacturing facility

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### 1. Description

This can be ascertained by reference to the attached plans and photographs.

Planning permission is sought to vary Condition 11 of permission 22/00133/PPPM. That permission granted planning permission in principle for the erection of a high voltage cable manufacturing facility, including detailed planning permission for the construction of a 185m high extrusion tower with associated factories, research and testing laboratories, offices with associated stores, transport, access, parking and landscaping with on-site generation and electrical infrastructure and cable delivery system.

Condition 11 of the permission currently states,

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

The reason Condition 11 was imposed is as follows,

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

This application seeks to change the wording to read,

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

The use of the site is restricted by condition to the construction, repair and decommissioning of large marine related structures. This is further restricted to oil rigs, platforms and similar structures that have served the oil and gas and offshore renewable industries. It is not proposed to change this restriction.

The application also originally sought to vary Condition 12 to lengthen the time before a redundant tower should be removed. This part of the application was withdrawn by the applicant, following an indication that it would be unlikely to be recommended to the Planning Committee for approval.

An application to vary Conditions 11 and 12 (ref: 22/00759/PP) was withdrawn in February 2023 following advice that it was unlikely to be supported. That application sought to vary the wording of Condition 11 to change reference from a financial bond to a binding agreement as well as extend the time period in Condition 12.

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

The relevant policy of the Local Development Plan adopted November 2019 (LDP) is considered to be Strategic Policy 2: Placemaking; and Policy 15: Landscape and Seascape.

National Planning Policy 4 (NPF4) was adopted 13th February 2023. NPF4 identifies Hunterston as a Strategic Asset. NPF4 is considered to be a material consideration for this application. The relevant policy considered to be Policy 14. The Scottish Government's Planning Circular 4/1998 sets out their policy on the use of planning conditions.

## **Relevant Development Plan Policies**

### **Strategic Policy 2**

Our Placemaking policy will ensure we are meeting LOIP priorities to make North Ayrshire safer and healthier by ensuring that all development contributes to making quality places. The policy also safeguards, and where possible enhances environmental quality through the avoidance of unacceptable adverse environmental or amenity impacts. We expect that all applications for planning permission meet the six qualities of successful places, contained in this policy. This is in addition to establishing the principle of development in accordance with Strategic Policy 1: Spatial Strategy. These detailed criteria are generally not repeated in the detailed policies section of the LDP. They will apply, as appropriate, to all developments.

## Six qualities of a successful place

### Distinctive

The proposal draws upon the positive characteristics of the surrounding area including landscapes, topography, ecology, skylines, spaces and scales, street and building forms, and materials to create places with a sense of identity.

### Welcoming

The proposal considers the future users of the site and helps people to find their way around, for example, by accentuating existing landmarks to create or improve views (including sea views), locating a distinctive work of art in a notable place or making the most of gateway features to and from the development. It should also ensure that appropriate signage and lighting is used to improve safety and illuminate attractive buildings.

### Safe and Pleasant

The proposal creates attractive places by providing a sense of security, including by encouraging activity, considering crime rates, providing a clear distinction between private and public space, creating active frontages and considering the benefits of natural surveillance for streets, paths and open spaces.

The proposal creates a pleasant, positive sense of place by promoting visual quality, encouraging social and economic interaction and activity, and by considering the place before vehicle movement.

The proposal respects the amenity of existing and future users in terms of noise, privacy, sunlight/daylight, smells, vibrations, glare, traffic generation, and parking. The proposal sufficiently investigates and responds to any issues of ground instability.

### Adaptable

The proposal considers future users of the site and ensures that the design is adaptable to their needs. This includes consideration of future changes of use that may involve a mix of densities, tenures, and typologies to ensure that future diverse but compatible uses can be integrated including the provision of versatile multi-functional greenspace.

### Resource Efficient

The proposal maximises the efficient use of resources. This can be achieved by re-using or sharing existing resources and by minimising their future depletion. This includes consideration of technological and natural means such as flood drainage systems, heat networks, solar gain, renewable energy and waste recycling as well as use of green and blue networks.

### Easy to Move Around and Beyond

The proposal considers the connectedness of the site for people before the movement of motor vehicles, by prioritising sustainable and active travel choices, such as walking, cycling

and public transport and ensuring layouts reflect likely desire lines, through routes and future expansions.

## Detailed Policy 15-Landscape & Seascape

### Landscape and Seascape

We will support development that protects and/or enhances our landscape/seascape character, avoiding unacceptable adverse impacts on our designated and non-designated landscape areas and features. In particular, we will consider the following:

- a) **National Scenic Areas**  
Development that affects the North Arran National Scenic Area including the need to protect existing sport and recreation interests, will only be supported where:
  - i) the objectives of the designation and the overall integrity of the area will not be compromised; or
  - ii) any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.
- b) **Special Landscape Areas**  
We will only support development which affects Special Landscape Areas where it would not have an unacceptable impact on their special character, qualities and setting.
- c) **Wild Land**  
We will only support development within Wild Land areas where any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation.
- d) **Local Landscape Features**  
Where appropriate, development should take into consideration its individual and cumulative impacts on landscape features, including:
  - i) patterns of woodlands, fields, hedgerows and trees;
  - ii) lochs, ponds, watercourses, wetlands, the coast and wider seascape;
  - iii) settlement setting, including approaches to settlements;
  - iv) the setting of green network corridors, such as important transport routes and the cycle and footpath network;
  - v) historic, natural and recreational features of interest, skylines and hill features, including important views to, from and within them.

For all development with the potential to have an impact on either Landscape Character or Landscape features (including their setting), appropriate mitigation measures should be considered as part of any planning application. Where there is potential for development to result in significant adverse landscape/visual impact, a landscape and visual impact assessment (LVIA) will be required. The Ayrshire Landscape Character Assessment (SNH, 1998) and North Ayrshire Settlement Development Strategy (Entec, 2008) provide further information on designations such as Local Landscape Character Areas and the Potential Limit of Development Expansion areas as shown on the map on page 81 and on our online proposals map. These landscape assessment documents, and any new or updated

landscape assessments, will be key considerations in determining whether development proposals would be acceptable within the landscape.

## **2. Consultations and Representations**

The application was subject to statutory neighbour notification procedures. There have been seven objections received, including objections from Fairlie Community Council which can be summarised as follows;

1. The wording of Condition 11 should not change as it would risk the local area being blighted by the tower which will dominate the landscape. The bond is required to ensure the tower does not become an eyesore should it become redundant. The wording should remain the same to ensure the tower is not a permanent blot on the landscape. Works below ground level will still be visible.

*Response: The proposed wording is considered fully below. However, it is noted that the proposed working would prevent any works above ground level, unless and until details of a bond are provided. This means the changes to Condition 11 would not put the area at risk of a redundant tower. It is not considered that works below ground level would be readily visible outwith the site and this is considered further below.*

2. A bond must be required. Who would be liable to comply with the condition without a bond?

*Response: Agreed. A bond would still be required by the terms of the varied condition. Ultimately the landowner would be responsible for complying with any breaches of planning control on their land.*

3. Condition 12 should remain the same as the time scales are appropriate to protect the area in the event of the tower becoming redundant.

*Response: Agreed. Concerns regarding changes to Condition 12 were communicated to the applicant and that part of the application has now been withdrawn.*

4. Any development of the site will have an impact on wildlife and residents.

*Response: Permission has already been granted for the development and such factors were considered in the granting of that permission. This application relates specifically to a condition and must be assessed in that context only.*

5. The applicant should not be allowed to continue to make piecemeal applications. If it were considered in full it would be refused.

*Response: The original application was for permission in principle for the factory and full permission for the tower. The other application is to provide details required by that permission. The Planning Acts allow the submission of such applications and to vary conditions.*

6. Fairlie Community Council do not consider the landowner to have the appetite for any risk to them. Why were the community not consulted prior to the submission of the application.

*Response: Opinions on the character or intentions of the landowner are not relevant material considerations. Under planning legislation, the landowner would be ultimately responsible for any breaches of planning control on their land. This application seeks to vary a condition and no prior consultation with the public is required.*

### **3. Analysis**

Planning permission in principle for the use of the land as a cable factory and detailed permission for the construction of the tower has been granted. The principle of the development is therefore established. The application considers only whether or not the revised Condition 11 would accord with the LDP, NPF4, Scottish Government advice and any other material considerations.

Strategic Policy 2 of the LDP sets out the six qualities of a successful place. The relevant quality is 'distinctive' which requires development to consider the local landscape. Policy 14 of NPF4 is essentially a reiteration of Strategic Policy 2.

Policy 15 of the LDP states that support will be given the development that avoids unacceptable adverse impacts on our landscape areas. The revised wording of Condition 11 would allow works to commence at ground level and below. This would essentially allow the foundations and basement level of the tower to be commenced.

The reason Condition 11 was imposed was to ensure steps are in place to remove the tower should the site become redundant, in the interest of visual amenity, and in recognition of the landowner being ultimately responsible for compliance with any conditions.

The tower would be some 1450sqm in area. It would be sited some 440m north of the southern boundary of the site and 75m west of the eastern boundary of the site. It would be 25m wide, west to east, and 58m in length, north to south. It would be approx. 1km south of the settlement of Fairlie, as identified by the LDP. The site of the tower is within an existing industrial yard. The site of the tower is surrounded to the south, east and north by trees including the Hunterston House Tree Preservation Order (TPO). It would be approx. 2.8km from Cumbrae to the west. Permission in principle has been granted for the factory buildings which would surround the towers. Those buildings are expected to be approx. 25-30m in height.

Given all of the above, it is considered allowing the works up to ground level to commence without a bond would have no impact on visual amenity or the wider landscape. As such the amendment to the condition would accord with Strategic Policy 2 and Policy 15 of the LDP and Policy 14 of NPF4.

Planning Circular 4/1998 states that planning conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. It is considered that the amended condition would remain relevant to planning, relevant to the development, enforceable and precise. The condition would remain necessary in respect of the tower i.e. the removal of the tower in the case of redundancy, being a structure visible in public realm. The condition

would also remain reasonable in that it would allow works which will not have an adverse impact on visual amenity.

Planning permission should therefore be granted for the variation of Condition 11 as set out below.

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

Approved subject to Conditions

#### **Reasons for Decision**

##### **Condition**

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

##### **Reason**

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

##### **Condition**

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

##### **Reason**

In order that these matters can be considered in detail.

##### **Condition**

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

##### **Reason**

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

##### **Condition**

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

non-classified roads by construction vehicles and details of management of impact on the core path and cycle route network.

**Reason**

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

**Condition**

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

**Reason**

To ensure appropriate oversight of the construction of the development

**Condition**

6. Prior to development commencing the applicant shall implement the measures detailed under Mitigation Measures Adopted as Part of the Project in Chapter 9 Hydrogeology, Geology and Ground Conditions of the submitted EIA report dated February 2022. All documentation be verified by a suitably qualified Environmental Consultant and submitted to the satisfaction of North Ayrshire Council, as Planning Authority.

**Reason**

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

**Condition**

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

**Reason**

To ensure proper management of dust throughout the construction period.

**Condition**

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

**Reason**

To ensure proper consideration of potential noise from the development.

**Condition**



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

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

**Reason**

To ensure proper consideration of surface water drainage.

**Condition**

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

**Reason**

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

**Condition**

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

**Reason**

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

**Condition**

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

**Reason**

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

**Condition**

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

**Reason**

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

**Condition**

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

**Reason**

To ensure proper management of dust throughout the construction period.

**Condition**

15. That prior to the commencement of the development of the tower, a Construction Management Plan and Code of Practice, including details for monitoring and action against non-compliance shall be submitted to North Ayrshire Council, as Planning Authority, for approval. Thereafter the construction shall be carried out only as approved by the Plan and Code of Practice. For the avoidance of doubt this shall include an assessment of use of the rail and port connections as a first principle and the prohibition of the use of the A78 through Fairlie, the B780/B781, the C26 and all local non-classified roads by construction vehicles and details of management of impact on the core path and cycle rout network.

**Reason**

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

**Condition**

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

**Reason**

To ensure proper oversight of the construction of the tower.

**Condition**

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

**Reason**

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

**Condition**

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

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

**Reason**

To ensure the proper treatment of surface water.

**Condition**

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

**Reason**

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

**Condition**

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

**Reason**

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

**Condition**

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

**Reason**

To meet the requirements of the relevant Air Authorities.

Yvonne Baulk  
Head of Service

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

## Appendix 1 – Location Plan

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