

North Ayrshire Council
9 November 2011

IRVINE, 9 November 2011 - At a Special Meeting of North Ayrshire Council at 2.00 p.m.

Present

Pat McPhee, Ian Clarkson, Robert Barr, Tom Barr, Andrew Chamberlain, Margie Currie, Anthea Dickson, John Ferguson, Alex Gallagher, William Gibson, Tony Gurney, Jean Highgate, Alan Hill, John Hunter, Ruby Kirkwood, Elizabeth McLardy, Peter McNamara, Ronnie McNicol, Elisabeth Marshall, John Moffat, Jim Montgomerie, Alan Munro, Ryan Oldfather, John Reid and Joan Sturgeon.

In Attendance

I. T. Mackay, Solicitor to the Council, Robert Forrest, Planning Services Manager, J. Miller, Chief Development Management Officer, J. Michel, Senior Planning Officer, and A. Craig, Senior Solicitor (Litigation) (Corporate Services); J. Montgomery, General Manager (Policy and Service Reform), L. McEwan, Communications Manager and M. McKeown, Committee Services Manager (Chief Executive's Service).

Chair

Provost McPhee in the Chair.

Apologies for Absence

John Bell, Matthew Brown, Margaret McDougall, David O'Neill, and Robert Rae,

1. Declarations of Interest

There were no declarations of interest by Elected Members in terms of Standing Order 16.

2. Proposed Multi-Fuel Power Station at Hunterston

Submitted report by the Solicitor to the Council, which (i) considered the responses and representations received by the Council in respect of the Scottish Government consultation on an application by Ayrshire Power Limited for planning permission to build a multi-fuel power station at Hunterston and (ii) sought agreement of the proposed response by North Ayrshire Council as Planning Authority to the Scottish Government consultation.

On 3 June 2010 the Scottish Government Energy Consents and Deployment Unit (ECDU) consulted North Ayrshire Council as Planning Authority on an application submitted by Ayrshire Power Ltd., under Section 36 of the Electricity Act 1989 for consent to construct a multi fuelled power station at Hunterston.

In the intervening period, Elected Members have received several reports on the progress of the consultation exercise, have undertaken site familiarisation visits, and have received presentations from the applicants and other interested parties. Most recently, at a Special Meeting of the Council held on 24 October 2011, Elected Members received presentations from the applicants, together with representatives from Fairlie Community Council, Communities Opposed to New Coal at Hunterston (CONCH), the Royal Society for the Protection of Birds/World Wildlife Fund, the Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage (SNH). Each party was given the opportunity to address the Council on their respective positions with regard to the application and Elected Members asked questions, and received responses, in respect of the information presented. At a seminar held on 26 October, Elected Members were given the opportunity to seek clarification from officers on matters raised at the Special Meeting. A note of this seminar was tabled.

The report provided details of the application submitted by Ayrshire Power Limited to the ECDU; set the application in the context of local and national planning policies, including National Planning Framework 2; and summarised the scope of the consultations undertaken by Council, and the extent and terms of the representations received, in relation to the application. Supplementary representations information from SEPA and Fairlie Community Council was tabled.

On the basis of the information provided to date, the report recommended that the Scottish Government be advised that North Ayrshire Council as Planning Authority objects to, and seeks refusal of, on the grounds set out in the report. The report further recommended conditions and terms for a planning agreement, should the Scottish Government be minded to grant the application.

Members asked questions and received clarification on a range of issues, including:-

- the lack of information/clarity provided by the applicant and statutory consultees in key areas to allow an informed decision to be taken;
- powers of Scottish Ministers to approve the application without a public inquiry if matters can be dealt with through conditions, and the Council's influence on that decision;
- the respective input from Health Protection Scotland/NHS Ayrshire and Arran as consultees;
- treatment of effluent from the power station;
- the impact of the development on the local road and rail networks, during construction and operation; and
- the need for an independent Health Impact Assessment to be undertaken;

Thereafter, Councillor Reid, seconded by Councillor Gibson, moved that the Council should accept the recommendations contained in the report, subject to the inclusion of a further condition 36 relating to the visual impact of the plume, and a request to the Scottish Government that an independent Health Impact Assessment be required. There being no amendment, the motion was carried.

Accordingly the Council agreed that the Scottish Government be advised that:-

- (a) the Council objects to, and seeks refusal of, the Section 36 application on the following grounds set out in Appendix 1 of this minute;
- (b) the Council strongly recommends the need to hold a public inquiry if it is intended to approve the application and that an independent Health Impact Assessment be required; and
- (c) in the event that the Scottish Government is minded to support the application, the Council recommends that (i) the conditions outlined in the attached Appendix 2 be imposed including a further condition 36 relating to the visual impact of the plume; and (ii) the Heads of Terms for a Planning Agreement mitigating the impacts of the development in part, as set out in Appendix 3, be considered in association with recommended conditions.

The Meeting ended at 3.25 p.m.

Signed in terms of Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.
Signed By:
Date:

Heads of Terms for a Planning Agreement - Mitigating the impacts of the development in Part

Appropriate heads of terms are set out below and are recommended to the Scottish Government in association with recommended conditions.

Landscape Impact

The Power Station development would have a major impact on the surrounding landscape and the quality of life within the local area.

It is suggested that mitigation of this landscape and visual impact be undertaken by way of landscape planting. This should be implemented through woodland development and ongoing management in the areas identified as required within the applicants Environmental Statement and by the Council's landscape architect. This would be implemented under the auspices of NAC through agreement with relevant landowners. (An indicative cost for these works is between £2.9M and £3.5M.)

Ecological and Economic Impact

The development would result in negative environmental impacts through the partial loss of the Portencross SSSI, resulting from the infilling of around 30ha of intertidal area at Southannan Sands. The development would also result in the generation of significant levels of carbon emissions prior to the power station operating as fully CCS.

Replication of those habitats lost should be mitigated by:

- a. Reclamation of a redundant area of the present marine construction yard to provide new intertidal habitat at Southannan Sands (this would not fully replicate the habitats lost); and,
- b. Improvement of the Bogside Flats SSSI in Irvine. This represents the nearest available opportunity for significant habitat restoration and provide a suitable resting area for birds in sufficient numbers and at an appropriate distance from other such bird sanctuaries. (An indicative cost for item b works is £0.7M).

The provision of financial contributions:

- (1) To an environmental enhancement fund aimed at improving the environment within North Ayrshire and compensating in part the carbon generated by the proposal during the period when the plant is not fully CCS. Contributions would be expended by the established Community Benefit Fund which aims to promote Environmental Enhancement through a range of issues including; environmental education, energy efficiency, sustainability, environmental management, conservation of natural resources, and the promotion of green energy.
- (2) To mitigate any adverse impact on economic development and regeneration within North Ayrshire by expenditure on economic development programmes through:
 - a. North Ayrshire's Tourism Growth Programme, which aims to grow tourism in North Ayrshire by marketing the destination and its key attractions, and by supporting tourism businesses and organisations;
 - b. North Ayrshire Sectoral Academy, an established targeted employability programme designed to respond to the needs of local employers, help residents move into sustainable employment and provide wage support to stimulate the demand for labour.
 - c. Provision that during both construction and operation, an agreed minimum percentage of employees and apprenticeships shall come from North Ayrshire. This serves a planning purpose, as Ayrshire Power stress that employment generation represents a material consideration in the planning decision, and agree the principle. This would maximise the employment impacts of the development within the local area. (These financial contributions should be funded based on £2,500 per MW of installed capacity per annum until the operation is fully CCS. On a net capacity of 1,800 MW this would equate to £4.5M per annum).

NORTH AYRSHIRE COUNCIL

SUGGESTED CONDITIONS FOR S36 CONSULTATION REF NO 10/00369/CON

Grant subject to the completion of a S75 Agreement or similar legally binding agreement to (1) secure a scheme of woodland development and ongoing management in the areas identified as required within the applicants Environmental Statement, by the Council's consultant landscape architect and SNH; (2) compensation for the loss of the Portencross mudflats Site of Special Scientific Interest; (3) a financial contribution to an environmental enhancement fund within North Ayrshire; and (4) a financial investment in economic development and regeneration within North Ayrshire; and (5) a local employability provision for both during construction and operation of the plant,

and the following conditions:-

1. That the development, hereby approved, shall commence within 3 years of the date of this consent.

To define the commencement period

2. That full CCS shall be installed prior to the use commencing, to the satisfaction of the Scottish Ministers.

To accord with NPF2 and the prepared Local Development Plan.

3. That prior to the commencement of the development, hereby approved, all mitigation measures identified in the Appropriate Assessment shall be undertaken to the satisfaction of the Scottish Ministers.

To comply with legislative requirements.

4. That prior to the commencement of the development, hereby approved, a Health Impact Assessment shall be submitted for the approval in writing of the Scottish Ministers. Thereafter the findings of the Assessment shall be implemented to the satisfaction of the Scottish Ministers.

In the interests of the human health.

5. That prior to the commencement of the development, hereby approved, details of measures for oil storage, effluent treatment, and the monitoring of all pollutants arising from the development, shall be submitted for the approval in writing of the Scottish Ministers. Prior to the commencement of the use, such details for oil storage and effluent treatment, as may be approved, shall be implemented to the satisfaction of the Scottish Ministers.

In the interests of the amenity of the area.

6. That prior to the commencement of the development, hereby approved, details of revised mitigation measures to improve noise attenuation and to avoid loss of amenity to nearby residents by reason of vibration impacts and piling, shall be submitted for the approval in writing of the Scottish Ministers.

To meet the requirements of Environmental Health.

7. That prior to the commencement of the development, hereby approved, details of the proposed impact on the marine environment, including the entrainment of smaller organisms and the prevention of invasive species, and pre-operation environmental monitoring shall be submitted for the approval in writing of the Scottish Ministers.

In the interests of the marine ecology as advised by SEPA and SNH.

8. That prior to the commencement of the development, hereby approved, the applicant shall provide clarification of hydrological design flows, confirmation of flood management proposals when proposals are finalised at the Masterplan stage, an Updated Flood Risk Assessment when the watercourse diversion/re-alignment has been finalised and consideration of potential flood risk from the northern watercourse are available, These further details shall be submitted for the approval in writing of the Scottish Ministers, prior to the commencement of the development.

To ensure appropriate control of the potential flood risk aspects of the site as advised by SEPA.

9. That prior to the commencement of the development, hereby approved, an Environmental Management Plan, to include issues such as air quality monitoring, pollution prevention, waste reduction and management, appropriate timing of works etc., shall be submitted for the approval in writing of the Scottish Ministers.

In the interests of the health and amenity of the area as advised by SEPA.

10. That prior to the commencement of the development, hereby approved, a detailed management plan for the proposed translocation of eel grass 'Zostera noltii' shall be submitted for the approval in writing of the Scottish Ministers. The plan should include the following:

- An assessment of the substrate in the areas available for transplanting, and how these areas will change during and after construction
- Changes to hydrology and thermal regime in these areas
- Extent of transplantation required to compensate for areas lost on Southannan Sands
- Methodologies used for transplantation
- An assessment of the likelihood of success including evidence for this
- A monitoring programme to measure the success of the transplantation
- Details of the implementation of the results from monitoring
- An assessment of options for further work either on site or elsewhere should monitoring or the result of this additional information indicate transplanting or habitat creation will not succeed
- Evidence of how mitigation areas will be secured against future conditions such as the impact of climate change or potential future development proposals.
- Consideration of habitat management outwith the development site to compensate for damage to the intertidal habitat of the SSSI

In the interests of the ecology of the area as advised by SNH.

11. That prior to the commencement of the development, hereby approved, a re-survey of birds and otters shall be undertaken to identify the usage of the area at that time. A management plan including measures for implementation shall be prepared, detailing any necessary mitigation works, for the approval in writing of the Scottish Ministers.

In the interests of the ecology of the area and a protected species as advised by SNH.

12. That prior to the commencement of the development, hereby approved, an integrated biodiversity management plan, including mitigation for any loss or damage to biodiversity and proposals for implementation and enhancement shall be submitted for the approval in writing of the Scottish Ministers.

In the interests of the ecology of the area as advised by SNH.

13. That prior to the commencement of the development, hereby approved, details of any impacts on diffuse pollution on the Clyde Muirshiel Park, and an audit of the moorland (baseline studies of the atmospheric pollution; the distribution of the peatland habitats; the current “health” of the peat forming habitats; the species assemblages; the physical characteristics of the habitats) followed by monitoring of the atmospheric pollution; the impacts on the peat forming habitats; etc. For identified sites within the moorland, where intervention would give the greatest benefits (within the Renfrewshire Heights SPA) , the developer should establish moorland enhancement programmes eg “grip blocking” and grazing management plans, shall be submitted for the approval in writing of the Scottish Ministers.

In the interests of the ecology of the area as advised by Clyde Muirshiel Regional Park.

14. That no development shall take place until there has been submitted to and approved by the Scottish Ministers a detailed plan showing a scheme of tree planting for the 5 metre wide strip of land adjacent to the boundary of the site that adjoins the railway line. The tree planting scheme shall include details of existing trees to be retained and incorporate a mix of evergreen and broadleaved trees, together with details of any soil treatment required and measures for their protection in the course of the development. For the avoidance of doubt, no trees at the southern end of the site shall be felled or removed without the written consent of the Scottish Ministers.

In the interests of the amenity of the area.

15. That all planting approved under the terms of Condition 14 shall be carried out in the first planting season following the commencement of the development. Any trees which, within a period of five years from the completion of the development 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 the Scottish Ministers gives written consent to any variation.

In the interests of the amenity of the area.

16. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Scottish Ministers. 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 the Scottish Ministers in agreement with the West of Scotland Archaeology Service.

To protect the archaeological interests in the site.

17. Prior to the commencement of the development the applicants shall undertake a desk study of the application site, (including the review of any previous site investigations) to assess the likelihood of contamination and assist in the design of an appropriate site investigation and subsequent suitable quantitative risk assessment. Remediation proposals shall also be presented in relation to any significant findings.

All documentation shall meet the standard of BS10175:2011, be verified by a suitably qualified Environmental Consultant and submitted, all to the satisfaction of the Scottish Ministers. Thereafter the presence of any significant unsuspected contamination, which becomes evident during the development of the site, shall be reported to the Scottish Ministers and treated in accordance with a remediation scheme acceptable to the Scottish Ministers.

On completion of the proposed works written verification, detailing what was done by way of any remediation, shall also be submitted to the Scottish Ministers.

In the interests of environmental health.

18. That prior to the commencement of the development, hereby approved, details of (i) an impact assessment on water infrastructure, (ii) any discharges to the public sewer, and (iii) the provision of an oil interceptor, shall be submitted for the approval in writing of the Scottish Ministers.

To meet the requirements of Scottish Water.

19. That prior to the commencement of the development, hereby approved, details of the site construction access, site compound and site workers' encampment, shall be submitted for the approval in writing of the Scottish Ministers.

In the interests of the amenity of the area.

20. That prior to the commencement of the development, hereby approved, details of any possible remedial measures to the traffic signals at the junction of A78/A760, Haylie Brae, Largs and a road condition survey of the A760, shall be submitted for the approval in writing of the Scottish Ministers.

In the interests of traffic safety as advised by Transport Scotland.

21. That prior to the commencement of the development, hereby approved, details of a 'Construction and Traffic Management Plan', shall be submitted for the approval in writing of the Scottish Ministers and thereafter implemented all to the satisfaction of the Scottish Ministers. For the avoidance of doubt, the B780/B781 shall not be used by construction traffic.

22. That prior to the commencement of the development, hereby approved, full details of rail transportation shall be submitted for the approval in writing of the Scottish Ministers.

23. No trains shall enter or leave the site outwith the hours of 8.00 am to 8.00 pm, unless otherwise agreed in writing with the Scottish Ministers.

In the interests of traffic safety and the amenity of the area.

24. That prior to the commencement of the development, hereby approved, an option appraisal plan including implementation measures in respect of improvements to Stevenston railway crossing shall be submitted for the approval in writing of the Scottish Ministers.

In the interests of pedestrian and traffic safety.

25. That prior to the commencement of the development, hereby approved, details of a scheme of measures to promote delivery of construction materials to the site by sea or rail, shall be submitted to, and approved in writing by the Scottish Ministers.

In the interests of traffic safety and the amenity of the area.

26. That the concurrent operation of the Ayrshire Power station development and the proposed wind turbines, at the marine construction yard, if approved, shall not be permitted, unless prior to the commencement of the development, hereby approved, the impact of the proposed wind turbines, on the dispersion of pollutants from the stack of the proposed power plant, is assessed and submitted for the approval in writing of the Scottish Ministers.

In the interests of the health and amenity of the area as advised by SEPA.

27. That prior to the commencement of the development, hereby approved, details of monitoring of dust, arising during the construction, shall be submitted for the approval in writing of the Scottish Ministers.

In the interests of the amenity of the area.

28. That there shall be no on site incineration of waste, generated by the development, at either the construction or operational phases.

In the interests of the health and amenity of the area as advised by SEPA.

29. That no ash residues shall be disposed of, stored outwith the silos, or used for landfill on the site; and gypsum and ash shall only be removed from site by train.

To fully define the consent and in the interests of traffic safety and amenity and as advised by SEPA.

30. That coal and biomass shall only be imported to the site by ship and heavy fuel for start up purposes and limestone required for flue gas desulphurisation shall only be brought to the site by train to the satisfaction of the Scottish Ministers.

In the interests of traffic safety and amenity.

31. That prior to the commencement of the erection of the flue and buildings, proposals for the provision of aviation warning lighting, including timing of the provision, shall be submitted for the prior written approval of the Scottish Ministers.

32. That no vehicles associated with construction shall enter or leave the site outwith the construction working hours stated within the ES, unless otherwise agreed in writing with the Scottish Ministers

In the interests of traffic safety and residential amenity.

33. That the hours of construction of the development, hereby approved, shall be as stated within the ES, unless otherwise agreed in writing with the Scottish Ministers.

In the interests of the amenity of the area.

34. That within six months of cessation of construction of the multi fuel power station or it becoming obsolete or redundant, it shall be removed and the site reinstated to the satisfaction of the Scottish Ministers.

In the interests of the visual amenity of the area.

35. That prior to the commencement of the development, hereby approved, proposals for a 'Community Liaison Group' including its composition, remit and administration shall be submitted for the approval of the Scottish Ministers.

In the interests of the amenity of the area.

36. That prior to the commencement of the development hereby approved, details of proposals for the fitting of equipment to reduce plume visibility shall be submitted for the approval in writing of the Scottish Ministers. The approved details shall be implemented to the satisfaction of the Scottish Ministers prior to the commencement of the operation of the power station.

Reason

In the interest of visual amenity.

Informative - For the purposes of current and future air quality monitoring, North Ayrshire Council Environmental Health would require to be involved in the process for determining the scope and extent of this monitoring programme and have access to all data collected.

Informative - For the interests of aviation safety, the following information shall be submitted to the Defence Geographic Centre (MOD): 1 Precise location of development, 2 Date of commencement of construction, 3 Date of completion of construction, 4 The height above ground of the tallest structure, 5 The maximum extension height of any construction equipment, and 6. If the structure will be lit with a navigation beacons

Informative - For the interests of nuclear safety and the operation of Hunterston 'B', the applicants should contact EDF.

Grounds for Refusal

1. The proposed development does not accord with and is potentially contrary to NPF2 in that it is not clean coal and does not address the matters where consent is sought with regard to siting, design and layout, carbon impact, landscape, seascape and visual impact and has failed to demonstrate tolerable impact on cultural and natural heritage and offer appropriate mitigation or compensation. The proposed development may be prejudicial to the other identified uses covered by the designation. As such the development is prejudicial to the implementation of the National Objectives of National Planning Framework 2 and achieving the Key aim of reducing greenhouse gas emissions which contribute to climate change.
2. The proposed development would be contrary to Policies ENV1 and ENV6 of the Ayrshire Joint Structure Plan due to its adverse impact on landscape quality, built heritage, and potentially contrary to ENV7 due to insufficient information at this time.
3. The proposed development would be contrary to Policies IND4a, IND4b, and ENV8 of the adopted North Ayrshire Local Plan (excluding Isle of Arran), as neither compatible with existing industrial nor potential future development, and the development does not enhance the developed coast; and is potentially contrary to ENV6 due to insufficient information at this time; and would be contrary to the Development Control Statement as it does not satisfy (a) siting, design and external appearance, (b) amenity, (c) landscape character, and (g) merits the application of the precautionary principle.
4. The proposed development would be contrary to North Ayrshire Council's prepared Local Development Plan in terms of Policies IND2, as it does not entirely provide for CCS from its first day of operation, and is potentially contrary to this Policy due to insufficient information at this time, relative to the wider potential for industrial development, environmental sensitivities, and transportation. The development is contrary to ENV8 as the development does not enhance the developed coast and potentially contrary to ENV9 due to insufficient information at this time. In relation to the General Policy does not satisfy (a) siting, design and external appearance, (b) amenity, (c) landscape character; and merits the application of the precautionary principle (f), and has not made express provision for developer contribution (g).

5. In the absence of sufficient environmental information and uncertainty of impacts on (i) human health as advised by Ayrshire & Arran Health Board; (ii) terrestrial and marine environment; (iii) public concern and anxiety it is considered that the Precautionary Principle should apply as prescribed in the Local Plan Development Control Statement and PAN 51.
6. The mitigation described in the submissions is not considered sufficient in respect of the following matters required to be addressed when consent is sought:- siting, design and layout, carbon impact, landscape, seascape and visual impact and has failed to demonstrate tolerable impact on cultural and natural heritage and offer appropriate mitigation or compensation