

**DPEA Reference:
PPA-390-2029 and PPA-240-2032**

**Proposed Development for Coal Bed Methane production, including Drilling, Well Site Establishment at 14 locations, Development of Inter-site Connection Services, Site Access Tracks, a Gas Delivery and Water Treatment Facility, Ancillary Facilities, Infrastructure and Associated Water Outfall Point
Letham, Falkirk**

NPF3, SPP (June 2014)

Written Submission

On behalf of Dart Energy (Forth Valley) Ltd

July 2014

Introduction

- 1.1 This submission on behalf of Dart Energy (Forth Valley) Ltd is made in response to a direction by the Reporters dated 1 July 2014. The submission presents the views of the appellant on the implications of National Planning Framework 3 and revised Scottish Planning Policy both of which were published on 23 June 2014. These changes have consequential implications for the emerging Development Plans and some policy matters considered during Inquiry Session 4.
- 1.2 In summary, NPF3 and SPP are supportive of the proposed development as outlined below. Under the terms of section 25 of the Town and Country Planning (Scotland) Act 1997, as amended, planning decisions should be based upon the development plan unless material considerations suggest otherwise. In this case, the proposed development is consistent with the development plan insofar as the policies are relevant to coal bed methane, and NPF3 and SPP further reinforce support as material considerations. In this respect, NPF3 re-affirms Scottish Government acknowledgement of the role of coal bed methane in the diversification of the energy mix within Scotland and the proposed development complies with the specific requirements contained with the SPP.

National Planning Framework 3

- 1.3 The National Planning Framework 3 (NPF3) seeks to guide Scotland's spatial development for the next twenty to thirty years, bringing together the Scottish Government's plans and strategies for (amongst other matters) economic development, energy, environment and climate change.
- 1.4 Whilst recognising the need for the continued growth of energy generation from renewable energy technologies, as with the now superseded National Planning Framework 2, NPF3 continues to place significant weight on maintaining security and diversity of energy supplies and reducing the effects of fuel poverty.

1.5 NPF3 notes that the Scottish Government's Electricity Generation Policy Statement (EGPS) (Scottish Government, 2013) and forthcoming Heat Generation Policy Statement (HGPS) will set out how Scotland's energy targets will be met, with paragraph 3.10 of NPF3 identifying that the EGPS sets out a continued and important role for thermal generation (progressively fitted with carbon capture and storage) in Scotland's future energy mix.

1.6 Paragraph 4.26 of NPF3 recognises the role of coal bed methane within Scotland's future energy mix in the following terms:

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.

It was demonstrated during the Public Inquiry and Hearing Sessions that the proposed development has been carefully and comprehensively planned to ensure that no unacceptable environmental impacts will arise and local communities and residents will be fully protected from any potential adverse effects or loss of amenity during the construction, development and operation phases.

1.7 It is submitted that there is nothing within NPF3 that would justify the withholding of planning permission for the proposed development, and more importantly it recognises a continuing role for gas, particularly in relation to heating which accounts for a significant proportion of Scotland's total energy use, with only 11% of this sector anticipated to be derived from renewable sources by 2020. NPF3 thus re-affirms the position that while renewables derived energy will play an increasingly important role, it will not replace continuing reliance on gas within the foreseeable future.

- 1.8 It is noted that NPF3 identifies Grangemouth Investment Zone as a national development (paragraph 6.7 [11] and Annex A). This designation is for further upgrading of facilities to enhance its petrochemical and chemical business area facilitating wider economic activity in the area. It should be appreciated that coal bed methane can be used as an alternative energy source to mains gas and the proposed development is geographically well placed to serve that particular market, which is now seen as nationally significant by the Scottish Government.

Scottish Planning Policy

- 1.9 The revised Scottish Planning Policy (SPP) published in June 2014 completed a review of the previous SPP which commenced in autumn 2012. The SPP sets out the national planning policies which reflect the Scottish Government's priorities for the operation of the planning system and the development and use of land.
- 1.10 It replaces all guidance previously given within the 2010 version of SPP (Document DE8) and it renders the content of the SPP Position Statement issued in January 2014 (Document DE[P] 6) as completely redundant. It is submitted that all evidence presented in the context of Inquiry Session 4 in relation to the SPP Position Statement should now be discounted for the purposes of determination of these appeals. It is evident that the SPP was drafted with the additional benefit of more recent advice from an Independent Expert Panel and has rejected specific matters such as the application of arbitrary buffer zones originally suggested within the Position Statement and upon which objectors such as CCof and FoES placed considerable weight.
- 1.11 The SPP subject policies on promoting responsible extraction of resources (paragraphs 234 to 248) set out how the planning system should manage the process of safeguarding mineral resources and facilitating their responsible use when preparing development plans and determining planning applications.

1.12 In recognition of the Scottish Government’s key objectives to establish a diverse energy portfolio to provide Scotland with secure and affordable heat and electricity for decades to come, SPP paragraph 235 identifies the continuing important role of indigenous coal, oil and gas production, stating that the planning system should:

- *“recognise the national benefit of indigenous coal, oil and gas production in maintaining a diverse energy mix and improving energy security.”*

1.13 SPP Paragraph 235 also identifies that the planning system should also:

- *“safeguard workable resources and ensure that an adequate and steady supply is available to meet the needs of the construction, energy and other sectors;*
- *minimise the impacts of extraction on local communities, the environment and the built and natural heritage; and*
- *secure the sustainable restoration of sites to beneficial afteruse after working has ceased.”*

1.14 SPP paragraph 237 identifies that local development plans should set out the factors that specific minerals proposals will need to address, identifying that these factors should include consideration of:

- *“disturbance, disruption and noise, blasting and vibration, and potential pollution of land, air and water;*
- *impacts on local communities, individual houses, sensitive receptors and economic sectors important to the local economy;*
- *benefits to the local and national economy;*
- *cumulative impact with other mineral and landfill sites in the area;*
- *effects on natural heritage, habitats and the historic environment;*
- *landscape and visual impacts, including cumulative effects;*
- *transport impacts; and*
- *restoration and aftercare (including any benefits in terms of remediation of existing areas of dereliction or instability).”*

1.15 These criteria remain unaltered from the earlier draft SPP (paragraph 172). It is submitted that the proposed development has fully addressed all of these matters with the findings fully presented within the Environmental Statement and, for benefits to the local economy, the Planning Statement with fuller evidence presented to Inquiry Session 3.

1.16 With specific regard to unconventional gas extraction, paragraph 240 states that for areas covered by a Petroleum Exploration and Development Licence (PEDL), that local development plans should also:

- *“identify licence areas;*
- *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;*
- *confirm that applicants should engage with local communities, residents and other stakeholders at each stage of operations, beginning in advance of any application for planning permission and in advance of any operations;*
- *ensure that when developing proposals, applicants should consider, where possible, transport of the end product of the pipeline, rail or water rather than road; and*
- *provide a consistent approach to extraction where licences extend across local authority boundaries.”*

1.17 In determining application for minerals proposals, SPP paragraph 242 provides that 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. It states that:

“This should include the provision of adequate buffer zones 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.”

1.18 With specific regard to proposals for shale gas and coal bed methane, SPP paragraph 245 requires that applicants should undertake a risk assessment to assist planning authorities with their consideration of impacts on local communities, neighbouring uses and the environment. It continues that the assessment should clearly identify those onsite activities 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. It is submitted that the proposed development fully complies with this requirement.

1.19 Paragraph 245 states that that:

“the evidence from, and outcome of, these risk assessments should lead to buffer zones being proposed in the application which will protect all sensitive receptors from unacceptable risks. When considering planning 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.”

Commentary

1.20 It is clear that that there remains a very strong Scottish Government planning policy support in NPF3 and SPP for the continued development of indigenous coal, oil and gas production in order to maintain security and diversity of energy supplies so that energy supplies can still be delivered at an affordable cost to customers for decades to come. The continued inclusion of coal bed methane extraction within SPP reflects the fact that the Scottish Government continues to

acknowledge that coal bed methane can play an important role in (at least) the medium term in meeting the need for energy generation.

- 1.21 It is considered that the most significant policy change from the previous SPP (February 2010) and the new SPP is the requirement for all proposals for coal bed methane extraction to undertake a risk assessment, and for the findings of this risks assessment to be used to identify an adequate buffer zone between sites and sensitive receptors. No arbitrary buffer zone or set-off distances have been applied by the Scottish Ministers as a matter of national planning policy. As such, a flexible approach has been recommended allowing determination on a site by site basis.
- 1.22 It is submitted that the approach adopted by the appellant is entirely consistent with the policy requirement now established within the SPP. In particular, the relevant topic studies contained within the Environmental Statement initially consider and assess the relationship between the proposals and sensitive properties or areas within the locality and having regard to relevant standards (where published) in order to establish acceptable separation distances, including the potential for introduction of further mitigation measures. Similarly all assessments include site-specific consideration of risk as an element that is always present within such work. In addition, a significant proportion of Inquiry Session 1 was devoted (directly and indirectly) to the assessment of risks incorporating the source-pathway-receptor model as now advocated within SPP (paragraph 245).
- 1.23 Based upon the original ES assessments buffer zones were proposed where appropriate within the planning applications. For example, ecological interests and noise, buffers (stand-off or separation distances) of 250 and 400m respectively were proposed to protect flora and fauna and residential receptors. In addition, based upon inquiry discussion, underground buffers such as lateral drilling being set off at a distance of 250m from existing mine workings were also proposed. This is all consistent with the approach now advocated that buffer zones should be based upon the assessments within the EIA process and tailored to the specific circumstances of the proposed development and location.

Implications for Development Plans

Emerging Falkirk Development Plan

- 1.24 Falkirk Council is at present preparing a new local development plan under the requirements of the Planning etc. (Scotland) Act. Evidence on this emerging local development plan on behalf of the appellant was given to Inquiry Session 4 within the Precognition of Alan Pollock in Section 11.
- 1.25 The draft Proposed Plan was published on 26 April 2013 (Document DE4). The draft Proposed Plan was therefore prepared in the context of NPF2 and the current SPP, and not the new NPF3 and SPP as discussed above.
- 1.26 As the Proposed Plan is still subject to examination, it should be noted that many of the policies may be subject to further modifications. The draft Proposed Plan is therefore of limited weight but is still a material consideration in this determination of this appeal insofar as it represents the most recent statement of the Council's policy towards coal bed methane development.
- 1.27 The most significant change from the current development plan is that the draft Proposed Plan now contains specific provisions on CBM. Paragraph 5.123 states that:

"The Falkirk area contains several minerals of economic importance including coal, fireclay, coal bed methane (CBM) and aggregates (sand, gravel and hard rock). The British Geological Survey (BGS) Mineral Resource Map identifies the mineral resource in the area, including the boundaries of the Petroleum Exploration and Development Licences (PEDL 133 and 162). The only areas excluded from PEDL licences are to the north of Banknock and east of Bo'ness."

1.28 PEDL areas are identified on Map 5.1 (Mineral Resources). In addition, the Settlement Statement for the Rural North area (paragraphs 4.56 to 4.62) within which the application site lies also specifically refers to CBM. Paragraph 4.59 states that:

“The Rural North area contains deposits of several minerals of economic importance, particularly coal and coal bed methane. The Council will maintain its policy presumption against open cast coal extraction in this sensitive landscape area but exploration activity for coal bed methane west of Letham is expected to continue and expand during the plan period, possibly leading to production in the later years.”

1.29 **Policy RW02: Mineral Resources** of the Proposed Plan states that:

“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.”

1.30 As such, the principle of the proposed development is both recognised and supported, subject to consideration of the policies below.

1.31 **Policy RW03: Assessment of Minerals Proposals** is relevant to all minerals proposals and states that:

“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;*
- *Impact on landscape and visual amenity, having regard to Policy GN03;*
- *Impact on the historic environment, having regard to Policies D07-D14;*

- *Impact on prime agricultural land, carbon rich and rare soils, having regard to Policy RW07;*
- *Impact on the water environment, having regard to Policy RW05;*
- *Impact on air quality, having regard to Policy RW07;*
- *Impact on the local road network; and*
- *Any positive economic or environmental benefits accruing from the proposal, including restoration of abandoned/derelict minerals sites and local employment opportunities.*

Proposals should be accompanied by the following information:

- *Information sufficient to allow assessment of the impacts outline 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.”*

1.32 This policy is initially assessed within the Planning Statement Addendum (Document DE25) at paragraphs 2.29 to 2.33.

1.33 It is considered that the Environmental Statement contains all information necessary to allow assessment of the potential impacts identified within the policy. The planning authority disputes that position only in relation to the water environment and air quality. These issues were addressed in the evidence presented in Inquiry Sessions 1 and 2.

1.34 The Environmental Statement also provides estimates of the methane production, employment and timescales for the proposed development.

- 1.35 The working methods proposed are fully described within the Environmental Statement (Document DE19).
- 1.36 Both the Environmental Statement and Planning Statement provide details for site restoration. In addition, the proposed conditions 4, 9A, 9B, 26, 28, 29 and 30 cover everything that would be contained within the restoration plan.
- 1.37 It is recognised that as a form of extraction which gives rise to relatively little disturbance to the land surface, restoration of the land is readily achieved in comparison to the large scale earth works associated with aggregates or opencast coal extraction. This is also reflected in the costs of restoration. For this reason the appellant has made representations to the draft Plan proposals regarding the need for financial guarantees, also bearing in mind that the issue of the developers financial position is fully examined and assessed as part of the DECC licensing regime, which also creates a range of legal obligations for restoration. Notwithstanding that position, the appellant will be willing to provide such guarantees in the event that the Reporters are minded to grant planning permission.
- 1.38 It is submitted that the draft Proposed Plan now requires further amendment in order to comply with the revised SPP. In particular, policy reference is required in relation to the assessment of risk and tailored assessments in order to establish appropriate buffer zone recommendations. As noted above, the proposed development already complies with these requirements.

Emerging Stirling Development Plan

- 1.39 The policy framework of the Stirling Local Development Plan does not comply with the specific requirements of the new SPP. It is, however, noted that Council intends to prepare supplementary guidance in relation to coalbed methane therefore, that will provide an opportunity to bring the policy framework more fully into alignment with the requirements of the SPP.

Conclusions

- 1.40 The key feature of the updated policy position is the clear acknowledgement and support by the Scottish Government for unconventional gas within the future energy mix.
- 1.41 It is submitted that the proposed development complies with the updated policy position contained within NPF3 and the SPP. It is evident that the framework for the consideration of coal bed methane development contained within SPP reflects what would be considered to be best practice to safeguard the quality of the environment and protect local communities. The appellant fully subscribes to such measures and has complied with all requirements in the design and progression of the proposed development to date.
- 1.42 While it is recognized that it would be premature to anticipate that the existing development plans would already incorporate all of the requirements of the updated NPF3 and SPP, the onus for compliance now rests with the planning authorities in promoting the new local development plan (Falkirk) and supplementary planning guidance (Stirling). However, insofar as the existing development plans contain policies relevant to the particular circumstances of coal bed methane development, the proposals are in accord with those policies as submitted within Inquiry Session 4. The emerging Falkirk local development plan is already supportive of coal bed methane development and the proposed development complies with more specific emerging policy requirements. In such circumstances, section 25 of the Town and Country Planning (Scotland) act 1997 as amended, clearly points to a position in which it would be unreasonable to withhold the granting of planning permission.

