

**WARD 01\_17**

**23/01165/APP**  
**24th July 2023**

**S42 to vary condition 3 and condition 20 of the original planning consent ref 21/00020/EIA at Garbet Windfarm Site 5.5km Southeast of Dufftown Moray for Energiekontor**

---

**Comments:**

- The application is reported to Committee as it is a major application. Given that this is an application under section 42 of the planning act to vary the terms of an existing consent the pre application requirements for major applications was not required.
- The application was advertised for Neighbour Notification.
- No representations have been received.

**Procedure:**

- None.

**Recommendation**

Grant Planning Permission - Subject to the following:

**Conditions/Reasons**

Other than in relation to conditions 3 and 20, all other conditions referring to the 'EIA report', related to Environment Impact Assessment documents submitted and approved in relation to the consent permitted under DPEA reference PPA-300-2066 determined on 26 September 2022. In relation to variation sought, the Ministry of Defence have sought two further conditions (30 & 31).

1. **Length of planning permission**

Unless otherwise agreed in writing with the planning authority, the permission hereby granted shall endure for a period no longer than 35 years from the date of final commissioning, after which the development shall cease to export electricity to the national grid, and shall be decommissioned in accordance with the details otherwise approved elsewhere within this planning permission. The date of final commissioning shall be as informed to the planning authority in writing or 18 months from the date of this planning permission, whichever is the sooner.

**Reason:** to avoid uncertainty and ensure that the permission is implemented within a reasonable period, and to allow the planning authority to monitor compliance with the other conditions imposed.

2. Expiry of planning permission

This planning permission will lapse on the expiration of a period of five years from the date of this planning permission, unless the development has been started within that period.

**Reason:** to apply a reasonable time limit for the implementation of the planning permission.

3. Height of Turbines

For the avoidance of doubt, the maximum height of the turbines hereby approved is 200 metres to blade tip.

**Reason:** to ensure that the development is carried out in accordance with the approved details.

4. Turbine details

No turbines shall be erected on the site until the definitive type/model of all turbines including details of the hub height, blade length and blade tip height, external finishes and colour, together with any further assessments as may be required in order to demonstrate to the reasonable satisfaction of the planning authority that the turbines conform to the impacts of the candidate turbine assessed in the EIA report, have been submitted to and approved in writing by the planning authority. The approved details shall be implemented. Furthermore:-

- a) all wind turbine blades shall rotate in the same direction;
- b) no part of the development shall display any name, logo, sign or other advertisement other than as specified in the application, unless approved in advance in writing by the planning authority or if required by law; and
- c) the wind turbines shall be constructed and operated in accordance with the approved details and shall be maintained in the approved colour, free from external rust, staining or discolouration, until such time as the development is decommissioned.

**Reason:** to ensure that the environmental impacts of the turbines forming part of the development conform to the impacts of the candidate turbine assessed in the EIA report and in the interests of the visual amenity of the area.

5. Substation

No construction of the substation or compound shall commence until final details of the external appearance, dimensions, surface materials and boundary treatment of each, including the means of foul water disposal and water supply have been submitted to and approved in writing by the planning authority. The sub-station and compound (including associated infrastructure) shall thereafter be constructed in accordance with the approved details.

**Reason:** to ensure that the environmental impacts of the sub-station and the compound forming part of the development conform to the impacts assessed in the EIA report and in the interests of visual amenity.

6. Battery Storage facility

No construction of the battery storage facility shall commence until final details of its external appearance, dimensions, surface materials and boundary treatment, including the means of foul water disposal and water supply have been submitted to and approved in writing by the planning authority. The battery storage facility (including associated infrastructure) shall be constructed in accordance with the approved details.

**Reason:** to ensure that the environmental impacts of the battery storage facility forming part of the development conform to the impacts assessed in the EIA report and in the interests of visual amenity.

7. Transportation

Prior to the commencement of any part of the development, the following must be submitted to and approved in writing by the planning authority in consultation with the roads authority:

- a) detailed proposals for undertaking trial runs and also delivery of abnormal indivisible loads. Details must include, measures proposed to protect the public road and structures, traffic management (including temporary waiting restrictions), vehicle holding areas and non-vehicular management during deliveries, time restrictions for deliveries i.e. outwith school arrival and departure times. PPA-300-2066 29.
- b) evidence that a construction traffic management plan (CTMP) has been completed and signed by both the developer and the roads authority. The CTMP must cover the duration of the development and include methods of dealing with large and abnormal delivery vehicles. The plan shall also include the methods of marshalling and manoeuvring at junctions on the public road network, any temporary traffic waiting restriction requirements, all modifications to the road network and traffic management arrangements, routes for deliveries to and from the site, and routes which must not be used by development traffic (construction or staff) to access the site. A programme of monitoring for all routes identified in the CTMP during construction will be required.
- c) evidence that a wear and tear agreement between the developer and the roads authority has been completed and signed by both parties. The wear and tear agreement must include a condition survey of the network undertaken jointly by the developer and a representative from the roads authority. The survey must include the full extent of the agreed construction traffic route(s) (within Moray) between the site and the 'A' class road network. In addition, the wear and tear agreement shall also include condition surveys of all roads identified as 'unsuitable' which must be agreed with the roads authority.
- d) evidence shall be provided to confirm that a bond or other financial security has been agreed by the developer and the roads authority and put in place to cover the construction period of the development and to be called upon in the event that the developer fails to meet its obligations under the wear and

tear agreement to maintain the road in a safe condition during the construction phase of the development and to restore the road to its original predevelopment condition within 1 year of the completion of construction or the development becoming operational, whichever is the earlier. The bond/security shall relate to the full extent of the U94bH Burnside of Markie Road within the Moray Council area and is required to mitigate the potential risks from damage to the public road occurring during the construction phase of the development.

- e) detailed plans (1:200 minimum) of all temporary and permanent works proposed to the public roads including details of any works required to listed structures and any other heritage assets affected by deliveries to the development. Details for any areas of road widening and new passing places must also include drainage details to accommodate the additional road surface area. Specific trees to be removed to accommodate the road widening and passing places on the public road network leading to the site should also be identified. Details of where an equivalent number will be planted should also be included.
- f) detailed plans (1:200 minimum) of all works to accommodate the proposed abnormal indivisible deliveries. Details for any areas of road widening and new passing places must also include drainage details to accommodate the additional road surface area. Specific trees to be removed to accommodate the road widening and passing places on the public road network leading to the site should also be identified. Details of where an equivalent number will be planted should also be included.

Thereafter, the development shall be completed in accordance with the approved details and plans.

**Reason:** to ensure that the development is acceptable in road safety terms and to mitigate the environmental impact.

#### 8. Road works

Prior to the commencement of construction and deliveries, including any abnormal indivisible loads, all suspensive works approved through condition 7 must be completed in accordance with the approved details and plans. Any works undertaken are to be permanent for the duration of the operation of the development unless otherwise agreed in writing with the planning authority in consultation with the roads authority.

On completion of the works but prior to the commencement of deliveries, including any abnormal indivisible loads, abnormal load trial run(s) must be undertaken to confirm the works are acceptable and to identify any other restrictions not previously addressed and the frequency and location of abnormal load passing places/oncoming vehicle holding areas required. Representatives from Moray Council Transportation (Traffic), Aberdeenshire Council and Police Scotland must be invited to the trial run. Thereafter, the development shall be completed in accordance with the approved details and plans.

**Reason:** to ensure that acceptable infrastructure is provided on the route to/from the development in the interests of road safety.

9. Temporary over-run areas

Prior to completion of the development, all areas of temporary over-run must be reinstated to an appropriate standard.

**Reason:** to ensure restoration at the end of the construction period to mitigate the environmental impact.

10. Environmental Clerk of Works

- a) No development shall commence until the planning authority has, in consultation with NatureScot, approved in writing the terms of the appointment of an independent environmental clerk of works (ECoW). The terms of appointment shall:
  - i. impose a duty to monitor compliance with the mitigation identified in chapter 15 Schedule of Mitigation of volume I of the EIA Report; the construction environmental management plan; and the habitat management plan;
  - ii. require the ECoW to report to the developer's nominated construction project manager and the planning authority any incidences of noncompliance with the mitigation measures referred to at i) above at the earliest practical opportunity;
  - iii. require the ECoW to direct the micro-siting and placement of the turbines, buildings, tracks, hardstanding, and other ancillary infrastructure in accordance with the micro-siting condition;
  - iv. require the ECoW to submit a monthly report to the planning authority summarising works undertaken on site and incidents of micro siting;
  - v. require the ECoW to advise on adequate protection of nature conservation interests on the site and be responsible for checks for protected species before and during construction; and
  - vi. require the ECoW to attend frequent meetings as set out in the habitat management plan.
- b) The ECoW shall be appointed on the approved terms prior to the commencement of development, throughout any period of construction activity and during any period of post construction restoration works.

**Reason:** to secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the development.

11. Environmental Clerk of Works (Decommissioning)

No later than six months prior to decommissioning of the development or the expiration of this permission (whichever is the earlier), details of the terms of appointment of an independent environmental clerk of works throughout the decommissioning, restoration and aftercare phases of the development shall be submitted in writing to the planning authority for approval in writing. The environmental clerk of works shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the development.

**Reason:** to secure effective compliance with the environmental mitigation and management measures associated with the development during decommissioning.

12. Habitat Management Plan

Prior to the commencement of development and further to the mitigation and enhancement contained within the outline habitat management plan hereby approved, a consolidated and detailed habitat management plan must be submitted to the planning authority for approval in writing, incorporating:-

- a) the constitution of the habitat management plan steering group, including as a minimum the developer, the landowner, NatureScot, and the Deveron, Bogie and Isla Rivers Trust;
- b) the remit of the habitat management plan steering group including how changes to the plan will be made and approved;
- c) a fishery management plan including additional baseline electrofishing and kick sampling to be conducted before, during and two years post construction;
- d) frequent site meetings with the ECoW appointed in accordance with condition 10 pre construction, during and on completion of construction;
- e) consolidation of the proposed ornithological mitigation with existing agri-environmental management schemes already in place particularly in relation to wading birds and peatland restoration;
- f) further investigation and implementation of measures to reduce the required excavation in construction of crane hardstandings. This may be by adoption of alternative construction methods or other means;
- g) the construction programme duration which is likely to be 12 to 18 months;
- h) a peat management plan including details of alternatives to stripping the shallow peaty layer in the temporary construction compound; active intervention measures to promote swift revegetation including details of the slope and how the hydrology of the reinstated peat will be addressed and monitored; water table depth and resulting soil pore space saturation which will require monitoring and active intervention if the water table is lower than required; and
- i) blanket bog restoration: further details of location, methods, materials, monitoring and aftercare in relation to blanket bog restoration required.

Thereafter, the development shall be completed in accordance with the approved details. No development shall commence unless and until the habitat management plan steering group has been established.

**Reason:** to minimise potential impacts on fish fauna, birds and peat and to ensure the appropriate management of peat habitats and reuse of peat.

13. Drainage

Unless otherwise agreed with the planning authority in writing, a finalised drainage impact assessment, showing the following must be submitted to and approved in writing by the planning authority (in consultation with Moray Flood Risk Management Team) prior to completion of all water crossing and turbine foundation pads. The drainage impact assessment should be based upon the designed drainage mitigation contained in Chapters 8 and 15 of volume I of the EIA report and detail the following:

- a) plans submitted with the definitive track and turbine pad layout of the drainage system for both the construction phase and the final site layout once micro-siting allowances have been made;

- b) the drainage system should be designed to a 1:30 year return period (including 35% climate change), without surcharging, if attenuation is used the system must drain completely within 24 hours;
- c) demonstrate that the post development run-off rate does not exceed the predevelopment run-off rate, or increase the risk of flooding to the surrounding land;
- d) confirm that drainage is not redirected to allow surface water draining from one catchment to drain into a different catchment either at construction phase or completion;
- e) instead of the culverts shown in Figure 3.5 'Typical Watercourse Crossing' of the EIA report, watercourse crossings to be oversized, bottomless arched culverts or traditional style bridges are to be used; and
- f) the Deveron District Salmon Fishery Board are to be consulted on any instream works before work progresses and specifically on the design of all waterway crossings.

**Reason:** to ensure all the necessary flood prevention measures are in place and to ensure that protection of the water environment is maintained throughout the construction, operation and decommissioning of the development.

14. Access Management Plan

Prior to commencement of development an access management plan must be submitted to and approved in writing by the planning authority in consultation with the Moray Access Manager and the Moray Local Outdoor Access Forum. Thereafter the approved access management plan shall be adhered to and implemented within the timescales set out.

**Reason:** to ensure that public access is secured throughout the life of the development.

15. Construction Environmental Management Plan

No development shall commence until a construction environmental management plan, incorporating a construction method statement and the proposed precautions and mitigation detailed in chapter 15 Schedule of Mitigation Table 15.1 of volume I of the EIA report, has been submitted to and approved in writing by the planning authority in consultation with the Scottish Environment Protection Agency.

**Reason:** to ensure all the necessary mitigation measures as set out in the EIA Report are implemented properly.

16. Construction Hours

- a) Construction work shall only take place on the site between the hours of 0700 to 1800 on Monday to Friday inclusive and 0700 to 1300 on Saturdays, with no construction work taking place on a Sunday or on national public holidays or bank holidays. Outwith these specified hours, development on the site shall be limited to concrete pouring if started within those hours, turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, unless otherwise approved in advance in writing by the planning authority. The developer shall notify the planning

- authority of such works if carried out outside the permitted hours within two working days of their occurrence.
- b) Heavy Goods Vehicles (HGV) movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 0700 to 1900 Monday to Friday, and 0700 to 1600 on Saturdays, with no HGV movements to or from site taking place on a Sunday or on national public holidays or bank holidays unless otherwise agreed in writing by the planning authority.
  - c) Turbine delivery may be made out with these construction hours, where necessary, and as agreed in writing in advance with the planning authority. For the avoidance of doubt the public holidays or bank holidays are detailed as follows:
    - New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January;
    - 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January;
    - Good Friday;
    - The first Monday in May;
    - The first Monday in August;
    - 30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day;
    - Christmas Day, if it is not a Sunday or if it is a Sunday, 27th December; and
    - Boxing Day, if it is not a Sunday or, if it is a Sunday, the 27th December.

**Reason:** to ensure that construction activity minimises the impact on surrounding neighbours.

#### 17. Wind Farm Noise

The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty and amplitude modulation (AM) penalty), when determined in accordance with the attached guidance notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Table 1 attached to these conditions and:

- a) within 21 days from receipt of a written request of the planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant and provide a written protocol to be approved by the planning authority. The protocol shall describe the procedure to assess the level and character of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached guidance notes. The written request from the planning authority shall set out as far as possible the time or meteorological conditions to which the complaint relates and time or conditions relating to tonal noise or AM if applicable. - Measurements to assess compliance with the noise limits shall be undertaken in accordance with the assessment protocol which shall be approved in writing by the planning authority.
- b) the wind farm operator shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the protocol within two months of the date of the approval of the protocol by the local authority unless otherwise agreed by



the planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements and analysis, such data to be provided in a format to be agreed with the planning authority. Certificates of calibration of the equipment shall be submitted to the planning authority with the report.

- c) where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 5 of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's initial assessment unless otherwise agreed by the Planning Authority.

**Table 1:** At all times – Noise limits expressed in dB LA90, 10 minute and apply for standardised 10 m height wind speeds up to 10 m/s as determined within the site averaged over 10 minute periods.

Location	Standardised Wind Speed at 10m height in m/s averaged over 10 minute periods, Sound Pressure Levels in dB, LA90 10min								
Property Name	4	5	6	7	8	9	10	11	12
H1 Easter Braetown	25	30	32	32	32	32	32	32	32
H2 Wester Braetown	25	30	32	32	32	32	32	32	32
H3 Dumeath	16	21	23	23	23	23	23	23	23
H4 Backside Farm	21	26	28	28	28	28	28	28	28
H5 Ballochford	17	22	24	24	24	24	24	24	24
H6 Bellcherrie	20	25	27	27	27	27	27	27	27

**Table 2:** Coordinate locations of the dwelling listed in Table 1.

LOCATION	Easting	Northing
Easter Braetown	339688	839028
Wester Braetown	339423	838865
Dumeath	342236	837129
Backside Farm	341085	836165
Ballochford	336007	833656
Bellcherrie	340060	834097

Note to Table 2: The geographical coordinate references are provided for the purpose of identifying the general location of the dwelling to which the noise limits apply.

#### Guidance notes for noise condition

These notes are to be read with and form part of the planning condition on noise. The measured data is to be split into bins as described below. The rating level in each bin is the arithmetic sum of the wind farm noise level, any tonal penalty applied in accordance with Note 3 and any AM penalty applied in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI). IOAGPG is "A Good Practice Guide to the Application of ETSU-R-97 for the

Assessment and Rating of Wind Turbine Noise” or any update of that report current at the time of measurement. The IOA Metric is “A Method for Rating Amplitude Modulation in Wind Turbine Noise” dated 9th August 2016 or any update of that current at the time of measurement.

Note 1 – Data collection

- a) Values of the LA90,10-minute noise index should be measured in accordance with the IOAGPG. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and to allow an AM penalty to be calculated for selected periods where a tonal or AM assessment is required.
- b) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second (m/s) and mean wind direction in degrees from north in each successive 10-minutes period in a manner to be agreed in writing with the planning authority. The wind speed at turbine hub height shall be “standardised” to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data which are correlated with the noise measurements determined as valid. The wind farm operator shall continuously log arithmetic mean nacelle anemometer wind speed, mean nacelle orientation, mean wind direction as measured at the nacelle, arithmetic mean rotor RPM and whether each wind turbine is running normally during each successive 10-minutes period for each wind turbine on the wind farm. All 10- minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Universal Time (UT).

Note 2 – Data analysis

- a) The independent consultant shall identify a sub set of data having had regard to:-
  - the conditions (including time of day and corresponding wind directions and speeds) at times in which complaints were recorded;
  - the nature/description recorded in the complaints if available;
  - information contained in the written request from the local planning authority;
  - likely propagation effects (downwind conditions or otherwise); and
  - the results of the tonality/AM analysis where relevant. In cases where it is possible to identify patterns of clearly different conditions in which complaints have arisen additional sub sets may be considered provided this does not introduce unreasonable complexity in the analysis and can be justified by the independent consultant.
- b) Within each of the sub set(s) of data identified, data shall be placed into separate 1 m/s wide wind speed bins.

Note 3 – Tonal penalty

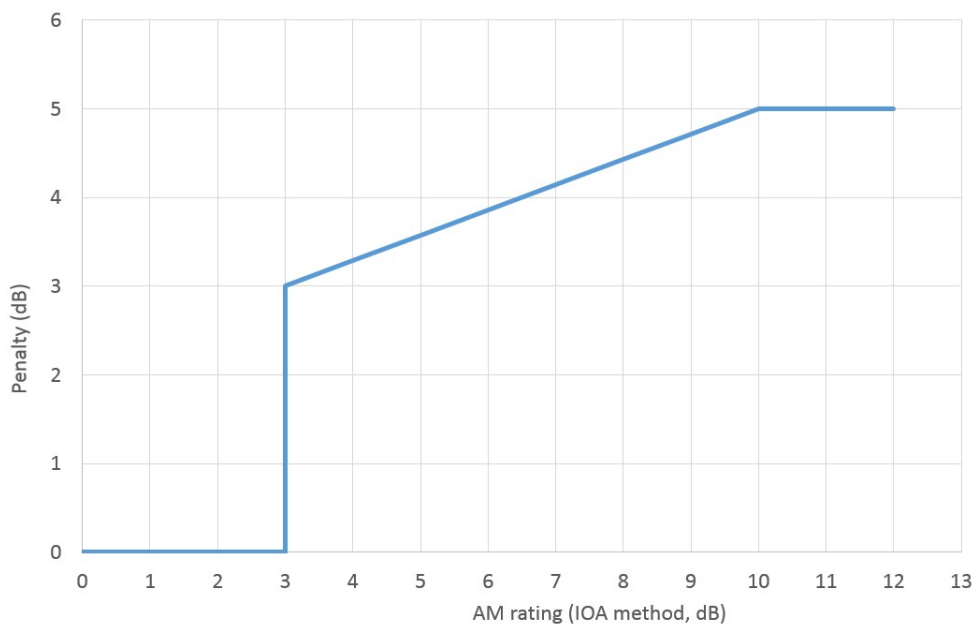
- a) Where, in accordance with the protocol, the noise contains or is likely to contain a tonal component, a tonal audibility shall be calculated for each ten-minute period using the following procedure.
- b) For each 10-minute period for which a tonal assessment is required this shall be performed on noise immissions during two minutes of each 10-minute

period. The two minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure").

- c) For each of the two-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted. Where data for a ten-minute period are corrupted, that period shall be removed from the tonal analysis.
- d) The tone level above audibility for each 10-minute period shall be placed in the appropriate data sub set and wind speed bin.

#### Note 4 – AM penalty

- a) Where, in accordance with the protocol, the noise contains or is likely to contain AM, an AM penalty shall be calculated for each ten-minute period using the following procedure.
- b) For each 10-minute interval for which an AM assessment is required this shall be performed in accordance with the IOA Metric. The value of AM for each ten-minute period shall be converted to a penalty in decibels in accordance with the graph below and the penalty shall be placed in the appropriate data sub set and wind speed bin. Where a penalty is zero it should be placed in the bin in the same way.



#### Note 5 – Calculation of rating level

- a) The LA90 sound pressure level for each data sub set and wind speed bin is the arithmetic mean of all the 10 minute sound pressure levels within that data sub set and wind speed bin except where data has been excluded for reasons which should be clearly identified by the independent consultant. The tonal penalty for each bin is the arithmetic mean of the separate 10 minute tonal audibility levels in the bin converted to a penalty in accordance

with Fig 17 on page 104 of ETSU-R-97. The AM penalty for each bin is the arithmetic mean of the AM penalties in the bin. - The assessment level in each bin is normally the arithmetic sum of the bin LA90, the bin tonal penalty and the bin AM penalty except where the AM penalty and the tonal penalty relate to the same characteristic (e.g. amplitude modulated tones) when the sum of both penalties may overly penalise the characteristics of the noise. Such cases should be identified and only the larger of the AM or tonal penalty should be applied.

- b) If the assessment level in every bin lies at or below the values set out in the table(s) attached to the conditions then no further action is necessary. In the event that the assessment level is above the limit(s) set out in the tables attached to the noise conditions in any bin, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only. Correction for background noise need only be undertaken for those wind speed bins where the assessment level is above the limit.
- c) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such periods as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
  - i. Repeating the steps in Note 1, with the wind farm switched off, and determining the background noise (L3) in each bin as required in the protocol. At the discretion of the consultant and provided there is no reason to believe background noise would vary with wind direction, background noise in bins where there is insufficient data can be assumed to be the same as that in other bins at the same wind speed.
  - ii. The wind farm noise (L1) in each bin shall then be calculated as follows where L2 6 5 4 a: , "0 i 3 ,, C II CL 2 1 0 0 1 2 3 4 5 6 7 8 9 10 11 12 13 AM rating (IOA method, dB) is the measured level with turbines running but without the addition of any tonal nor AM penalty:

$$L_1 = 10 \log \left[ 10^{L_2/10} - 10^{L_3/10} \right]$$

- iii. The rating level shall be calculated by adding the tonal and AM penalties to the derived wind farm noise L1 in that bin.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal and AM penalties in every bin lies at or below the values set out in the Tables attached to the condition at all wind speeds then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Table(s) attached to the condition then the development fails to comply with the planning condition in the circumstances represented by that bin.

**Reason:** to ensure noise emanating from the windfarm, including amplitude modulation should it occur, can be controlled and kept to an acceptable level.

#### 18. Noise measurements

Prior to the commencement of development full details of the proposed wind turbines (including the power rating, sound power levels, and tonality assessment

carried out on the selected turbine) shall be submitted to and approved by the planning authority. Thereafter only the approved turbines can be erected on the site unless with the written consent of the planning authority.

An independent consultant, approved by the planning authority, shall be employed to measure and where necessary calculate, at the developer's expense, the level of noise emissions from the wind turbines within the first year of operation. The measurement procedures, which may include filtering data according to wind direction, shall be agreed with the planning authority prior to commencement of operation. The measurements shall be carried out in accordance with the approved procedures. The results of any measurement exercise shall be forwarded to the planning authority as soon as practicable after the completion of the monitoring exercise.

**Reason:** to ensure adequate noise data is collected to aid future safeguard to neighbouring properties for noise amenity.

19. Borrow Pit Conditions

- i. Prior to the commencing of any blasting operations for the formation of borrow pits associated with the development, a scheme for the monitoring of blasting including the location of monitoring points and equipment to be used shall be submitted to the planning authority for written approval. All blasting operations shall take place only in accordance with the scheme as approved or with subsequent amendments as may be approved in writing by the planning authority.
- ii. In the event of the formation of borrow pits, blasting times shall be restricted as follows:
  - a) No blasting shall be carried out on the site except between the following times (1000 and 1200 hours) and (1400 and 1600 hours) on Mondays to Fridays and (1000 and 1200 hours) on Saturdays.
  - b) There shall be no blasting or drilling operations on Sundays, national public holidays or bank holidays (as defined in condition 16).
  - c) The above requirement shall not apply in cases of emergency when it is considered necessary to carry out blasting operations in the interests of safety. The planning authority shall be notified in writing immediately of the nature and circumstances of any such event.
- iii. Ground vibration as a result of blasting operations to form borrow pits at the site shall not exceed a peak particle velocity of 6mms-1 in 95% of all blasts and no individual blast shall exceed a peak particle velocity of 12mms-1 as measured at vibration sensitive buildings. The measurement shall be the maximum of 3 mutually perpendicular directions taken at the ground surface at any vibration sensitive building.
- iv. At the reasonable request of the planning authority, following a complaint relating to vibration from blasting operations to form borrow pits, the developer shall measure at its own expense ground vibration to ensure compliance with the above condition. The results of such monitoring shall thereafter be forwarded to the planning authority.

**Reason:** to ensure that any blasting is carried out safely and so as to minimise the impact on neighbouring amenity.

20. Micro-siting

- a) All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the locations shown in Figure 1.1 Site Layout. The location of the wind turbines, compounds, areas of hardstanding and tracks may be varied (micro-sited) within the site subject to the following, unless otherwise approved in advance in writing by the planning authority:
  - i. no wind turbine, building, mast, tracks, hardstanding or other ancillary infrastructure shall be moved more than 100 metres from the position shown within the Figure 1.1 Site Layout. If any micro-siting is sought, it must first of all be approved in writing by the planning authority (in consultation with the Ministry of Defence - Safeguarding).
  - ii. the exceptions to this will relate to tracks between T4 to T7 where micro-siting allowance can extend beyond 100m to ensure tracks can be moved onto shallower peat.
  - iii. all micro-siting permissible under this condition must be approved in advance in writing by the ECoW appointed in accordance with condition 10.
  - iv. for any micro-siting of turbines which results in an increase in altitude of more than 5m from the approved position, a prior request for approval in writing must be made to the planning authority (in consultation with the Ministry of Defence, Safeguarding). Such a request must be accompanied by an updated and comparative ZTV plan and wireline montages as required by the planning authority. No such micro-siting can take place without the written approval of the planning authority.
- b) No later than two months after the date of final commissioning, an updated site plan shall be submitted to the planning authority showing the final position of all wind turbines, anemometry masts, areas of hardstanding, tracks and associated infrastructure forming part of the development. The plan must also specify areas where micro-siting has taken place and, for each instance, be accompanied by the ECoW or the planning authority's written approval, as applicable.

**Reason:** to ensure that micro-siting decisions take account of environmental impacts and local ground conditions, including existing infrastructure.

21. Buffer zones

The buffer zones around groundwater abstractions and watercourses identified on Figure 8.6 Constraints of the EIA report shall be implemented in full throughout the construction, operation and decommissioning of the development.

The groundwater abstractions buffer zone shall be 100 metres for all development with excavations or intrusions less than 1 metre depth. The buffer zone shall be 250 metres for all development with excavations or intrusions greater than 1 metre depth.

There shall be no development, machinery movement or operations within the buffer zones without the agreement of the planning authority in consultation with the Scottish Environment Protection Agency. The buffer zone around the groundwater abstraction areas shall be demarcated on the ground during construction.

**Reason:** to prevent potential unacceptable impacts on groundwater abstractions.

22. Shadow flicker

At the reasonable request of the planning authority following a complaint, the developer shall investigate and instigate appropriate mitigation measures to minimise the effects of shadow flicker.

**Reason:** to ensure mitigation can be pursued and instigated in the event of such a complaint being received.

23. Restoration of borrow pits

Prior to the construction of the final turbine, a finalised restoration plan for any borrow pits used on site, including the programme and timescales for the restoration, must be submitted to, and approved in writing by the planning authority in consultation with the Scottish Environment Protection Agency. Thereafter the restoration shall be carried out in accordance with the plan.

**Reason:** to ensure the restoration of borrow pit(s) at the end of the construction period to mitigate the environmental impact.

24. Mitigation

The development shall be developed in accordance with the schedule of mitigation as specified in chapter 15 Schedule of Mitigation Table 15.1 of volume I of the EIA report. The measures contained within, must be carried out in accordance with the submitted information contained within the EIA Report or as required by other conditions of this permission.

**Reason:** to ensure the various mitigation measures proposed and collated within the EIA Report in Table 15.1 are met.

25. Aviation Lighting

Prior to commencing construction of any wind turbine generators, or deploying any construction equipment or temporal structure(s) 50 metres or more in height (above ground level) an aviation lighting scheme must be submitted to the planning authority for approval in conjunction with the Ministry of Defence defining how the development will be lit throughout its life to maintain civil and military aviation safety requirements as deemed necessary for aviation safety by the Ministry of Defence.

This should set out:

- a) details of any construction equipment and temporal structures with a total height of 50 metres or greater (above ground level) that will be deployed during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with; and

- b) the locations and heights of all wind turbine generators and any anemometry mast featured in the development identifying those that will be fitted with aviation warning lighting identifying the position of the lights on the wind turbine generators; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used. [specify shielded lights as per the lighting strategy]

Thereafter, the developer must exhibit such lights as detailed in the approved aviation lighting scheme. The lighting installed will remain operational for the lifetime of the development.

**Reason:** to maintain aviation safety.

26. Aviation Charting and Safety Management

The developer must notify the Ministry of Defence, at least 14 days prior to the commencement of the works, in writing of the following information:

- a) the date of the commencement of the erection of wind turbine generators;
- b) the maximum height of any construction equipment to be used in the erection of the wind turbines;
- c) the date any wind turbine generators are brought into use; and
- d) the latitude and longitude and maximum heights of each wind turbine generator, and any anemometer mast(s).

The Ministry of Defence must be notified of any changes to the information supplied in accordance with these requirements and of the completion of the construction of the development.

**Reason:** To maintain aviation safety.

27. Decommissioning, Restoration and Aftercare

- a) The development will cease to generate electricity by no later than the date falling 35 years from the date of final commissioning. The total period for decommissioning and restoration of the site in accordance with this condition shall not exceed 37 years from the date of final commissioning without prior written approval of the planning authority.
- b) Prior to the commencement of development an outline decommissioning, restoration and aftercare method statement shall be submitted to and approved in writing by the planning authority in consultation with the Scottish Environment Protection Agency. The method statement shall include measures for the decommissioning of the development, restoration and aftercare of the site and will include, without limitation, proposals for the removal of the PPA-300-2066 42 above ground elements of the development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions.
- c) No later than one year prior to decommissioning of the development or the expiration of the 35 year period of operation (whichever is the earlier) a detailed decommissioning, restoration and aftercare method statement, based upon the principles of the approved outline decommissioning,



restoration and aftercare method statement, shall be submitted to the planning authority for written approval in consultation with the Scottish Environment Protection Agency. The detailed decommissioning, restoration and aftercare method statement will provide updated and detailed proposals for the removal of above ground elements of the development, the treatment of ground surfaces, the management and timing of the works and environment management provisions.

- d) The development shall be decommissioned, site restored and aftercare thereafter undertaken in accordance with the detailed decommissioning, restoration and aftercare method statement as approved, unless otherwise agreed in writing in advance with the planning authority in consultation with Scottish Environment Protection Agency.

**Reason:** to ensure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.

28. Financial Guarantee

- a) No development shall commence unless and until a bond or other form of financial guarantee in terms acceptable to the planning authority, acting reasonably, which secures the cost of performance of all decommissioning, restoration and aftercare obligations referred to in condition immediately above is submitted to the planning authority.
- b) The value of the financial guarantee shall be agreed between the developer and the planning authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in condition 27 above.
- c) The financial guarantee shall be maintained in favour of the planning authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in condition 27 above.
- d) The value of the financial guarantee shall be reviewed by agreement between the developer and the planning authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.
- e) The landowner of the development site shall be entitled to be a joint beneficiary with the planning authority under the foregoing financial guarantee. The terms of the landowner's involvement will be subject to the approval of the planning authority acting reasonably and thereafter will be set out in the financial guarantee documentation.

**Reason:** to ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the developer.

29. Reduced lighting scheme

Unless otherwise agreed in writing with the planning authority, prior to development commencing a proposed lighting scheme based on the lighting strategy detailed in appendix 6.4 of the EIA report, together with a report detailing the investigations into a reduced lighting scheme and the measures that can be taken (or evidence of why they cannot be achieved), must be submitted to and approved in writing by the planning authority in consultation with the Ministry of Defence Windfarm Safeguarding and the Civil Aviation Authority. Thereafter the lighting scheme must be implemented in accordance with the approved scheme.

**Reason:** to ensure that only the minimum necessary lighting requirement are developed and to allow for further consideration of the lighting proposals.

30. No development shall commence unless and until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind turbines upon air safety has been submitted to and approved in writing by Moray Council in conjunction with the Ministry of Defence (MOD).

The Air Traffic Control Radar Mitigation Scheme (ATCRMS) is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Lossiemouth ("the Radar") and the air traffic control operations of the MOD which are reliant upon the Radar. The ATCRMS shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the lifetime of the development provided the Radar remains in operation.

The development shall be implemented strictly in accordance with the details set out in the approved ATCRMS.

**Reason:** in order to ensure that the appropriate mitigation measures are in place prior to the windfarm becoming operational.

31. No wind turbine erected as part of this development shall be permitted to rotate its rotor blades about its horizontal axis, other than for the purpose of testing radar mitigation for this development for specific periods as defined in the approved Air Traffic Control Radar Mitigation Scheme (ATCRMS) or otherwise arranged in accordance with provisions contained in the approved ATCRMS, until:

- a) those mitigation measures required to be implemented prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis as set out in the approved ATCRMS have been implemented; and
- b) any performance criteria specified in the approved ATCRMS and which the approved ATCRMS requires to have been satisfied prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis have been satisfied and Moray Council as Planning Authority, in conjunction with the Ministry of Defence, have confirmed this in writing.

Thereafter the development shall be operated strictly in accordance with the details set out in the approved ATCRMS for the lifetime of the development, provided the Radar remains in operation.

**Reason:** in order to ensure that the appropriate mitigation measures are in place prior to the windfarm becoming operational.

#### Schedule 2: Advisory notes 1

1. Notice of the start of development: The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
2. Notice of the completion of the development: As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).
3. Display of notice: A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).
4. Right to challenge this decision: This decision is final, subject to the right of any person aggrieved by this decision to question its validity by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision. Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.
5. Notification of this decision by the planning authority: The planning authority is required (a) to inform the public and bodies consulted in respect of the EIA report of this decision by publishing a notice on the application website or newspaper circulating the in locality of the proposed development or by other reasonable means and (b) to make a copy of the decision available for public inspection in an office of the planning authority where its planning register may be inspected and on the application website.

#### Schedule 3: Application drawings

Figure 1.1 Planning application boundary dated 20 November 2020.

Figure 3.1 Infrastructure Layout - as revised and submitted under the current planning application.

#### Schedule 4: Opportunities for public participation in decision-making

There is the following evidence before me of opportunities the public had to take part in decision-making procedures on the application before I was appointed to this appeal:

- the appellant has provided a report on pre-application consultation. This indicates that two online public exhibitions were held to conform with covid 19 safety guidelines. The first showed the proposed development comprising

14 turbines and took place over the period 25 May 2020 to 8 June 2020. The second took place over the period 10 November to 23 November 2020 and related to the proposed development. Both online events were advertised in the Northern Scot, the Huntly Express and the online version of a local newspaper called Grampian online. The public had an opportunity to comment to the appellant on the proposed development by responding to a questionnaire;

- advertisements of the application in the Northern Scot and the Edinburgh Gazette both dated 19 February 2021 have been provided. They advertised the opportunity for the public to make representations upon the proposal for the development and the accompanying EIA report; and
- the planning authority received 40 public representations in respect of the application. The main points raised in those representations are addressed in the decision notice.

Those who made representations upon the application have been treated as interested parties in the appeal. They have had the opportunity to make representations on matters that they raised, by written response to the appeal. In addition, I requested further written evidence from some of the interested parties on specified matters.

### **Reason(s) for Decision**

The Council's reason(s) for making this decision are:-

The proposal accords with the relevant policies of the National Planning Framework 4 and those of the Moray Local Development Plan 2020. The proposed variations submitted under variations to conditions 3 and 20 are acceptable (subject to the imposition of all previous conditions and two new conditions to ensure policy compliance regarding aviation safeguarding) and there are no material considerations that would indicate otherwise.

### **List of Informatives:**

The TRANSPORTATION MANAGER has made the following comments:-

Prior to the commencement of deliveries or any construction work, a Wear and Tear agreement will be required to be approved between the developer and the roads Authority. The scope of the Wear and Tear Agreement must be agreed with the Roads Authority and must include a condition survey of the network undertaken jointly by the developer and a representative from the Roads Authority. The survey must include the full extent of the agreed construction traffic route(s) (within Moray) between the site and the 'A' class road network. In addition, the wear and tear agreement shall also include condition surveys of all roads identified as 'unsuitable' which must be agreed with the Roads Authority.

The Construction Traffic Management Plan must cover the duration of the development, include methods of dealing with large and abnormal delivery vehicles. The plan shall also include, the methods of marshalling and

manoeuvring at junctions on the public road network and any temporary traffic waiting restriction requirements and all modifications to the road network and traffic management arrangements. Routes for deliveries to and from the site and routes which must not be used by development traffic (construction or staff) to access the site. A programme of monitoring for all routes identified within the CTMP during construction will be required.

It is not acceptable to overrun central refuge/splitter islands, they are not constructed to take vehicle loadings. Proposals submitted must show how this will be managed during deliveries. It is also not appropriate to remove signing for the duration of the abnormal loads therefore confirmation of how signs will be managed during the delivery phase needs to be agreed.

Some of the side tracks which join the public road may appear to be part of the public road as they have a thin layer of tar on them. It is unlikely that there is suitable road construction under any of them and where they are being utilised each location should be assessed and reconstructed if necessary.

Prior to completion of the development, all areas of temporary over-run must be reinstated to an appropriate standard. Example 300mm thick dressed topsoil and reseeded appropriate for the surroundings.

Additional details for all areas of road widening and new passing places must also include drainage details to accommodate the additional road surface area.

Transport Scotland must be consulted with respect to all deliveries proposed via the Trunk Road. The neighbouring Local Authorities, through which the delivery route may pass, Highland/Aberdeenshire/Aberdeen City, must be consulted as appropriate.

Planning consent does not carry with it the right to construct a new road or any part of a road. In accordance with Section 21 of the Roads (Scotland) Act 1984 Construction Consent for new roads (includes passing places, modified junctions and footpaths) that will form part of the public road will be required. Advice on this matter can be obtained by emailing [transport.develop@moray.gov.uk](mailto:transport.develop@moray.gov.uk) and reference to the following pages on the Council web site

Checklist: <http://www.moray.gov.uk/downloads/file68812.pdf>

RCC: [http://www.moray.gov.uk/moray\\_standard/page\\_65638.html](http://www.moray.gov.uk/moray_standard/page_65638.html)

Specification: <http://www.moray.gov.uk/downloads/file68813.pdf>

The applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984. Advice on this matter can be obtained by emailing [roads.permits@moray.gov.uk](mailto:roads.permits@moray.gov.uk) and reference to the following page on the Council web site.

Road Opening: [http://www.moray.gov.uk/moray\\_standard/page\\_79860.html](http://www.moray.gov.uk/moray_standard/page_79860.html)

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

If required, street furniture will need to be repositioned at the expense of the developer. In addition any existing roadside ditch may require a pipe or culvert. Advice on these matters can be obtained by emailing [road.maint@moray.gov.uk](mailto:road.maint@moray.gov.uk)

The applicants shall be responsible for any necessary diversion of any utilities or drainage present at the locations where works are to be undertaken.

The applicants shall meet all costs of improvements to the road infrastructure, which are required as a result of the development.

The applicants shall meet all costs of removal and re-erection of road signage, which are required as a result of the delivery of the abnormal loads.

The applicants shall meet all costs of diverting any footpath or cycleway during the construction period, including signage.

The applicants shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

Bridges and Structures - The developer must contact the Senior Engineer for Bridges and Structures to discuss the proposals via [structures@moray.gov.uk](mailto:structures@moray.gov.uk)

Traffic Management Plan - The developer must contact the Senior Engineer Transportation discuss the proposals via [transport.develop@moray.gov.uk](mailto:transport.develop@moray.gov.uk)

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT		
Reference No.	Version No.	Title/Description
FIG 8-1-2		Site layout
FIG 1.01		Site location plan
FIG 3.01		Location plan
Fig 3.1		Turbine elevation 200m



## PLANNING APPLICATION COMMITTEE SITE PLAN

### Planning Application Ref Number:

23/01165/APP

### Site Address:

Garbet Windfarm

Site 5.5km Southeast Of Dufftown

### Applicant Name:

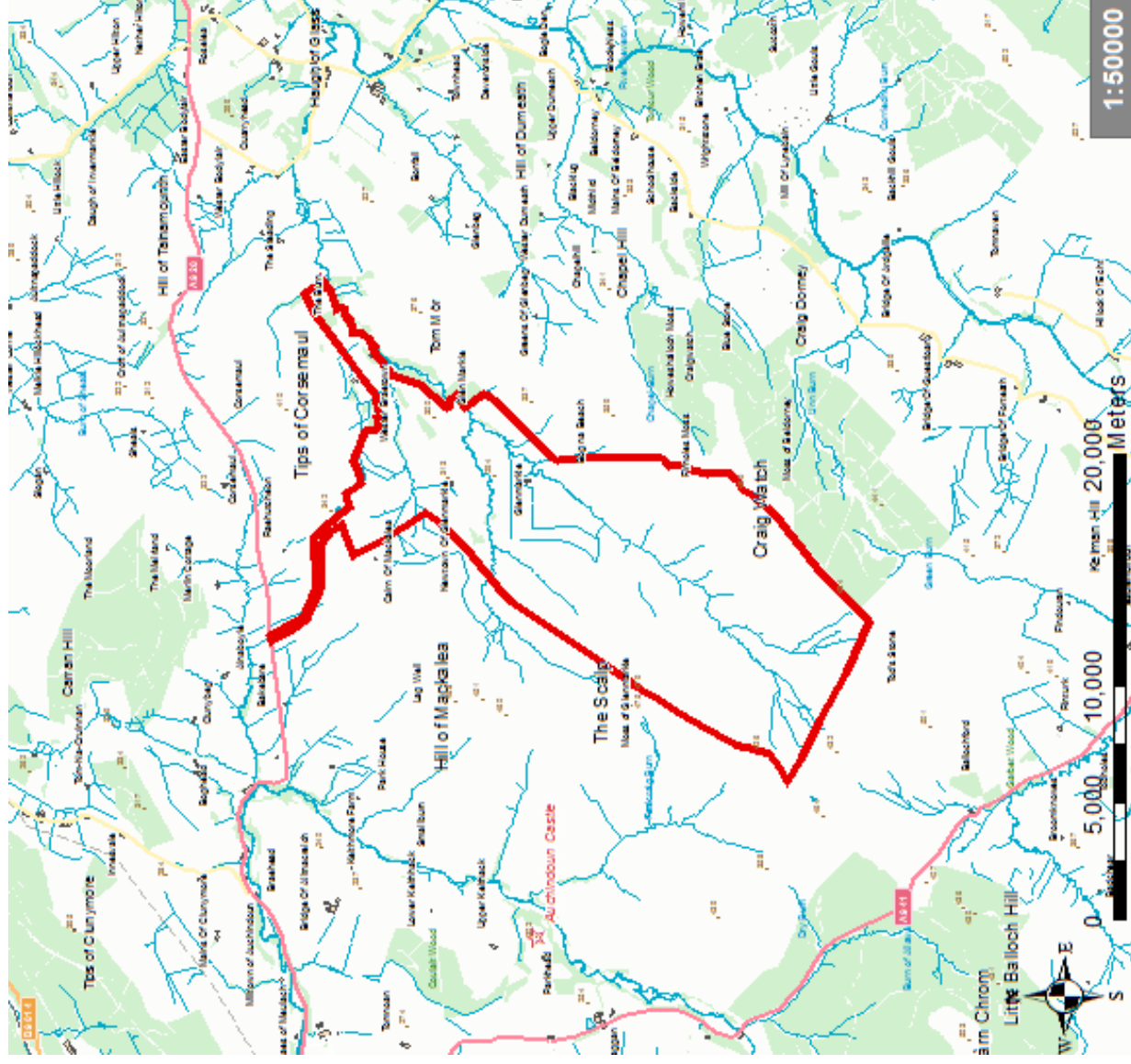
Energiekontor

Plans, drawings and other material submitted to the local authority are protected by the Copyright, Designs and Patents Act 1988 (section 47). You may only use material which is downloaded and/or printed for consultation purposes, to compare current applications with previous schemes and to check whether developments have been completed in accordance with approved plans.

Further copies must not be made without the prior permission of the copyright owner.

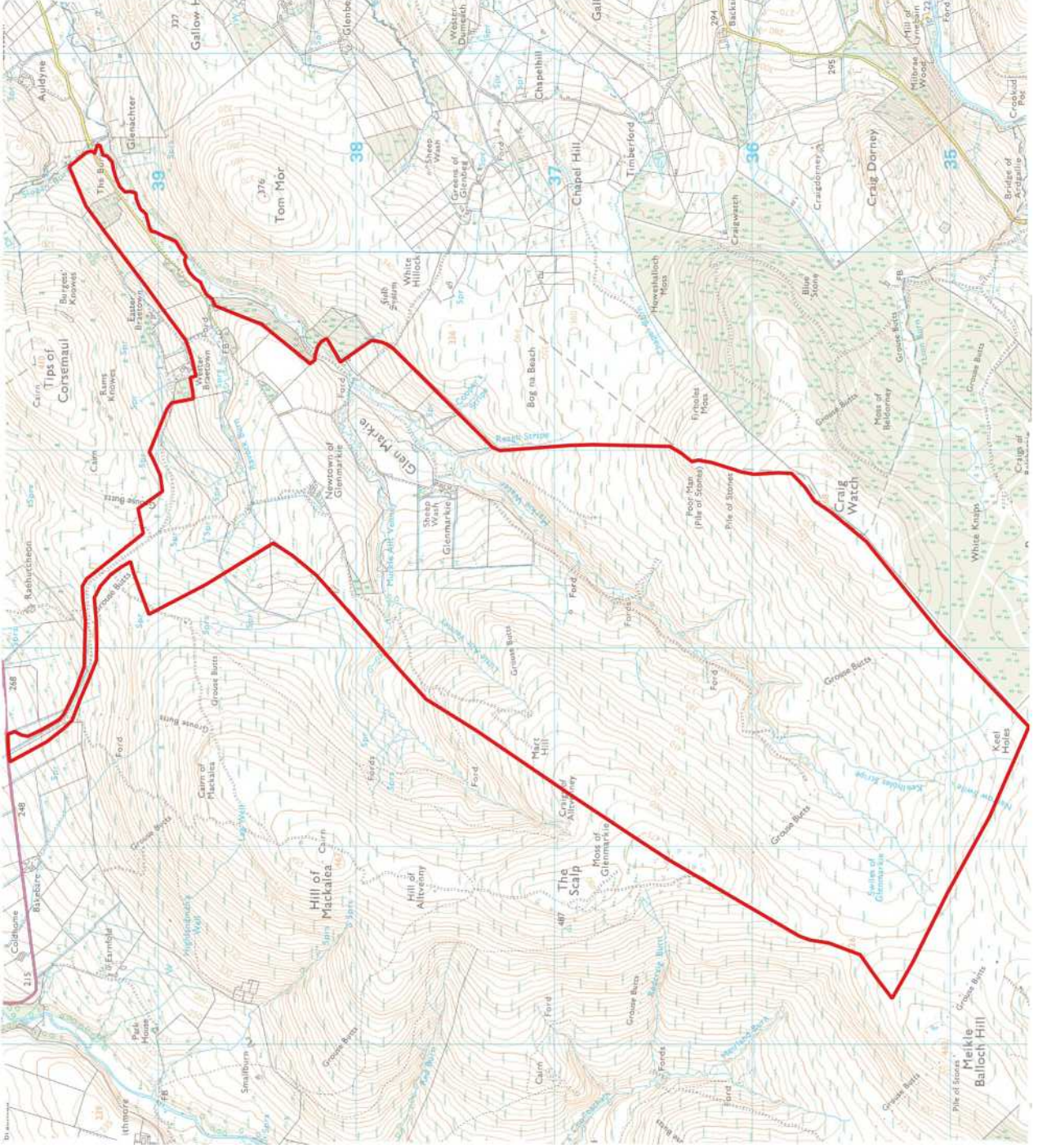
Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Moray Council and other Copyright holders. This permission must be granted in advance.

## Location Plan



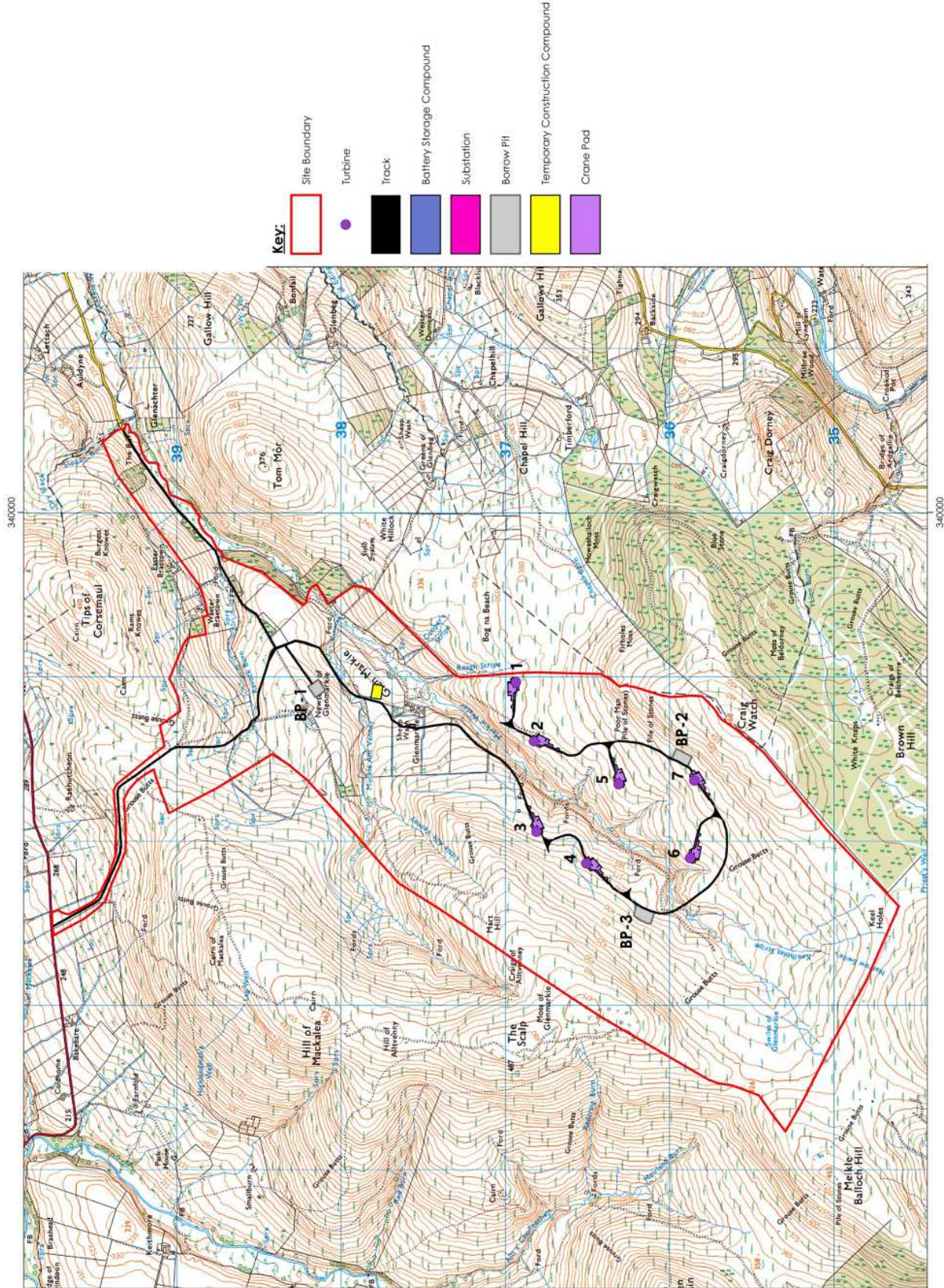


The map shows a topographic representation of the Glenmarkie area. A prominent red boundary line is drawn across the landscape, starting from the top left, following the Glenmarkie river, and extending across the map. The map includes various geographical features such as hills (e.g., Hill of Mackalea, Hill of Allvenny), rivers (e.g., Glenmarkie, Cragg Burn), and settlements (e.g., Glenmarkie, Chapel Hill). The red boundary line encloses a large portion of the area, including the Glenmarkie river and several hills. The map also shows contour lines, roads, and other local features.



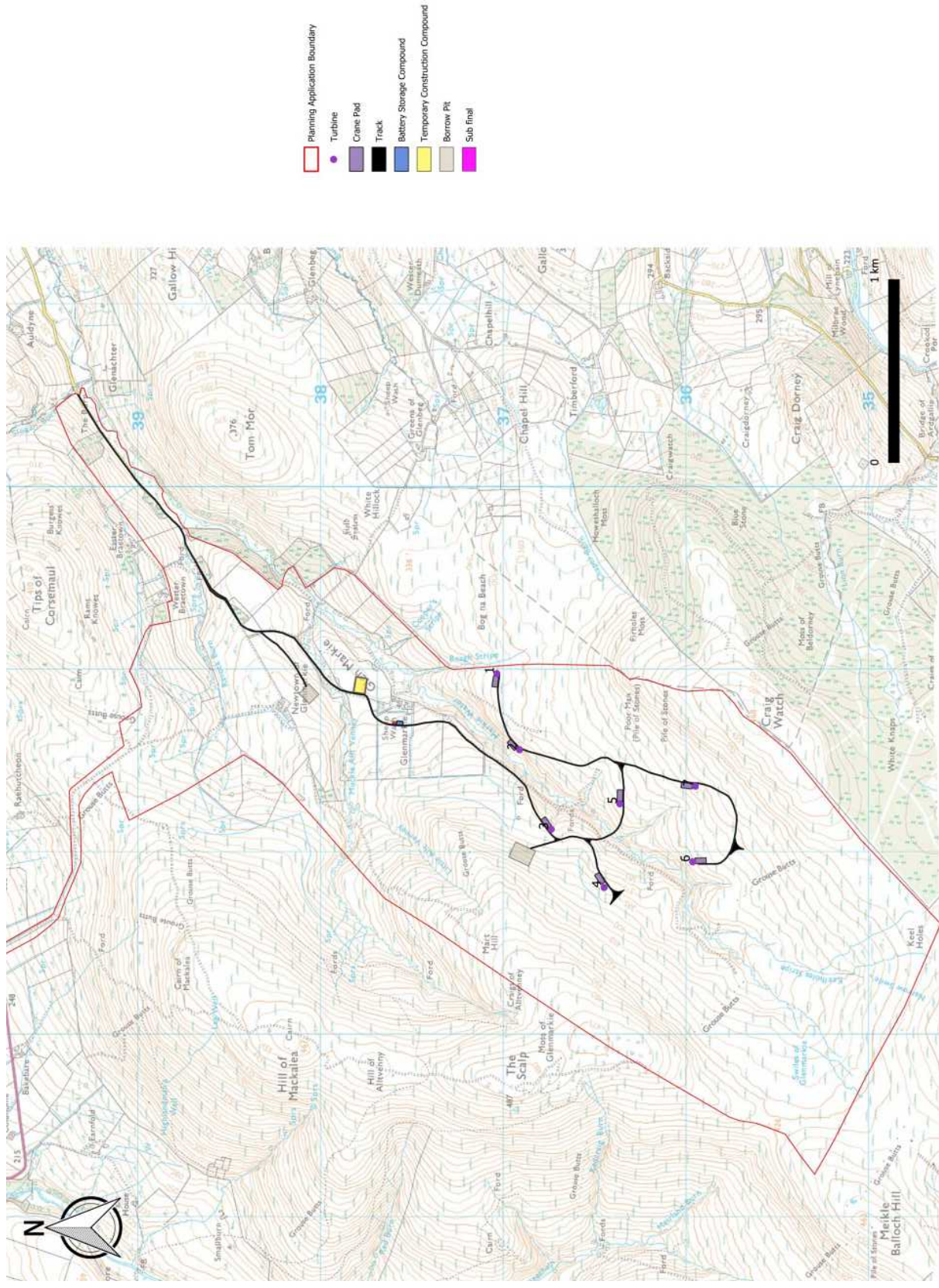


Site Layout— Proposed

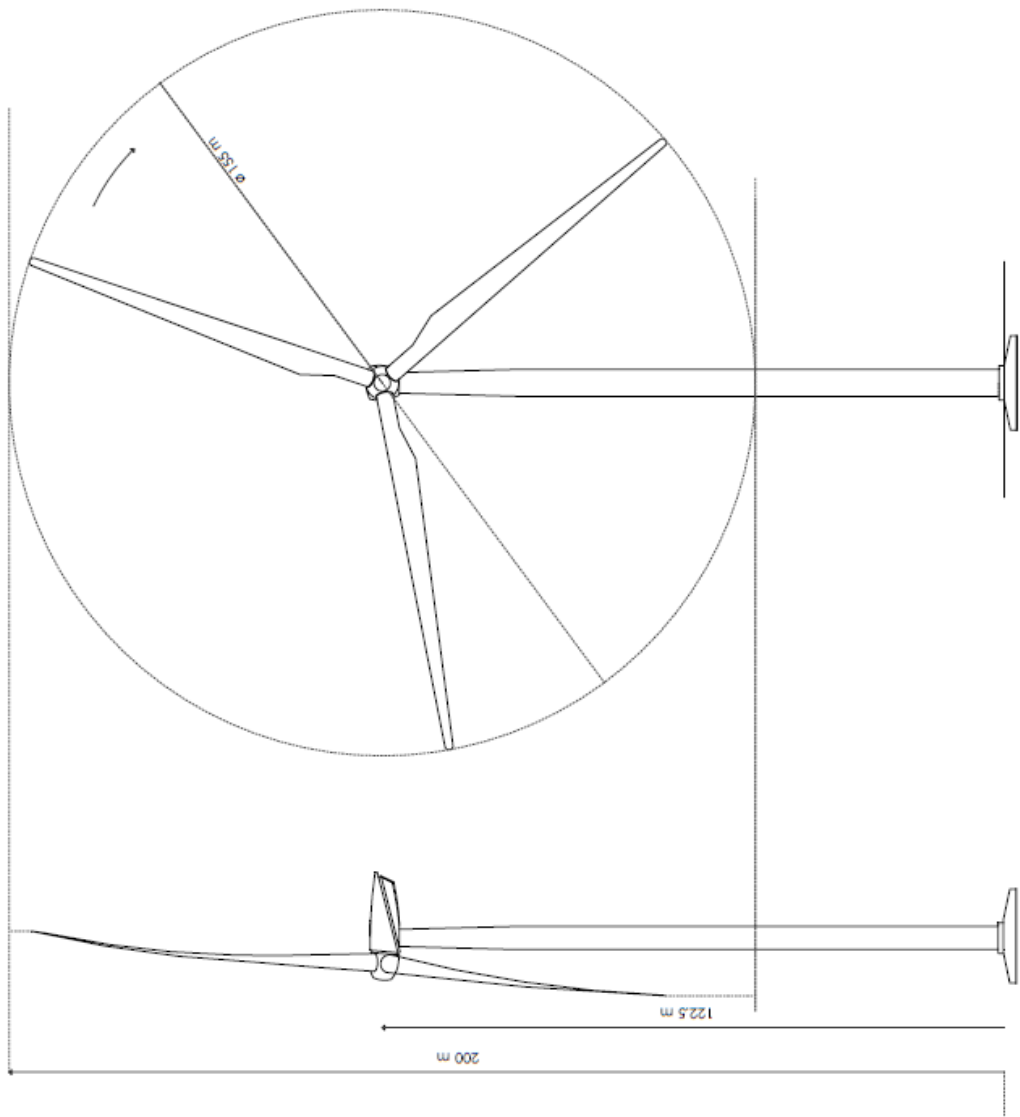




# Site layout—Original



**Turbine Elevation 200m**





## PLANNING APPLICATION: 23/01165/APP

*In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications*

---

### 1. THE PROPOSAL

- This is an application under section 42 of the Planning Act, which seeks to vary conditions 3 and 20 of the existing planning permission for wind farm.
- The original planning permission (21/00020/EIA) was for seven 190m high wind turbines and associated infrastructure and was granted at appeal in September 2022 and development has not yet commenced.
- Condition 3 stated that for Turbine details *“For the avoidance of doubt, the maximum height of the turbines hereby approved is 190 metres to blade tip. Reason: to ensure that the development is carried out in accordance with the approved details.”* The current application seeks to amend this height upward to include turbines up to a height of 200m.
- Condition 20 as approved stated that for Micro-siting:
  - “a) All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the locations shown in Figure 3.1 Infrastructure Layout of EIA report. The location of the wind turbines, compounds, areas of hardstanding and tracks may be varied (micro-sited) within the site subject to the following, unless otherwise approved in advance in writing by the planning authority:
    - i. no wind turbine, building, mast, tracks, hardstanding or other ancillary infrastructure shall be moved more than 100 metres from the position shown within the EIA report and on Figure 3.1 Infrastructure Layout provided such areas are covered by the relevant surveys;
    - ii. the exceptions to this will relate to tracks between T2, T4, T5, T6 and T7 where micro-siting allowance can extend beyond 100m to ensure tracks can be moved onto shallower peat;
    - iii. all micro-siting permissible under this condition must be approved in advance in writing by the ECoW appointed in accordance with condition 10; and
    - iv. For any micro-siting of turbines which results in an increase in altitude of more than 5m from the approved position, a prior request for approval in writing must be made to the planning authority. Such a request must be accompanied by an updated and comparative ZTV plan and wireline montages as required by the planning authority. No such micro-siting can take place without the written approval of the planning authority.
  - b) No later than two months after the date of final commissioning, an updated site plan shall be submitted to the planning authority showing the final position of all wind turbines, anemometry masts, areas of hardstanding, tracks and associated infrastructure forming part of the development. The plan must also specify areas where

*micro-siting has taken place and, for each instance, be accompanied by the ECoW or the planning authority's written approval, as applicable. Reason: to ensure that micro-siting decisions take account of environmental impacts and local ground conditions, including existing infrastructure."*

The current application seeks to amend micro-siting to allow the turbines, access tracks, borrow pits, crane pads and other ground infrastructure to be re-positioned and relocated. In some instances, this repositioning lies outwith the micro-siting thresholds set out in the current approval (condition 20). The current application is therefore accompanied by a revised layout plan, which some changes to the access track, turbine pad positions and borrow pits by the road side.

- No other alterations to the terms of the planning permission are proposed beyond the conditions above, and proposed alterations to the layout out and turbine heights. The change in turbine heights will relate to the tower section with the blades remaining of the same length as indicated under planning approval 21/00020/EIA (155m in diameter).
- The increase in turbine height would see the predicted output of the development increase by 10% up to 165GWh from 150GWh.

## **2. THE SITE**

- The site occupies an area of moorland and upland heathland, used for grazing and is host to several derelict farms. There are areas of wetland and blanket bog also.
- The rural settlement of Haugh of Glass lies 4km to the east.
- The Markie Water flows through the site in a north-easterly direction prior to joining the River Deveron. There are a couple other minor watercourses, tributaries of the Markie Water, which also flow through the site.
- The site occupies an enclosed glen that opens up to the north-east. The site lies within the Moray Landscape Sensitivity Study, Landscape Character type14 'Open Uplands with Settled Glens'. The site is located within an area with potential for windfarm development.
- The site also partially lies within the area designated where windfarm extensions and repowering may be possible.
- A key scenic approach into Moray along the A920 (Huntly to Dufftown Road) lies to the north-east of the site.
- Several derelict vacant properties lie close to site, with a few occupied dwelling close to the site at Wester Braetown and Easter Braetown.
- An archaeological site at Craig Dorney (hillfort site), immediately south-east of the site, lies just outwith Moray and 2km from the nearest proposed turbine.

### 3.

### HISTORY

On site:

**21/00020/EIA** - Installation and operation of a windfarm comprising seven turbines with a generating capacity of up to 46.2MW an electricity storage facility with a maximum capacity of 3MW and associated infrastructure on land 5.5km south-west of Dufftown. This comprised of seven 190m high metre high turbines and following a refusal by the Planning and Regulatory Services Committee in November 2021. The development was subsequently approved at appeal by the Scottish Government in September 2022.

**23/00144/APP** - Upgrade works to the existing access track running south of the A920 to Garbet windfarm, Site 5.5km Southeast Of Dufftown, Moray. A alteration to the approved access track to the site has recently been approved, which would see the developers upgrade an use an existing hill track to the site, accessed via the A920 to the north. This application was approved under delegated power on 25.09.2023

Off site:

**22/00913/S36** – Proposed wind energy comprising of up to 11 wind turbines, up 200m high at Craig Watch immediately south of Garbet windfarm. This Section 36 application is still under consideration by the Energy Consents Unit and Moray Council has yet to respond. It is anticipated that the design of this proposal may be modified and re-consultation occur at some point in early 2024.

**23/00047/S36** – Construct, operate and decommission a wind farm with a generating capacity in excess of 50MW consisting of up to 22 wind turbines Approximately 3 km south of the site, a Section 36 application for an extension to Clashindarroch windfarm has been submitted to the Energy Consents Unit. Moray Council considered this application earlier in 2023 and did not about to object subject to recommending conditions to the energy consents unit.

Aberdeenshire Council, determined my Scottish Government (ECU Ref. ECU00002002) Clashindarroch II windfarm proposes to develop fourteen turbines, each with up to a 6MW capacity and with a tip height of 180m. The proposal was consented after a Public Inquiry and lies within Aberdeenshire adjacent to the existing Clashindarroch windfarm. The appeal decision is currently subject of a judicial challenge.

Aberdeenshire Council application - APP/2009/1380 Clashindarroch Windfarm – Eighteen turbines at 110m. The site is located immediately east of the currently proposed windfarm site and has been in operation since 2015.

#### **4. POLICIES**

##### **Relevant Planning Policy**

###### National Planning Framework 4

NPF3 - Biodiversity  
NPF5 - Soils  
NPF7 - Historic assets and places  
NPF11 - Energy  
NPF25 - Community wealth building  
NPF1 - Tackling the Climate  
NPF2 - Climate mitigation and adaptation

###### Moray Local Development Plan

PP2 Sustainable Economic Growth  
PP3 Infrastructure and Services  
DP1 Development Principles  
DP9 Renewable Energy  
EP2 Biodiversity  
EP3 Special Landscape Areas  
EP7 Forestry Woodland and Trees  
EP10 Listed Buildings  
EP12 Management and Enhancement Water  
EP13 Foul Drainage  
EP16 Geodiversity and Soil Resources

#### **5. ADVERTISEMENTS**

- 5.1 The application was advertised as an EIA development and for neighbour notification purposes.

#### **6. CONSULTATIONS**

**Contaminated Land** - No objection.

**Private Water Supplies** – No objection.

**Transportation Manager** – No objection and note that the conditions previously attached to 21/00020/EIA are re-iterated. Informatives recommended also.

**Aberdeenshire Council (North)** - Aberdeenshire Council considered the proposed revisions and do not object to the planning application.

**Transport Scotland** – No objection and it is noted that conditions are re-iterated (7 and 8) of the 21/00020/EIA consent imposed by the Reporter which would need to be complied with in due course.



**Historic Environment Scotland** – No objections, advice offered.

**Aberdeenshire Council Archaeology Service** – No objection.

**Atkins Global** - No objection.

**JRC – Windfarms** - No objection.

**National Air Traffic Systems Limited** - No objection.

**BAA Aerodrome Safeguarding (Aberdeen Airport)** - No objection.

**Ofcom** – No response.

**Cairngorm National Parks Authority** – No objections.

**Moray Flood Risk Management** – No objection.

**Moray Access Manager** – No response.

**Strathbogie Community Council** – No response.

**NatureScot** – No objection.

**MOD Safeguarding** – The proposed development brought several of the turbines into conflict with the Air Traffic Control Radar avoidance areas for RAF Lossiemouth. The applicants have however now agreed a scheme of mitigation with the Ministry of Defence, which have addressed any aviation conflict, and are the subject of two separate conditions additionally placed upon the consent. Given that the radar mitigation scheme is based upon the specific layout currently proposed, any micro-siting of the turbines, under Condition 20, must be the subject consultation with the MoD also. Subject to the variation to Condition 20, and the further conditions recommended (30 and 31) the MoD have no objection.

**Scottish Environment Protection Agency** - They note that previous conditions imposed by the Scottish Government regarding submission of a finalised Habitat Management Plan, Peat Management Plan inclusive of a Peat Landslide Risk Assessment must still be submitted for final approval.

**Dufftown Community Council** - Not currently constituted, no response.

**Environmental Health Manager** – No objection and it is noted that the previous noise conditions imposed by the Reporter are repeated.

## **7. OBJECTIONS-REPRESENTATIONS**

None received within statutory objection period.

## **8. OBSERVATIONS**

- 8.1 Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended allows applicants to apply to develop land without compliance with conditions previously attached to a planning consent. In determining such an application, the Council, as Planning Authority can only consider the conditions subject to which planning permission should be granted and may:
- grant permission unconditionally (i.e. remove the conditions attached to the planning consent);
  - grant permission conditionally with differing conditions; or
  - refuse the application (i.e. keep the conditions attached to the planning consent).
- 8.2 Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the Development Plan i.e. National Planning Framework 4 (NPF) and the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.
- 8.3 **Background**  
As the windfarm is located immediately adjacent to the local authority boundary with Aberdeenshire, consultation has been undertaken with Aberdeenshire Council. Aberdeenshire Council previously significant concerns about the windfarm under planning application 21/00020/EIA, but this did not formally object. These concerns alongside the grounds for refusal by Moray Council were considered by the DPEA in arriving at their decision to approve the planning application.
- 8.4 Of note, the approved windfarm was to take access primarily from road within Aberdeenshire to the east of the approved site. However, due to difficulties, the applicants subsequently applied for an alternative access route into the site from the north via the A920 to the north (see planning history 23/00144/APP above).
- 8.5 The presence of the consented 190m Garbet windfarm will have to form a significant material consideration in the determination of the current Section 42 application.
- 8.6 The main issues are considered below;
- 8.7 **Section 42 application**  
In considering a Section 42 application the planning authority can only consider the conditions that are the subject of the application although this does not preclude consideration of the overall effect of granting a new permission. The effect of granting a Section 42 application is the creation of a new planning permission and therefore all conditions of the previous consent must be reiterated in order to have effect.
- 8.8 While the application seeks specifically to vary conditions 3 and 20, there appears to be no impediment within Circular 3/2022 Development Management procedures to the addition of further conditions (so long as all conditions remain attached, or as specifically varied within the Section 42). This point will be

become pertinent later in the report, but with the determining authority allowed to consider the overall effect of granting a new planning permission, the imposition of additional conditions may be necessary and justified.

- 8.9 As a Section 42 development, the application did not require to go through formal public Pre-Application Consultation procedures. The application was advertised for neighbour notification purposes and consultation issued to surrounding community councils, including Strathbogie in Aberdeenshire.
- 8.10 **Environmental Impact Assessment (EIA)**  
Proposals for more than two wind turbines are 'schedule 2' developments for the purposes of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The original application (21/00020/EIA) was an EIA application. The EIA Regulations do not specifically provide for a proposal to vary conditions of an earlier development. It is recognised that a Section 42 application is an application for planning permission and that the effect of granting it would be to grant a fresh permission for the whole development. However, the current proposal does not alter the previously approved number of turbines, or general location.
- 8.11 The applicant has however provided an updated EIA Report in support of the application which reviewed those matters affected by the revised tracks, turbine positions and turbine heights. The EIA Report covers a range of issues related to soils, peat, Groundwater Dependent Terrestrial Ecosystems, other habitat and water environments such as water courses.
- 8.12 **Relationship of proposal to national renewable energy policy/guidance**  
National Planning Framework 4 (NPF4) which was adopted in 2023 nationally effectively becomes the top tier development plan for use by all planning authorities or bodies making planning related decisions.
- 8.13 The Climate Change (Scotland) Act 2009 places a duty on public bodies to act sustainability and meet emissions targets including a requirement to achieve at least an 80% reduction in greenhouse gas emissions by 2050 (over 1990 levels). They are The Scottish Government's Programme for Scotland 2020-21, The Environment Strategy for Scotland, February 2020, Climate Change (Emissions Reductions Targets) (Scotland) Act 2019, Scottish Government Climate Change Plan (2018), Scottish Government Onshore Wind Policy Statement 2017 and Scottish Energy Strategy (2017). These generally stress the need to reduce carbon emissions (for which wind energy will clearly play a part) but do qualify this with the need to protect landscapes, built and natural heritage, residents and other interests.
- 8.14 The applicant's submissions regard national policy as being significant and supportive of this proposal where this development, as a proven technology providing a source of safe and locally produced renewable energy for many years, will make a significant contribution towards renewable energy production at the national and local level. Whilst it is noted that some targets have been met for renewable energy production it is noted that the Scottish Governments guidance in pursuit of renewables has not diminish support for renewable energy proposals.

- 8.15 The applicants have submitted a planning statement addressing NPF4 policy 11 Energy. It is clear that in tackling climate change a key aim of NPF4 is to support renewable energy proposals that reduce greenhouse gas and reduce carbon emissions. It therefore states that 'significant weight' will be given to tackling climate change, and onshore wind is a part of that solution.
- 8.16 Generally speaking, national legislation is increasingly supportive of onshore wind development, but does within NPF4 policy 11 seek to state some caveats. Policy 11 energy lists impacts which need to be addressed such as cumulative impacts, significant landscape and visual impacts and impacts on historic environment to name several of the thirteen impacts identified. These particular matters will be addressed below.
- 8.17 **Climate Change and Principle of Renewable Energy Proposal (NPF4 Policy 1, 2, 11 and DP9)**  
NPF4 Policy 1 'Tackling the climate and nature crises' states that significant weight must be attached to the global climate and nature crisis. It aims seeks to reduce emissions and supports development that addresses these goals. Development of renewable energy is one such development and therefore significant weight must be attached to its contribution toward emissions reductions. Similarly, Policy 2 'Climate Change and adaptation' seeks to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change. This can directly be linked to other wider objectives of NPF4 in creating sustainable places and the production and transmission of clean energy is part of the spatial strategy or the north of Scotland.
- 8.18 Policy 11 'Energy' states that project design and mitigation will demonstrate how the various impacts are addressed and these are listed in section e) of the policy. One within section e) being significant landscape and visual impacts, recognising that such impacts are to be expected for some forms of renewable energy. Where impacts are localised and/ or appropriate design mitigation has been applied, they will generally be considered to be acceptable. This goes beyond the comparable MLDP policy DP9 by implying that under certain circumstances, even significant landscape impacts are to be accepted. Policy 11 Energy states that local landscape and visual impact are to be expected, and this must therefore be born in mind for the A920 and Glen Markie area north of the windfarm.
- 8.19 MLDP Policy DP9 Renewable Energy (informed by Moray Councils - Moray Wind Energy Landscape Sensitivity Study 2023) states that all renewable energy proposals will be considered favourably where they meet criteria identified in policy. DP9a)i) where proposals should be compliant with policies to safeguard and enhance the built and natural environment, while DP9a)iii) gives a list of impacts that must be avoided to prevent an overall unacceptable significant adverse impact occurring. The Moray Councils Wind Energy Landscape Sensitivity Study states that this particular landscape (Open Uplands with Settled Glens) would be highly sensitive to larger wind turbines of as scale such as those now sought.

- 8.20 In this case consent already exists for seven turbines, 190m in the same location, so the principle is largely established. The matter remains however as to whether the revised turbines heights and positions are acceptable. When the initial development was approved in 2022, NPF4 had not yet been adopted, so the additional support given to onshore wind energy proposals by NPF4 is a material consideration.
- 8.21 **Impact of changes positions and turbine heights**  
In terms of the landscape and visual impact, particular attention is paid to the net increase in tip rise for turbines increasing in height from 190 to 200m and which are being positioned further uphill. Of specific note, the effect of the changes would see some of the turbines not only being 10m taller but located 10m or more up the hill sides. These changes have been accurately reflected in the amended visualisations and have been assessed. Not all are being located further uphill with some being positioned along the hillside within the same contours. There has also been an element of micros siting for these higher turbines in order to ensure that the development did not conflict with the Ministry of Defence aviation safeguarding requirements.
- 8.22 The extent to which the turbines have been repositioned does in some cases extend beyond the micro setting allowance set out in the previous reporters decision, but does not alter the position of the turbines to any significant extent. The extent to which the turbines have been repositioned will have a minor impact upon the visual appearance of the wind farm as viewed from the wider locality. The wind farm as consented was already visually enclosed from the north, west and south (from within Moray) by elevated upland landform but the most notable change would be viewed from the A920 road to the east leading from Aberdeenshire (Viewpoint 6 A920 West of Bodylair). Even with the increase in height of the wind turbines by 10m, over the distances concerned, the change would be immaterial. Given the change in position of several of the turbines, the composition of the turbines would appear different from this viewpoint, however there would be no difference in terms of the significance or extent of the view. The magnitude of change is minimal and other than the repositioning of some turbines, within the same vicinity as previously approved, the difference in height of 5% does not warrant refusal.
- 8.23 Any visual and landscape impacts would remain localised and the development still benefits from good visual containment from the hill tops to the west south and east. The increase in heights would however slightly increase the developments presence when viewed from higher vantage points and summits in the wider area.
- 8.24 The change in turbine heights would not see any change to turbine blades, noise generated or the size of abnormal delivery loads, so the remaining conditions of the 2022 Reporters Decision still apply and are pertinent to the changes sought under S42.
- 8.25 **Impact on soil resources/minerals (NPF4 Policy 5 and EP16)**  
Policy 5 does state that while generally carbon rich soils should be avoided by development, c)ii. within the policy states generation of energy from renewable sources that optimises the contribution of the area to greenhouse gas

emissions reductions targets may be accepted in peatland. Policy EP16 Geodiversity and Soil Resources states that for large scale (over 20MW) renewable energy proposals, development will only be permitted where it has been demonstrated that unnecessary disturbance of soils, geological interests, peat and any associated vegetation is avoided. The current application see changes to the approved track position, most notable between turbines 4 and 6, where the track has been moved. The applicants have however undertaken further investigations in these areas to ensure soil, peat risk, water environment and habitat impacts have been identified and considered in the updated EIA Report.

- 8.26 Revised ground assessments have been undertaken for the repositioned crane pads and track positions. It is noted that conditions are carried forward from the main consent that require a finalised Habitat Management Plan, and Peat Management Plans, inclusive of the Peat slide risk assessment.
- 8.27 Notably the revised track layout sees rationalisation of water crossing of the Markie Water as it runs between turbine positions 4-6 following further site investigation, which will see less cut and fill and a smaller crossing.
- 8.28 **Impact on cultural heritage (NPF4 policy7 EP8 and EP10)**  
NPF4 Policy 7 Historic assets and places and MLDP EP8 Historic Environment seeks to protect historic and archaeological assets. EP10 Listed Buildings states that development proposals will be refused where they would have a detrimental effect on the character, integrity or setting of a listed building. Structures such as windfarms have the potential to affect the setting of listed buildings other cultural heritage assets some distance away.
- 8.29 From the heritage viewpoint at Auchindoun Castle to the north, the change to the turbine positions would result in a minor extent of visibility being introduced by the blade tip of one turbine alone just breaching the skyline. The tip of blade 6 will, approximately 3.2km away will be just visible as it spins, but as it relates on the very extremity of the blade tip, it does not materially effect the setting of the castle.
- 8.30 Whilst this change is regrettable, it is not significant enough to materially affect or be detrimental to the setting of the heritage asset. Historic Environment Scotland also consider the impact on the castle to be minor in terms of the impact upon its setting. No departure from the above policies occurs.
- 8.31 **Access and traffic impacts (NPF4 policy 13 and DP1)**  
NPF4 policy 13 Policy Sustainable transport and DP1 Development Principles (ii) and its associated appendix in the MLDP identifies the transportation requirement for development in Moray. As the current Section 42 does not propose any increase in traffic movements or the number of abnormal vehicle deliveries (which would now use the new roadway from the A920 (see planning consent 23/00144/APP). This will avoid the smaller more constrained public roads within Glen Markie. The additional geological work done and re-positioning of borrow pits will hopefully further ensure that materials can be won on site, rather than imported.

- 8.32 The various Transportation conditions previously attached to the Reporters decision, are hereby re-iterated ensuring compliance with the relevant local and national planning framework policies.
- 8.33 **Aviation safeguarding issues**  
The proposal which effectively sees vertical changes and repositioned turbines has been assessed by the Ministry of Defence and it was found that the Section 42 changes were going to interfere with Air Traffic Control Radar at RAF Lossiemouth.
- 8.34 Consideration was given to further repositioning of turbines and even a reduction in height of several of the turbines, but ultimately the applicants were able (instead of radar avoidance) to agree with the MoD to utilise a Terma Scanter 4002 Radar Mitigation System that has been assessed being compatible with the ATC Radar at Lossiemouth. This solution is based upon the submitted position and height of turbines originally submitted under the Section 42 application, for which any micro-siting of turbines under condition 20 still needs to be agreed by the Ministry of Defence. They would not need to be consulted on matters such as track micro-siting which would have no impact upon aviation safety.
- 8.35 These additional radar mitigation conditions (recommended as conditions 30 and 31) whilst not forming part of original conditions or forming part of the Section 42 request, are necessary to ensure the overall effect of the consent continues to raise to aviation safeguarding concerns. NPF4 policy 11 Energy e) iv. requires wind energy proposals to mitigate impacts aviation and defence interests.
- 8.36 **Natural environment (NPF4 policy 1, 2, 3, 5, and policy EP1, EP2 and EP12)**  
NPF4 policies 1 'Tackling the climate and nature crises' and 2 'Climate mitigation and adaption' as a wider perspective on the natural environment see tackling climate change via carbon reduction, as one of the major priorities. Policy 1 says avoiding the ongoing nature crises as being hand in hand with climate change, and to address both NPF sees development of renewable energy as part of that solution. Policy 3 Biodiversity however seeks to enhance biodiversity so not withstanding allowances made for energy generation in upland areas elsewhere in NPF4 efforts should still be made to enhance the local biodiversity as a result of development.
- 8.37 NPF4 policy 3 requires all proposals for major developments to conserve, restore and enhance biodiversity. Given that the wind farm already had consent, albeit for slightly smaller turbines. It is noted that native species planting was provided as part of the original permission which would have provided a biodiversity enhancement.
- 8.38 Relevant assessments have been updated to reflect the changes in track position, and turbines heights, but the various suspensive conditions attached to original planning permission covering matters such as, peat, habitat and the water environment are all re-iterated. The various mitigation measures are also re-iterated from the original planning appeal approval, and many of them requires pre-construction surveys and consolidation of assessments once the

final layout is settled upon. As these matters were determined and covered by the conditions re-iterated there is little merit in discussing them under this Section 42 application.

8.39 In this instance the proposal is considered to comply with NPF4 policy 3.

8.40 **Socio Economics (NPF4 – 11, 25 and DP9)**

NPF4 Policy 11 states that proposals will only be supported where they maximise net economic impact, including local and community socio economic benefits. Policy 25 states developments that contribute towards local/regional community wealth building strategies and are consistent with local economic priorities will be supported. While for new wind energy projects consideration is being given as to how net economic benefits might be realised.

8.41 Policy DP9 Renewable Energy states that the contribution proposals make towards meeting renewable energy generation targets, its effect on greenhouse gas emissions and net economic impact, including socio-economic benefits such as employment is a consideration.

8.42 Notwithstanding the pursuit of maximising local community wealth building from new developments this application considers a Section 42 variation to an already approved wind energy development. The scope of the current application (by varying two conditions only) is focussed upon altering turbine heights and altering the micro-siting allowances to avoid aviation conflicts and minimise earthworks for tracks, the wider economic aspects of the development were determined under the original planning application and are not to be revisited here.

8.43 The remit of the application being so focussed, means it is not appropriate to visit this wider issue. Whilst NPF4 is new material consideration, the economic impact of the proposal has been concluded under the 2022 consent. The applicants did submit and updated planning statement considering the implications of NPF4 for the development including comments upon NPF4 Policy 11c) regarding the need to “maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities.” The Section 42 changes would not diminish the predicted local economic impact, so proposal is considered not to conflict with the above policies.

**Conclusion**

The proposed variation of condition to allow relatively minor changes to the approved windfarm was influenced by intervening adoption of NPF4 where support is specifically offered to onshore wind energy, which contribute toward tackling the climate emergency. Noting that the majority of the change to the development would be visible from Aberdeenshire, weight was attached to the response from Aberdeenshire Council raising no objection. Weight is attached to the fact the amended turbine heights are anticipated to yield a slightly larger energy output to the national grid.

Duration of the Planning Permission to reflect the previous decision by the Reporter will allow for 5 years for the development to commence and it will endure for a 35 year period.



## **REASON(S) FOR DECISION**

The Council's reason(s) for making this decision are: -

The proposal accords with the relevant policies of the National Planning Framework 4 and those of the Moray Local Development Plan 2020. The proposed variations submitted under variations to conditions 3 and 20 (subject to the imposition of all previous conditions and two new conditions to ensure policy compliance regarding aviation safeguarding) are acceptable and there are no material considerations that would indicate otherwise.

## **EIA Reasoning for decision**

Moray Council's assessment of the information presented within the EIA Report and other environmental information in relation to the Section 42 development is contained within the Report of Handling. It is considered that the development will not have any significant impacts on the environment. The various mitigation measures remain in place under the Scottish Government appeal decision in September 2022, with all conditions relating to mitigation repeated within this consent.

Moray Council is satisfied that other effects/issues can be addressed by way of mitigation.

A detailed description of the proposed mitigation is contained within the EIA Report and this Report of Handling.

**Author/Contact  
Officer:**

Neal MacPherson  
Principal Planning Officer

**Ext:** 01343 563266

**Beverly Smith  
Development Management & Building Standards Manager**