

Friends of the Firth of Clyde

friendsoftheclyde@gmail.com

20Dec18

To: Mike Bland, Marine Scotland

Cc: CMPP; Craig Hatton, CEO North Ayrshire Council; James Miller, Head of Planning North Ayrshire Council; Graham Walker, Scottish Natural Heritage; Pamela Armstrong, SEPA; David Walker, SEPA, David Ogilvie, SEPA; Rita Holmes, Chair Fairlie Community Council; West KilbrideCC; Cumbrae CC; LargsCC; Kenneth Gibson, MSP; Ross Greer, MSP; Jamie Greene, MSP; Crown Estates ; James Allan, CEO RYA;

Dear Mr Bland,

Marine Scotland Licence application relating to proposed works at Clydeport Operations Ltd Hunterston Construction Yard, Fairlie.

Friends of the Firth of Clyde are a constituted association, with 4,286 supporters whom we speak on behalf of. We believe that although it was previously decided by North Ayrshire Council that an EIA would not be required before the after mentioned Planning Permissions were granted, its reasoning was flawed, and an EIA is now essential to allow you to properly consider this application and its environmental effects. Accordingly, we request that no decision should be made without this being done. In this connection we have a number of points we would ask you to consider:

1. We are aware that the applicant put in a request for a pre-screening to North Ayrshire Council and yourselves in 2012. However, this was limited to the potential extension of the Dock/Quay.
2. A formal EIA screening was undertaken by North Ayrshire Council on 19May2017 and by Marine Scotland on 13Jun2017. We note from study of the screening and consultees' screening opinion that the potential impact of the proposed works was not considered, as it should have been, that there has been failure by North Ayrshire Council to define the Hunterston PARC decommissioning port project and to apply wide scope and broad purpose during the interpretation of Schedule 1&2 project descriptions.
3. The context of the much larger Hunterston project as known today has become evident from the planning permissions and supporting documents and the Working Plan and supporting documents submitted to SEPA as part of the WML application. We enclose the following for your consideration: -
 - a. **Attachment A** - an explanatory email to us dated 3 December 2018 from SNH which demonstrates their position in Jan2017 viz, that despite the relatively minor nature of some of the individual components of the Hunterston project (extension and upgrade of dock/quay , installation of caisson gates) the overall project, which is now known to include the decommissioning of large marine structures, could have a

wide range of environmental impacts which might be best addressed by a formal EIA.

- b. **Attachment B** – SNH response to a freedom of information request outlining the SNH advice provided to NAC at a meeting on 23rd of Jan 2017 and NAC position at the end of that meeting.
- c. **Attachment C** – consultation response by email dated 26May 2017 to Marine Scotland from SNH which demonstrates that their opinion that an EIA was not required related to the proposed extension to the dock/quay and the construction of the caisson gates when taken in isolation and not as part of the much larger Hunterston decommissioning project; that SNH took the view that they could not at the time of the screening take account of these works as part of the larger project as the proposed decommissioning was at that stage only a “Pre-Application Discussion”.
- d. **Attachment D** – email dated 8 May 2017 from Marine Scotland to North Ayrshire Council demonstrating concerns about disjointed screening opinions and concerns that this was schedule 1 development due to the size of the vessels (20,000t) which would use the extended quay/jetty and function as a trading port.
- e. **Attachment E** – the screening opinion from Marine Scotland, which refers to the consultation response by SNH (Attachment B) and explicitly requires the applicant to request a further screening “if the proposed works represent the first phase of a larger development” and they “propose to increase, extend or alter the proposed works”.

4. Since this screening opinion the applicant has submitted 3 planning applications as per the table below:

Date	Application	Summary of Outcome
17Jan18	Planning Permission N/17/01273/PP – to vary the purpose to allow decommission of large marine structures. The application is explicitly for the Marine Construction Yard as demonstrated in the location site .	Granted 25Apr18
16Feb18	Planning Permission N/18/00132/PP - Erection of caisson gates and subsequent removal of existing bund	Granted 25Apr18
19Feb18	Planning Permission N/18/00134/PP Replacement and enlargement of existing quay. Also referred to as Jetty and Dock.	Granted 25Apr18

5. We are aware that the dredging proposal is central to the larger scheme now proposed. The extent of the larger scheme has only recently become fully apparent. This can be seen from the above planning permissions and their supporting documents, the papers recently submitted to SEPA as part of the WML application and in particular the working plan, and this dredging application. We are aware that the larger scheme cannot go ahead without the dredging. Accordingly the dredging proposal is central to the whole proposed development of the site. It will allow a substantial increase in the use of the site by vessels and marine structures and enable the dismantling and storing process proposed. Even if the dredging was not central to the larger scheme we consider that because of the potential effects on the environment set out in this letter an EIA should be required.

6. For reasons which we consider fundamentally flawed North Ayrshire Council did not require an EIA and that SNH did not consider an EIA necessary. Our Queen's Counsel, Douglas Armstrong has stated in an Opinion he provided to us:

"There is little in the letter of 19 May 2017 which indicates that the Council has focussed on the specific issue it had to consider. In the paper apart - its assessment of the characteristics of the development, location of the development and characteristics of the potential impact - there does appear to have been consideration of the relevant test by the Council. However, Counsel considers that the Council appears to have had no regard to the advice set out in the Circular [Planning Circular 1/2017] at paragraph 153. That provides that "... the significance of any effects must be considered in the context of the existing development. For example, even a small extension to an airport runway might have the effect of allowing larger aircrafts to land, thus significantly increasing the level of noise and emissions". Counsel also refers to the Baker case [2010 1 P&CR 4] at paragraphs 22 and 41 to 45 for a discussion on the reasons why regard should be had to this issue. There does not appear to be any consideration of this in the assessment by the Council and no reference to it in the submissions by the Applicant or SNH."

7. As Marine Scotland provided the screening opinion in June 2017, and the full nature and extent of the project was not confirmed by way of the formal Planning Permission, the Marine Scotland Screening Opinion as per Attachment D may well be flawed and Marine Scotland may consider comments made by our QC before progressing the current Marine Application:

"Counsel now turns to the Marine Scotland screening opinion set out in its letter of 13 June 2017. The letter sets out that Marine Scotland does not consider the proposal as falling under Schedule 1. The letter does not set out a basis for this conclusion. The letter sets out that the Project is considered to fall under paragraphs 1(e), 4(g), 11(e) and potentially 10(m) of Schedule 2 of the Marine EIA Regulations. Marine Scotland does not conclude that it is covered by paragraph 14.

The letter does set out the right test and a conclusion on that test but does not set out the basis for that conclusion. The letter identifies that any potential impacts can be identified and mitigated during the marine licensing process. There is no indication that Marine Scotland considered the implications of the dredging on increasing the use of the site and it would appear from the second page of the letter (second last paragraph) that Marine Scotland may have limited its considerations to those elements of the project which require its approval rather than considering the project as a whole.

Accordingly Counsel considers there are weaknesses in the approach adopted by Marine Scotland."

8. Friends of the Firth of Clyde **therefore formally request** Marine Scotland to reconsider its EIA screening opinion in light of the information now available on the larger proposal. In addition to this information there are other new matters (since the original screening was undertaken) which are materially significant including, but not limited to:
- a. No-one has assessed the cumulative effects of the larger Hunterston project.
 - b. No decision maker has so far considered the extent to which allowing dredging and the larger project will increase the number and type of vessels and marine structures that will use the site and what the significance of these uses might be on the environment. The significant environmental impacts of the dredging and the larger project will result in a substantially larger number, frequency and type of vessels and marine structures using the site. This will result in increased marine exhaust and pollution. The effects of dismantling and storing of degraded marine structures as well as shedding of toxic particulate which will be created by dismantling and movement of part or all of the marine structures has not been considered.
 - c. The SEPA WML application evidences unprecedented levels of toxic materials which during the decommissioning would without a doubt have an impact on this environmentally sensitive area.
 - d. The Southannan SSSI is designated for its saline pools and sand flat features. Contrary to information offered by Peel Ports, in its environmental review, dredging will take place in the intertidal zone above current MLWS tideline. The Joint Nature Conservation Committee SSSI selection criteria pay attention to soft coast SSSI seaward boundaries and note that removing feeder material from sedimentary SSSI boundaries may cause significant environmental impacts. Removal of the SSSI's notified feature is contrary to SNH EIA guidelines and an offence under the Nature Conservation Scotland Act 2004.
 - e. Many species which have been documented as living within the SSSI have not been referenced and therefore not considered as part of any previous Environmental Reviews or as part of the EIA screening including but not limited to:
 - i. Native Oyster biotopes
 - ii. Blue Mussel biotopes
 - iii. Maerl biotopes
 - iv. Seals haulout
 - v. Recent studies indicate the local water contain persistent hotspots of European Protected Species and are a critical habitat for harbour porpoise.
 - f. There are grave concerns about the movement of 200,000m³ of sand with anticipated impacts likely to include, but not limited to:
 - i. Sedimentation of priority marine features
 - ii. Release of toxins currently trapped in the sands from industrial waste pollution.

In conclusion, it is our firm belief that North Ayrshire Council got the EIA screening opinion wrong. We believe Scottish Natural Heritage and Marine Scotland may have been led to misunderstand or not take account of the need to consider the potential environmental impact of the proposed works in the context of the larger Hunterston project rather than in isolation. We appeal to Marine Scotland to consider carefully the points laid out by the Friends of The Firth of Clyde and ensure that all necessary laws and regulations are properly adhered to.

We also request that Marine Scotland now take this opportunity to insist that a full EIA be undertaken which will take account of ALL the terrestrial and marine proposals at this site.

Yours faithfully

Caroline Briggs, Cyndy Duff, Clare Baguley, David Nairn, Rosie Heenan, Vicki Kincaid, Natasha Kater,
and Bill and Elizabeth Thomson

On behalf of Friends of the Firth of Clyde.