

DEVELOPMENT MANAGEMENT UNIT

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Development **Development For Coal Bed Methane Production, Including Drilling, Well Site Establishment at 14 Locations, Inter-Site Connection Services, Site Access Tracks, a Gas Delivery and Water Treatment Facility, Ancillary Facilities, Infrastructure and Associated Water Outfall Point**

Location **Letham Moss Falkirk FK2 8RT**

DPEA Ref No. **(if appropriate) PPA-240-2032**

Application No. **P/12/0521/FUL Appeal / Review Ref. AP/13/006/PPA**

Dear Jane

In response to the Reporters' instructions with regard to the publication of NPF3 and SPP, Falkirk Council can confirm that it does not intend to lead any witnesses at any potential inquiry session. However, this Written Statement expresses the views of Falkirk Council with respect to these planning documents, and also to the Written Statement produced by RPS on behalf of Dart Energy, which was submitted to the DPEA on 15 July 2014 (referred to below as "the Dart July Statement").

In Falkirk Council's opinion, the finalised SPP is, like the draft SPP, neutral in tone. There is no presumption against Coal Bed Methane exploitation, and planning authorities have to consider planning applications on their merits should they be submitted.

The issues to be taken into account in assessing such applications are similar between the draft and final guidance, and of course include pollution of land, air and water. The SPP, at paragraph 242, states that there should be *"...provision of an adequate buffer zone between sites and settlements, taking account of the specific circumstances of individual proposals..."*. In paragraph 245, the SPP requires that the assessment of the proposal should be carried out using a risk assessment, which should adopt a source-pathway-receptor approach and can be undertaken as part of any Environmental Impact Assessment (EIA) process. As a result, *"The evidence from and outcome of, the assessment should lead to buffer zones being proposed in the application which will **protect all sensitive receptors** (our emphasis) from unacceptable risks"*.

To achieve these requirements, operators need to clearly identify all the 'sensitive receptors' at risk, and then provide sufficient evidence for the assessment so that those receptors can be protected against unacceptable risks. It is only by doing enough work 'up front' that an operator would be in a position to propose buffer zones that would then meet the objective of the next sentence in paragraph 245, namely that *"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"*.

In the Dart July Statement, Dart asserts (with reference to paragraph 245 of the SPP) that its approach is “...entirely consistent with the policy requirement now established within the SPP.” It continues that “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 in such work. In addition, a significant proportion of Inquiry Session 1 was devoted (directly or indirectly) to the assessment of risks incorporating the source-pathway-receptor model...” (paragraph 1.22). Dart then states that “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” (paragraph 1.23).

Falkirk Council does not accept these assertions. Through the written and verbal evidence of its hydrogeological expert, Dr Shaun Salmon, Falkirk Council has demonstrated that in fact Dart has failed to properly understand the baseline conditions and then assess the potential effects on water features and, with respect to the migration of fugitive gas emissions from its proposed operations, also human receptors. This means that it has not carried out an assessment that will ensure sensitive receptors are protected from unacceptable risks.

Furthermore, although the term ‘buffer zone’ has been used by Dart and RPS in the ES and subsequent additional information (G20) reports, there appears to be no attempt to delineate buffer zones of the type advocated by the SPP, i.e. the distance by which a development ‘stands-off’ ‘settlements’ or ‘sensitive receptors’. For example, the 1.2 km buffer defined for the purposes of the cumulative dewatering impact assessment e.g. as set out in paragraph 2.11 and Figures 2-7 of G20 (October 2013), is not a stand-off buffer zone. Instead it is an inferred ‘zone of influence’, i.e. the area over which drawdown due to the proposed development, and even then its technical merit is questionable (Dr Salmon Precognition (February 2014), paragraphs 2.3.25 and 2.3.39).

In addition, with respect to the 250 m ‘stand-off’ from old mine workings referred to by RPS in paragraph 1.23 of its Written Statement, the old workings are not ‘sensitive receptors’ in their own right, but represent a source of pollution (of minewater and mine gases) and potential pathways to potential ‘sensitive receptors’ located in the vicinity of the proposed development. It is therefore inappropriate to consider that this suggested stand-off, the technical merit of which still needs to be established given that it is based on very limited field datasets and model calibration, fulfils the requirements of the SPP.

The claimed buffer zone of 250 m for “flora and fauna”, referred to in paragraph 1.23 of the Dart July Statement, is discussed in paragraph 6.9 of the ES. However, it is simply the zone beyond the application area that was used to define the study area for the ecological surveys. With regard to a noise buffer zone, Falkirk Council can find no reference to it in Chapter 9 of the ES or the accompanying Appendix 9.1. Therefore the Council finds it unclear on what basis the noise buffer zone is proposed or what evidence there is before the inquiry to support it as an appropriate buffer zone.

On this basis, Falkirk Council considers that paragraph 245 of the SPP supports the approach that it has adopted to date, and not the approach adopted by Dart Energy and its consultants. It therefore remains the concern of the Council that, with respect to its project at Letham Moss, the Appellant has failed to provide sufficient evidence to undertake a robust assessment of the environmental effects, and that consequently it is not in a position to derive the scientifically rigorous buffer zones required by the SPP (or other measures to prevent unacceptable effects from arising).

Paragraph 4.26 of NPF3 refers to the SPP for the framework for assessment of proposals for coal bed methane extraction. In the Council's view, no more need therefore be said in respect of the finalised NPF3.

This submission should be taken as a Written Submission to the Inquiry. However, the Council reserves its right to respond to matters raised by other parties and to provide oral evidence in such a response.