



3rd March 2015

Mr Stephen Hamilton
Strategic Planning Division
Planning HQ
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

33 Shore Road
Holywood
Co. Down
BT18 9HX

t. 028 9042 1011
f. 028 9042 5123
e. info@mbaplaning.com
w. www.mbaplaning.com

Dear Mr Hamilton,

MOYLE: RATHLIN ENERGY, EXPLORATORY WELL AT BALLINLEA ROAD, CO. ANTRIM – E/2013/0093/F

We refer to the above matter. This representation is submitted on behalf of PONC (Protect Our North Coast), and responds to the Environmental Impact Assessment and derived drawings submitted on behalf of the Applicant in respect of the above Planning Application.

PONC draws its members from the vast majority of households, businesses, community interest and other landowners affected by the proposed exploration installation.

The four week response to the Environmental Statement and additional documents is woefully insufficient to complete all the work required to provide an adequate and full analysis of the materials. To expect objectors with their limited resources to fully analyse the complex material that the Applicant has been working on for several months is an impossible task.

Furthermore, our review has been seriously hampered by the absence of complete data and information. Our client's advisors will continue to review the process and we reserve our ability and right to submit supplementary material. Equity requires that we are given a further period to be allowed to complete the analysis and submit full objections.

However, we wish to make the following preliminary points:-

INVALID APPLICATION

This is a full planning application and as such must comply with the Planning (General Development) Order (Northern Ireland) 1993 as amended to meet the tests of validity.

London Office:
Michael Burroughs Associates
(England)
93 Hampton Road
Hampton Hill, Middlesex
TW12 1JQ
t. 020 8943 8800
f. 020 8943 2781
e. info@mbaplaning.com

Michael Burroughs
BA MRTPI FRSA
Diana Thompson
BSc (Hons) Dip TP MRTPI

Richard O'Toole
BSc (Hons) MSc MRTPI
Jennifer Mawhinney
MA (Hons) MSc MRTPI

Emma Murray
BSc (Hons) MSc MRTPI
Dermot Monaghan
BSc (Hons) MSc MRTPI

Article 7 of the Planning (General Development) Order (Northern Ireland) 1993 indicates that a full application must be made on a form issued by the Department, have included the particulars specified in the form and be accompanied by a plan which identifies the land to which it relates, along with any other information necessary to describe the development which is the subject of the application.

For the following reasons the application is void for uncertainty:

Description

Question 7 of the P1 form states that the description of the development is as follows:

“Construction of an exploratory borehole to a depth of approximately 2700m including Conventional Exploratory Testing to evaluate the potential hydrocarbon reserve in the Rathlin Basin under DETI License PL3/10 issued to Rathlin Energy Ltd. Site preparation comprising ground works and ancillary operations include: road widening part of the Kilahamogue Road; Parking; Offices & workshops; Earth bunding; Flood Lighting; Wheel wash; Storage area; Security fence; and Site restoration”.

There are four issues with the description of development:

1. It uses the words “includes” several times. The Planning Appeals Commission has ruled that full planning applications must note all matters of development in their description. The use of the word “includes” fails this test as it evidences that not everything has been covered in the description;
2. The word “approximately” also falls foul of the same criticism. It is imprecise and unhelpful;
3. Part 1.2 of the ES provides a useful summary of the proposal. Much of the development identified therein is not identified in the description of development;
4. The description of development should not reference other legislative provisions ie the DETI licence. I also note this licence is not contained anywhere within the ES; and
5. The ES states that this is a temporary development – that is the premise on which the whole document is based. The description should identify this and the period to which it relates.

Drawings

A full application must include the submission of detailed plans and drawings which specify the siting, design and external appearance of the development, with means of access to the development and landscaping of the proposal.

The P1 Planning Application Form indicates that applications for full permission must include:-

- An accurate, up-to-date ordnance survey site location plan to a scale not less than 1:2500 clearly showing the boundary of the application site outlined in red.
- A site layout/block plan to a scale of not less than 1:500 showing the proposal in relation to the boundaries of the application site and neighbouring properties. All boundary treatments should be clearly annotated.
- Existing and proposed floor plans to scale 1:50 or 1:100.
- All existing and proposed elevations to scale 1:50 or 1:100 giving details of the materials to be used in the external finish of walls and roofs and their colour. You should also include elevations of the boundary treatments, including any walls, gates and fences etc.
- Relevant cross sections in existing and proposed levels to scale.

The application drawings which accompany the revised application available on EPIC do not comply with statutory requirements. There are no floor plans or elevations for the majority of the buildings that will be on site throughout the duration of this development. No detail is provided of the materials to be used for these buildings or their colour.

Furthermore, the plans do not show the details of the proposed boundary treatment and mitigation proposed, visibility splay detail, location or detail of floodlighting, the wheel wash facilities, or the location of any protected species in accordance with the guidance.

As this is a full application it is impossible to condition vital missing aspects of the proposal post full application consent.

The Planning Application and ES

An ES does not form part of a planning application. However, it is provided to assess the development proposed as described in the application and so consistency is required. Where the ES and planning application are not consistent it must be the case that either the application fails the test of validity or the ES fails the test of validity.

If the application fails the test of validity then it should be returned to the applicant immediately. If the ES does not reflect the development proposals and so fails the test of validity then it might be the case that the period for production of a ES requested by the Department has not been met and a deemed refusal should be issued. The absence of either course of action by the Department could result in an unlawful decision.

The inconsistency in the application documents as a whole make it impossible for interested parties to properly engage with the development proposal and its impacts. By way of example a preliminary review identifies the following as problematic:

- Qu 11 of the P1 form asks whether the applicant is aware of the existence of any protected species on the site. The P1 form states that there is none. This does not accord with the Ecology chapter of the ES;
- Qu 19 asks the applicant to confirm what the daily water requirements are for the development proposal. The P1 form states that the daily requirement is 34m³ and will be from the mains. This is inconsistent with the ES;
- Qu 21 of the P1 form asks for detail on the floorspace and areas associated with development proposal. That stated on the form diverges from the ES and application drawings which detail storage, production and areas for ancillary uses fluctuating across the lifetime of the development. It does not seem to consider plant in its floorspace calculations and so the overall impression from the P1 form is a small footprint of buildings – this is entirely misleading;
- Qu 22 asks the applicant to confirm the vehicle movements per day associated with the development. The information provided in the forms is at odds with the ES whose estimates are higher.

For the reasons identified above members of the public are unable to properly understand the proposals. A large number of members of PONC have expressed deep concern about their inability to engage in a process that lacks a clear description of what is proposed, much less the impact of the proposals. It is clear that the application is void for uncertainty.

PREMATURITY

The description of development does not preclude non-conventional exploratory testing and neither does the DETI licence or ES provided by the Applicant.

In May 2012, the Environmental Protection Agency (EPA) released the report from a preliminary study "*Hydraulic Fracturing or 'Fracking': A Short Summary of Current Knowledge and Potential Environmental Impacts*". Information provided by the preliminary research project has now been used along with other sources such as European Commission reports by a project steering committee to develop the Terms of Reference for a more comprehensive study, which is being co-funded by the EPA, the Department of Communications, Energy and Natural Resources (DCENR) and Northern Ireland Environment Agency (NIEA).

At present there is no exploratory or commercial drilling underway in relation to Unconventional Gas Exploration & Extraction in Ireland. In response to a number of activities planned, it was decided that research is required to fully understand the potential impacts on the environment from the use of Unconventional Gas Exploration & Extraction.

Currently the outcome of the joint North-South (NIEA/EPA) research into the impacts of unconventional gas exploration and extraction is unknown including whether this report will result in legislative or policy which will have an impact on the application.

In addition to this in March 2012 the NI Assembly produced a research paper on onshore hydrocarbon exploration. Its conclusions were explicit; there is no consensus on the impact of shale gas and hydraulic fracturing; and the benefits to the island of Ireland have not been independently verified.

This poses a serious question for Rathlin Energy Ltd's application in respect of prematurity. It is considered that granting permission for this proposal would undermine the North-South research and the NI Assembly position and its potential to create future plans and policies.

Plans on the overarching requirement and infrastructure for onshore exploration of hydrocarbons should be subject to Strategic Environmental Assessment. The United Nations Economic Commission for Europe Protocol on Strategic Environmental Assessment was implemented by European Directive 2001/42/EC and provides for the assessment of the effect of certain plans and programmes on the environment. The Directive was implemented in Northern Ireland by the Environmental Assessment of Plans and Programmes (NI) Regulations 2004 ("the 2004 Regulations").

It is noted that the Strategic Energy Framework ("SEF") on which the applicant seeks to rely has not been subject of an SEA.

If this proposal was granted it would not be subject to Ireland specific analysis on fracking developments and would not be compliant with any plan that had been subject to an appropriate assessment. For these reasons granting consent could set a precedent for future developments that could be contrary to the research findings and, importantly, future environmentally assessed strategic plans. Therefore, the precautionary principle should be applied and the application refused.

THE ENVIRONMENTAL STATEMENT

I request that the Department consider the appropriateness of an Environmental Statement that relies on legislation and historic planning and non-planning consents to scope matters out of inclusion in the document, or as a reason for adopting a particular stance within the document, but that are not made available to the reader. This seems to stifle a process whose central premises is to ensure that the public and statutory consultees can actively engage and understand a development proposal being applied for and its impacts. Failure to deal with this point in a meaningful way will lead to a judicial review.

White Young Green (WYG) has provided some comments with respect to the failings of the current ES which I will not rehearse here. In addition to these points I wish the Department to consider the following:

- New BS4142 Noise standards – these apply to industrial or commercial operations. While I understand relying on BS5228 is the “norm” for this type of development I do not take that to preclude the application of different standards appropriate to context. It seems given the nature of the development that the satisfaction of both standards is appropriate;
- The use of averages to detail the traffic figures in the ES is unhelpful to consultees and the public trying to understand the impact of the proposal in terms of access and the network. A simple question to ask is what is the worst case number of movements to the site in a day? Does this mean that a Right Hand Turning Lane is required? Does this require third party land?
- The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 and whether planning consent can be granted prior to the securing of a Waste Management License.

I consider that until such times as these issues are addressed that no planning permission can be forthcoming.

FLAWED PLANNING POLICY ASSESSMENT

The applicant’s case is that the development proposal is compliant with a long list of policy. Having reviewed the ES and Chapter 5 specifically I find it to be lacking on 3 fronts:

- It is pre-emptive in approach as it identifies policy which, in a caveated way, encourages mineral extraction for viable supplies and adopts it as supportive on an application which seeks to explore if commercial reserves exist;
- It fails to correctly assess the weight that should be applied to area plans in adopted or draft form in relation to other policy statements;
- It fails to make any meaningful assessment of relevant policy and yet blindly asserts the proposal is compliant with it.

In more detail:

Regional Development Strategy

The applicant’s case for the development proposal complying with ***policy RG5*** is entirely pre-emptive. It is based on the assumption that the exploratory drilling exercise finds hydrocarbons in the ground. It is clear from the ES that the exploratory exercise is not pre-determined. Nothing in the RDS supports development of an exploratory drilling development in the absence of knowledge of what will be extracted. To suggest it does is plainly wrong and so the assessment of compliance with this policy is misguided.

The applicant encourages the wording of the SEF to be read into this policy. This is not appropriate. Notwithstanding this I note that the applicant accepts that the SEF only seeks to “maintain” access to alternative fuels i.e oil. It is well established that to “maintain” something finds relevance in respect of the status quo. The SEF therefore does not support the wholesale opening up of NI to oil extraction – this is logical given the Government emphasis on the development of renewables. It is impossible to assess the application’s relevance to this policy document in the absence of understanding what the outcomes of the development are. It does nothing to assist the applicant.

North East Area Plan 2002 (“NEAP”)

From the 1st April 2015 NI’s development management system becomes a plan led system. This means that Area Plans will normally have determining weight.

While I accept the Applicant’s position that the draft Northern Area Plan (“dNAP”) is at an advanced stage, until such times as it is finally adopted the NEAP is the statutory plan to be afforded this determining weight.

The applicant makes no attempt to assess NEAPs policy making the rather sweeping statement that because the site is not within a designated area it does not conflict with its content. No detailed assessment is made.

Minerals policy is found in Section 7 of the Plan. It states at **Para 7.1** that:

“In assessing mining proposals, therefore, the Department will balance the economic benefits against the need to minimise such disturbance and protect landscape quality.”

The applicant has provided no information on economic benefits of the proposal and so an adverse inference must be made by the Department in this respect. Potential economic benefits are not relevant to this policy.

It continues that there will be a presumption against permission being granted for new excavations which will cause a breach in a prominent skyline. This is certainly true for the introduction of a 50m installation with 10m noise barriers which abuts a public road and rests in a landscape which the NI Landscape Character Assessment says is an area is quite sensitive to change. This sensitivity is due to the long views which are available across the landscape, where tall and upstanding development would be intrusive in this very open horizontal landscape. Despite what the applicant says the existing farm abutting the Ballinlea Road will do little to diminish its impact and so the proposal is in direct conflict with policy.

Para 7.2 states that the Department will not normally approve developments where they would prejudice the essential character of areas or designated sites. This area is characterised by arable land and open fields. This installation is industrial – there is nothing like it in the immediate vicinity of the site. Its scale, character and nature will rudely interrupt open views of the quiet surrounding countryside.

While the ES repeatedly asserts that this is a temporary installation this is not reflected in the description of development which will ultimately be approved. Furthermore, nowhere in the ES categorically states what is meant by temporary or suggests an appropriate condition to limit the lifetime of the rig and conversely it actually confirms that this may become a long term operation. Harm caused by the development must be considered in this context and the application refused.

DNAP

I note that the Regional Policy Context on which dNAP's local policy is built is based on an outdated version of the RDS. As such although the plan is at an advanced stage it remains possible that policy might be updated to reflect the new wording which, as identified above, does not expressly support hydrocarbon exploration. For this reason I draw caution at placing too much emphasis on the draft plan policies as suggested by the applicant.

The only policy relevant to the development proposals is **Policy MIN 2 Natural Mineral Reserves – Hydrocarbon Extraction**. It states that the exploitation of commercially viable reserves of natural oil and gas will be considered in the context of the short and long term viability of the site. This is the first step an application must satisfy to be permitted.

This policy only applies to commercially viable reserves of natural oil or gas. This has not been demonstrated by the applicant. Indeed it cannot be as the point of the exercise is to determine if such reserves exist. As such it does nothing to support the planning application and the applicant's conclusions that it is policy compliant is, in this context, completely unjustified.

The second policy test flows from this and states: *Development that would have a significant adverse impact on the environment will not be permitted*. It is not relevant to consider this test as the preceding policy hurdle has not been met which opens the gate to this secondary hurdle.

Notwithstanding this, and on a without prejudice basis to the above position, White Young Green has identified why the existing ES has not demonstrated the development does not have a harmful environmental impact on the environment.

For the above reasons I see no meaningful assessment that allows the applicant to conclude the proposal is compliant with area plan policy.

Planning Strategy for Rural Northern Ireland ("PSRNI")

The PSRNI should be given minimal weight for the following reasons:

- NI is from 1st April 2015 an area plan led system and so the policy identified in NEAP is the lead policy with determinative weight over and above PSRNI's provisions;
- It is a 1993 document which is in the process of being superseded by a number of Planning Policy Statements and potentially a forthcoming Strategic Planning Policy Statement. Being over 20 years old it clearly does not reflect current thinking on mineral extraction, its risks and impacts.

Notwithstanding the above I note the following:

Policy MIN 1: Environmental Protection states that the need for the mineral should be assessed against the need to protect and conserve the environment. It continues that in all areas, decisions on mineral applications will be made with regard to the preservation of good quality agricultural land amongst other things such as natural features of interest.

Need is dealt with exclusively and somewhat whimsically in Section 1.3 of the ES. It makes no reference to the source of material from which its statistics are derived. It references no UK Government Policy in support of its position and it clearly falls foul of the NI Assembly Research Paper's concern that there is no independent verification of the position forwarded as supportive of the scheme: it is entirely self-serving. It makes no note of the trend over the last year where oil prices

have fallen dramatically which is as a result complex politics and the US' oil fracking boom which might severely undermine the need case advanced for this scheme.

On the other side the assessment of environmental effects has been called into question for the reasons identified in the WYG letter. I also note no independent assessment by a person of relevant qualification into the quality of this farmland has arisen. As such it has not been demonstrated that the proposal is compliant with this policy.

Contrary to what the applicant asserts I do not agree that **Policy MIN 2** and **MIN 4** apply to the proposal as both relate to minerals extraction proposals and not exploration proposals.

Issues with **Policy MIN 6 - 8** are dealt with in the WYG letter and further demonstrate the inconsistency of the proposal to meet policy.

Other Planning Policy Statements ("PPS)

Compliance with other PPS' dealing with environmental compliance are detailed in the WYG letter and found to be severely lacking on the grounds that there is insufficient information to confirm that no significant impact arises from the proposal with regards to:

- Noise and vibration;
- Air Quality and Climate Control;
- Lighting;
- Health;
- Visual Impact;
- Ecology; and
- Water Quality/ Hydrology.

For these reasons the applicant has not demonstrated there would not be harm to interests of acknowledged importance and in accordance with the provisions of **Para 59** of **PPS1** and other relevant PPS' and the application should be refused.

Overall, the above assessment shows that the applicant has:

- failed to identify the correct policy that relates to this proposal;
- failed to give relevant policy appropriate weight; and
- failed to make a meaningful assessment of policy in light of context and the information it has provided to date.

The conclusion of this entirely flawed approach is that this the applicant has not proven the development to be compliant with policy and so it must be refused.

CONCLUSION

To grant it in its current form would result in an unlawful decision.

Yours sincerely,



Jennifer Mawhinney
Michael Burroughs Associates