

**TOWN AND COUNTRY PLANNING (APPEALS)
(SCOTLAND) REGULATIONS 2013**

**APPEAL UNDER SECTION 47(2) OF THE TOWN
AND COUNTRY PLANNING (SCOTLAND) ACT
1997 BY DART ENERGY (FORTH VALLEY) LTD
CONCERNING COAL BED METHANE
PRODUCTION, INCLUDING DRILLING, WELL
SITE ESTABLISHMENT AT 14 LOCATIONS AND
ASSOCIATED INFRASTRUCTURE AT LETHAM
MOSS, FALKIRK, AND POWDRAKE ROAD,
NEAR AIRTH, PLEAN**

(REFERENCES PPA-240-2032 AND PPA-390-2029)

WRITTEN RESPONSE

for

CONCERNED COMMUNITIES OF FALKIRK

regarding

**NATIONAL PLANNING FRAMEWORK 3 AND
SCOTTISH PLANNING POLICY 2014**

Concerned Communities of Falkirk (CCoF) make the following written response:

Summary of main points

1. The new Scottish Planning Policy (“SPP”) supports the position that CCoF have taken throughout their involvement with Dart Energy (“Dart”) and its proposed development, before and during the appeal proceedings, namely that:
 - a. before planning permission can be granted, a risk assessment must be carried out, in consultation with local communities, identifying all potential hazards, including those regulated under environmental and

- other legislation, and adequate buffer zones should be proposed (SPP para. 245);
- b. Dart should disclose sufficient information to enable a full assessment of all those hazards (SPP para. 242); and
 - c. Dart should be as clear as possible about the minimum and maximum extent of possible operations (i.e. number of wells and duration) (SPP para. 240).
2. The purpose behind the most recent changes to the SPP in relation to unconventional oil and gas is helpfully set out in a letter from the Minister for Planning and Local Government to Friends of the Earth Scotland (attached as Appendix 1 to this response), which was issued the same day as the SPP was published. That letter, in particular its acknowledgement that “this is an emerging area of scientific research, where evidence about potential health impacts is developing”, corroborates CCoF’s position that a precautionary approach is necessary (see CCoF Closing Submissions paragraph 4).
 3. On behalf of local communities CCoF have repeatedly asked Dart for information in relation to points b and c above, but Dart has failed to provide it, with the argument that it will either provide that information to SEPA and other regulators after the planning decision, that it is not required to make available such information to regulators under any environmental or other legislation, or that the information is commercially confidential.
 4. In particular, although Dart’s website and documents contain some information, key data about the full chemical composition of the produced gas, the produced water and the post-treatment sludge (i.e. some of the major ‘sources’ in a source-pathway-receptor risk analysis) – as well as key data about the geological formations (i.e. one of the major ‘pathways’) – have not been forthcoming, even after all the inquiry and hearing sessions, so a risk assessment of all the potential hazards has not been possible. Dart has continued to be evasive and ambiguous about the extent of possible future operations at Airth.

5. Dart has had every opportunity to gather (if necessary) and provide the necessary information about potential risks, and develop a comprehensive risk assessment in consultation with local authorities and communities, as envisaged by SPP, but has failed to do so. Its appeal should therefore be refused.

National Planning Framework 3

6. *A low carbon place* - NPF3 emphasises that Scotland should be a low carbon place and that is one of the specific outcomes referred to – see page 2 and Chapter 3. Coal bed methane is a fossil fuel, producing significant amounts of carbon dioxide when burned, so it cannot be described as a low carbon fuel. When emitted to the atmosphere unburned, its impact as a greenhouse gas on climate change substantially greater than that of carbon dioxide. It can play no part in the Scottish Government’s vision of Scotland as a low carbon place. Therefore to grant planning permission to this development would be contrary to the aspirations of Chapter 3.
7. The relevant passages regarding coal bed methane in NPF3 are:

“4.26 Reserves of coal bed methane in the Scottish midland valley (Central Belt) could contribute to secure energy supplies in the medium term but will require careful planning to avoid negative environmental and community impacts from extraction activities. A framework for this is set out in the Scottish Planning Policy. There is also a continuing need to actively address the impacts of past uses of the land, including minerals extraction, through restoration and enhancement. Poor management of restoration obligations has left a legacy of opencast coal sites in South Lanarkshire, East Ayrshire, Fife and elsewhere, requiring intervention to ensure that they are properly restored. The Scottish Mines Restoration Trust has been established to help communities and other stakeholders involved in restoring open-cast coal sites across Scotland to bring together viable restoration plans.” [underline added]
8. CCoF make the following points arising from paragraph 4.26:
 - a. It is recognised that coal bed methane “could” contribute to secure energy supplies “in the medium term”. While paragraph 235 of SPP recognises the “national benefit of indigenous coal, oil and gas production in maintaining a diverse energy mix and improving energy

security” it should be noted that the NPF3 makes this specific statement about coal bed methane that (should other criteria be met – see paragraph b. below) it could contribute in the medium term. This supports CCoF’s position that there is no immediate need for Dart’s development near Falkirk and therefore it should be refused. Further, if there is no immediate need for coal bed methane, in view of the uncertainties as to the environmental effects focused in the evidence for CCoF and others, it is submitted that if coal bed methane is to be developed, it would be better developed in the future, allowing time for the scientific uncertainties to be resolved.

- b. The paragraph refers to the requirement for “careful planning to avoid negative environmental and community impacts from extraction activities”. CCoF submit that this reinforces the case made at the inquiry that if there remains a risk of negative impacts on the environment and community impacts then, applying the precautionary principle, the application should be refused.

Scottish Planning Policy 2014

9. *A low carbon place* - Paragraphs 17 to 19 support NPF3’s objective to “facilitate the transition to a low carbon economy”. Methane, which when burned produces significant amounts of carbon dioxide (more than half as much as e.g. coal) and, if emitted unburned, is a substantially more potent greenhouse gas than carbon dioxide, does not facilitate but delays the transition to a low carbon economy. Therefore to grant planning permission to this development is contrary to the aspirations of “Outcome 2: A low carbon place”.

10. The relevant passages regarding coal bed methane extraction in SPP are:

“240. For areas covered by a Petroleum Exploration and Development Licence (PEDL), local development plans should also:

- ...;
- encourage operators to be as clear as possible about the minimum and maximum extent of operations (e.g. number of wells and duration) at the exploration phase whilst recognising that the factors to be addressed by

applications should be relevant and proportionate to the appropriate exploration, appraisal and production phases of operations;

...

242. Operators should provide sufficient information to enable a full assessment to be made of the likely effects of development together with appropriate control, mitigation and monitoring measures. This should include the provision of an adequate buffer zone between sites and settlements, taking account of the specific circumstances of individual proposals, including size, duration, location, method of working, topography, the characteristics of the various environmental effects likely to arise and the mitigation that can be provided.

245. To assist planning authorities with their consideration of impacts on local communities, neighbouring uses and the environment, applicants should undertake a risk assessment for all proposals for shale gas and coal bed methane extraction. The assessment can, where appropriate, be undertaken as part of any environmental impact assessment and should also be developed in consultation with statutory consultees and local communities so that it informs the design of the proposal. The assessment should clearly identify those onsite activities (i.e. emission of pollutants, the creation and disposal of waste) that pose a potential risk using a source-pathway-receptor model and explain how measures, including those under environmental and other legislation, will be used to monitor, manage and mitigate any identified risks to health, amenity and the environment. The evidence from, and outcome of, the assessment should lead to buffer zones being proposed in the application which will protect all sensitive receptors from unacceptable risks. When considering applications, planning authorities and statutory consultees must assess the distances proposed by the applicant. Where proposed distances are considered inadequate the Scottish Government expects planning permission to be refused.

246. Conditions should be drafted in a way which ensures that hydraulic fracturing does not take place where permission for such operations is not sought and that any subsequent application to do so is subject to appropriate consultation. If such operations are subsequently proposed, they should, as a matter of planning policy, be regarded as a substantial change in the description of the development for which planning permission is sought or a material variation to the existing planning permission. Where PEDL and Underground Coal licences are granted for the same or overlapping areas, consideration should be given to the most efficient sequencing of extraction.”
[underline added]

11. CCoF make the following points arising from paragraphs 240, 242, 245 and 246:

a. Paragraph 240 states that “operators should be as clear as possible about the minimum and maximum extent of the operations (e.g.

number of wells and duration) at the exploration phase” or, as the Minister for Planning and Local Government puts it, that they should be “upfront about their plans” (Appendix 1). Yet even as they apply to go into commercial production, Dart remain evasive about their plans for full field development. As was submitted for CCoF in evidence and in written submissions this application is the ‘thin end of the wedge’ and if granted would be the opening for more applications for further wells as the development proceeds. The evidence on the future extent of Dart’s operations was contradictory and Dart’s position remained unclear. In these circumstances it is clear that Dart has not complied with the requirement of paragraph 240 and indeed was evasive in the evidence given on this aspect and in response to cross examination.

- b. Paragraph 242 makes clear that operators should provide sufficient information to enable a full assessment of the likely effects of development to be made. In order for such an assessment to be “full”, all available and relevant data need to be disclosed. However, as set out in detail in CCoF’s written submissions, reiterated herein, Dart failed to provide sufficient information to enable the Reporters to make a full assessment.
- c. Paragraph 245 refers to the requirement for a risk assessment and, in addition, requires that risk assessment to be developed in consultation with local communities (as well as statutory consultees). Appendix 1 makes clear that the risk assessment contemplated by the SPP is an “additional requirement” over and above environmental impact assessment, although as the SPP states these two types of assessment can be integrated if appropriate.
- d. For the reasons advanced at the inquiry no proper risk assessment has been presented to the Reporters. Dart’s Written Submission on NPF3 & SSP (2014) does not advance this point. In particular there is no valid risk assessment because of Dart’s failure to provide available and relevant information in the Environmental Statement (ES) or at the inquiry regarding:

- i. chemical composition of substances to be used in the methane extraction process;
 - ii. the chemicals (including endocrine disrupters and other toxins) that will be in the extractive waste products and subsequently disposed of by road tankers to an unspecified landfill or by waste water discharged to the tidal waters of the River Forth;
 - iii. the underlying geological formations – detailed submissions were made on this in the final written submissions.
- e. In the absence of such information, there could be no valid risk assessment as required by the SPP and in so far as Dart might claim that they have done risk assessments (see below), the Reporters have not been presented with details of any such purported “risk assessments” so are not in a position to make an assessment as to their validity.
- f. In so far as Dart has provided some information about some risks, much of that information – for example on hydraulic conductivity of geological formations and PM_{2.5} concentrations – is based on theoretical models rather than on actual data or signal testing that would constitute the “evidence-based approach” set out in Appendix 1.
- g. In so far as Dart has proposed buffer zones, the information provided is not a sufficient evidence base for buffer zones of such limited extent. Failing sufficient information and detailed justification of distances selected, a precautionary approach to buffer zones would be required, i.e. they would need to be much larger. As any proposed distances are inadequate, planning permission should be refused.
- h. Additionally, any such purported risk assessments were not “developed in consultation” with local communities. The local community was not involved in the preparation of the ES on which Dart relies as “the risk assessment”, which the SPP clearly contemplates should be the case. Furthermore the community was excluded from discussions between

Dart, the local authorities and AMEC on the issues relating to the underground risks and in the production of the agreed ‘joint statement of common understanding’.

- i. Paragraph 245 requires that:

“The assessment should clearly identify those onsite activities (i.e. emission of pollutants, the creation and disposal of waste) that pose a potential risk using a source-pathway-receptor model and explain how measures, including those under environmental and other legislation, will be used to monitor, manage and mitigate any identified risks to health, amenity and the environment.”

The obligation that the assessment “should clearly identify” activities that pose a potential risk must mean that there should be a full disclosure of available and relevant information from which the Reporters should then be able to determine whether or not the activities do pose such a risk and to determine if this risk has been properly managed and mitigated. Throughout the appeal proceedings Dart has consistently expressed the view, in response to requests by CCoF and others, that only such information need be disclosed and only such measures need be taken as the planning regime requires, and that risks covered by environmental and other legislation can be dealt with by SEPA in its licensing role under the Pollution Prevention and Control regime, the Radioactive Substances Act and/or the Controlled Activities Regulations, by the Health and Safety Executive etc. Dart’s position is therefore contrary to the SPP which requires that all available and relevant information should be disclosed so that risks can be identified and assessed, and mitigation proposed, before planning permission is granted, even if they are regulated under other legislation.

- j. Paragraph 245 refers to “risks to health” – this was not an aspect addressed by Dart in their evidence; all they did was to oppose the evidence from CCoF on this issue. The Reporters should therefore

accept the evidence given for CCoF at the inquiry regarding the potential health impacts.

k. In an email to DPEA dated 1 July 2014, Jessel Gair for Dart wrote that:

“For this application and as a matter of standard company policy, we have carried out extensive risk assessments considering the impacts on local communities, neighbouring uses and the environment. As a result of this assessment, we have incorporated buffer zones for sensitive receptors based on science to guard these against any potential unacceptable risk. Examples of these, in addition to measures to monitor, manage and mitigate risks to health, the amenity and the environment were examined during the Inquiry Sessions at length. For example, drilling operations and associated activities would only be carried out where it can be assured that it would fall within acceptable limits with regard to nearby receptors.”

The Reporters should not accept the generality of this statement nor the generality of statements at paragraphs 1.22 and 1.23 and other paragraphs in the Written Submission from Dart on the NPF3 & SPP (2014) (see paragraph 12 below). The Reporters should confine their consideration to the evidence that was led at the inquiry sessions and given at the hearing sessions. Much of Dart’s evidence was based on data or documents that were not before the inquiry and should therefore, as submitted in CCoF’s closing submissions, be disregarded. In so far as Dart claims to have carried out risk assessments, they do not cover all the potential risks to all sensitive receptors. In so far as they have proposed buffer zones “based on science”, they are again based on information that has not been fully disclosed.

The available information includes maps showing the location and direction of the proposed drilling lines, some of which were intended to run under the built area at Kinnaird Village. Even though this drill line has been dropped, the fact that Dart intended to drill in this area without having ascertained that there was a community at Kinnaird Village does call into question the competence of any purported risk assessment.

1. *Hydraulic fracturing [Paragraph 246]*– while Dart state that there is no intention to carry out hydraulic fracturing, in the event that planning permission is granted, in accordance with paragraph 246 there should be a specific condition prohibiting hydraulic fracturing without the grant of a new planning permission.

Specific points arising from Dart's Written Submission on NPF3 & SPP (2014)

12. CCoF make the following points in response to Dart's submission circulated on 15 July 2014:
 - a. Paragraph 1.2 - CCoF strongly disagree with the generality of Dart's contention that NPF3 and SPP are supportive of the development, for the reasons given above.
 - b. Paragraph 1.5 - Dart highlights that the Scottish Government's Electricity Generation Policy Statement "sets out a continued and important role for thermal generation in Scotland's future energy mix". This is irrelevant. Dart's evidence at the inquiry was that it proposes to feed all the gas it produces into the local gas distribution network and it will not be used for electricity generation.
 - c. Paragraph 1.6 - CCoF take issue with the generality of the statements made in the last part of paragraph 1.6. Because of the lack of key information on risks as set out above and in CCoF's evidence, Dart was unable to demonstrate that its proposed development will cause no unacceptable environmental impacts and no loss of amenity for local communities.
 - d. Paragraph 1.7 - Dart submits that "there is nothing within NPF3 that would justify the withholding of planning permission for the proposed development". CCoF disagree: as submitted above, the development would fundamentally conflict with the Scottish Government's aspiration that Scotland should be a low carbon place.

- e. Paragraph 1.8 - Dart draws attention to the designation of the Grangemouth Investment Zone as a national development, and states that coal bed methane “can be used as an alternative energy source to mains gas”. There was no case for Dart at the inquiry or hearing sessions that any CBM extracted at Falkirk would be used as an energy source for Grangemouth. It would require evidence on whether or not the proposed developments in the new investment zone would in fact want or be able to use energy from CBM. Dart’s evidence was that it proposes to feed all the gas it produces into the local gas distribution network, so it will become mains gas. It is therefore not fair or reasonable to raise this issue at this late stage. The Reporters should disregard paragraph 1.8.
- f. Paragraph 1.10 - CCoF do not agree with the submission that the evidence on the Scottish Government’s January 2014 position statement should be disregarded. That position statement provides useful background information, as does Appendix 1, about how the more cautious approach adopted in the SPP evolved and how the SPP should be interpreted.
- g. Paragraph 1.15 - CCoF strongly disagree with Dart’s contention that the proposed development has fully addressed all the matters listed at SPP paragraph 237, for all the above reasons.

Also, as a matter of fact, those matters do not “remain unaltered from the earlier draft SPP (paragraph 172)”. There are significant changes.

- h. Paragraphs 1.24-1.39 (*Emerging Falkirk and Stirling Development Plans*) - The Reporters should exclude from consideration the comments made by Dart in these paragraphs in respect of the emerging local development plans. These plans were considered in the inquiry session with evidence and cross examination. In these circumstances it is not fair or reasonable to allow Dart to make further written submissions about these plans which cannot be subject to cross examination.

Conclusion

13. For all the above reasons CCoF submit that the new NPF3 and SPP support their written submissions that planning permission should be refused.