



The Scottish Parliament
Pàrlamaid na h-Alba

Roseanna Cunningham
Cabinet Secretary for Environment, Climate Change and Land Reform
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh EH1 3DG

5 February 2019

Dear Cabinet Secretary,

Hunterston Decommissioning

I have previously written to you with concerns regarding the lack of rigour in consideration of proposals from Clydeport Operations, a subsidiary of Peel Ports, for the decommissioning of oil rigs at the Hunterston Peninsula in Ayrshire. A number of my constituents (organised as *The Friends of the Firth of Clyde*) have been working hard to establish why this could have been given planning permission without a full and specific Environmental Impact Assessment (EIA) being carried out. I am writing to ask for your intervention on this matter.

In January and February 2018, after several years of pre-application enquiry, Clydeport Operations applied to North Ayrshire Council (NAC) for 3 separate planning applications to undertake construction work to convert the Hunterston site into an oil rig decommissioning location. The Planning Applications were all approved by NAC in April 2018. NAC made a decision that these projects would not require an EIA, only a number of smaller assessments, to add to work done on historical planning applications on the site.

All developments falling within a description in Schedule 1 to the 2017 EIA Regulations require EIA. Developments of a type listed in Schedule 2 to the 2017 EIA Regulations will require EIA if they are "likely to have a significant effect on the environment, due to factors such as their size, nature or location". NAC deemed EIA to be unnecessary, despite - as my constituents have subsequently become aware via FOI requests- opinions to the contrary being expressed by Scottish Natural Heritage (SNH) and Marine Scotland (MS).

Ross Greer MSP

MG.21 Scottish Parliament, Edinburgh EH99 1SP
0131 348 6347 | ross.greer.msp@parliament.scot





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Local residents and environmentalists were initially surprised to hear that it was possible for Clydeport to be allowed to undertake works of this magnitude and of such a potentially hazardous nature (the Waste Management Licence application to SEPA suggests the handling of up to 250,000 tonnes of waste per year, including thousands of tonnes of special category waste) in a location immediately adjoining a Site of Special Scientific Interest (Southannan Sands SSSI) and so close to human habitation (the village of Fairlie lies less than half a mile away) without the need for an EIA. Residents made several FOI requests of the relevant regulatory authorities in an attempt to throw light on the decision-making process which led to this outcome.

These FOI requests and other evidence gathered have been quite revealing and have demonstrated that North Ayrshire Council, while appearing to carry out the appropriate consultations on the matter of EIA with the relevant consulting bodies, (SNH and MS) appeared not to heed their views when deciding that an EIA was not necessary. The fact that they issued their screening decision on 19th May 2017, while MS were still discussing the matter of EIA with SNH, (see attached email from MS to NAC) appears to both local residents and myself to show quite clearly that NAC had no intention of taking the views of MS in to account.

Specifically, my constituents have pieced together the following timeline of events from their research.

- In 2012 Clydeport approached North Ayrshire Council and Marine Scotland to request an EIA screening opinion on potential Dock / Quay extension. The advice from Marine Scotland was that they did not consider that an EIA was required for this project. The project was however specifically the extension to and upgrading of the existing quay and did not include the decommissioning project.
- In January 2017 a screening meeting took place at Clydeport Offices at Hunterston to talk about the previously discussed construction project of the Dock Extension with the introduction of caisson gates and the change of use to decommissioning. Present were Clydeport, NAC, SNH and Marine Scotland. Despite advice from SNH and possibly Marine Scotland to the effect that an EIA would be required, it appears from an FOI response from SNH (attached) that NAC took the decision at that meeting that a EIA would not be required, thus apparently not following any formal process in assessment of the characteristics or risks of the project as required by law.

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MG.21 Scottish Parliament, Edinburgh EH99 1SP
0131 348 6347 | ross.greer.msp@parliament.scot





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- In February 2017 Clydeport, through their agents, EnviroCentre, formally requested an EIA screening in writing.
- It appears from FOI (emails attached) that Marine Scotland attempted to have NAC agree to a joint screening process and response, to save time and ensure no conflict.
- In May 2017 – North Ayrshire Council issued their negative EIA screening opinion. There is no evidence that they consulted Marine Scotland.
- In June 2017 - *almost 4 weeks later* - Marine Scotland issued their negative screening opinion to EnviroCentre with the significant caveat that they understood this to be the first phase of a much larger project. It appears that they may have been led to believe, from the wording of the email sent to them by SNH on 26 May 2017 (attached), that decommissioning was only a preapplication discussion and therefore should be disregarded.
- In January 2018 the three planning applications, which had some changes since the EIA screening request of February 2017, were submitted. It would appear NAC did not seek to re-examine the screening opinion to ensure its validity.

This search for information and results of the FOI have taken many months to come through, meaning that my constituents were not in a position to lodge within the statutory time-limits a well-founded application for Judicial Review of North Ayrshire Council's decision not to call for EIA. However, they had gathered enough information via FOI by August 2018 to submit a request for review to Scottish Ministers for DPEA (Planning and Environmental Appeals Division) screening. This is still ongoing. Although submitted outwith the statutory time limit I understand that a decision was made to exercise discretion to consider this request regardless. It has a Case Number, EIA-NAY-042, and is being administered by Marion Hunt on behalf of the Scottish Government. My constituents have since then sent supplementary evidence and requested an update from Marion Hunt on several occasions, and have been advised that a Senior Planner is investigating this, and giving confirmation that the additional information has been received.

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MG.21 Scottish Parliament, Edinburgh EH99 1SP
0131 348 6347 | ross.greer.msp@parliament.scot





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I'd like to reiterate that I'm a strong supporter of the role of oil rig decommissioning as part of our transition to a green economy, but it must be done in a way that does not unnecessarily damage the environment or adversely impact communities. Having seen the information collected through FOI, there is a strong suggestion that the Application of Environmental Impact Assessment Regulation may not have been followed in this case. I would like to formally request a Ministerial Review and an Investigation into the planning permission to ensure appropriate laws have been followed.

Yours sincerely,

Ross Greer MSP

Ross Greer MSP

MG.21 Scottish Parliament, Edinburgh EH99 1SP
0131 348 6347 | ross.greer.msp@parliament.scot



[Redacted]

From: [Redacted]
Sent: 08 May 2017 09:29
To: [Redacted] @north-ayrshire.gov.uk
Cc: [Redacted]
ayrshire.gov.uk; MS Major Projects
Subject: RE: Hunterston Marine Construction Yard - Screening Request

Dear [Redacted]

I spoke with [Redacted] of Envirocentre on Friday and he advised that [Redacted] is yet to get a screening opinion. [Redacted] advised that NAC had been in touch with SNH and would be appreciative of sight of SNH's response. I would hope that SNH's consideration was of both marine and terrestrial elements in their response but if not perhaps we ought to get a joined holistic comment from SNH.

[Redacted] also advised that the quayside may be able to accept larger vessels and therefore fall into 'Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes' which would make the project schedule 1.

Please could you call to discuss the next steps as [Redacted] seemed concerned about the prospect of getting differing screening opinions or opinions, by dint of the time of introduction of the new regs, which relate to different Directives.

Kind regards,

[Redacted]

Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Direct Dial: [Redacted]
General Queries: +44 (0)1224 295 579
Fax: +44 (0)1224 295 524
Email: [Redacted] @gov.scot
Website: <http://www.gov.scot/Topics/marine>

Frequently
Asked
Questions

From: [Redacted] (MARLAB) On Behalf Of MS Major Projects
Sent: 24 March 2017 15:40
To: [Redacted] @north-ayrshire.gov.uk
Cc: MS Major Projects; [Redacted] [Redacted] MS Major Projects
Subject: RE: Hunterston Marine Construction Yard - Screening Request

Dear [Redacted]

I tried to call earlier.

I wonder if it would be possible to get North Ayrshire Council's view on the below and if you have communicated with SNH on the matter of the Screening opinion. You will recall we discussed that you would consider whether NAC was to approach SNH relating to the request from Envirocentre.

As a secondary query, MS-LOT is presently considering a request for a Screening Opinion for the Millport Flood Protection Scheme. Can you advise if NAC is considering, or has considered, the EIA requirements for this project and if the same joined up approach would be suitable?

Kind regards

[Redacted]

From: [Redacted] (MARLAB)
Sent: 20 February 2017 16:05
To: [Redacted] north-ayrshire.gov.uk
Cc: MS Major Projects; [Redacted]
Subject: FW: Hunterston Marine Construction Yard - Screening Request

Dear [Redacted]

Following on from the below correspondence and the attached Screening Request, I note the request to combine the screening of the terrestrial and marine aspects of this proposal. There are good practice reasons for trying to streamline the EIA process for the applicant, not least of which is the reduced burden placed upon our shared consultees. Would NAC be amenable to the joined up EIA screening approach requested by the applicant in their Screening request?

Happy to discuss further if you wish.

Kindest regards

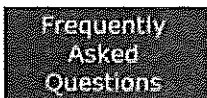
[Redacted]

[Redacted]

Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Direct Dial: [Redacted]
General Queries: +44 (0)1224 295 579
Fax: +44 (0)1224 295 524
Email: [Redacted] gov.scot
Website: <http://www.gov.scot/Topics/marine>



From: [Redacted] envirocentre.co.uk
Sent: 20 February 2017 15:03
To: [Redacted] north-ayrshire.gov.uk
Cc: [Redacted] (MARLAB); [Redacted] peelports.com; [Redacted]
Subject: Hunterston Marine Construction Yard - Screening Request

[Redacted]

Further to recent discussions please find attached a request for a formal screening opinion for Hunterston Marine Construction Yard along with supporting information in the form of an Environmental Review.

If you require any further information please do not hesitate to contact us.

Kind regards





[Redacted]

[Redacted]

Direct dial [Redacted]

Email: [Redacted]@envirocentre.co.uk



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-  Ecology
-  Environmental Impact Assessment
-  Water Management & Engineering



<https://www.bhf.org.uk/>
EnviroCentre's nominated charity
for 2017

Registered Office: EnviroCentre Ltd., Craighall Business Park, 8 Eagle Street, Glasgow G4 9XA.
t[Redacted] f +44 (0) 141 341 5045 w www.envirocentre.co.uk

Regional Offices:

Aberdeen: Banchory Business Centre, Burn o' Bennie Road, Banchory AB31 5ZU
Inverness: Alder House, Cradlehall Business Park, Inverness IV2 5G
Edinburgh: Suite 114, Gyleview House, 3 Redheughs Rigg, Edinburgh, EH12 9DQ

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Scottish Natural Heritage
Dualchas Nádair na h-Alba
nature.scot

Ms [REDACTED]

By email: caroline.briggs@gmail.com

Our Ref: SIR153226/A2810737

17 December 2018

Dear Ms [REDACTED]

Information Request – Peel Ports Decommissioning Project

Thank you for your information request, which we received on 16 November. We have considered your request under the Environmental Information (Scotland) Regulations 2004 ('the EIRs').

Your Request

"We understand that representatives from SNH attended a Screening Opinion Meeting with North Ayrshire Council some time around May 2017 to discuss the requirements for an EIA for the Peel Port Decommissioning Project - involving change of use of the site, extension of the dock and construction of caisson gates. Planning Applications:

17 Jan 18	Planning Permission <u>N/17/01273/PP</u> – 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.
16 Feb 18	Planning Permission <u>N/18/00132/PP</u> - Erection of caisson gates and subsequent removal of existing bund
19 Feb 18	Planning Permission <u>N/18/00134/PP</u> Replacement and enlargement of existing quay. Also referred to as Jetty and Dock.

1. I wonder if SNH could recall the advice provided at this time to North Ayrshire Council regarding the need for an EIA of this project.
2. Did SNH consider that this was an EIA application?
3. Could SNH provide any meeting minutes or written documentation they provided or were circulated to them at this time.
4. Does SNH recall the advice provided by any of the other agencies at this time?
5. Can SNH recall how the meeting was concluded.
6. Does SNH have any follow up communications with either North Ayrshire Council or any of the other agencies after the meeting regarding the need for an EIA of this project."

Our Response

We have carried out a detailed search of the information we hold, and the attached documents comprise all the relevant information we have.

Scottish Natural Heritage, Battleby, Redgorton, Perth, PH1 3EW
Tel 01738 444177 Fax 01738 458611 www.nature.scot

We have marked out (redacted) some parts of the documents where they contain personal data. Releasing the personal data into the public domain in response to an access to information request would breach the Data Protection Act 2018. We are therefore withholding the information under EIRs Regulation 11(2) (Personal data).

We have also responded to each of your specific questions below.

1. I wonder if SNH could recall the advice provided at this time to North Ayrshire Council regarding the need for an EIA of this project.

North Ayrshire Council are the competent authority for deciding on the necessity of an EIA. In this case they called a screening meeting to discuss the project and its potential impacts in order to help them come to a decision.

2. Did SNH consider that this was an EIA application?

At the meeting we did express the opinion that due to the scale, the introduction of new processes and complex nature of the entire project, that it would be sensible to request the production of an EIA. The structure of any EIA could be scoped to narrow down the range of environmental factors and impacts being considered.

3. Could SNH provide any meeting minutes or written documentation they provided or were circulated to them at this time.

We hold some brief hand written notes, but there was no written up notes or formal minute of the meeting. A copy of the note is included in the information provided – please see the last page of the information provided.

4. Does SNH recall the advice provided by any of the other agencies at this time?

We do not hold any information on this. I therefore need to explain that this means that EIRs Regulation 10(4)(a) (Information not held) applies to this part of your request.

5. Can SNH recall how the meeting was concluded.

At the conclusion of the meeting the Council indicated that they would consider the change of use application for the rig yard without an EIA of the entire project.

6. Does SNH have any follow up communications with either North Ayrshire Council or any of the other agencies after the meeting regarding the need for an EIA of this project.

We have provided copies of all of the relevant material we hold on this case.

How We Handled Your Request

We believe you have asked for environmental information as defined in the Environmental Information (Scotland) Regulations 2004 ('the EIRs'), so we are dealing with your request under those regulations. To be able to use the EIRs, we must apply an exemption under section 39(2) of the Freedom of Information (Scotland) Act 2002 ('FOISA'). The Scottish Information Commissioner's guidance recommends that public authorities apply this exemption to environmental information and handle requests under the EIRs. If you would like to find out more about the access to information legislation, there is a guidance booklet available on the Scottish Information Commissioner's website:

<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=5487&sID=5024>.

Review and Appeal

I hope this information meets your requirements but if you are dissatisfied with how we have responded to your information request, please write to us within 40 working days explaining your concerns. You can contact us at Battleby, Redgorton, Perth, PH1 3EW or email us at FOI@nature.scot. We will carry out a review of our response and contact you with our findings within 20 working days.

If you are not satisfied following this, you can make an appeal to the Scottish Information Commissioner. The Scottish Information Commissioner can be contacted at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

Online appeal service: www.itspublicknowledge.info/Appeal

Website: <http://www.itspublicknowledge.info/>

Telephone: 01334 464610

Yours sincerely

Rhoda Davidson

Rhoda Davidson
Information Officer
FOI@nature.scot

[Redacted]

From: [Redacted]
Sent: 20 February 2017 16:05
To: [Redacted] north-ayrshire.gov.uk'
Cc: MS Major Projects; [Redacted]
Subject: FW: Hunterston Marine Construction Yard - Screening Request
Attachments: 005 let Hunterston Screening Request.pdf; Hunterston Environmental Review Final.pdf

Dear [Redacted]

Following on from the below correspondence and the attached Screening Request, I note the request to combine the screening of the terrestrial and marine aspects of this proposal. There are good practice reasons for trying to streamline the EIA process for the applicant, not least of which is the reduced burden placed upon our shared consultees. Would NAC be amenable to the joined up EIA screening approach requested by the applicant in their Screening request?

Happy to discuss further if you wish.

Kindest regards

[Redacted]

[Redacted]

Marine **Scotland** - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Direct Dial: [Redacted]
General Queries: +44 (0)1224 295 579
Fax: +44 (0)1224 295 524
Email: [Redacted] @gov.scot
Website: <http://www.gov.scot/Topics/marine>

Frequently
Asked
Questions

From: [Redacted] envirocentre.co.uk]
Sent: 20 February 2017 15:03
To: [Redacted] north-ayrshire.gov.uk
Cc: [Redacted] peelports.com; [Redacted]
Subject: Hunterston Marine Construction Yard - Screening Request

[Redacted]

Further to recent discussions please find attached a request for a formal screening opinion for Hunterston Marine Construction Yard along with supporting information in the form of an Environmental Review.

If you require any further information please do not hesitate to contact us.





Kind regards

[Redacted]

[Redacted]

Direct dial [Redacted]
Email [Redacted] envirocentre.co.uk



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Registered Office: EnviroCentre Ltd., Craighall Business Park, 8 Eagle Street, Glasgow G4 9XA.
t[Redacted] f +44 (0) 141 341 5045 w www.envirocentre.co.uk

Regional Offices:

Aberdeen: Banchory Business Centre, Burn o'Bennie Road, Banchory AB31 5ZU
Inverness: Alder House, Cradlehill Business Park, Inverness IV2 5G
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From: [Graeme Walker](#)
To: ms.majorprojects@gov.scot
Subject: RE: Hunterston
Date: 26 May 2017 14:54:53

Hi Kerry

Thank you for your prompt re the above screening.

I can confirm that if we consider the marine licencing application for the works associated with the construction of the new lock gates and the extension of the pier on their own, then we can be confident about the scale and location of the impacts and it could be assessed as not requiring full EIA.

My frustration remains that we were told by the applicant that works were related to a larger project that would involve a change of use at the site. The re-development of the rig yard into a decommissioning facility could introduce a range of operations and processes which could potentially have a much greater impact and the overall project could well justify the request for EIA.

However, this larger project remains a “pre-application discussion” over a potential project and on balance we should simply consider the Marine issues at this stage and consider the assessment of the “change of use” under planning legislation should those proposals be brought forward at some point in the future.

I hope this helps.

Graeme

Graeme Walker

Graeme Walker, Operations Area Officer, Strathclyde & Ayrshire, Scottish Natural Heritage, Russell House,
King Street, Ayr. KA8 0BF

01292 270760

www.snh.gov.uk <<http://www.snh.gov.uk/>>

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From: [REDACTED]@gov.scot [mailto:[REDACTED]@gov.scot] On Behalf Of ms.majorprojects@gov.scot
Sent: 26 May 2017 12:53
To: [REDACTED]
Cc: ms.majorprojects@gov.scot; Michael.Bland@gov.scot
Subject: RE: Hunterston

Dear Graeme

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

I refer to our telephone conversation earlier today together with your previous correspondence with our Mike Bland and should be grateful if you would provide your views as to whether the proposed works at Hunterston are an EIA project.

As discussed, North Ayrshire Council have issued their screening opinion and we are now being pressed by the applicant to issue our opinion. I would appreciate therefore if you would provide your views as soon as possible.

If you require any further information or wish to discuss matters further please know.

I look forward to hearing from you.

Kind regards

Kerry Bell
EIA/HRA Advisor

Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Direct Dial: +44 (0)1224 295 486

General Queries: +44 (0)1224 295 579

Fax: +44 (0)1224 295 524

Email: <<mailto:kerry.bell@gov.scot>> kerry.bell@gov.scot

Website: <<http://www.scotland.gsi.gov.uk/marinescotland>>
<http://www.gov.scot/Topics/marine/Licensing/marine>

<<http://www.gov.scot/Topics/marine/Licensing/marine/MLFAQ>>

From: Bland M (Michael) (MARLAB)
Sent: 12 May 2017 10:54
To: graeme.walker@snh.gov.uk
Cc: gordoncraig@north-ayrshire.gov.uk; MS Major Projects
Subject: Hunterston

Hi Graeme,

As discussed, I understand that NAC sought a view on the Hunterston project from you, can I please ask that you copy any response to the MS major projects box (copied)?

Thanks

mike

Mike Bland
Marine Licensing Section Head

Marine Scotland - Marine Planning & Policy

Scottish Government | Marine Laboratory | 375 Victoria Road | Aberdeen | AB11 9DB

Direct Dial: +44 (0)1224 295 408

General Queries: +44 (0)1224 295 579

Fax: +44 (0)1224 295 524

Email: michael.bland@gov.scot

Website: <<http://www.gov.scot/Topics/marine>> <http://www.gov.scot/Topics/marine>

<<http://www.gov.scot/Topics/marine/Licensing/marine/MLEAQ>>

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