

COUNCIL: 27 JUNE 2018

RESPONSES TO SUPPLEMENTARY QUESTIONS

Please find below responses to two supplementary questions asked at the last Council meeting held on 27 June 2018:-

- (f) In respect of her question about support for the bereaved, Councillor Brahim asked, as a supplementary question, whether the free training referred to in the Leader's response was that provided by the Scottish Government Child Poverty Action Group.

Councillor Cullinane responded by undertaking to seek the clarification on this matter. It was later confirmed to Members following the meeting that the training being considered was indeed that provided by the Child Poverty Action Group.

- (k) In respect of his question about any Environmental Impact Assessment (EIA) requirements associated with the oil rig decommissioning yard proposals at Hunterston, Councillor Murdoch, as a supplementary question made reference to the detailed provisions of Section 12 of the guidance notes to the Petroleum Act 1998 as they related to EIA requirements for the decommissioning of oil and gas platforms, asked a number of further questions and whether advice that an EIA was not required at Hunterston should be revisited in light of this guidance and the opinion of Scottish Natural Heritage on the matter.

Councillor Gallagher responded by undertaking to request Planning officers to examine the points raised in detail.

At the request of the Provost, Councillor Murdoch undertook to provide his supplementary questions in writing, for circulation to all Members.

The following detailed supplementary questions were subsequently circulated to all Members, on behalf of Councillor Murdoch. The response to each is provided in italics on behalf of the Cabinet Member for the Economy:-

- (1) Section 12 of the Guidance Notes for the Petroleum Act 1998 sets down in law the environmental protections and regulations necessary for the decommissioning of oil and gas platforms.

Response: *It should be noted that there are separate legislation regulations for sea and land based activities. The Petroleum Act 1998 controls the setting up, extracting and decommissioning at sea of those installations and pipelines required in order to produce petroleum. The responsibility for ensuring that the requirements of the Act are complied with rests with the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) which sits within the Department for Business, Energy and Industrial Strategy (BEIS). This legislation is regulated by OPRED and not by North Ayrshire Council as a planning authority.*

The Petroleum Act is there to ensure that each structure oil platform is removed from its site and transported to its final destination safely. North Ayrshire Council through our statutory planning responsibilities, SEPA and Marine Scotland would then regulate what happens once the structures reaches their final decommissioning site on land.

As regards onshore planning applications, Schedule 1 and Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 outline the criteria for determining whether an Environmental Impact Assessment (EIA) would be required. Guidance published by the Scottish Government states that Developments falling within a description in Schedule 1 to the 2011 EIA Regulations always require EIA. Development of a type listed in Schedule 2 to the 2011 EIA Regulations will require EIA if it is likely to have a significant effect on the environment, by virtue of factors such as its size, nature or location.

- (2) Sections 12.1 to 12.5 clearly state that an Environmental Impact Assessment (EIA) **MUST** be provided and available in draft form for public consultation and in final form for any planning application.

Response: *As previously detailed, the Petroleum Act 1998 does not cover land based activities. As part of the Petroleum Act each structure at sea may require an EIA and it is the responsibility of the operator to draw up an Environmental Appraisal (EA) or Decommissioning Plan (DP). These plans are reviewed by the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) and not by the Council. The guidelines outline the type and level of information expected in an EA and DP but the primary focus is the removal procedures and journey taken by each structure when going to their disposal site, whether that be for reuse, recycling or disposal at Hunterston or elsewhere. The DP would not control the operations being carried once the marine structure reaches the site that is carrying out the final recycling or disposal of the affected structures. Once on land, SEPA would then regulate what happens to the structure.*

- (3) Section 12.9 refers to decommissioning that they may take place "close to shore" clearly establishing that section 12 covers decommissioning in any geographical marine situation - such as Hunterston Basin. (It has been argued that section 12 only applies to decommissioning far out at sea and / or beyond the 12 mile limit.

Response: *This part of the guidance to the Petroleum Act is referring to the removal procedures and journey taken by each marine structure when going to their final site, whether that be for reuse, recycling or disposal, and not the operations being carried out by those reusing or completing the final recycling or disposal of the affected structures. Therefore, the Offshore Petroleum Regulator for Environment and Decommissioning would assess the potential removal of the structure and where it is to be transported, in line with the Petroleum Act.*

However, once at Hunterston, the demolition of the structure would then be controlled by SEPA and Marine Scotland. Even if 'close to shore', the Offshore Petroleum Regulator for Environment and Decommissioning would still be the primary regulator for how the oil rig is removed from its existing site and transported. The Council does not control what occurs at sea.

- (4) It has been stated that an EIA will be provided in future for each individual oil rig. This would seem to be contradicted by NAC's own planning documentation. Agenda Item 3.3 for the Planning Committee Meeting of 25th April 2018, states the following: "An EIA screening request was submitted on February 2017 where it was determined that an EIA was not required for 'DECOMMISSIONING', erection of caisson gates or the extension to the quay". Does this confirm NAC's formal position that an EIA will not be required or enforceable for any aspect of future decommissioning at Hunterston?

Response: *As has been indicated in previous responses to the earlier questions, the Petroleum Act covers the removal procedures and journey taken by each structure at sea and going to its final site. The Planning Act regulates the land use activities.*

Each oil rig that is being moved from its current site at sea may require its own EIA under the Petroleum Act. The Offshore Petroleum Regulator for Environment and Decommissioning would assess the potential removal of the structure and where it is to be transported. Once the structure arrives at Hunterston, it is then the responsibility of the operators at the site to ensure the correct consents/licenses are in place to complete the final disposal of the structure. Once on land SEPA would then regulate what happens to the structure. There is therefore no contradiction between the North Ayrshire Council Planning Committee decision and the potential requirements for an EIA under the Petroleum Act.

- (5) Section 12 as outlined above was published after the NAC screening opinion of 2017 but before Planning Permission was granted in April 2018. Why was the earlier screening opinion not revisited in the light of this important new legislation?

Response: *The Petroleum Act and its supporting guidance covers the removal procedures and journey taken by each structure when going to their final site, and not the decommissioning of the structures that occurs on land in order to recycle or dispose of the structures. The Petroleum and Planning Acts are different regimes. There was no change in circumstances that would have required a revised screening opinion in terms of the Planning Act.*

- (6) It has now been confirmed that the Scottish Natural Heritage Pre-Screening Consultation Response that was attached to Marine Scotland's letter to EnviroCentre of 13th June 2017, is not on file and can not be found. This means it could not have been read by Planners. How were the Planners able to arrive at a favourable Screening Opinion with this absolutely critical and fundamental information missing?

Response: *In terms of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, there is no requirement for Planning Officers to consult with external bodies as part of the process. Officers adopt a screening opinion based on the information that has been submitted by the applicant. However, North Ayrshire Council approached SNH to ascertain if they had any comments on the screening opinion. SNH did not respond to this consultation. Marine Scotland as part of the screening for their assessment as to whether an EIA is required for their purposes, did consult with SNH and it is that letter that cannot be located. A letter from SNH to Marine Scotland on the subject of the Marine Scotland assessment for a requirement for an EIA has no relevance in the assessment of whether North Ayrshire Council require an EIA as part of the Planning Act. It should be noted that Marine Scotland has determined that an EIA is not required for their purposes.*

It is worth noting that SNH did not object to any of the planning applications that were submitted and approved in April 2018.