

**THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING
(NOTIFICATION OF APPLICATIONS)
(SCOTLAND) DIRECTION 1997**

Proposed development of an energy from waste plant, together with a materials reclamation facility, associated infrastructure and landscape works at Binn Farm, Glenfarg, Perthshire.

Fife Council comments to Scottish Ministers

March, 2007

the application will not commence until 6th March 2007. (A 3 week consultation period). (See Appendix 2).

- 1.5 Fife Council is grateful to the Scottish Executive for allowing this consultation opportunity and for comments to be submitted by Fife Council prior to the statutory period for Scottish Ministers to consider the application referred by Perth and Kinross Council.
- 1.6 The 3 week period is however considered to be the minimum reasonable period and it has not been possible to include formal internal consultations, discussions and briefings with key councillors including local ward councillors and indeed the adjacent Community Councils.
- 1.7 Fife Council's first formal opportunity to submit comments is the Environment and Development Committee which meets on 22nd March 2007. It may well be that further comments will follow after that meeting and it is hoped that Scottish Ministers will take any additional comments following on from this initial submission into account as part of their overall assessment and decision making process.

2.0 FIFE COUNCIL ASSESSMENT

- 2.1 Fife Council staff have had access to the Perth and Kinross Council report to the Development Control Committee, 19th December 2006 and to the related documents.
- 2.2 Internal discussions have been held with relevant officers and a Planning Application Assessment was independently commissioned by Fife Council from Seamus Lalor Associates Limited (SLA). The principal of the practice Seamus Lalor is a highly experienced Chartered Town Planner and he has been briefed on the development proposal by the Perth and Kinross Case Officer, Mark Williamson. The assistance of Perth and Kinross Council staff in facilitating this consultation is greatly appreciated and has been very helpful.
- 2.3 SLA also undertook a desk assessment of the relevant background papers including the Environmental Statement, planning application submission, consultation responses, letters of representation received and the Perth and Kinross Council committee report. The Planning Application Assessment report is copied in full as Appendix 3 and the findings and recommendations set out in the report have been used to inform the comments, conclusions and recommendations set out in this paper.
- 2.4 The assessment by Fife Council is made under 5 main headings as follows:
 - Applicant/Planning Authority Interest
 - Procedural and Consultation Shortcomings

- Principal Environmental Appraisal Considerations
- SEPA grounds of objection
- Representations submitted to Fife Council

2.5 Applicant/Planning Authority Interest

2.6 The Notification of Applications Direction makes it absolutely clear that where Planning Authorities have an interest in a proposed development that the decision making process has to be seen to be operating openly and fairly. Planning Authorities require to notify Scottish Ministers where they propose to grant planning permission for any development in respect of which they have a financial interest or which is to be located on land owned by them or in respect of which they may have an interest.

2.7 SETA UK the applicants presently hold a Municipal Management Waste Contract with Perth and Kinross Council which expires in 2009. SETA UK also has an agreement to purchase parts of the site and they own and operate the current landfill site at Binn Farm. In addition, the report prepared for the Development Control Committee confirms that the proposed development at Binn Farm is contrary to the current Development Plan, the Perth Area Local Plan 1995 and it has also attracted a considerable number of objections and representations.

2.8 Fife Council is not suggesting that the planning decision reached by Perth and Kinross Council is in any way influenced by the existing contractual arrangements with the Council but Fife Council would urge Scottish Ministers to ensure that the proposed development and its potential environmental impacts are carefully assessed and scrutinised particularly in light of the comments submitted by SEPA on the level of public objection which are discussed below.

Procedural and Consultation Shortcomings

2.9 Fife Council is concerned that such a major and environmentally sensitive proposed development within an adjacent Planning Authority's area can be determined and referred to Scottish Ministers with a recommendation for approval without any prior notification or consultation with Fife Council as the immediately adjacent Planning Authority or any of the immediately adjacent Community Councils or local councillors.

2.10 The potential impacts set out in the environmental assessment do not stop at the political, administrative boundary of Perth and Kinross. Issues relating to air quality, pollution, visual and landscape impacts are all relevant to the landward part of Fife Council and its communities.

2.11 Whilst Fife Council welcomes this late opportunity to provide comments on the proposal it does feel that there is insufficient time to provide a fully comprehensive response which would have the benefit of being

further informed by discussions with specialist consultees and consultants. Fife Council considers that the consultation arrangements between Planning Authorities on environmentally sensitive proposals which require environmental assessment should be mandatory and the consultation should take place at receipt of the planning application to enable proper consultation discussion and negotiations to take place as applicable. This concern should be included in future considerations of the EA Regulations and guidance, and inter-authority consultations could be considered in the current Planning legislation changes.

Principal Environmental Appraisal Considerations

- 2.12 The SLA report sets out in part 6 the two principal interests for consideration by Fife Council:
- The potential impact upon the environment relative to the protection of air quality
 - Whether or not the condensation plume will have an adverse impact on landscape character and visual amenity within Fife.
- 2.13 Based upon the evidence and information submitted to Perth and Kinross Council summarised in paras 6.12, 6.13 and 6.14 of the SLA report Fife Council considers that the impact on air quality within Fife must be considered to be acceptable as it is within stipulated limits.
- 2.14 Nevertheless, in the terms of air quality, Fife Council is not entirely convinced that the statutory responsibilities for local air quality management have been sufficiently clarified. The Head of Environmental and Consumer Services has confirmed that Perth and Kinross Council has the statutory responsibility but SEPA officers have confirmed verbally that SEPA will ensure compliance with air quality standards as a principle consideration integral to ITPC authorisation. Scottish Ministers are requested to seek fuller clarification of this "local agreement" to adequate and effective monitoring of air quality within the site and the affected adjoining areas. Fife Council also recommends that a specific planning condition should be added to the draft conditions regarding the monitoring of emissions from the site. Fife Council Environmental Services also have a regulatory role to fulfil and this should be an integral part of any future monitoring/regulatory arrangements.

Condensation Plume

- 2.15 The specialist landscape consultant for Perth and Kinross Council, David Tyldesley confirms that whilst the plume would not be a continuous feature in the landscape the plume will be a very noticeable feature in a much wider landscape than the building itself. Whilst it is clear that the plume will be visible in the Fife context the statistics given suggest that the various plume characteristics would be visible for 32% of time but only visible for 16% of time taking daylight hours into account. Fife Council does not consider that this factor on its own is a significant material consideration worthy of a formal objection.

SEPA Grounds of Objection

- 2.16 It is regrettable that an application for a permit to SEPA to operate the proposed process under the Pollution, Prevent and Control (Scotland) Regulations 2000 has not been made at the planning stage to enable concurrent assessment. This is particularly in light of the comments in SEPA's letter dated 7th December which confirms that it is unlikely that SEPA would grant a PPPC permit for the purpose for the proposed operation based upon the information submitted to date on the ground that BAT has not been demonstrated with regard to energy utilisation.

The SEPA response letter confirms their position in relation to

1. SEPA sustains its first objection re rigorous assessment against alternatives (Policy 77 of the Central Area Local Plan).
 2. SEPA sustains its third objection re maximise the potential energy recovery.
- 2.17 In the same letter SEPA draws attention to PAN51 which states that: "A grant of planning permission can be said to establish the principle of development but this is only relevant to planning. It carries no weight so far as environmental protection regimes are concerned. The granting of planning consent does not therefore establish anything so far as other licences, permissions or authorisations are concerned and they have to be determined according to their own requirements. A valid planning consent must be in place however before a Waste Management Licence (WML) or PPPC permit can be issued. Nevertheless, the aim should be to avoid situations where planning consent cannot be implemented because other environmental controls cannot be satisfied". Fife Council feels that the clear objections expressed by SEPA in relation to the above two issues needs to be comprehensively assessed and any decision to grant planning permission at this stage is seen as premature until these outstanding objections can be accommodated.

Representations submitted to Fife Council

- 2.18 The Perth and Kinross Council report confirms that there were 268 letters of representation, almost all objecting to the proposal and a petition of 465 signatories objecting to the proposal.
- 2.19 Fife Council has not had the opportunity to consult formally but additional letters of representation have been received from:
- Mrs Sangster (Abernethy) on behalf of 3 Community Councils in Perth and Kinross (Abernethy and District, Earn and Glenfarg) and two Community Councils in Fife (Auchtermuchty and Strathmiglo and Newburgh).
 - Mr Michael Gallacher (Coupar Angus)

- Mr David Cowling, Secretary Auchtermuchty and Strathmiglo Community Council. Copies of these letters of representation are included in Appendix 6.

2.20 The objections lodged with Fife Council are based on the following grounds:

- Lack of appropriate consultation
- Perth and Kinross Council's direct interest in the application
- Air pollution
- Significant intrusion into a sensitive landscape
- Increase in traffic levels
- Problems of incineration as a method of treating municipal solid waste
- The effect of toxins, dioxins, PM 2.5 particles, greenhouse gases and toxic emissions
- Adverse environmental impact.

2.21 Councillor Ewen Jardine, represents the immediately adjacent Fife Council ward and he has made specific comments in discussions with officers as follows:

- Consultation
- Odour Problem
- Traffic
- Maximising energy production from waste
- Breakdown and maintenance

Consultation:

2.22 Councillor Jardine agrees with the Auchtermuchty and Strathmiglo Community Council that Perth and Kinross Council should have informed adjacent communities on this matter which is bound to have an impact on them. The location of the incinerator on the Binn site means that the Fife village of Gateside is as close to the development, if not closer, than Glenfarg. Although the submitted information confirms that all waste will be sourced from within Perth and Kinross, economies of operation and scale must also mean that material for incineration may not always be sourced solely from Perth and Kinross in the future but from much wider afield. This, in turn, would have an impact on traffic through Gateside and Auchtermuchty.

Odour problem:

2.23 The local farmer at Westfield of Pitlochrie has previously complained about odour problems from the Binn Landfill Site in certain wind directions. This was discussed with Fife Council's Environment Services. Fife Council believes that the owners of Binn Landfill have been previously charged and fined for releasing offensive odours. In the SEPA Regional Report ER 03/06 covering the period January to March 2006 there are ongoing complaints from Abernethy referring both to landfill gas smells and compost odours. The report states that

inspections indicated that there are still problems with gas emitting from the combustion plant. It was also discovered that leachate was discharging to a surface water drain. The Auchtermuchty and Strathmiglo Community Council have also been informed of offensive odours in the Auchtermuchty to Gateside area.

- 2.24 These problems give real cause for concern as regards the running of an incinerator and the strict monitoring and control required to ensure that there is no harm to neighbouring people, animals and plants. E.g. The teratogenic (malformation of the foetus) and other harmful effects of combustion if it is not closely controlled.

Traffic:

- 2.26 The site is located in the countryside just off the A912. This is a narrow, winding and (to the south) hilly road. Many of the corners are very sharp and blind as the road follows the river. Any increase in heavy traffic could result in an increased risk of accidents.
- 2.27 The site is located at the eastern extremity of Perth and Kinross it could be argued that, in order to cut down journey miles, a more central location would be far more cost efficient if all the material for incineration is to come solely from within the Perth and Kinross boundary.
- 2.18 The location of the site should maximise accessibility and minimise journey miles. This location does neither and so is having a harmful impact on the environment and does not promote sustainability.

Maximising energy production from waste:

- 2.29 Incineration comes well down the list of sustainability and best practicable environmental options (BPEO). Thus it should be used to maximise energy recovery. Siting the incinerator well away from industry or areas of high population means that while electricity can be generated the heat is not being used to the maximum (if at all). The location of the incinerator should seek to recover the maximum achievable level of energy from the waste through the use of combined heat and power systems as suggested in SEPA guidelines for Thermal Treatment of Municipal Waste (August 2004).

Breakdown and maintenance:

- 2.30 Similar incinerator plants have been off line for long periods of time and some have suffered fires. Such an eventuality would require that procedures were in place for storage of the waste being delivered for incineration until the plant was again on line. The impact that a prolonged shut down would have on the local environment with particular regard to storage of waste is also an issue of concern.
- 2.31 It is clear from the content of the submissions received by Fife Council that the proposed development is of considerable concern to the immediately adjacent local communities and they have genuine

concerns about not only the visual and landscape impact of the proposal but also have concerns about pollutants from the development and the possible adverse health effects. In particular the detailed papers from Mr Gallacher clearly set out concerns about potential health impacts. It is only right and proper that these are brought to the urgent attention of Scottish Ministers in order to ensure that due regard has been paid to the assessment of these potential risks insofar as they can be determined within the planning application process as a relevant national consideration.

- 2.32 Fife Council is aware of the other regulatory and licensing regimes which will require the energy from waste plant to operate to imposed national and international standards but would wish the health concern issues to be considered by Scottish Ministers, as appropriate and relevant.

3.0 CONCLUSIONS

- 3.1 On the balance of the information provided so far, Fife Council considers that the granting of planning permission is premature and Scottish Ministers should await the further detailed submitted evidence from SEPA in relation to their submitted grounds of objection -

- The applicant has not demonstrated that the proposal has been assessed rigorously against alternatives
- The proposal does not maximise potential energy recovery.

Fife Council considers that these are crucial objections which require to be fully resolved prior to any grant of planning permission being considered.

- 3.2 In procedural terms Fife Council as the adjoining Planning Authority was not formally consulted on the proposed development by either the developer or Perth and Kinross Council as Planning Authority as required under the Environmental Assessment legislation. This may render any subsequent decision open to separate legal challenge by third parties and Scottish Ministers in their assessment of the application should confirm formally whether they feel that the appropriate and correct consultation procedures have been carried out by Perth and Kinross Council.
- 3.3 Fife Council do not consider that there will be a significant, adverse visual or landscape impact on Fife and its communities but the chimney stack and the plumes from it will be visible at certain locations in Fife and at certain times.
- 3.4 Fife Council considers that the planning conditions proposed by Perth and Kinross Council can be significantly strengthened and a more rigorous management and enforcement regime imposed. Fife Council would respectfully suggest that Scottish Ministers should consider the

following additional conditions/obligations if minded to issue conditional approval of the planning application.

- A specific condition is required re the monitoring of air quality
- Inclusion of a requirement, via a section 75 agreement, for the developer to fund and administer a local liaison committee including the key constituent Community Councils in both Perth and Kinross and Fife to provide a discussion and updating forum
- Consideration should also be given to the payment of a royalty per tonne of waste generated into a community trust fund, or similar, to be allocated to the local affected Community Councils for the funding of local projects
- The EU Landfill Directive sets strict targets to reduce the amount of bio-degradable waste sent to landfill. Thermal treatment is one of the treatment methods which can be more environmentally friendly. It has however not been without its legitimate public concerns, however, including human health issues, poor management, technical inefficiencies leading to stoppages and breakdowns and the varying and overlapping powers of the regulatory authorities. Fife Council is also aware of the Scottish Executive's ongoing surveys in Scotland to locate suitable sites for waste incineration plants and it seems obvious that there are clear economies of scale to be identified and wider geographical areas to be considered rather than strict local authority boundaries. Submissions have been made in relation to the Binn Farm application referring to the existing consent for Shore Road which, in the view of many of the objectors, would be a much more suitable location particularly from the point of view of efficiency in energy view recovery because the low-grade heat could be used to heat neighbouring buildings. Fife Council is not aware of the details of the existing planning permission.
- Again it is clear from the submissions received by Fife Council that there are public concerns about the potential health risks and, whilst it is accepted that the quality and content of emissions is regulated outwith the planning process, Scottish Ministers will require to satisfy themselves that all the appropriate statutory controls and consents can be put in place for this proposed development.
- Fife Council is also concerned that in terms of the wider, strategic interest relating to waste disposal and treatment this development is only providing a partial solution for one Council. This seems to be a missed opportunity for larger scale, locational thinking to place, across local authority boundaries.
- Fife Council does not consider the traffic implications to have an adverse impact IN Fife. The additional traffic generated will not create any problems in terms of traffic capacity or congestion.

- Fife Council considers that the Environmental Assessment carried out is comprehensive and sound. Whilst the methodology used is acceptable it is noted that the Council did not seek the assistance of an external independent agency such as the Institute of Environmental Management and Assessment (IEMA), or a specialist independent consultant in air quality management.
- Fife Council uses the services of IEMA and feels that this independent check on the robustness of the environmental methodology used is important in confirming to politicians and third parties that a competent assessment has been made. Again, given the comments about openness and transparency mentioned earlier, this would have been an important governance response to set against external scrutiny.
- Fife Council wishes to ensure that Scottish Ministers are fully satisfied that the key issues raised relating to this proposed development have been adequately and competently dealt with by Perth and Kinross Council as Planning Authority and would respectfully suggest that the application is called in by Scottish Ministers for determination particularly given the lack of formal consultation with Fife Council, the local Fife Communities, the number of objections lodged, and the outstanding objections from SEPA.

APPENDICES

1. Letter to Jim McKinnon, Chief Planner SEDD dated 22nd January 2007.
2. Letter from Iain McLeod, SEDD dated 13th February 2007.
3. Planning Application Assessment Report, prepared by Seamus Lalor Associates Limited (SLA) dated March 2007.
4. Summary of the Binn Farm proposal.
5. Existing, proposed and possible new facilities at Binn Farm.
6. Letters of representation to Fife Council.