

21stJuly19

Dear Marine Scotland,

EXTREMELY URGENT, REQUIRES IMMEDIATE ATTENTION

Friends of the Firth of Clyde –Marine Licence Applications for Hunterston Marine Construction Yard Redevelopment - Screening Request 2019

We acknowledge your email of 16 July 19 and note what you write.

We would refer you to our email to Mike Bland of 20th December 2018 a copy of which (*Attachment A*). In our email we detailed at length our concerns regarding the above matter and our view that an EIA was now essential and fully justified, and asked that we be informed of any updates to this project. We were reassured on this latter point by separate email correspondence between our Chairperson Caroline Briggs and Mike Bland (*Attachment B*) and MS-LOT's letter of 19th February 19 (*Attachment C*).

Bearing in mind the terms of the email correspondence mentioned above and the significant public interest in this project we are surprised and disappointed that MS have not kept us abreast of developments brought to our attention only by an EIR response from the Scottish Government (*Attachment D*) and have not contacted or consulted with either ourselves or Fairlie Community Council in connection with the applicants' fresh Screening Request, which appears to have been lodged in early March 19, but on the new MS website. All that we have received, in response to our email of 11th July19 asking for clarification of the current position (*Attachment E*), is your email of 16th July19 (*Attachment F*) which essentially gives us no meaningful information and makes it clear that it is not regarded as appropriate for us to know what is happening. We find that very hard to accept on a matter which is so important to our local community, particularly as it is not in keeping with the spirit of the email correspondence mentioned above and in view of the migration of information to the new Marine Scotland website which has made the tracking of information relating to this matter problematic.

There are huge levels of public concern about this industrial development and the impact it would have on the environment. Peel were obliged to set up a formal community liaison committee which met on 18March19 and have also undertaken a 3-day consultation (4-6thJun19) locally as well as specific meetings with the community councils. It is impossible however to understand how meaningful consultation could have been taking place with the community and the community councils, when this new EIA screening has not been drawn to the communities' attention during these formal discussions and questions about the MS licence application were evaded by the applicant, with the applicant briefing the community to the effect that they did not know what was happening with the licence applications.

That being said, we have now had the opportunity to discuss matters with our legal advisor, Douglas Armstrong QC and the purpose of this email is to raise the following, urgent concerns, some of which we believe need to be addressed before consideration of the screening request submitted by Peel Ports in March 19, viz:-

1. It is simply **not possible** for Marine Scotland to reach a fully informed view on a screening opinion based on the supporting information provided by the applicant (*Attachment G- EnviroCentre letter dated 15th Feb 2019*), which is sketchy and lacking in meaningful technical detail. Marine Scotland should be asking for more information, specifically, but not limited to:
 - a) Details of the proposed methods of construction, to which we know there have been significant changes. **This is essential to a proper understanding of the potential environmental impact of the construction work.**
 - b) The **cumulative impact** of this now significantly larger development (eg a three-fold increase in dredging is now required) which would indicate a change in usage patterns and a correspondingly greater potential for environmental damage over the site as a whole. **Nowhere in Attachment G is this addressed.** The applicant improperly offers *Attachment G* and EnviroCentre's 2017 "desk-top" Environmental Review http://marine.gov.scot/sites/default/files/hunterston_-_environmental_review_-_february_2017_1.pdf as a panacea to as yet undetermined environmental issues.
 - c) The tidal information provided by the applicant, which is inadequate, missing in part or may we believe have been deliberately removed to reduce attention to the SSSI boundary during the planning and licensing processes.
 - d) The SSSI boundary information, which is inaccurately described. The SSSI boundary indicated on the plans submitted by the applicants is contrary to Marine Scotland's own definition of marine SSSI boundaries. It is also contrary to SNH and JNCC's advice on sedimentary and dynamic SSSI boundaries:
 - i) Evidence contained within EnviroCentre's otherwise outdated and wholly inadequate intertidal survey contained in the 2017 Environmental Review, indicate that the applicant is aware of the actual level of MLWS (0.4m), which is contrary to information submitted in the applicants planning submissions and drawings.
 - ii) We have completed a number of scientifically credible surveys of the SSSI and MLWS tideline. The boundary issues raised in this application have already been accepted by statutory authorities during a retrospective planning application to extend a pacific oyster farm into, beyond and along the edges of disputed SSSI boundary and current MLWS tideline. This is summarised in *Attachment H* with commentary and the applicants' own diagrams.
- 2) The gradient on the dredge pocket has changed to a steeper 1:4 gradient which will exacerbate slope failure along the disputed SSSI boundary. Additionally, the 1:4 slope and dredge pocket will receive runoff from the SSSI's Gill Burn which will accelerate and result in net loss of notified feature from the SSSI sedimentary system.
- 3) We strongly believe that the latest dredging proposal is an underestimate and forerunner to a larger dredging campaign to enable the proposed decommissioning site to receive financially viable decommissioning projects. Due to the resulting threat of significant environmental impacts we believe it is wholly unacceptable for this proposal to be considered, as suggested by

the applicant in *Attachment G*, during a future dredge license application and must be considered within the context of a full Environmental Impact Assessment.

- 4) The applicant has failed to address the existence and threats to OSPAR and Habitats Directive-listed Priority Marine Features (native oysters, blue mussel) which are located in close proximity to the development and dredge pocket.
- 5) The Clyde Regional Marine Plan (CMPP, 2019) shows Southannan Sands SSSI is a protected eelgrass meadow. It is a rare 'natural carbon sink' that collects and stores CO₂. Like peat moors and forests it is one of nature's weapons against climate change.
- 6) The Shellfish Protected Waters designation was set up via Water Framework Directive. Changes in industrial activity, dredging etc, will affect the quality of the water. Any development that has the potential to impact the Shellfish Protected Waters must be considered to have a significant environmental impact, and ultimately must be legislated for via EU Water Framework Directive.
- 7) The current screening request and background material fail to identify the true purpose of the development. If this purpose was 'properly' considered in the context of EU and devolved EIA legislation it would be considered as Schedule 1 paragraph 8(b) development. It is clear from the applicants' drawings that vessels using the proposed new pier will be above threshold values contained in legislation. All development components including dredging proposals are for a development which will accept vessels that would trigger a mandatory EIA.
- 8) When initial consideration was given to EIA screening it was assumed that the applicant would be applying for a PPC licence from SEPA. It now transpires that they have applied for a WML. Considering the significant quantities of dangerous waste materials, this should be a key consideration.
- 9) It is vital that any decision made by Marine Scotland takes account of and fully reflects the following recommendation at p.176 of the Report on Examination (Attachment I) of the proposed North Ayrshire Local Development Plan 2, submitted by the Reporters to the Scottish Government on 10th July 19:

*"Hunterston is an area where **co-ordinated action and a masterplanned approach** is required. We would expect all development to take account of the special environmental and safety constraints of Hunterston including detailed transport studies to identify options for enhancing port/rail/road accessibility, and management of impact of uses on nearby communities and the natural and built heritage assets in the area."*

In other words, **Peel must not be allowed to avoid an EIA by "salami-slicing"** ie by obtaining licences on a piece-meal basis for the individual elements of their overall plans for the Hunterston peninsula. **The cumulative impact of their proposals as a whole must be the measure used by Marine-Scotland but how can MS make a full assessment of the cumulative impacts without the full facts of the whole development?** Eg *Attachment G* refers to a number of further licences which will be applied for in due course, including: An application to disturb European Protected Species (EPS Licence) / A separate dredging application for the caisson gates / A Sampling Plan for contamination of dredged material will be submitted to Marine Scotland for approval / a construction licence application / an Environmental Management Plan (CEMP)

We are also aware that North Ayrshire Council have responded (*Attachment J*) to the request from Marine Scotland for consultation on the screening request. However, they do not appear to have fully considered the broad scope of the application nor the cumulative impact in their response. The Report to Planning Committee (*Attachment K*) in respect of Planning Application 17/01273/PP, Section 2 Paragraph 2 - Consultations and Representations, states:

“An EIA Screening Request was submitted on February 2017 where it was determined an EIA was not required”.

What is not explained, however, is that this ‘determination’ was made under the ‘delegated powers’ of the NAC Planning Officers. Fairlie Community Council formally complained at the time that such a critical decision should have been made by the full Planning Committee if not the full Council. FCC’s complaints were ignored by the officers and no reference to FCC’s serious concerns in this respect is included in the Report. Similarly, the Report glosses over and fails to mention the concerns being expressed by SNH and other government bodies that EIA should be considered. These concerns were, of course, only discovered after extensive FOI enquiries. It seems clear that NAC’s Planning Committee were seriously misled in relation to that application - leading to the granting of Planning Consent in wholly inappropriate circumstances.

We are also baffled as to why North Ayrshire Council have not communicated their response to the EIA screening to elected members, nor requested that the response be ratified by the planning committee in light of the commitment to transparency they have undertaken to us with this project.

In summary a) it is our view that Marine Scotland cannot properly consider a screening request until they have received the additional information and clarification outlined above b) it is our view that in light of the abovementioned LDP2 direction, if and when the applicants do provide such information the need for a “Masterplanned” and co-ordinated approach means that Marine Scotland should consult with the community before issuing a screening opinion and c) we would ask that in considering their screening opinion Marine Scotland take in to account our objections as set out in *Attachment A and in this email*.

Could you please acknowledge receipt of this email and confirm a) that it has been passed to the officer in charge of this case and b) that all of the above matters will be considered before a screening opinion is issued?

Yours faithfully

Cyndy, Caroline, Clare, David, Jackie, Rosie

On behalf of Friends of the Firth of Clyde.