

**FALKIRK COUNCIL**

**Subject:** DEVELOPMENT FOR COAL BED METHANE PRODUCTION, INCLUDING DRILLING, WELL SITE ESTABLISHMENT AT 14 LOCATIONS, INTER-SITE CONNECTION SERVICES, SITE ACCESS TRACKS, A GAS DELIVERY AND WATER TREATMENT FACILITY, ANCILLARY FACILITIES, INFRASTRUCTURE AND ASSOCIATED WATER OUTFALL POINT AT LETHAM MOSS, FALKIRK FK2 8RT FOR DART ENERGY - P/12/0521/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 27 November 2013

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Carse, Kinnaird and Tryst

Councillor Stephen Bird  
Councillor Steven Carleschi  
Councillor Charles MacDonald  
Councillor Craig Martin

**Community Councils:** Airth Parish  
Larbert, Stenhousemuir and Torwood

**Case Officer:** John Milne (Senior Planning Officer), Ext. 4815

**PURPOSE OF THE REPORT**

1. As Members will be aware, the Directorate for Planning and Environmental Appeals (DPEA) will conduct the forthcoming Public Local Inquiry and determine the planning appeal in respect of the above. The purpose of this report is twofold: (1) to confirm the position Falkirk Council will adopt in the Public Local Inquiry; and (2) at the request of the DPEA, to agree such technical matters which are considered to have been resolved between parties since the lodging of the application, and to make arrangements for a Joint Statement of Common Understanding (JSCU) on these matters to be submitted.

**BACKGROUND**

2. While previous reports are attached as appendices 1 and 2, Members will recall that, at the point the appellant lodged an appeal against non-determination of the planning application, Falkirk Council had not been able to undertake a full appraisal of the proposals through lack of information. Matters outstanding at that point sought to address concerns from objectors to the application with regard to below ground works and potential environmental and amenity issues which could arise as a consequence of these below ground activities. To address these specific matters, Falkirk Council appointed external consultants (AMEC E&I UK, a division of AMEC plc and hereafter simply referred to as AMEC) to examine information accompanying the planning application and to invite such additional information from the applicant to allow a full assessment of the matters raised through comment. In particular AMEC were commissioned to review the information contained within the Environmental Statement submitted with the application.

## **UPDATE ON PROGRESS OF APPEAL**

3. Members will recall that a report (copy attached) was presented to the Planning Committee on 25 June 2013, advising that Dart Energy (Forth Valley) Limited, had submitted an appeal to the DPEA in terms of Section 47(2) of the Town and Country Planning (Scotland) Act 1997.
4. To date, Falkirk Council's involvement in the appeal has been in accordance with the recommendation agreed by the Planning Committee on 25 June 2013 as follows:-
  - 1) to advise the Directorate for Planning and Environmental Appeals that, as at the date of lodging the appeal, the Council had no opportunity to evaluate the information most recently provided by the applicant in response to the application, that information having been supplied on the date the appeal was lodged;
  - 2) that the Reporter, in the absence of analysis of the information the Council considers necessary to allow determination of the appeal and evaluation thereof, be asked to refuse the appeal;
  - 3) to co-operate in the appeal process and provide any information requested by the Directorate for Planning and Environmental Appeals (DPEA) with the Director of Development Services being authorised to prepare and submit to the DPEA the Council's response to the appeal made by the applicant and to handle the appeal process for the Council;
  - 4) to authorise the Director of Development Services to engage such external advisers to assist in the Council's participation in the appeal process as she thinks fit; and
  - 5) to instruct the Director of Development Services to intimate to the Reporter that the Council recommends a public inquiry to be held as part of the appeal process to conclude outstanding matters within a public forum, reflecting the complexity of issues and responding to the high level of public interest in the application.
5. Members will also recall that part of the development proposal fell within the Stirling Council area, to which a separate planning application was submitted. This is also the subject of an appeal.
6. Both the Falkirk Council planning application (DPEA ref. PPA-240-2032) and Stirling Council planning application (DPEA ref: PPA-390-2029) will be heard conjointly by the Directorate for Planning and Environmental Appeals.
7. It has been intimated to Falkirk Council that Ms Karen Heywood and Mr David Bullya are the Reporters appointed to jointly determine these appeals.

### **Instruction from Reporters**

8. The Reporters consider that the application comprises complicated technical information, particularly that contained within the Environmental Statement, which should be tested by cross-examination and Public Inquiry sessions. They have arranged a public meeting to take place on 4 December 2013, to discuss with the various parties the arrangements for the Inquiry.
9. The Reporters have asked the Councils and the appellant to discuss prior to that meeting, the additional environmental information submitted at the same time as the lodging of the appeal on 5 June 2013, and subsequent information submitted by Dart Energy and to submit a joint statement explaining what matters are agreed and what matters remain unresolved. It is normal practice for the Reporters to encourage the parties to identify areas of agreement. This document is known as a Joint Statement of Common Understanding (JSCU).

10. At the time of writing, the deadline for the JSCU is 29 November 2013.
11. Members will recall that the elements of the application that remained to be evaluated were summarised in paragraph 4.2 of the report dated 25 June 2013:-
  - the possibility of works causing geological instability;
  - the possibility of the process drawing water from more than the coal seam;
  - the possibility of the process causing dewatering of local aquifers;
  - the possibility of the process encouraging methane migration and promoting fugitive emissions through the vertical bores and through potential cracks in the geology following dewatering;
  - the preclusion of hydraulic fracturing potentially being applied to the proposed operations; and
  - any other matters arising following assessment of the above investigations.
  - These are matters which should have been properly addressed as part of the Environmental Statement previously mentioned.

In addition, Falkirk Council was awaiting representation from Scottish Government Public Health Division to matters raised through comment.

### **Update on Technical Concerns**

12. Since the instruction by the Reporters to consider the technical issues, substantial clarification has been given and relevant information has been exchanged with relevant parties, and this has been acknowledged by the DPEA. The assessment of information has been carried out by AMEC acting as consultants to Falkirk Council and has resulted in the issue of 6 Technical Notes to the appellant seeking clarification and further information. Negotiations on the JSCU have not been concluded.
13. Of the matters outstanding in June, in relation to the Environmental Statement an update can be provided as follows:-
  - **the possibility of works causing geological instability.**

The risk of geological instability is primarily related to the seismic risks that are associated with hydraulic fracturing (fracking), and Dart Energy and its consultants have confirmed that fracking does not form part of the development proposals.

Therefore, Falkirk Council's consultants accept the argument that, in the absence of fracking, geological instability can be discounted as a significant risk in the assessment of the application.

This issue is considered to have been resolved.

- **the possibility of the process causing dewatering of local aquifers.**

It is accepted by AMEC that the total dewatering volume proposed by Dart Energy is sufficiently constrained by the capacity of the proposed treatment facility water capacity and through planning condition.

On this basis, Falkirk Council's consultants consider that the water abstraction proposed by Dart Energy is unlikely to cause significant dewatering of local aquifers.

This issue is considered to have been resolved.

- **the provision of hydraulic fracturing potentially being applied to the proposed operations.**

Falkirk Council's consultants consider that the data and modelling results, by themselves, do not preclude the use of fracking. However, Dart Energy's written assurances should be reflected in the wording of any future planning permission and accompanying planning conditions. In addition, the operational method described in the Environmental Statement accompanying the planning application reflects a dewatering process, and any change from that process may be considered to be material in planning terms and therefore require a new planning application.

This issue is considered to have been resolved.

- **The possibility of the process drawing water from more than the coal seams.**

With the concern that the proposed development could draw water from more than the coal seams, the effects on the water environment remains open to doubt. This is particularly relevant in consideration of the proximity of the Firth of Forth SPA, SSSI and Ramsar site, to the application site.

This remains a concern because Falkirk Council's consultants have not seen information that convincingly demonstrates that this matter has been addressed.

Therefore, at this time, this issue remains unresolved.

- **The possibility of the process encouraging methane migration and promoting fugitive emissions.**

The possibility that fugitive methane emissions via faults or higher permeability strata may take place is a concern. The presence/absence of transmission pathways represents an important component in determining the magnitude of change in gas emissions resulting from the development.

This remains a concern because Falkirk Council's consultants have not seen information that convincingly demonstrates that this matter has been addressed.

Therefore, at this time, this issue remains unresolved.

- **Any other matters arising following assessment of the above investigations.**

Although potentially now accepting of the baseline monitoring being potentially undertaken post-planning approval, there are still a number of concerns regarding other aspects of the monitoring proposals. Notwithstanding any assurances that might be provided in respect of the above two areas of concern, the development of a monitoring plan, in conjunction with Falkirk Council, would have given comfort that, should relevant systems fail, this would be the subject of early detection and early remediation thus limiting any environmental impacts.

Therefore, at this time, this issue remains unresolved.

14. In summary, it is Falkirk Council's consultant's view that considerable progress has been made in addressing the main issues identified above, with three of the six issues considered resolved.

15. However, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 requires that such information needed to enable the likely significant effects to be properly assessed is gathered as part of the Environmental Impact Assessment process, this is further explored below.
16. In considering the technical matters under review, Members should be aware that such matters will also be required to be clarified by the appellant to the Scottish Environment Protection Agency (SEPA) should the planning application be approved, and separate permits and authorisation sought under the Pollution Prevention and Control (Scotland) Regulations 2000 and the Water Environment (Controlled Activities) (Scotland) Regulations 2011.
17. SEPA is satisfied that the proposed works are, in principle, capable of consent under the above legislation referred to in para 16, but technical content will be subject to more detailed consideration of the relevant permit and authorisation applications.

## Environmental Impacts

18. **Circular 3 (2011) - The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.** This circular gives guidance on the Environmental Impact Assessment (Scotland) Regulations 2011. The main aim of the Environmental Impact Assessment regime is to ensure that the authority granting permission makes its decision in full knowledge of any likely significant effects on the environment.
19. Specifically, paragraph 126 of the Circular states:

“It is important to ensure that all the information needed to enable the likely significant environmental effects to be properly assessed is gathered as part of the EIA process. If tests or surveys are needed to establish whether there are likely to be significant effects, the results of these should be taken into account in deciding whether planning permission should be granted. **If the full environmental information as defined in Regulation 2(1) is not taken into account due to the inadequacy of the Environmental Statement, any planning permission granted runs the risk of being quashed.**”
20. Prior to the appeal against non-determination of the planning application, Falkirk Council sought technical advice to enable further consideration of likely significant effects on the environment from below ground works. The above ground works are generally considered to accord with the Development Plan (Appendix 1 Planning Committee Report 25 June 2013), but there are still some issues which remain outstanding which are considered capable of being resolved.
21. Planning Advice Note 51 (PAN 51) - Planning, Environmental Protection and Regulation (Revised 2006) supports the existing policy on the role of the planning system in relation to the environmental protection regimes. PAN 51 states:

“Planning decisions should always be made on planning grounds and in the public interest. The planning system should not be used to secure objectives that are more properly achieved under other legislation. The grant of planning permission does not remove the need to seek other statutory consents nor does it imply that these consents will be forthcoming. Even where legal or administrative measures outwith the planning system may exist for controlling a particular activity, this can still be a consideration to which weight is given in reaching a planning decision. If a consideration is material in planning terms, it must be taken into account in reaching a decision. **For example, the planning authority should have regard to the impact of a proposal on air or water quality although the regulation of emissions or discharges will fall to be dealt with under other legislation.**”

22. In this instance, the examination of technical matters by Falkirk Council relating to below ground works clearly has linkage to matters potentially to be addressed by SEPA. Notwithstanding this, the terms of the guidance are clear that the Planning Authority has a responsibility in addressing environmental impacts
23. SEPA's overall aim is to provide an efficient and integrated environmental protection system for Scotland that will both improve the environment and contribute to the Scottish Minister's goal of sustainable development. SEPA is responsible for a wide range of strategic and operational environmental matters including:
- controlling discharges to water (surface, tidal and ground water);
  - authorising the abstraction and impoundment of water;
  - authorising river engineering works in or near watercourses;
  - controlling discharges and emissions to land, air and water from PPC Part A installations;
  - controlling emissions to air from PPC Part B installations;
  - minimising waste and promoting energy efficiency as Part A installations;
  - licensing waste management and registration of waste carriers;
  - registering the keeping and use of radioactive substances and the disposal of waste;
  - regulating industry to prevent land being contaminated, licensing remediation works and causing 'special sites' to be remediated;
  - acting as a statutory consultee for Local Air Quality Management; and
  - minimising waste and promoting recycling in conjunction with the Scottish Executive and Local Authorities.

24. PAN 51 also advises that:

“A grant of planning permission can be said to “establish the principle of development” but this is only relevant to planning. It carries no weight so far as environmental protection regimes are concerned. The granting of planning consent does not therefore establish anything so far as other licences, permissions or authorisations are concerned, and they have to be determined according to their own requirements. A valid planning consent must be in place, however, before a Waste Management Licence (WML) or PPC permit can be issued. Nevertheless, the aim should be to avoid situations where planning consent cannot be implemented because other environmental controls cannot be satisfied.

Planning powers are therefore not an alternative means of controlling matters which are properly the responsibility of the environmental protection regimes. Each means of control should be used as required by its own legislation, but when two or more are relevant to the same project it is imperative that they complement each other. **Generally, the planning system has a wider remit in relation to the protection of the environment than any specific regime. This is because it is concerned with the proper use of land and buildings and with the sum total of the effects which a development has on its surroundings and the environment.** It also has to take into account a wide range of non-environmental factors and therefore it will not always deliver environmental protection above any other consideration. Hence it is of a different character to the more specific environment protection regimes.”

25. However, Planning Advice Note 51 further advises that:

“There may be circumstances where the environmental protection body is satisfied that their requirements in relation to a proposed development can be met, but the planning authority takes the view that, because of the particular characteristics of an area, the development is unacceptable on environmental grounds and planning permission may have to be refused. In such cases, which are only likely to arise in exceptional circumstances, **the planning authority will need to demonstrate the land use planning reasons which have led them to conclude that the proposed development is unacceptable.** It is also possible that a proposal which is acceptable on planning grounds may be unacceptable to the environment protection body.”

26. It is considered that insufficient information has been lodged, contrary to Circular 3, by the appellant to fully address any environmental concerns over impact of the development covered by the application. This means the Planning Authority cannot properly assess the application in this context and conclude on its potential environment impact (PAN 51). Thus the application does not meet the land use planning tests as detailed above

### **Public Health**

27. The DPEA has sought comment from Falkirk Council, Stirling Council and the appellant as to a request by a contributor that a full public health impact assessment takes place on the planning application proposals.

28. Falkirk Council confirmed that consultation with the Scottish Government Public Health Division was initiated as part of the planning application process, but no response received.

29. In relation to public health, PAN 51 states at paragraph 49:-

“All determinations of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise (Town and Country Planning (Scotland) Act 1997, section 25). In practice, the scope of material considerations is fairly wide and falls to be determined in the circumstances of individual cases. Any consideration of the quality of land, air or water and potential impacts arising from development, possibly leading to a proven impact on health, is capable of being a material consideration, insofar as it may arise from any land use. **Where however a proposal requires licensing under the Pollution Prevention and Control Regulations, planning authorities should accept that as adequate and suitable for public health protection (see PAN 63 paragraph 85).** Whether authorisation of licensing under another regime would be approved or refused is not a material consideration, although whether a proposal was ‘capable of being licensed’ would be.”

30. In this instance, the consultation response from the SEPA confirms that the below ground operational activities will require to be licensed. PAN 51 advises that an application under the Pollution Prevention and Control Regulations is adequate and suitable for public health protection.

31. It is currently at the discretion of the DPEA as to what procedural approach may be adopted to address public health concerns through the Public Local Inquiry process. The Councils response has been as above.

### **Proposed Joint Statement of Common Understanding (JSCU)**

32. The proposed Joint Statement is being prepared through an exchange of information and opinion by the appellant, Falkirk Council and Stirling Council and will be the subject of consideration by the DPEA.

33. The JSCU will contain a summary of issues on which all parties are agreed or not agreed, allowing the Reporters to have regard to such matter when determining the agenda relating to the Public Local Inquiry.
34. While the DPEA will be the decision-maker in the determination of the planning appeal, Members are requested to authorise the Director of Development Services to conclude the content of the JSCU following on from the decision made by Members today.
35. Members are advised that, should a joint agreement on all matters not be reached, the reasons why agreement has not been reached on these specific matters require to be conveyed to the DPEA.

### **Participation in the Appeal Process**

36. As stated previously, it was agreed at the Planning Committee of 25 June 2013:-
  - (1) to advise the Directorate for Planning and Environmental Appeals that, as at the date of lodging the appeal, the Council had no opportunity to evaluate the information most recently provided by the applicant in response to the application, that information having been supplied on the date the appeal was lodged;
  - (2) that the Reporter, in the absence of analysis of the information the Council considers necessary to allow determination of the appeal and evaluation thereof, be asked to refuse the appeal;
  - (3) to co-operate in the appeal process and provide any information requested by the Directorate for Planning and Environmental Appeals (DPEA) with the Director of Development Services being authorised to prepare and submit to the DPEA the Council's response to the appeal made by the applicant and to handle the appeal process for the Council;
  - (4) to authorise the Director of Development Services to engage such external advisers to assist in the Council's participation in the appeal process as she thinks fit; and
  - (5) to instruct the Director of Development Services to intimate to the Reporter that the Council recommends a public inquiry to be held as part of the appeal process to conclude outstanding matters within a public forum, reflecting the complexity of issues and responding to the high level of public interest in the application.
37. In reference to each of these matters:-
  - (1) Falkirk Council has not yet been requested by the DPEA to respond to the appeal against non-determination of the planning application. However, it should be noted that the DPEA considered the additional information lodged by the appellant on the date of appeal to be so significant and substantial as to merit being considered an "Addendum" to the Environmental Statement. This afforded Falkirk Council, consultees and other interested parties 28 days to review the information.
  - (2) This position adopted by Falkirk Council was based on the absence of detailed information to address concerns summarised in this report. However, while much of this information has now been submitted and evaluated a number of matters remain outstanding.

- (3) As well as allowing Falkirk Council to analyse the information submitted by the appellant on the submission of the planning appeal, the DPEA asked Falkirk Council and the appellant to submit a joint statement, explaining what matters are agreed and what matters remain unresolved. Falkirk Council has co-operated in this process. The content of the JSCU has not as yet been concluded, as detailed in this report.
- (4) The Director of Development Services has continued the engagement of external consultants to review the technical information submitted to date.
- (5) This request was made and it has been confirmed that a Public Local Inquiry will take place.

Given that there has been a further exchange of information with the appellant, and a joint statement is required to be submitted to the DPEA by 29 November 2013, Members require to determine the position Falkirk Council wish to adopt in the appeal process.

### Development Plan Policies

38. Members will recall the Development Plan policy position at the lodging of the planning appeal (Appendix 1, Planning Committee report dated 25 January, 2013).
39. Falkirk Council Structure plan Policy ENV.8 ‘General Principles for Mineral Working’ states:
  - 1 *Proposals which pose an unacceptable risk to the amenity of communities or the local environment, which cannot be mitigated or eliminated by the use of planning conditions or agreements will not be supported. The Local Plan will include detailed guidance on constraints, and the benefits expected from mineral extraction.*
  - 2 *Where information is available, mineral resources of economic significance will be protected from sterilisation arising from permanent development.*
  - 3 *The Council will work with mineral operators through the Local Plan Process to establish future programmes of working and to identify preferred areas for mineral working. Preferred sites may also be defined within these areas. To assist this process, applications for mineral working should be accompanied by detailed information on mineral reserves in the area, local market areas and local mineral needs.”*
40. Policy ENV.8 takes a precautionary approach to new mineral proposals. Proposals which would impose unacceptable risks to amenity of communities or the environment and which cannot be mitigated, will not be supported. It is therefore for the appellant to show that the impact of the proposal will be within acceptable limits. In this instance, insufficient information in relation to below ground works has been submitted to satisfy this precautionary approach.
41. Falkirk Council Local Plan Policy EQ 32 - General Criteria for Minerals Development - states:
 

*“There will be a general presumption against new or extended mineral workings which:*

  - (1) would have a significant adverse impact on the amenity of a community or smaller groups of houses which cannot be mitigated by planning conditions/agreements;*
  - (2) would be visually intrusive from main transport corridors;*
  - (3) would result in the permanent loss of or damage to prime quality agricultural land which cannot be restored to its previous condition;*
  - (4) would have a significant adverse impact on the landscape of the area, with particular respect to Areas of Great Landscape Value and Green Belt, having regard to Policies EQ20 and EQ23;*

- (5) *would have a significant adverse impact on internationally or nationally designated areas of nature conservation value such as Ramsar sites, SPAs, SACs or SSSIs, on locally designated sites such as Wildlife Sites and SINCs, or on national and local priority habitats and species identified in the Falkirk Area Local Biodiversity Action Plan, having regard to Policies EQ24 and EQ25; or*
- (6) *would have a significant adverse impact on the character or setting of a Listed Building, Conservation Area, Scheduled Ancient Monument or site of archaeological or historic importance or site within the Inventory of Gardens and Designed Landscapes, having regard to Policies EQ12, EQ14, EQ16 and EQ18;*
- (7) *would have a significant adverse impact on the water environment.”*

42. The response at that time concluded that while the majority of criteria within policy EQ32 could be considered to be addressed, uncertainty over criterion (7) remained and this, in turn, raised concern that criterion (1) could not be met. This remains the case.

43. In conclusion, it is considered that the proposal does not accord with the provisions of the Development Plan.

## Material Considerations

### ***Falkirk Local Development Plan (Proposed Plan) (April 2013)***

44. Policy RW02 - Mineral Resources - of the Falkirk Local Development Plan states:-

- 1) *The preferred area of search for surface coal mining is identified on Map 5.1. Proposals for surface coal mining in the area of search will be supported where they are proven to be environmentally acceptable, having regard to Policy RW03 and other LDP policies.*
- 2) *No new hard rock quarries, or extensions to existing workings, will be permitted.*
- 3) ***The extraction of coal bed methane will be supported where it is proven to be environmentally acceptable, having regard to Policy RW03 and other LDP policies.***
- 4) *The sterilisation through development of mineral resources which are likely to be capable of environmentally acceptable extraction will not be permitted.*

45. Policy RW03 - Assessment of Mineral Proposals - of the Falkirk Local Development Plan states:-

- 1) *Proposals for mineral workings and onshore oil and gas extraction will only be permitted where there is no significant adverse impact on the environment or local community. Proposals will be assessed against the following factors:*
  - *Impact on the amenity of communities and smaller groups of houses, including cumulative effects on settlements within 5km where there are existing mineral operations or unimplemented consents;*
  - *Impacts on landscape and visual amenity, having regard to Policies GN02 and CG02;*
  - *Impact on nature conservation and biodiversity, having regard to Policy GN03;*
  - *Impact on the historic environment, having regarding to Policies D07-D14;*
  - *Impact on prime agricultural land, carbon rich and rare soils, having regarding to Policy RW04;*
  - ***Impact on the water environment, having regarding to Policy RW05;***
  - *Impact on air quality, having regarding to Policy RW07;*
  - *Impact on the local road network; and*

- *Any positive economic or environmental benefits accruing from the proposal including restoration or abandoned/ derelict minerals sites and local employment opportunities.*

2) *Proposals should be accompanied by the following information:*

- **Information sufficient to allow assessment of the impacts outlined in 1) above;**
- *Information on need, estimates of annual production, levels of employment, timescale for extraction and the total resource on the site including other minerals present;*
- *A fully developed method statement including information on drainage and water treatment; phasing, topsoil/overburden stripping and storage, access and maximisation of sustainable transport and working hours; and*
- *A fully costed, appropriately phased scheme for restoration and aftercare, which secures benefits for the green network in terms of Policy GN01, and will be secured through appropriate financial guarantees.*

46. Policy RW05 – ‘The Water Environment’ states:

*“The Council recognises the importance of the water environment within the Council area in terms of its landscape, ecological, recreational and land drainage functions. Accordingly:*

1. *The Council will support the development of measures identified within the Forth Area River Basin Management Plan designed to improve the ecological status of the water environment;*
2. *Opportunities to improve the water environment by: opening out previously culverted watercourses; removing redundant water engineering installations; and restoring the natural course of watercourses should be exploited where possible;*
3. *There will be a general presumption against development which would have a detrimental effect on the integrity and water quality of aquatic and riparian ecosystems, or the recreational amenity of the water environment, or which would lead to deterioration of the ecological status of any element of the water environment. Where appropriate, development proposals adjacent to a waterbody should provide for a substantial undeveloped and suitably landscaped riparian corridor to avoid such impacts;*
4. *There will be a general presumption against any unnecessary engineering works in the water environment including new culverts, bridges, watercourse diversions, bank modifications or dams; and*
5. *The water environment will be promoted as a recreational resource, (subject to the requirements of policy GN03 (1) for Natura 2000 Sites), with existing riparian access safeguarded and additional opportunities for ecological enhancement, access and recreation encouraged where compatible with nature conservation objectives.”*

47. Policy RW02 – ‘Mineral Resources – stipulates that the extraction of coalbed methane will only be supported where it is proven to be environmentally acceptable. This policy aligns itself with the precautionary approach stipulated in the current Development Plan.

48. On the basis of evidence submitted to date, the advice from the Council's consultants is that the appellant has not demonstrated that the proposal would not impose unacceptable risks to the amenity of communities or the environment which can adequately be mitigated.

## **Conclusion**

49. The publication of the addendum to the Environmental Statement and further information submitted on matters to be contained within the JSCU to be submitted to the DPEA means the initial position of Falkirk Council in opposing the grant of planning permission through the appeal process requires to be reassessed.

50. It is the opinion of officers that the application largely conforms to the terms of the Development Plan with regard to above ground works subject to the submission of further information as described in Appendix 1 to the report of 25 June 2013 and appropriate planning conditions and that, other than matters relating to below ground works, there are no material planning considerations which would merit the refusal of planning permission for the above ground works, subject to addressing outstanding matters.
51. In relation to below ground works, the appellant's failure to submit such information as to satisfy the terms of the Development Plan, specifically Falkirk Council Structure Plan policy ENV 8 – General principles for Mineral Working – part (1) and Falkirk Council Local Plan Policy EQ 32 - General Criteria for Mineral Developments - criterion (7) and criterion (1) would conclude that the application is considered not to accord with the Development Plan policy and there are no material consideration to depart from this view.
52. The absence of information means that it cannot be concluded that the development will or will not have a significant adverse environmental impact. However, the Development Plan policy requires that the applicant has to provide information to demonstrate the lack of a significant adverse environmental impact. In the absence of such information, the proposed development is considered to be contrary to the Development Plan.
53. Members are reminded that the applicant has the opportunity to make a claim for expenses in respect of the appeal. Government Guidance (in Circular 5/1990) indicates that expenses will only be awarded to an applicant in response to a claim against the planning authority if:-
- the planning authority has behaved unreasonably, and
  - the unreasonable behaviour has caused the applicant to incur unnecessary expense.
54. Examples given of unreasonable behaviour on the part of the planning authority include:-
- Reaching a decision without reasonable planning grounds for doing so.
  - Refusing an application because of local opposition, where that opposition is not founded upon valid planning reasons. While the planning authority will need to consider the substance of any local opposition to a particular application, their duty is to decide a case on its planning merits.
  - Introducing a new matter (eg a new reason for refusal) at a late stage in the proceedings.
  - Refusing to cooperate in settling agreed facts.
55. Members should therefore take particular care to ensure that, if they adopt the recommendations of this report, their decision fully reflects the views that they have reached upon the application and that, if they should reach a different decision upon how to proceed, that that decision is based upon planning considerations.
- 56. Recommendation**
- 56.1 It is recommended that the Committee:-**
- (a) agrees the recommendation in paragraph 52 of appendix 1 to the report dated 25 June 2013 in relation to the above ground works element of the application**
  - (b) agrees to authorise the Director of Development Services to conclude the content of the Joint Statement of Common Understanding given the terms of this report;**

- (c) instructs the Director of Development Services to advise the DPEA that Falkirk Council considers that the absence of supporting information in relation to below ground works merits refusal of the planning application, being contrary to ENV 8 – General principles for Mineral Working of the Falkirk Council Structure Plan criterion (1) Falkirk Council Local Plan Policy EQ32 - General Criteria For Minerals Development - criteria (7) and (1) in that the applicant has failed to demonstrate there will be no significant adverse environmental impacts as a consequence of development as required by the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.

.....  
Director of Development Services

Date: 21 November 2013

#### LIST OF BACKGROUND PAPERS

1. P/12/0521/FUL.
2. Planning Advice Note 51 - Planning, Environmental Protection and Legislation.
3. Circular 3 (2011) - The Town and Country Planning (Environmental Impact Assessment (Scotland) Regulations 2011.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504815 and ask for John Milne, Senior Planning Officer.

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**Community Councils:** Airth Parish  
Larbert, Stenhousemuir and Torwood

**Case Officer:** John Milne (Senior Planning Officer), Ext. 4815

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 This application reflects the applicant's aspirations to expand an existing network of Coal Bed Methane (CBM) wells and associated infrastructure around Letham Moss, Falkirk.
- 1.2 This proposal is to embark on Full Field development of suitable natural gas infrastructure to facilitate gas distribution to the local gas network. Full Field development of a site is likely to operate for a minimum period of 25 years.
- 1.3 The proposed development covers land within the Falkirk Council and Stirling Council areas. Consequently, certain elements of the proposal are under consideration as part of a separate planning application to Stirling Council, namely:
- The site of the Gas Delivery and Water Treatment Facility; and
  - 3 new well sites.
- The applications to Falkirk Council and Stirling Council both have associated above ground and under ground infrastructure.
- 1.4 The planning application submitted to Falkirk Council includes the following:
- 11 new well sites;

- Potential water outfall provision to the Firth of Forth; and
  - Further drilling operations at 2 existing sites near Airth.
- 1.5 The purpose of the proposed development is to extract gas for distribution into the local gas grid for use by domestic, municipal and industrial customers.
- 1.6 The application is considered 'Major' in terms of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and the applicant has conducted a Pre-Application Consultation with local communities. The application is also supported by an Environmental Assessment.

### ***Project Description***

- 1.7 The applicant proposes both above ground and below ground works, over a 12.2 ha area (well sites, access tracks, gas delivery and a water treatment facility) to extract Coal Bed Methane (CBM). The process to extract CBM does not include hydraulic 'fracking'.

## **2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 It is considered appropriate to advise the Planning Committee that the applicant has submitted an appeal to the Directorate for Planning And Environmental Appeals in terms of Section 47(2) of the Town and Country Planning (Scotland) Act 1997. Acknowledgment of the appeal was received by Falkirk Council from the Directorate for Planning and Environmental Appeals on 10 June 2013.
- 2.2 The application is therefore deemed to have been refused by virtue of the making of an appeal against the failure of Falkirk Council to determine the application within statutory time limits. The Reporter now seeks the planning authority's response to the appeal, to be submitted no later than 8 July 2013.

## **3. APPLICATION HISTORY**

- 3.1 The applicant approached Falkirk Council on 30 April 2012 with a Proposal of Application Notice (PRE/2012/0006/PAN - Exploration and Pilot Test Development for Coal Bed Methane, including Drilling, Well Site Establishment at 14 Locations and Development of Inter-Site Connection Services, Site Access Tracks, A Gas Delivery and Water Treatment Facility, Ancillary Facilities and Infrastructure and an Associated Water Outfall).
- 3.2 Falkirk Council advised that the requirements for pre-application consultation on a major planning application had been met on 28 August 2012.
- 3.3 Planning application P/12/0521/FUL - Development For Coal Bed Methane Production, Including Drilling, Well Site Establishment at 14 Locations, Inter-Site Connection Services, Site Access Tracks, a Gas Delivery and Water Treatment Facility, Ancillary Facilities, Infrastructure and Associated Water Outfall Point - was submitted to Falkirk Council on 7 September 2012. Following submission, neighbour notifications were issued, public notices were installed, a public advertisement placed in the Falkirk Herald and statutory consultations were issued.

- 3.4 The response to these approaches was such that, prior to the end of the statutory 4 month period of consideration, Falkirk Council wrote to the applicant (20 December 2012) requesting a further extension time period of 4 months (appendix 3). This was to allow consideration of the proposal at a public hearing, allow consideration of the large number of representations and complete consultation with statutory consultees.
- 3.5 The applicant considered a 2 month extension appropriate, and it was agreed to extend the period of consideration to 7 March 2013.
- 3.6 On 30 January 2013 a paper was presented to Falkirk Council's Planning Committee requesting that a hearing be convened prior to any further recommendation on the proposals (appendix 2). The Planning Committee agreed to the requesting hearing but, to date, no hearing has taken place or has been arranged. A hearing is not now considered appropriate in circumstances where an appeal has been submitted. As the application will be determined by the Directorate for Planning and Environmental Appeals, any further comment on the application should be directed towards Scottish Government and lodged prior to 8 July 2013. In addition, the expected technical peer review by AMEC has not been completed and several aspects of the proposal remain to be clarified.
- 3.7 In terms of consultation responses, additional comments were expected from Scottish Natural Heritage, Falkirk Council's Roads and Design Unit, Crown Estates and Marine Scotland. Members will also be aware that Falkirk Council has accepted representations on the application throughout the application's consideration. This resulted in a large volume of representations and, increasingly, comments of a technical nature. It was the opinion of officers that statutory consultees could not address such matters and an external consultant to peer review these specific elements was considered prudent.
- 3.8 On 1 March 2013 Falkirk Council approached the applicant for a further extension to timescale (appendix 4). This was to allow consideration of the proposal at a public hearing, complete consultations with statutory consultees and allow the commissioning of an external consultant to peer review technical aspects of the proposals.
- 3.9 The applicant considered a 2 month extension appropriate, and it was agreed to extend the period of consideration to 7 May 2013.
- 3.10 On 14 March 2013 Falkirk Council commissioned AMEC Environment Infrastructure UK Ltd to represent Falkirk Council in the peer review of specific aspects of the proposals.
- 3.11 On 3 May 2013 Falkirk Council approached the applicant for a further extension to timescale to 7 July 2013 (appendix 5). This was to allow the consideration of the proposal at a public hearing and complete the technical peer review by the commissioned external consultant.
- 3.12 The applicant considered an extension to 31 May 2013 appropriate. Falkirk Council did not consider this suggested timescale extension sufficient, given that it was not envisaged that the peer review of the application would be complete within that time nor had a potential date for a hearing been considered. Therefore no extension to the period of consideration beyond 7 May 2013 was agreed.
- 3.13 As no extension to the period of consideration beyond 7 May 2013 was agreed and the application was not determined by that date, there then commenced a three month period in which the applicant was entitled to make an appeal to the Directorate for Planning and Environmental Appeals on the basis that Falkirk Council had failed to determine the application within the statutory timescale and that it was therefore deemed to have refused the application.

- 3.14 On 10 June 2013 Falkirk Council received notification from the Directorate for Planning and Environmental Appeals that an appeal had been lodged. Notification of the appeal was also received from the applicant/agent, along with a list of all documents, materials and evidence accompanying the appeal. Falkirk Council has issued appropriate notice of this appeal to each interested party in respect of the application.
- 3.15 The Reporter now seeks the planning authority's response to the appeal. This response should be submitted no later than 8 July 2013, and should include the following:-
- A note of the matters the planning authority considers should be taken into account in determining the appeal and by what procedure (or combination of procedures) the authority thinks these should be examined;
  - A copy of the documents (other than those specified by the applicant in his list of documents, materials and evidence) which were taken into consideration by the planning authority in making its decision;
  - A copy of any report on the authority's handling of the application;
  - The conditions which the planning authority considers should be imposed in the event that planning permission is granted.
- 3.16 Prior to 24 June 2013, Falkirk Council will provide the Directorate for Planning and Environmental Appeals:-
- details of the date when interested parties were notified;
  - all letters of representations from third parties;
  - any consultee responses received in respect of the planning application.

#### **4. CONCLUSION**

- 4.1 While the initial time period of determination of the application was 4 months, officers sought to extend the period of determination to examine the complex issues arising and to allow further public representation in the process through means of a hearing. In this case, the application was of a scale and type that has not been widely experienced by local authorities nor statutory consultees in a Scottish context. Falkirk Council, statutory consultees and interested parties required such timescales to contribute to the application and examine potential consequences of the proposals. Not least, there has been significant representation on the application and widespread community involvement in the planning process. Analysis of the information before the planning authority is yet to conclude whether the application is considered significantly contrary to the Development Plan and, without this assessment, it would have been premature to bring the application to recommendation; not least, a pre-determination hearing may have been required. An initial policy interpretation is attached (appendix 1), which clearly identifies further consideration of below ground aspects by more specialised respondents. Hence, the need for specialist consultants to be commissioned. Commissioning of consultants was embarked in January 2013 and resulted in the commissioning of AMEC in April 2013.
- 4.2 At the time of writing, it is considered that elements of the application remain to be evaluated; namely -
- the possibility of works causing geological instability;
  - the possibility of the process drawing water from more than the coal seam;
  - the possibility of the process causing dewatering of local aquifers;

- the possibility of the process encouraging methane migration and promoting fugitive emissions through the vertical bores and through potential cracks in the geology following dewatering;
- the preclusion of hydraulic fracturing potentially being applied to the proposed operations; and
- any other matters arising following assessment of the above investigations.

4.3 An initial approach to investigate these matters was made to the applicant through a letter from AMEC dated 20 May 2013. The applicant has submitted their response to this letter as part of the appeal documents lodged with the Directorate for Planning and Environmental Appeals and a copy of the response was sent to AMEC on 5 June 2013 (the submission date of the appeal by the applicant). Evaluation of the response has not been undertaken as an appeal has been lodged, therefore not allowing for assessment to be undertaken.

4.4 In addition, Falkirk Council is awaiting representation from Scottish Government Public Health Division in response to matters raised through comment.

4.5 Detailed assessment of matters raised through comment has, similarly, yet to be completed.

4.6 The applicant has the opportunity to make a claim for expenses in respect of the appeal. Government guidance (in circular 5/1990) indicates that expenses will only be awarded to an applicant in response to a claim against the planning authority if

- The planning authority has behaved unreasonably, and
- The unreasonable behaviour has caused the applicant expense.

Examples given of unreasonable behaviour on the part of the planning authority include:

- Reaching a decision without reasonable planning grounds for doing so,
- Refusing an application because of local opposition, where that opposition is not founded upon valid planning reasons. While the planning authority will need to consider the substance of any local opposition to a particular application, their duty is to decide a case on its planning merits.
- Introducing a new matter (eg a new reason for refusal) at a late stage in the proceedings.

Members should therefore take particular care to ensure that, if they adopt the recommendations of this report, their decision fully reflects the views they have reached upon the application, and that if they should reach a different decision upon how to proceed, that that decision is based upon proper planning considerations.

4.7 It is at the discretion of the Reporter whether the appeal process involves written submissions, a hearing, a site inspection and/or a public local inquiry. However, Falkirk Council can intimate what procedure the authority considers is most appropriate for the handling of this appeal, or suggest a combination involving more than one procedure. An explanation as to which matters be subject to specific procedure is required to be submitted to the Directorate for Planning and Environmental Appeals.

- 4.8 Given the degree of public interest in the application, members may wish to consider asking the reporter to hold an inquiry. However, if members wish to make this request, the matters the reporter should consider at the inquiry should be identified, including those detailed in paragraph 4.2, in appendix 1 (Interim Policy Assessment) and any other matters considered to be material. The possible costs to the Council, including providing witnesses and possibly legal representation should also be taken into account. A timescale of likely events is attached (appendix 6).
- 4.9 Given that Development Plan policy emphasises the importance of non-detrimental impacts of development on the environment and takes a precautionary approach to new mineral proposals, it is concluded that, at the time of writing, the applicant has not demonstrated that the proposal would not impose unacceptable risks to the amenity of communities or the environment which cannot be mitigated.
- 4.10 Members will continue to be advised on the appeal process.

## **5. RECOMMENDATION**

### **5.1 It is recommended:-**

- (a) that the Council advises the Directorate for Planning and Environmental Appeals that, as at the date of lodging of the appeal, it had had no opportunity to evaluate the information most recently provided by the applicant in response to the application, that information having been supplied on the date the appeal was lodged;**
- (b) that the Reporter, in the absence of analysis of the information the Council considers necessary to allow determination of the appeal and evaluation thereof, be asked to refuse the appeal;**
- (c) that the Council co-operates in the appeal process and provides any information requested by the Directorate for Planning and Environmental Appeals (DPEA) with the Director of Development Services being authorised to prepare and submit to the DPEA the Council's response to the appeal made by the applicant and to handle the appeal process for the Council;**
- (d) that the Director of Development Services is authorised to engage such external advisers to assist in the Council's participation in the appeal process as she thinks fit; and**
- (e) that the Committee agrees its preferred format for the appeal and reasons therefore having regard to the terms of paragraphs 4.2, 4.7 and 4.8 above and authorises the Director of Development Services to intimate same to the Reporter.**

Pp

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**Director of Development Services**

**Date: 20 June 2013**

## APPENDICES

1. Appendix 1 - Interim Policy Assessment.
2. Appendix 2 - Report.
3. Appendix 3 - Letter of extension dated 20 December 2012.
4. Appendix 4 - Letter of extension dated 1 March 2013.
5. Appendix 5 - Letter of extension dated 3 May 2013.
6. Appendix 6 - Scottish Planning Appeal Procedure.

This is a summary of the relevant policy documents in relation to unconventional oil and gas which includes coal bed methane.

### **The role of the Department for Energy and Climate Change (DECC)**

The 1994 Coal Industry Act clarified that the ownership of methane did not rest with the Coal Authority. As a petroleum product, the crown owns the methane associated with coal and the rights to the gas are regulated by DECC under the Petroleum Act 1998.

DECC Oil and Gas Division licence exploitation by means of onshore Petroleum Licences generally issued in "rounds". More information on this process and the location of existing licenses can be accessed on the DECC web site at [www.og.decc.gov.uk](http://www.og.decc.gov.uk)

### **Energy Paper 67 Cleaner Coal Technologies, including Annex D The UK Opportunities for Coal Bed Methane. (dti) 1999**

This was produced by DECC's predecessor the Department of Trade and Industry. Annex D identifies the potential of CBM to contribute to the UK's energy supply subject to technical and economic barriers being overcome.

No further updates to Energy Paper 67 have been made however it is understood to continue to form part of Government Policy.

### **[Written Ministerial Statement by Edward Davey: Exploration for shale gas - 13Dec12](#)**

While this relates specifically to shale gas it may also cover coal bed methane proposals. It states that once companies have the relevant permissions and environmental permits for their proposals they will also have to obtain consent from DECC for specific fracking operations and a fracking plan will be required to be submitted before consent is given for any fracking. Further guidance is anticipated in summer 2013 from the new Office of Unconventional Gas and Oil (OUGO).

The British Geographical Society (BGS) have been commissioned to identify the potential shale gas resource; this may also include an estimate of the coal bed methane resource. This will not however include an estimate of workable reserves.

### **Energy Security Strategy DECC Nov. 2012**

This acknowledges in Chapter 5 that gas will continue to play a crucial part in the UK energy mix and that while UK domestic production is expected to decline unconventional gas production may mitigate against this. It also acknowledges the uncertainty in the shale gas market.

### **Gas Generation Strategy DECC Dec 2012**

This focuses on shale gas however it may also apply to coal bed methane which is also an unconventional gas. The potential for unconventional gas is recognised although the uncertainty in the market is also acknowledged.

### **Other publications:**

New Oil and Gas Strategy for Scotland 2012-2020, Oil and Gas Industry Leadership Group. Scottish Enterprise.

This focuses on conventional oil and gas however does refer to coal bed methane under a section on new technologies (Page 10). It states that there are major opportunities which will develop in the next few years in the unconventional gas market.

## **NPF2: 2009**

Paragraphs 154 – 156 highlight policy in this area.

The contribution to the economy by the oil and gas industry is recognised and that there remain large reserves of extractable coal in Central Scotland. The methane in coal beds in central Scotland is estimated to be equivalent to at least 10% of Scotland's gas demand for the next 25 years. The extraction of methane could potentially be linked to carbon capture and storage. Planning authorities in the Central Belt should consider the potential for extraction in the preparation of development plans and there may be a need for authorities to work together in developing their planning framework.

## **SPP: Feb 2010**

General minerals policy is covered in paragraphs 225 – 235 and is more obviously separate from the section on on-shore oil and gas extraction than the draft SPP.

Paragraphs 236 – 238 highlight policy specifically in relation to on-shore oil and gas extraction.

The potential for onshore oil and gas extraction is recognised with the aim being to **maximise their potential** in an environmentally acceptable way as part of a strategy for a safe and secure energy supply.

Development plans should identify the factors to be considered for proposals with relevant factors highlighted including noise, pollution of land, air and water, impact on communities, the natural and built heritage, landscape and transport. Where PEDL licences extend across local authority boundaries, planning authorities should work together to ensure a consistent approach.

The transportation of gas should ideally be via pipeline or other sustainable means rather than by road and restoration of sites should be fully addressed in planning consents. Operators should take into account neighbouring uses and use directional drilling where possible.

## **Draft NPF3**

Paragraph 2.54 notes that there are emerging opportunities to utilise unconventional gas including coal bed methane subject to the protection of the environment.

Paragraph 3.25 notes that there are also sources of shale gas and coal bed methane in the Central Belt which have the potential to contribute to our energy supplies.

## Draft SPP

Paragraphs 166 – 167 recognises that the extraction of minerals makes a valuable contribution to the economy with the planning system being required to recognise the role of indigenous oil and gas in a diverse energy mix and for energy security. The impact on local communities, built and natural heritage and the water environment should be minimised and sites should be restored after use. The Petroleum Act is listed as a key document in relation to onshore exploration.

Para. 172 highlights issues to be addressed for mineral proposals generally within the development plan although it is not clear if this and the section under development management also cover Petroleum Exploration and Development Licences (PEDL) areas.

### Para. 173

“ For areas covered by PEDL, local development plans should:

- recognise that exploration and appraisal is likely to be the initial focus of development activity, with production probably requiring a separate decision;
- address constraints on production and processing;
- identify factors that will be taken into account when determining planning applications for wellheads and transmission infrastructure; and
- provide a consistent approach to extraction where licences extend across local authority boundaries.”

In relation to planning applications for mineral proposals generally sufficient information should be provided to enable a full assessment to be made. Proposals should be permitted if “significant impacts can be adequately controlled or mitigated”. Cumulative impact with other mineral sites and landfill sites should be taken into account and there should be an adequate buffer between settlements and sites taking into account the specifics of individual proposals. Restoration and aftercare should be to a high standard and mineral permissions should be reviewed every 15 years.

There is also a separate paragraph (para. 179) on onshore oil and gas with account required to be taken of effects on neighbouring uses. Directional drilling is preferred and consideration should be given to the end transport by pipeline, rail or water rather than by road. Where coal extraction is also likely to occur the most efficient sequence of extraction should be considered.

### Proposed LDP

The proposed LDP contains 2 minerals policies. Policy RW02 identifies that proposals for coal bed methane extraction will be supported where they are environmentally acceptable. Policy RW03 further emphasises that proposals will only be permitted where there is no significant adverse impact on the environment or local community and proposals will be assessed against a number of factors.

1. The site covers an extensive area west and north of Letham. The land in question sits in the designated countryside in policy terms. Thus much of the relevant policy considerations are those pertaining to a countryside location. The applicant was also advised at EIA scoping stage, that in the absence of a specific policy covering coal bed methane extraction, the proposal would be considered under the appropriate mineral policies of the development plan.

## Planning Policy

### Falkirk Council Structure Plan 2007

<b>ENV1</b>	<b>Countryside and Protected Areas</b>
<b>ENV2</b>	<b>Green Belt</b>
<b>ENV3</b>	<b>Nature Conservation</b>
<b>ENV4</b>	<b>Coastal Planning and Flooding</b>
<b>ENV8</b>	<b>General Principles for Mineral Working</b>

#### *ENV1*

#### **2. Policy ENV1 states that:**

- 1** *There is a general presumption against development in areas defined as countryside, unless it can be demonstrated that a countryside location is essential or is an appropriate form of agricultural diversification. Where it is established that a countryside location is essential, development proposals will also be assessed in relation to Local Plan policies appropriate to specific protected areas as defined generally by Schedules ENV.1 and ENV.3.*
- 2** *The policies applicable to countryside and protected areas within it, together with the detailed boundaries of each area, will be set out in Local Plans.*

3. As the proposal is for the exploitation of a mineral resource specific to particular geological features there is no option but to develop where the resource exists. In this case, therefore, a countryside location is essential. Whether the proposal conforms to the other policies cited will be dealt with below.

#### **ENV2**

4. Policy ENV2 provides for a system of green belts around the area, as indicated in the Structure Plan key diagram and whose boundaries are to be identified in the Falkirk Council Local Plan (FCLP). The policy further states '*Within these there will be a long term presumption against development in order to prevent the coalescence of settlements, protect their landscape setting and avoid prejudicing future proposals for landscape enhancement and countryside recreation.*
5. FCLP designates an area of land south of the M876 as green belt and an element of the proposal, the waste water outflow pipe, passes through this area. However I understand this pipe will be underground and therefore will make no impact on the above ground landscape or features, except during the construction period. The proposal does not contravene policy ENV2.

#### **ENV3**

6. Policy ENV3 is an overarching policy providing for the designation of a hierarchy of nature conservation sites of national, regional and local importance in the FCLP and for their protection from development to various degrees. It also encourages the identification of opportunities for enhancing, and the creation of new, habitats, and for species protection through the Local Plan, as identified in the Falkirk Local Biodiversity Action Plan. Comment on how the proposal relates to the various habitats and features is set out under the commensurate Local Plan policies EQ24 and EQ25 below.

## **ENV4**

7. Policy ENV4 provide for the identification, and protection from development, of the undeveloped coastal zone, an area of land generally to the east of the A905 road and north of the River Carron. It also requires any impact of development in this zone on flood risk, nature conservation, landscape impact and water pollution to be assessed.
8. The waste water outflow pipe, as discussed at para 5 above, also passes through the Undeveloped Coastal Zone as well as the green belt. While the pipeline will make no landscape impact the outflow of waste water into the Firth of Forth could potentially have impacts on water quality, nature conservation and flooding. These impacts are discussed below under local plan policies EQ24 and EQ25 or, in the case of water quality and flood risk, are the province of other consultation responses.

## **ENV8**

9. The proposal is considered to be a minerals related development as it extracts methane gas from within the coal field and is therefore appropriately assessed against the minerals policies in the Structure Plan and Local Plan. This principle was established during the consideration of coal bed methane issues at the Falkirk Local Plan Inquiry in 2009, when the Reporter accepted that references to CBM were appropriately located within the minerals policy section of the Local Plan (ref para 1.12.10 Part 1 Report of Inquiry).
10. Policy ENV8 takes a precautionary approach to new mineral proposals. Proposals which would impose unacceptable risks to amenity of communities or the environment and which cannot be mitigated, will not be supported. At the same time Scottish Planning Policy (para 236) expects that the potential of Scotland's gas reserves are maximised in an environmentally acceptable manner, which seems to complement the policy stance in ENV8.
11. Thus it is for the applicant to show that the impact of the proposal will be within acceptable limits. Many of these issues are dealt with under Local Plan policy areas. Local Plan minerals policies expand on the constraints to be considered and the benefits of the proposal to be taken into account. Discussion of these is set out below.

## **Falkirk Council Local Plan 2010**

12. The relevant policies are:

<b>EQ19</b>	<b>Countryside</b>
EQ20	Green Belt
EQ14	Listed Buildings
EQ16	Sites of Archaeological Interest
EQ18	Historic Gardens and Designed Landscapes
EQ22	Landscape and Visual Assessment
EQ24	Ecological Sites and Features
EQ25	Biodiversity
EQ28	The Coastal Zone
EQ29	Outdoor Access
EQ30	Agricultural Land
EQ30A	Air Quality
EQ31	Protection of Mineral Resources
EQ32	General Criteria for Minerals Development (and related policies EQ33-36)

EP18	Major Hazards
EP19	Hazardous Substances Consent
ST12	Flooding
ST14	Pipelines
ST19	Waste Reduction in New Development

### **EQ19**

13. Policy EQ19 applies a presumption against development outside village limits, other than those described specifically in other policies, except in 3 circumstances; that the proposal requires a countryside location, that it is a suitable infill development or that it utilizes existing buildings. It has already been established above that the nature of this proposal requires a countryside location. Moreover the nature of this proposal is most appropriately dealt with under Minerals policies EQ31-39 which are specifically referenced through policy EQ19. Assessment under the most relevant of these policies is dealt with below.

### **EQ20**

14. As discussed above under policy ENV2 an element of the proposal lies within the designated green belt south of the M876/A876. The policy applies a strong presumption against development in the green belt unless it satisfies policy EQ19. As has been shown in para. 14 the proposal is most appropriately considered under specific policies which are referenced under policy EQ19. Thus the proposal satisfies policy EQ20.

### **EQ14**

15. The Council's response to the Scoping Report drew attention to a number of cultural heritage assets in the vicinity of the proposal. The Environmental Report acknowledges the issues around these and the requirements of policy EQ14 to protect listed buildings and their settings. The nearest listed buildings are Kinnaird House, Club's Tomb, Kersebrook Farmhouse and Dunmore Pineapple. Club's Tomb is closest to a proposed above ground structure i.e. well head, at 300m distance. The others mentioned are further away from above ground structures and in most cases there is intervening vegetation or topography. Given the distance of the nearest listed buildings to an above ground structure, we are satisfied that none of the settings are compromised.

### **EQ16**

16. Policy EQ16 provides for the preservation of Scheduled Ancient Monuments (SAMs) and other sites of archaeological importance and protects their setting. The only SAM within Falkirk council area is Airth Old Church which is over 1km distant from the nearest above ground structure and hidden by intervening vegetation. The proposal does not conflict with policy EQ16.

### **EQ18**

17. Policy EQ18 provides a presumption against development which adversely affects the character or setting of a designated historic garden or designed landscape. Dunmore Park and Pineapple is such a designed landscape and one well head, at site B, is located within the designed landscape, on its south-west corner. This part of the designed landscape is now a scrubby woodland and it is arguable that this is a landscape which would not be adversely affected by the proposal.

### **EQ22**

18. The response from my colleague, Phil Harris, on landscape impacts of the proposal has already been forwarded. His conclusion is that the overall landscape and visual effects will be low and of an acceptable level. The conclusion of the Landscape and Visual Impact Assessment part of the EIA is considered to be accurate.

### **EQ24 and EQ25**

#### **Firth of Forth SPA**

19. Due to the potential for this development to have a significant impact on the qualifying interests of the Firth of Forth SPA, Falkirk Council will be required to undertake an Appropriate Assessment of the proposal. Having looked at the data submitted and in-line with the advice provided by SNH the proposal should not adversely affect the integrity of the site, as long as the following mitigation is strictly adhered to:

- Construction of the well site establishment at fourteen locations, inter-site connection services, gas delivery and water treatment facility, ancillary facilities, infrastructure and associated water outfall point to take place between April and August (i.e. outside the bird over-wintering period).
- Water outfall pipeline to be laid by horizontal directional drilling (HDD) under the SPA mudflats and the adjacent onshore saltmarsh (to avoid disturbance to and loss of inter-tidal habitat)
- Water outfall pipeline to be laid (by HDD) between April and August (i.e. outside the bird over-wintering period).

#### **Letham Moss SINC**

20. There is some development proposed within the boundary of the Letham Moss SINC. However, this is within an area of arable habitat and therefore will not have a significant impact on the ecologically important features of the SINC.

#### **Dunmore Wood and Moss Wildlife Site**

21. There is development proposed within the Dunmore Moss and Wood wildlife site (at well site B). This does appear to entail the loss of some woodland and marshy grassland habitat. The ecological impact on the integrity of the wildlife site as a whole is likely to be relatively minor, however the development will impact on this site. As such the applicant must detail, specifically for this site, how they intend to minimise the disturbance and damage to the wildlife site, plans for restoration (in the areas where this is appropriate) to help restore and protect the wildlife site, and other mitigation or compensation to ensure no overall negative impact on the wildlife site. This detail could be submitted as part of the CEMP (see below) or in a separate document, and should be approved by Falkirk Council prior to work on this particular site commencing.

### **Protected Species**

22. The scope and methodology of the protected species surveys is appropriate. As long as the mitigation identified within the Environmental Statement and various habitat and species survey reports is adhered to there should be no significant negative impact on any protected species.

### **CEMP**

23. It is essential that a Construction Environmental Management Plan (CEMP) is produced and is approved by Falkirk Council prior to work commencing. The CEMP should include all the mitigation measures identified within the environmental statement, including:
- Measures to protect, as far as possible, any areas of Groundwater Dependant Terrestrial Ecology within or close to the development area. In particular, this should include the protection, as far as possible, of habitat at the site of Well B adjacent to Dunmore Wood and of wetland habitats surrounding Letham Moss SINC
  - Measures to minimise the ecological impact of burn and ditch crossings
  - Mitigation measures to protect bats, otters and great crested newts
  - Measures to ensure that the Letham Moss SINC is protected from any potential significant negative impacts as a result of this development.
24. In addition, any work to remove trees or shrubs should be undertaken outwith the bird breeding season, or only carried out after a check for nesting birds by a suitably qualified person. It is essential that, as identified within the environmental statement, an Ecological Clerk of Works is appointed to ensure that the CEMP is implemented successfully.

### **EQ28**

25. The extent of the coastal zone is defined in FCLP and policy EQ28 provides for careful assessment of proposals which may affect the amenity, ecology, water quality and flood risk of the zone. As discussed above under policy ENV4 the route of the waste water outflow pipe crosses this area, though the pipe will be underground. The effects of the discharge of waste water into the Forth on water quality and flood risk are matters for other responses.

### **EQ29**

26. Policy EQ29 seeks to safeguard, improve and extend the network of outdoor access routes within the area. The Council's response to the EIA Scoping Report identified 4 outdoor access routes affected by the proposal; Hamilton Road National Cycle Route (NCR) 76, Drum of Kinnaird to Letham NCR 76, Mains of Powfoulis NCR 76, Letham Moss Core Path and North Doll to Westfield Core Path.
27. Our Access Officer is satisfied that core paths and the need to consider access rights afforded by the Land Reform (Scotland) Act 2003 are all noted within the Environment Statement for this proposal. It appears that the developer understands the need to protect not only the core path routes, but also the general right of public access in the area. Therefore the proposal meets the terms of policy EQ29.

### **EQ30**

28. Policy EQ30 protects prime agricultural land from development, and only if there are overriding local or national circumstances should this be permitted. The response to the EIA scoping report pointed out that there was some land in categories 2.1 and 3 at the southern end of Letham Moss. This area contains an existing well site (6&8) and the proposed route of a pipeline and cabling service corridor.
29. Other than disturbance during construction of the service corridor there should be no permanent diminution of the prime agricultural land asset, and minimising of construction disturbance should be controlled by condition. Any loss of prime land at well site 6&8 has already been sanctioned through previous consents. Restoration of the site after operations cease should already be covered by conditions to the previous consent.

### **EQ30A**

30. The issues of air quality should be the subject of a detailed response from colleagues in Environmental Health. At the scoping report stage they had no concerns with methodology proposed by the applicant to address air quality. The site is not within an AQMA.

### **EQ31**

31. While the proposal is not a permanent development the applicant should ensure that there is no sterilisation of the existing coal resource.

### **EQ32**

32. Criteria 1: The area is characterised by sporadic farms/steadings and individual properties, with groups of 2-3 houses in the area affected by above ground works. The below ground horizontal boreholes extend under similarly sporadically occurring housing groups; however one trajectory is shown going under both the Hill of Kinnaird and Bellsdyke allocated housing sites. It is considered that above ground works and drilling compounds would have no significant adverse impact on the amenity of these smaller groups of houses and the proposal accords with this criteria.
33. There has been considerable concern expressed by objectors that hydraulic fracturing (known colloquially as fracking) will be used to extract gas at this site. Hydraulic fracturing has been reported to have caused small seismic activity and contamination of groundwater in a few locations elsewhere. There is no indication in the material supplied by the applicant that this will be the method used here; the term used in the applicant's submissions for the extraction process is described as dewatering. Dewatering involves the pumping of water, which gathers in the bores drilled into the coal, at pressure to the surface, thereby releasing the methane gas.
34. However a Mineral Planning Factsheet prepared by the independent British Geological Survey suggests that hydraulic fracturing can be used to boost the extraction of remaining coal bed methane when a well approaches exhaustion. The applicant should be asked to provide clarification that hydraulic fracturing will **not** be used for this operation. Perhaps this can be covered by condition or it may be a matter for the licence authorities (Department of Energy and Climate Change and the Coal Authority).

35. Criteria 2: It is not considered that the above ground works and drilling compounds would be visually obtrusive from main transport corridors (M9, M876, Falkirk to Stirling railway line), given the scale and temporary nature of drilling operations and the scale of plant on site in the production phase, and that the proposal accords with criteria (1). If necessary the application should be conditioned to ensure that temporary cold vents, in place until production starts, are removed once the site is in production.
36. Criteria 3: It is considered that the application should be conditioned to ensure sites are restored to their previous condition to ensure there is no permanent loss or damage to prime quality agricultural land.
37. Criteria 4: The impact on the landscape of the area of the proposal has already been assessed in a separate submission referred to at para 19 above. The proposal is therefore considered to accord with EQ32(4).
38. Criteria 5: It is considered that the proposal is capable of satisfying the terms of policy EQ32 (5), as discussed above at paras 20 to 25.
39. Criteria 6: It is not considered that the above ground works and drilling compounds would have a significant adverse impact on the sites of built heritage identified in the policy, given the scale and temporary nature of drilling operations, the scale of plant on site in the production phase and the distance from built heritage assets. This has been discussed above in more detail at paras 16 to 18.
40. Criteria 7: The impact of the proposal on the water environment is the subject of other consultation responses. If the proposal is considered to have a significant adverse impact on the water environment it would be contrary to this aspect of the policy.

### **EQ33**

41. The proposal requires to be assessed in association with the existing consented well sites. It is not clear from the proposal how many of the well sites will be drilled at any one time and this information is required to consider the cumulative impact of the above ground sites.

### **EQ34**

42. The potential benefits from the proposal are addressed by the applicant.

### **EQ35**

43. The relevant information has been submitted by the applicant. The proposal should be conditioned to ensure annual returns are made on production levels at the site.

### **EQ36**

44. The proposal should be appropriately conditioned, or have a section 75 obligation if necessary, to ensure sites are appropriately restored.

### **EP18**

45. A major hazard pipeline runs through the area which may affect some of the above ground sites and the vertical and horizontal boreholes. However, given the small numbers of people associated with the mineral workings it is considered that the proposal is in accordance with this policy.

### **EP19**

46. The gas distribution facility may be subject to Hazardous Substances Consent, dependent on the quantity of gas stored. As this facility is to be located in Stirling Council area this is not a matter for Falkirk Council, but associated pipelines could be in Falkirk Council area and would have to be appropriately assessed.

### **ST12**

47. The issues of flood risk should be the subject of a detailed response from colleagues in Roads and Flooding. A number of the proposed well sites are close to areas of significant (i.e. 1:200) fluvial flood risk associated with the Pow Burn and its tributaries – sites E, H, I, M, and N. In addition the proposed waste water outfall pipe passes through the coastal zone referred to above, which is subject to 1:200 coastal flood risk from the Firth of Forth. I understand a flood risk assessment has been submitted.
48. The Council's scoping response pointed out that water from the drilling process, particularly its management and disposal, could be the greater risk to adjacent land, rather than flooding from watercourses affecting the site.

### **ST14**

49. A Pipeline Plot Plan is referred to in the application documents but this does not appear to be included in the application. The preferred location for new pipelines is in existing pipeline zones and the routing of all new pipelines should minimise the impact on protected nature conservation areas, important areas of woodland and scheduled ancient monuments. If the routes of new pipelines are outwith these existing pipeline zones a full justification is required. The Pipeline Plot Plan is required to assess the proposal against this policy.

### **ST19**

50. Policy ST19, as it applies to commercial development, require applicants to demonstrate the maximisation of reusable or recycled materials and minimising of generation of waste during construction. The major component of waste produced is the water used in the operational phase. The proposal includes a Gas Distribution and Water Treatment Facility which will be linked to all the wells by pipeline. This facility will be located in Stirling Council area and is a matter for their consideration. The residual waste from this facility will be transported by pipeline to the Firth of Forth at Skinflats. The discharge of waste water requires licensing by SEPA, a process which, I assume, will take account of its environmental impacts.
51. The Council's Scoping Opinion drew attention to the potential significant impact on the wintering bird populations of laying this pipeline into the Forth.

## **Assessment**

52. The above ground aspects of the proposal have been assessed against the relevant planning policies and, in general, conform to these, subject to the supply of further material where indicated e.g. Pipeline Plot Plan, CEMP, or further assessments e.g. Appropriate Assessment.
53. However, assessing the below ground aspects of the proposal has been more problematic. Reaching a firm view on whether these aspects of the proposal will not make a significant adverse impact on the amenity of the community or the water environment, as required under policy EQ32(1) and (7), can only be made after taking into account the views of more specialised respondents.

**FALKIRK COUNCIL**

**Subject:** DEVELOPMENT FOR COAL BED METHANE PRODUCTION, INCLUDING DRILLING, WELL SITE ESTABLISHMENT AT 14 LOCATIONS, INTER-SITE CONNECTION SERVICES, SITE ACCESS TRACKS, A GAS DELIVERY AND WATER TREATMENT FACILITY, ANCILLARY FACILITIES, INFRASTRUCTURE AND ASSOCIATED WATER OUTFALL POINT AT LETHAM MOSS, FALKIRK FK2 8RT FOR DART ENERGY - P/12/0521/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 30 January 2013

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Carse, Kinnaird and Tryst

Councillor Stephen Bird  
Councillor Steven Carleschi  
Councillor Charles MacDonald  
Councillor Craig Martin

**Community Council:** Airth Parish  
Larbert, Stenhousemuir and Torwood

**Case Officer:** John Milne (Senior Planning Officer), Ext. 4815

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 This application reflects the applicant's aspirations to expand an existing network of Coal Bed Methane (CBM) wells and associated infrastructure around Letham Moss, Falkirk.
- 1.2 This proposal is to embark on Full Field development of suitable natural gas infrastructure to facilitate gas distribution to the local gas network. Full Field development of a site is likely to operate for a minimum period of 25 years.
- 1.3 The proposed development covers land within the Falkirk Council and Stirling Council areas. Consequently, certain elements of the proposal are under consideration as part of a separate planning application to Stirling Council, namely:
- The site of the Gas Delivery and Water Treatment Facility; and
  - 3 new well sites.
- The applications to Falkirk Council and Stirling Council both have associated above ground and under ground infrastructure.
- 1.4 The planning application submitted to Falkirk Council includes the following:
- 11 new well sites;

- Potential water outfall provision to the Firth of Forth; and
  - Further drilling operations at 2 existing sites near Airth.
- 1.5 The purpose of the proposed development is to extract gas for distribution into the local gas grid for use by domestic, municipal and industrial customers.
- 1.6 The application is considered 'Major' in terms of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and the applicant has conducted a Pre-Application Consultation with local communities. The application is also supported by an Environmental Assessment.

### ***Project Description***

- 1.7 The applicant proposes both above ground and below ground works, over a 12.2 ha area (well sites, access tracks, gas delivery and a water treatment facility) to extract Coal Bed Methane (CBM). The process to extract CBM does not include hydraulic 'fracking'.

## **2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 It is considered that, in view of the number of issues raised in relation to the application, including the number of representations and the environmentally sensitive areas to which it relates, that it be considered by the Planning Committee.

## **3. SITE HISTORY**

- 3.1 There is a substantial history in the vicinity of the application site relating to Coal Bed Methane:
- 3.2 F/95/0355 - exploration, gas well (temporary) – Airth No 5 Well Site, South Letham by Coal Bed Methane Ltd - granted temporary permission.
- 3.3 F/95/0356 - use of land for the exploration of methane gas (temporary) - Airth No 6 Well Site, Letham by Coal Bed Methane Ltd - granted temporary permission.
- 3.4 F/95/0357 - use of land for the exploration of methane gas (temporary) - Airth No 3 Well Site Crow Wood, South Letham by Coal Bed Methane Ltd - withdrawn.
- 3.5 F/95/0358 - use of land for the exploration of methane gas (temporary) - Airth No 4 Well Site, Crow Wood, South Letham by Coal Bed Methane Ltd - withdrawn.
- 3.6 F/95/0362 - use of land for the exploration of methane gas - Airth No 2 Well Site, North Letham by Coal Bed Methane Ltd – granted permission.
- 3.7 F/95/0363 - use of land for the production of methane gas - Airth No 1 Well Site, South Letham by Coal Bed Methane Ltd - granted temporary permission.
- 3.8 F/97/0287 - use of land for the exploration of methane gas - Airth No 4 Well Site, North Bellsdyke Farm, Airth by Coal Bed Methane Ltd - granted temporary permission.
- 3.9 F/97/0811 - use of land as methane gas production site - Well No 2, South Letham, Airth by Coal Bed Methane Ltd - granted temporary permission.

- 3.10 F/97/0812 - use of land as methane gas production site and installation of plant and machinery - Well No 3 South Letham, Airth by Coal Bed Methane Ltd - granted temporary permission.
- 3.11 F/98/0014 - use of land for the exploration and production of methane gas - Craigend, Standburn by Coal Bed Methane Ltd – granted permission.
- 3.12 F/2001/0107 - use of land as methane gas production site - Airth No 2A Well Site, Letham by Coal Bed Methane Ltd - withdrawn.
- 3.13 F/2001/0769 - use of land for the exploration of methane gas - Airth No 4 Well Site, North Bellsdyke Farm, Falkirk FK1 2HZ by Coal Bed Methane Ltd - granted temporary permission.
- 3.14 F/2002/0732 - drilling operations to stimulate additional coal seams - Airth No 3 Well Site by Coal Bed Methane Ltd – granted permission.
- 3.15 F/2004/0862 - drilling operations to stimulate 4 coal seams and installation of plant and machinery - Airth No 3 Well Site by Composite Energy Ltd – granted permission.
- 3.16 F/2005/0133 - drilling operation - Land at Letham, Airth, Falkirk by Composite Energy Ltd – granted permission.
- 3.17 F/2005/0134 - drilling operation - Land at Letham, Airth, Falkirk by Composite Energy Ltd – granted permission.
- 3.18 06/0536/FUL - exploratory drilling for natural gas through the stimulation of 4 coal seams and the production of gas from No 6 Well Site at Airth 6 by Composite Energy Ltd - granted.
- 3.19 06/0540/FUL - exploratory drilling for natural gas through the stimulation of 4 coal seams and the production of gas from the wellbores 2, 3 and 5 - Site at Airth 2, 3 and 5 Well Sites by Composite Energy Ltd – granted permission.
- 3.20 06/0874/FUL – coal bed methane production, exploration and development (DTI licence no. 133) - Site at proposed Well north west of Drum and Kinnaird Farm, Falkirk by Composite Energy Ltd - withdrawn.
- 3.21 06/0875/FUL – coal bed methane production, exploration and development (DTI licence no. 133) - Site at proposed Well north west of Linksfield Farm, Falkirk by Composite Energy Ltd – granted permission.
- 3.22 P/07/0103/FUL – coal bed methane production, exploration and development (DTI licence no. 133) - Site at Airth 4 Well west of North Bellsdyke Farm, Falkirk by Composite Energy Ltd – granted permission.
- 3.23 P/07/0104/FUL – coal bed methane production, exploration and development (DTI licence no. 133) - Site to the south of Dunislay Cottage, Falkirk by Composite Energy Ltd - withdrawn.
- 3.24 P/07/0258/FUL - development of land for the extraction of methane gases - Site at Airth 3 Well south east of Letham Farm, Falkirk by Composite Energy Ltd – granted permission.
- 3.25 P/07/0576/FUL - development of land for coal bed methane exploration and production - Site at Airth 1 and Airth 7 Well south west of Letham farm, Falkirk by Composite Energy Ltd – granted permission.
- 3.26 P/07/0631/FUL - development of land for coal bed methane exploration and production – Site at Airth 1-7 Well south west of Letham Farm, Falkirk and Site at proposed Well north west of Linksfield Farm, Falkirk by Composite Energy Ltd - withdrawn.

- 3.27 P/07/0914/FUL - development of land for coal bed methane exploration and production - Site at Airth 1-7 Well south west of Letham Farm, Falkirk and Site at proposed Well north west of Linksfield Farm, Falkirk by Composite Energy Ltd – granted permission.
- 3.28 P/08/0758/FUL - Exploratory drilling for natural gas through the stimulation of 4 coal seams and the production of gas from 6 Well (renewal of planning permission 06/0536/FUL) - Site at Airth 6 Well west of Crow Wood House, Falkirk by Composite Energy Ltd – granted permission.
- 3.29 P/10/0840/FUL - exploration and pilot test development of coal bed methane (CBM), including installation of drilling and production equipment and operation specification and power generation equipment at existing CBM sites (Airth 1, 7 and 10 and Airth 3 and 9) - Site at Airth 1, 7 and 10 Well south west of Letham Farm, Falkirk and Site at Airth 3 and 9 Well south east of Letham Farm, Falkirk by Composite Energy Ltd – granted permission.
- 3.30 P/12/0109/FUL - exploration and pilot test development of coal bed methane, including use of drilling and production Equipment and erection of 2.4 metre perimeter fencing, on land to the north of Kersiebrock Farm, Falkirk – granted permission.
- 3.31 PRE/2012/0006/PAN - for the exploration and pilot test development to coal bed methane including drilling, Well site establishment at 14 locations and development of inter-site connection services, site access tracks, a gas delivery and water treatment facility, ancillary facilities and infrastructure and an associated water outfall at Letham Moss, Falkirk - accepted.

#### **4. CONSULTATIONS**

- 4.1 As part of the consideration of this planning application, consultation has been undertaken with the following:-
- Scottish Environment Protection Agency,
  - The Health and Safety Executive,
  - Scottish Water,
  - Network Rail,
  - Falkirk Council's Roads and Development Unit,
  - Falkirk Council's Environmental Protection Unit,
  - Falkirk Community Trust,
  - Stirling Council,
  - Clackmannanshire Council,
  - Fife Council,
  - Royal Society for the Protection of Birds (RSPB),
  - Scottish Natural Heritage,
  - Transport Scotland, and

- Historic Scotland.

4.2 It should be noted that consultation is still ongoing with the above consultees in relation to this proposal.

## **5. COMMUNITY COUNCIL**

5.1 Representations have been received to date from the following Community Councils:-

- Blackness Community Council,
- Airth Community Council;
- Larbert, Stenhousemuir and Torwood Community Council,
- Grangemouth (Including Skinflats) Community Council,
- Shieldhill and California Community Council;
- Bonnybridge Community Council; and
- Reddingmuirhead and Wallacestone Community Council.

5.2 No assessment has as yet been undertaken in respect of the comments received by the above mentioned Community Councils. However, the concerns that have been raised by the Community Council including issues of a technical nature which have been included in the summary of all comments raised so far in Appendix A to this report.

## **6. REPRESENTATIONS**

6.1 The application has also attracted a significant level of public interest with some 482 representations submitted. A number of these representations seek clarification in relation to technical and legislative matters. These are summarised in Appendix A to this report. It should be noted that no assessment of the submitted representations has been undertaken at this time.

## **7. CONCLUSION**

7.1 This major application, which is accompanied by an Environmental Statement, has generated a substantial level of interest and relates to environmentally sensitive areas. Consultation is advanced but not yet complete. No detailed assessment of the application or of the consultations or representations has been undertaken, and this report includes only factual information.

7.2 Under Circular 4/2009, Development Management Procedures, Annex F, paragraph 3, within section 38A(4), the Planning Authority may decide to hold a Hearing for any development not covered by the mandatory requirements and to give the applicant and any other person an opportunity of appearing before and being heard by the Committee. Examples of categories of development which planning authorities might decide require Hearings include applications in which the local authority has a financial interest, or applications that have attracted a given number and type of objections or applications relating to development in sensitive areas protected by statutory designations. There are no related legislative requirements to refer such cases to Falkirk Council for decision.

7.3 It is therefore considered appropriate that, prior to any recommendation being proposed for the consideration of the Planning Committee at a later date, in accordance with the above, a hearing take place. It should be noted that Falkirk Council has no financial interest in the proposed development.

8. RECOMMENDATION

8.1 **The application site is located within an environmentally sensitive area protected by statutory designations and has received a significant number of representations (some 482 at the time of writing - see Appendix A). Therefore, it is recommended that a Hearing be convened and conducted by the Planning Committee to allow exchange of information leading to an informed recommendation/decision on the planning application at a later date.**

Pp

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**Director of Development Services**

**Date: 22 January 2013**

**LIST OF BACKGROUND PAPERS**

1. Appendix A – summary of comments received to date

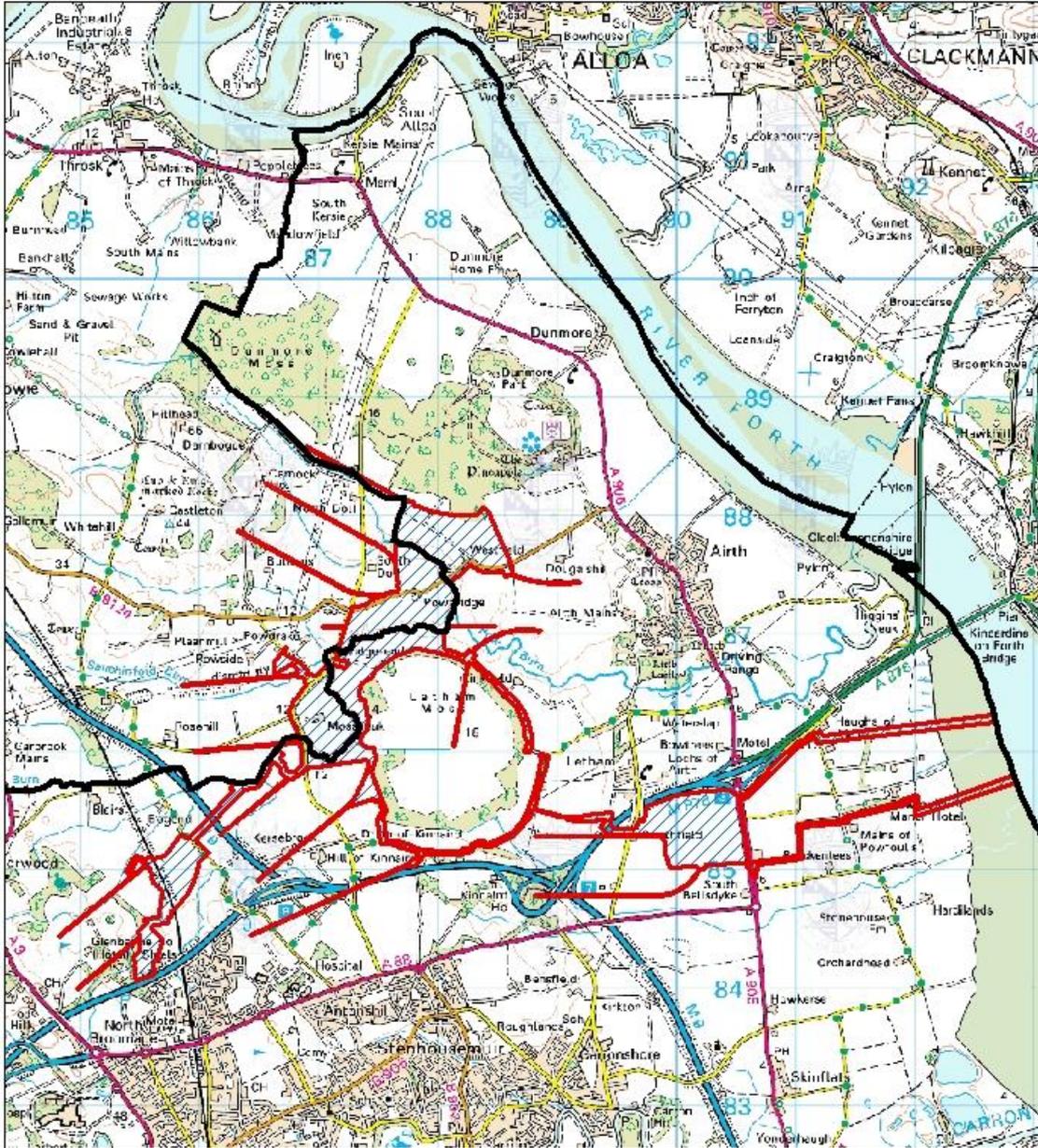
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504815 and ask for John Milne Senior Planning Officer.



# Planning Committee

## Planning Application Location Plan P/12/0521/FUL

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



Falkirk Council



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Summary of Comments Received To Date

- The underground borehole trajectory deliberately avoids going underneath any buildings. Therefore, it is of concern that buildings constructed above the borehole may be at risk.
- The proposals may prejudice business plans for above ground development of the area.
- The proposals will have an adverse impact on the area due to:-
  - access, traffic issues and deterioration of road condition;
  - noise generation, through the 24 hour operation of the site and continued vehicle movements necessary to ensure water delivery;
  - impact on natural habitat of local wildlife;
  - methane boreholes are not safe;
  - adverse visual impact of drilling rigs.
- The proposal will create vehicular conflict with cyclists, tractors, joggers and horse riders and will have an adverse impact on Dunmore Woods.
- The proposal will have an adverse visual impact on “The Pineapple” and its adjacent woodland, as well as flora and fauna.
- Adverse impact on the amenity of residential property near the above ground sites through noise and visual intrusion.
- The impact of the proposals in conjunction with existing development proposals, such as the peat extraction operation on Moss Road; new roadway development at the M9 motorway; new housing on Bellsdyke Road and the proposed sale of the Moss Road wood yard for housing.
- The applicant has not engaged with the local community, nor furnished sufficient information for consideration. Further public meetings should be held.
- The proposals may not include “fracking”, but this change in operation may come later.
- Concern over potential “fracking” operations, including the chemicals being used.
- The depth of extraction has not been clarified. The existing 30m of clay prevents contamination of the water table, which will be threatened if boreholes are undertaken. Clarification is required as to whether fern shaped grids are to be drilled; and what is the “tendrill” that seems to connect to the SUDs pond near Cambus Avenue?
- If Hamilton Road and Bogend Road are to be used for site access, this will create additional nuisance for residents of both Titland Hill and North Inches.
- There are major concerns about the extraction of “produced water” and the effects that this may have on the surrounding environment.
- There will be pollutant effects, not just on the workers but also on local population, from both the water and the air.
- This will not be a “significant creator of jobs”.

- Methane gas emissions will increase as a consequence of development, flying in the face of the Government's stated commitments to bringing down CO<sup>2</sup> and other greenhouse gases.
- There is concern regarding "fugitive" methane and methane's large potential as a greenhouse gas.
- There are major concerns about the extraction of "produced water" and the effects that this may have on the surrounding environment.
- What provision is in place for an uncontrolled release of gas? How often will the blowout preventer be tested?
- Are there carcinogens contained within the drilling mud?
- How much water is produced with each injection? - a figure of 3 million gallons is quoted.
- Where is the water outfall pipe to be located and what form will this take, i.e. excavated?
- Will the local aquifers be protected from contamination?
- How will the high water table be affected as a result of development? Will the soil dry out, creating ground disturbance to property?
- What contingency plans are in place to address any property damaged as a result of drilling, etc?
- What preventative measures will be in place to protect against gas leakage, either through the well heads or through the ground which has been disturbed?
- Will the new development integrate with existing gas pipelines in the area?
- Will there be earth tremors during working?
- What levels of light emissions will there be from the sites?
- What measures have been taken to reduce the visual impact of the sites?
- The depletion and pollution of the land that is targeted for this development is unacceptable.
- The company making these plans is only interested in profit and will have no consideration for the country or the people who will be affected.
- How are the drill paths isolated from the surrounding sub-soil and strata to prevent escape of outflow between layers of sub-soil?
- Is there knowledge of the contaminants in the layers to be drilled?
- Will there be a smell of methane or other gases in the air and from the watercourse?
- Will the Pow Burn be used for water outfall?
- There is a concern over risk to local water, and therefore health. In countries where this has been allowed to go ahead there has been evidence of water contamination, air pollution, toxic spills and emissions of gases causing climate change.
- The proposal will lock Scotland into continuing production of carbon dioxide for several decades.
- There is no local benefit from this proposal.

- The development is contrary to the local plan, which states that developments must not compromise the ability of future generations to meet their own needs and enjoy a high quality environment.
- The proposal will increase the production of greenhouse gases, contributing to global warming and the speeding up of climate change. This works against the Government's objective of reducing carbon dioxide emissions over the coming decades.
- Will the drilling coincide with any old mine workings, allowing the potential of chemical escape?
- The proposed technology has a track record of environmental damage.
- "Fracking" is dangerous, and what do geologists assess the result of the proposals to be?
- The areas of SSSI, protected nature reserves, historic woodlands and local wildlife sites will be potentially affected through accidental pollution.
- There is no evidence that the use of CBM will reduce the use of other fossil fuels.
- The proposals will reduce visitors to the area, with a detrimental impact on tourism and tourist related facilities.
- The proposals should be examined by an independent environmental agency to validate that there will be no impact to the water quality in the area.
- The proposal will pave the way for future similar proposals in the area, throughout the British Isles and globally.
- The contamination of groundwater layers and disturbance of these natural layers by industrial processes is unnecessary and dangerous to all who live around them.
- There will be adverse consequences on the geology of the land and likely leakage of chemicals into the food chain and the water table.
- The proposal will leave a legacy of industrialised countryside.
- Similar proposals in Australia and the Western United States have shown that the process is highly damaging and, in the Scottish context, the effect on nearby communities will be greatly magnified.
- Around 80,000 gallons of produced water per day will be dumped into the Firth of Forth after minimal treatment.
- The process will provide only a short term gain for Scotland. It is a human health toxicology experiment.
- The 30 year life of the development should not be considered "temporary".
- The proposals fall within close proximity to sites of future residential development.
- There will be adverse impact on nearby neighbours through 24 hour noise disturbance, including sleep disturbance issues. This is especially of concern during drilling periods.
- The applicant has failed to address impacts on the habitat of protected species, especially great crested newts.

- The proposal may result in earthshocks.
- There is lack of information and public consultation surrounding this proposal.
- Coal gasification is an unproven technology, likely to have significant adverse environmental impacts.
- The collected methane will be burnt, increasing greenhouse gas emissions, contrary to the targets set in the Climate Change (Scotland) Act.
- The impact on the fishery industry will be disastrous.
- An independent ecological impact audit has not been carried out.
- Investment should be directed towards sustainable energy sources rather than exploiting fossil fuel reserves using unconventional and risky methods.
- There are no suitable regulations in place to ensure that the water, the land, the environment and the health of the people in the area are protected from possible catastrophic damage.
- The proposals are contrary to Policies EQ32 and EQ35 of the Falkirk Council Local Plan.
- There will be potential risk to pipelines from Grangemouth.
- A cocktail of chemicals, including benzene, toluene and ethyl-benzene; nitrates, chlorides and other salts; metals such as arsenic lead, mercury and cadmium are already being dumped by Dart from the Airth site.
- There is no information regarding permanent monitoring systems to be used to ensure the integrity of the excavation process in respect of water and air quality.
- There are no details regarding the flaring of methane gas, no quantities or definition of safe limits. Similarly, there are no quantities given for the expulsions of CO<sup>2</sup>, from the flaring, to the local environment.
- There is no reference to baseline contamination measurements taken prior to excavation work for each borehole site.
- There is no reference to ongoing monitoring and independent reporting of the chemicals or additives used in the operation, excavation, water treatment and water outfall processes, concentration trigger levels and cumulative effects. Additionally, there is no mention of mitigating processes, actions or strategies should contaminant levels be exceeded.
- Dart Energy could later apply for a permit from SEPA to allow the use of hydraulic fracturing without applying for further planning permissions.
- Pollution of the Forth will devastate local farming interests.
- The proposal is a long term risk for a very small short-to-medium term gain.
- A refusal of planning permission for a bed and breakfast facility North of North Inches has recently been issued, based on grounds of road safety and access to the site. Due consideration of this decision should be taken in considering the methane project.

- It is considered that the Environmental Statement for the application has not adequately addressed issues of environmental impact.
- The impact of the proposal on the ability to meet climate change targets.
- The proposals are contrary to Policy EQ27 - Watercourses - of the Falkirk Council Local Plan, in that the proposed method of CBM extraction will have a detrimental impact through;
  - The lowering of water tables and potential associated impacts on agriculture and subsidence,
  - The contamination of ground water and any local aquifers with methane and other naturally occurring substances in the coal seams, as well as chemical used in the chilling mud, and
  - The disposal of large quantities of contaminated water withdrawn from the coal seams.
- Evidence from Australia demonstrates that water pollution and leaking methane occur regardless of whether “fracking” is used or not in this type of industry. The environmental statement for this application has not adequately addressed these issues.
- Can the waste/water infrastructure cope with the huge volumes of fluids needed to be disposed of or be able to treat the toxins and hazardous chemicals contained in such wastewater?
- The area is susceptible to flooding with the consequent increase in risk of pollution.
- There will be a resulting loss of landscape, amenity and utility through the visual impact of the proposed wells.
- When production stops and the wells are abandoned, the area will be contaminated, monitoring reduced and deterioration of the underground pipework will follow
- Prices of houses in the area will fall. Tourism will be adversely affected and future investment jeopardised.
- This is a non-sustainable development, which will benefit private organisations at the expense of local communities and the environment.
- The ecological and social impacts are far too great to have this happen so close to a still growing community, especially in such close proximity to a primary school.
- Unconventional and new techniques being trialled and used in the area makes the risk of this application going forward very dangerous to anyone living in the area.
- Methane is 20 times more potent than CO<sup>2</sup> and the risk of escape is unacceptable.
- What are the repercussions if the applicant simply abandons the venture?
- The applicant has endeavoured to get the application in ‘under the radar’ through minimal consultation.
- Coalbed methane is a fossil fuel, burning fossil fuels results in CO<sup>2</sup> emissions.
- The negative impacts of this development type are well documented and overseas research demonstrates and evidences such impacts.

## Planning and Transportation

Appendix 3

Enquiries to : John Milne  
Direct Dial : 01324 504815  
Fax : 01324 504747  
e-mail : john.milne@falkirk.gov.uk

Our Ref : P/12/0521/FUL/ONLINE/JD  
Please quote in all correspondence

20 December 2012

FAO Katharine Blythe  
RPS Planning & Development  
Ocean Point One, 4th Floor  
94 Ocean Drive  
Edinburgh  
EH6 6JH

Dear Sirs

### Town and Country Planning (Scotland) Acts

**Development** **Development For Coal Bed Methane Production, Including Drilling, Well Site Establishment at 14 Locations, Inter-Site Connection Services, Site Access Tracks, a Gas Delivery and Water Treatment Facility, Ancillary Facilities, Infrastructure and Associated Water Outfall Point**  
**Location** **Letham Moss, Falkirk, FK2 8RT**  
**Application No.** **P/12/0521/FUL**

#### Request to Extend Period for Determining Your Planning Application

When I acknowledged receipt of your application P/12/0521/FUL I hoped you would have received a decision by 07 January 2013. Unfortunately it is unlikely that a decision can be made on your application by that date for the following reason(s):

1. It is intended to present a report to Falkirk Council Planning Committee on 30th January, 2013, requesting that a hearing take place in relation to the application, thus prior to the determination of the application.

Under Circular 4/2009, Development Management Procedures, Annex F, paragraph 3, within section 38A(4), the planning authority may decide to hold a hearing for any development not covered by the mandatory requirements and to give the applicant and any other person an opportunity of appearing before and being heard by the Committee. Examples of categories of development which planning authorities might decide require hearings include applications in which the local authority has a financial interest, or applications that have attracted a given number and type of objections or applications relating to development in sensitive areas protected by statutory designations. There are no related legislative requirements to refer such cases to full council for decision.

In this instance, while Falkirk Council has no financial interest in the proposals, the application site is located within an environmentally sensitive area protected by statutory designations and has received a significant number of representations (some 423 at the time of writing). A large number of representations seek clarification of technical and legislative aspects of the proposals.

2. We have not received replies from all of the bodies / organisations consulted on the proposals.

I, therefore, request an extension of time of a further four months to allow full consideration and assessment of the application. This would extend the period to 07 May 2013. I cannot guarantee, however, that determination of the application will take place before then and a further extension period may be requested.

Yours faithfully

John Milne  
Senior Planning Officer

## Planning and Transportation

Appendix 4

Enquiries to : John Milne

Direct Dial : 01324 504815

Fax : 01324 504747

e-mail : john.milne@falkirk.gov.uk

Our Ref : P/12/0521/FUL/ONLINE/JWM/AD

Please quote in all correspondence

Your Ref :

1 March 2013

RPS Planning & Development  
FAO Katharine Blythe  
Ocean Point One, 4th Floor  
94 Ocean Drive  
Edinburgh  
EH6 6JH

Dear Madam

Town and Country Planning (Scotland) Acts

**Development Development For Coal Bed Methane Production, Including Drilling, Well Site Establishment at 14 Locations, Inter-Site Connection Services, Site Access Tracks, a Gas Delivery and Water Treatment Facility, Ancillary Facilities, Infrastructure and Associated Water Outfall Point**

**Location Letham Moss Falkirk FK2 8RT**

**Application No. P/12/0521/FUL**

**No.**

When I acknowledged receipt of your application P/12/0521/FUL I hoped you would have received a decision by 7 January 2013. Having already extended the envisaged timescale for determination to 7 March 2013, I must inform you that a decision has not yet been made on your application. The delay has occurred for the following reasons: -

1. On 30 January 2013, Falkirk Council Planning Committee agreed that a hearing take place in relation to the application, prior to its determination.

No date has yet been set for the hearing although it is envisaged that the hearing will be arranged in the near future.

Following the hearing, the application will be presented to Falkirk Council's Planning Committee for consideration.

2. Additional comments on the application are expected from the following consultees: -

- Scottish Natural Heritage.
- Falkirk Council's Roads and Design Unit.
- Crown Estates
- Marine Scotland.

3. Falkirk Council is in the process of commissioning an external consultant to peer review technical aspects of the proposals relating to:-
- the possibility of works causing geological instability;
  - the possibility of the process drawing water from more than the coal seam;
  - the possibility of the process causing dewatering of local aquifers;
  - the possibility of the process encouraging methane migration and promoting fugitive emissions through the vertical bores and through potential cracks in the geology following dewatering;
  - the preclusion of hydraulic fracturing potentially being applied to the proposed operations; and
  - any other matters arising following assessment of the above investigations.

It is expected that this review will be undertaken prior to the hearing.

I, therefore, request an extension of time of a further two months to allow full consideration and assessment of the application. This would extend the period to 7 May 2013. I cannot guarantee, however, that determination of the application will take place before then and a further extension period may be requested.

Yours faithfully

John Milne  
Senior Planning Officer

## Planning and Transportation

Appendix 5

Enquiries to : John Milne  
Direct Dial : 01324 504815  
Fax : 01324 504747  
e-mail : john.milne@falkirk.gov.uk

Our Ref : P/12/0521/FUL/JWM/ES  
Please quote in all correspondence

3 May 2013

RPS Planning & Development  
FAO Katharine Blythe  
Ocean Point One, 4th Floor  
94 Ocean Drive  
Edinburgh  
EH6 6JH

Dear Madam

Town and Country Planning (Scotland) Acts

**Development**      **Development For Coal Bed Methane Production, Including Drilling, Well Site Establishment at 14 Locations, Inter-Site Connection Services, Site Access Tracks, a Gas Delivery and Water Treatment Facility, Ancillary Facilities, Infrastructure and Associated Water Outfall Point**

**Location**            **Letham Moss Falkirk FK2 8RT**

**Application No.**    **P/12/0521/FUL**

I refer to your email dated 13 May 2013 which offers to further extend the statutory period for the determination of the above planning application so that it expires on 31 May 2013.

As you will be aware, Falkirk Council has commissioned AMEC Environmental and Infrastructure UK Ltd to peer review specific technical aspects of the proposals;-

- The possibility of works causing geological instability;
- The possibility of the process drawing water from more than the coal seam;
- The possibility of the process causing dewatering of local aquifers;
- The possibility of the process encouraging methane migration and promoting fugitive emissions through the vertical bores and through potential cracks in the geology following dewatering;
- The preclusion of hydraulic fracturing potentially being applied to the proposed operations; and
- Any other matters arising following assessment of the above investigations.

It is envisaged that the external consultant will respond in early course to the matters under consideration. Consequently, further information or clarification may be sought from your client to address these matters.

On 30<sup>th</sup> January 2013, Falkirk Council Planning Committee agreed that a hearing take place in relation to the application, prior to its determination.

No date has yet been set for the hearing. It is expected that the matters under consideration by AMEC will be completed to the satisfaction of the Planning Authority prior to any hearing date. Following the hearing, the application will be presented to Falkirk Council's Planning Committee for consideration. Owing to the matters that have been raised above it will not be possible to meet this revised determination date deadline offered by yourself of 31 May 2013.

I, therefore, request an extension of time of a further two months to allow full consideration and assessment of the application. This would extend the period to 7 July 2013. I cannot guarantee, however, that determination of the application will take place before then and a further extension period may be requested.

Yours faithfully

John Milne  
Senior Planning Officer

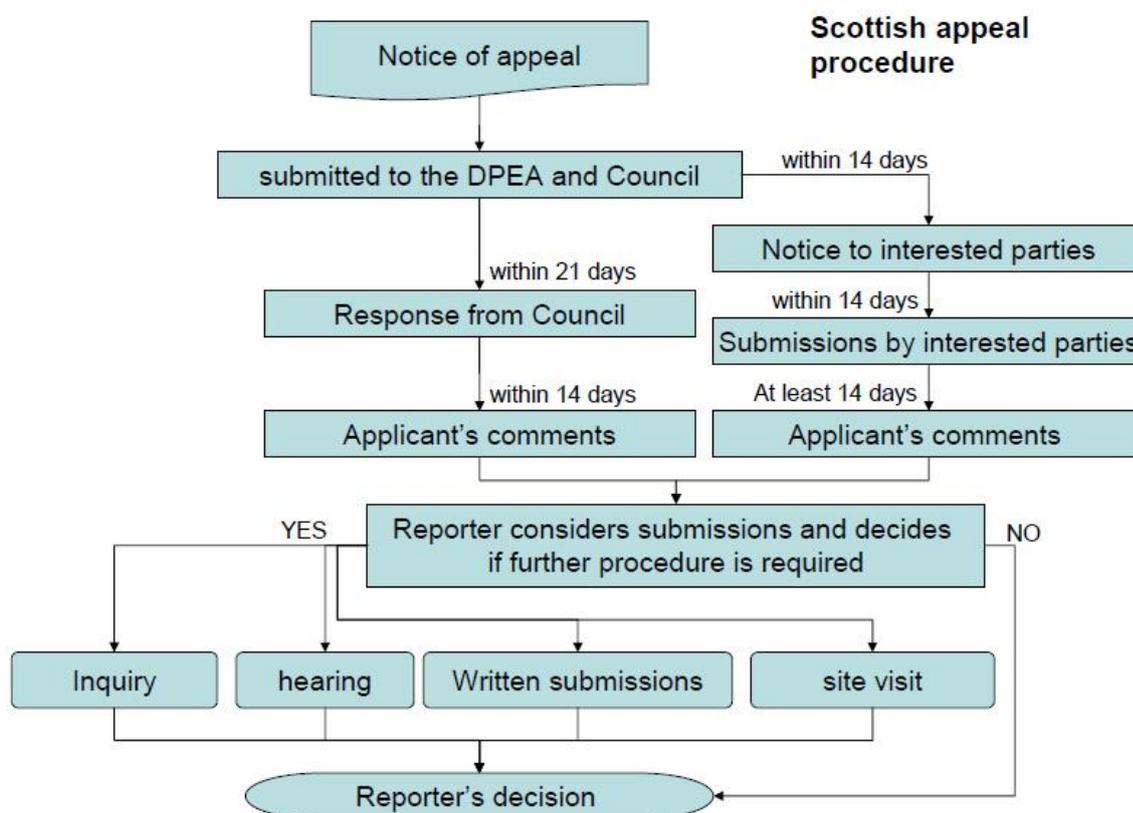
## DART PLANNING APPEAL: ANNEX TO ADVICE NOTE SCOTTISH PLANNING APPEAL PROCEDURE

Planning appeals are determined by the Scottish Ministers, or more usually by a reporter appointed by the Scottish Ministers.

As part of the planning reforms in 2009, a streamlined procedure was introduced for dealing with planning appeals:

- the emphasis in Scotland is on "front-loading" the procedure, i.e. requiring each party to provide full details of their case at the beginning.
- the reporter has very great control over procedure. After an initial round of written submissions, he or she decides what further evidence to hear, if any, on what matters, and by what means to take this further evidence.

We have prepared a diagram of this procedure – see below.



### Implications for the Council in handling the Dart appeal

- An appellant will usually include full details of their case, including all evidence they are going to rely on in their initial appeal submission. They have limited opportunities to introduce any other evidence at a later stage. Any further submission is generally at the request of the reporter.
- The Council's **full** response to the appeal must be submitted within 21 days from the date of notice of receipt of the appeal. If the Council is late in preparing its response, it runs the risk that the reporter will determine the appeal without considering the Council's response. There is very limited time to appoint external consultants to assist with the appeal.
- The appellant has the right within 14 days to respond to the Council's submissions.
- The Council must notify third parties who have commented on the application of the appeal, and they have the right to respond to the appeal within 14 days.

- The Council no longer has the right to insist a public inquiry or hearing to be held. However, it may make request the reporter to deal with particular matters by a particular procedure. The procedural options are:
  - inquiry (i.e. a formal hearing similar to court procedure in which parties provide witnesses to support their case and the witnesses can be cross-examined by other parties)
  - hearing (i.e. a structured discussion led by the reporter)
  - further written submissions (i.e. where there are particular matters still to be resolved the reporter might ask for parties to provide further written material)
  - site visit (which the reporter may carry out alone or accompanied by parties).
- Given the degree of public interest in the application, members may wish to consider asking the reporter to hold an inquiry. However, if members wish to make this request, they should identify the matters the reporter should consider at the inquiry, and also take into account the possible costs to the Council, since the Council would have to bear the costs of presenting its case, including providing witnesses and possibly legal representation.