



REPORT TO: SPECIAL MEETING OF PLANNING AND REGULATORY SERVICES COMMITTEE ON 26 JUNE 2023

SUBJECT: CONSULTATION ON SECTION 36 PROPOSAL TO ERECT A WIND ENERGY DEVELOPMENT 22 TURBINES UP TO 200M HIGH AT CABRACH, MORAY KNOWN AS CLASHINDARROCH EXTENSION FOR CLASHINDARROCH WIND FARM EXTENSION LIMITED

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 This report asks Committee to consider the consultation received from the Energy Consents Unit (ECU) of the Scottish Government in relation to an Electricity Act 1989 Section 36 application (which includes deemed planning permission) for a new windfarm extension. This Section of the Electricity Act relates to consenting onshore electricity generation.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to exercising the functions of the Council as Planning Authority.

2. RECOMMENDATION

2.1 It is recommended that the Committee agrees:

- (i) **to consider and note the contents of the report, as set out in Appendix 1-3, including the conclusions about the planning and wider merits of the development (see Section 5 below) where taking into account National Planning Framework 4, Moray Local Development Plan 2020 and all other material considerations, it is recommended that Moray Council does not object to the Section 36 application, but raises significant concerns and suggests amendments/mitigation referred to in Appendix 1 (with further council input if amendments are made); however**
- (ii) **where the committee are minded to raise an objection, provide planning reasons for objecting and instruct Officers to respond with those reasons formally objecting to the Section 36 application. The significant concerns identified and summarised in Appendix 1**

may constitute the basis for Committees objection or otherwise as determined by committee, but members must consider whether the approach suggested in recommendation (i) above would not address their concerns; however

- (iii) if the committee are minded to raise no objection and raise no significant concerns provide planning reasons and instruct Offices to respond with those reasons for raising no significant concerns or objection to the Section 36 application.**
- (iv) For any of the three options above send (without prejudice to any concerns or objections) the draft conditions contained within Appendix 3 to the ECU seeking further involvement in the formulation of any final list of conditions and delegate authority to officers regarding conditions in the event of the event the Section 36 being approved.**

3. BACKGROUND

- 3.1 As the estimated output of the windfarm will exceed 50mW (up to 195mW) the proposal is to be determined by the ECU within the Scottish Government. Responsibility for consultation with statutory consultees, relevant local authorities, receipt of representations and determination lies with the ECU. In these circumstances the role of Moray Council, as planning authority, is as a consultee rather than being the determining authority. The ECU has invited Moray Council to comment on the proposed wind farm development within a specific timeframe along with other consultees. The period for consultation for Moray Council expires in June and an extension to this period has been granted previously to accommodate referral to this special meeting of the committee. Moray Council objects to the Section 36, this will automatically trigger a Public Local Inquiry (PLI).
- 3.2 The application is described as an extension to the existing operational Clashindarroch windfarm which lies wholly within the Aberdeenshire Authority area immediately to the east. Also within Aberdeenshire adjacent to the operational Clashindarroch windfarm a pending Section 36 application for 'Clashindarroch II' is awaiting determination by Scottish Ministers following a Public Local Inquiry held in 2022. Of note the proposed Clashindarroch Extension subject of the report will have its own access, substation and does not propose to link any paths or roads into the existing operational Clashindarroch windfarm, which is operated separately by Vattenfal.
- 3.3 The recommendation by officers is that no formal objection be lodged. This is based partly upon the inarguable history of previous appeals and Public Local Inquiries (PLI) where Moray Council and community concerns over landscape and visual impact and cumulative effects are given limited weight in the determinations reached when these issues are viewed in the wider context of national planning policies and renewable targets. No refusal of, or objection to, a large wind energy development in Moray on landscape grounds has been supported by the Scottish Government in over 20 years. Such concerns

can still be raised with the ECU and Scottish Ministers without the costly and unproductive participation in a PLI. Adoption of NPF4 now adds further support for onshore wind energy beyond this previous determinations approving windfarms in Moray. As noted in Appendix 1 the applicant has not updated their submissions to the ECU addressing the relevant policies of NPF4 and the response suggested in para 2.1(i) above seeking revisions and suggesting draft conditions should trigger such a review by the applicant and ECU.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

Promote economic development and growth and maintain and promote Moray's landscape and biodiversity.

(b) Policy and Legal

The application is made for consent under S.36 of the Electricity Act 1989 to Scottish Government. If consented, planning permission is deemed to be granted for the development. For planning purposes proposals require to be determined in accordance with the development plan unless material considerations indicate otherwise. If granted by Scottish Government, the responsibility for the discharge of (planning) conditions attached to the formal decision to grant consent will pass to Moray Council.

(c) Financial implications

If Moray Council agrees to object to the proposal, a Public Local Inquiry would be arranged by Scottish Government. Moray Council would be expected to attend and participate in the Inquiry process, including any pre-Inquiry arrangements with resultant costs, including officer, legal representation and consultant costs where required/appropriate.

Furthermore as officers have recommended not to formally object then any case presented to a PLI may need to be by the relevant Councillors who moved against the officer recommendation. They would get support from legal but not from Development Management planning officers directly, although Strategic Planning & Development may assist.

At Inquiry, the applicant may seek an award of costs against the Council if it is considered the Council has acted unreasonably.

(d) Risk Implications

If the Council decide not to respond within the agreed period it would be open to Scottish Government to proceed and determine the application.

If deciding to object, the outcome of any Public Local Inquiry held to consider this proposed development is uncertain: it might uphold and

support the Council's decision to object, but equally the objection could be dismissed and consent granted for the development.

(e) Staffing Implications

In the event of a Public Local Inquiry, staff time and resources (Elected Members, planning and legal officers) will be required for preparation and attendance at any Inquiry.

(f) Property

None.

(g) Equalities/Socio Economic Impact

None.

(h) Climate Change and Biodiversity Impacts

As detailed in the **Appendix 1** report, the proposed development has the potential to make a considerable contribution toward the generation of low-carbon based electricity generation so significant weight is attached to this element. Switching to renewable sources of energy is acknowledged to make a big contribution toward climate change goals. Biodiversity impacts are sought to be mitigated by proposals such as the - Outline Peat and Habitat Management Plan.

(i) Consultations

Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Legal Services Manager, the Development Management and Building Standards Manager, the Equal Opportunities Officer, the Strategic Planning & Development Manager, and the Democratic Services Manager have been consulted, and comments received have been incorporated into the report.

5. CONCLUSION

5.1 From Appendix 1, the planning merits have been considered relative to current development plan policy and material considerations, including Moray Council's Wind Energy Landscape Sensitivity Study adopted by the Council.

5.2 National policy and guidance continue to provides support for onshore renewable energy and climate change initiatives, although not all aspects of national guidance in relation to landscape impact have been complied with and the applicant has made little effort to mitigate the landscape and visual impacts of the development. It is unclear if the socio-economic benefits have been maximised, or community wealth building realised, so more work is required by the applicant. Significant weight is attached to climate change and wider carbon reduction targets, which such a proposal would contribute towards. NPF4 also attaches 'significant weight' to the role of renewable energy production in reducing greenhouse gases, and

weight is also attached to the recent and past decisions of Scottish Ministers whose conclusions place less weight upon landscape impacts that Moray Council has sought to.

- 5.3 The decision to object or not must be based on planning policy (both national and local) and relevant material considerations. The officers recommendation does however attach weight to the outcome of previous objections raised and ultimately the suggested response still allows the Council to raise concerns, request amendments and contribute towards planning conditions.**

Author of Report: Neal MacPherson, Principal Planning Officer
Background Papers:
Ref: 23/00047/S36