



Planning and Regulatory Services Committee

Monday, 26 June 2023

NOTICE IS HEREBY GIVEN that a Special Meeting of the **Planning and Regulatory Services Committee** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Monday, 26 June 2023 at 14:00**.

BUSINESS

1. **Sederunt**
2. **Declaration of Group Decisions and Members Interests ***
3. **Resolution**

Consider, and if so decide, adopt the following resolution:
"That under Section 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Item 10 of business on the grounds that it involves the likely disclosure of exempt information of the class described in the relevant Paragraphs of Part 1 of Schedule 7A of the Act."

Guidance Note

7 - 8

4. **Planning Application - 22/00981/APP**

9 - 82

Report by the Appointed Officer

Site redevelopment including new sawmill log storage/processing yard rounding line buildings office and associated infrastructure at Site at Garmouth Road Mosstodloch Moray for James Jones and Sons Ltd

5. **Planning Application - 22/01255/HHCOMP**

**83 -
106**

Report by Appointed Officer

Application for High Hedge Notice at Kilmorack Broomhill Road Keith Moray for Mr Colin Crocket

- | | | |
|----|---|--------------|
| 6. | Planning Application - 22/01396/PPP
Report by Appointed Officer

Proposed 40 bed care home on Land to the Rear of Eight Acres Hotel
Morrison Road Elgin Moray for Parklands Developments Ltd | 107 -
136 |
| 7. | Consultation on Section 36 Proposals - Clashindarroch
Wind Farm Extension

Report by Depute Chief Executive (Economy, Environment and
Finance) | 137 -
186 |
| 8. | Validation Requirements for the Determination of
Planning Applications and Other Consents

Report by the Depute Chief Executive (Economy, Environment and
Finance) | 187 -
210 |
| 9. | Tree Preservation Orders

Report by the Depute Chief Executive (Economy, Environment and
Finance) | 211 -
214 |

**Item(s) which the Committee may wish to consider with
the Press and Public excluded**

10. **Land Adversely Affecting Amenity of Neighbourhood
[Para 13]**

- Information, which if disclosed to the public, would reveal that the Authority proposes, for the purposes of consultation, make an order or direction under any enactment which might allow an individual or organisation to defeat the purpose of the notice or order;

Watching the Meeting

You can watch the webcast live by going to:

http://www.moray.gov.uk/moray_standard/page_43661.html

Webcasts are available to view for 1 year following the meeting.

**You can also attend the meeting in person, if you wish to do so,
please come to the High Street entrance door and a member of
staff will be let into the building.**

Summary of Planning and Regulatory Services

Committee functions:

Town and Country Planning; Building Standards; Environmental Health; Trading Standards; Weights & Measures, Tree Preservation Orders, and Contaminated Land issues.

- * **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

MORAY COUNCIL

Planning and Regulatory Services Committee

SEDERUNT

Councillor David Gordon (Chair)
Councillor Marc Macrae (Depute Chair)

Councillor Neil Cameron (Member)
Councillor Theresa Coull (Member)
Councillor John Cowe (Member)
Councillor John Divers (Member)
Councillor Amber Dunbar (Member)
Councillor Jérémie Fernandes (Member)
Councillor Donald Gatt (Member)
Councillor Sandy Keith (Member)
Councillor Scott Lawrence (Member)
Councillor Paul McBain (Member)
Councillor Derek Ross (Member)
Councillor Draeyk Van Der Horn (Member)
Councillor Sonya Warren (Member)

Clerk Name:	Lissa Rowan
Clerk Telephone:	07765 741754
Clerk Email:	committee.services@moray.gov.uk



**GUIDANCE NOTE PRODUCED FOR PLANNING & REGULATORY SERVICES COMMITTEE
MEETING OF 26 JUNE 2023
REPORT ON APPLICATION**

“Note for guidance of the Committee where the decision of the Planning and Regulatory Services Committee is contrary to the recommendations of the Director of Environmental Services in respect to a Planning Application.”

Any Councillor putting forward a motion to refuse an application, contrary to recommendation, shall clearly state the reasons for refusal. These reasons should be based on policies contained in the approved Local Development Plan or some other material consideration. Time should be allowed to ensure that these reasons are carefully noted for minuting purposes.

Where Councillors put forward a motion to approve an application, contrary to recommendation, an indication should be given of any specific matters which should be subject of conditions along with reasons which should be based on policies in the approved Local Development Plan or some other appropriate consideration.

Note for guidance where the decision of the Planning and Regulatory Services Committee is to depart from the Local or Structure Plan.

Where a Councillor is convinced that there is reason to depart from Local Development Plan policy; then the Councillor’s reasons for making the motion should be clearly stated for minuting purposes. Any matters which should be subject to conditions drafted subsequently by the Director of Environmental Services should be indicated. If the Committee remains of a mind to approve such an application then the whole matter will be subject to statutory procedures as apply. In such cases, Councillors should be aware that the application may require to be advertised as a departure and any objections reported to the next available meeting of the Planning and Regulatory Services Committee. It also may be necessary to convene a hearing to consider the views of objectors.

There are three potential consequences if Committee takes a decision where the proper procedures have not been followed in whole or in part. Firstly, the person aggrieved by a decision may apply to the Supreme Courts in Scotland for an Order either compelling the Council to act according to law, quashing the decision altogether or declaring a decision to be unlawful coupled with an order to prevent the decision being implemented. A referral to the Supreme Courts in these circumstances is known as applying for Judicial Review.

Secondly, in addition to the application for Judicial Review when questions of alleged failure, negligence or misconduct by individuals or local authorities in the management of public funds arise and are raised either by or with the External Auditor of the Council and where an individual can be blamed the sanctions available are:-

Censure of a Councillor or an Officer
Suspension of a Councillor for up to one year
Disqualification of a Councillor for up to five years

In the case of the Council being to blame, recommendations may be made to the Scottish Ministers about rectification of the authorities accounts. Ministers can make an order giving effect to these recommendations.

Thirdly, whilst the Ombudsman accepts that Planning authorities have the freedom to determine planning applications as they wish procedural impropriety may be interpreted as maladministration. This can also lead to recommendations by the Ombudsman that compensation be paid.

Consistent implementation of departure procedures maintains public confidence in the planning system and is consistent with the time and effort invested in preparing the Local Development Plan.

WARD 04_17

22/00981/APP
17 August 2022

Site redevelopment including new sawmill log storage/processing yard rounding line buildings office and associated infrastructure at Site At Garmouth Road Mosstodloch Moray for James Jones & Sons Ltd

Comments:

- A site visit will have been carried out.
- Application is for full planning permission.
- Advertised, as a departure from the development plan and a Schedule 3 development.
- 6 objections received from members of the public, one supporting letter.
- Local community council has objected (Innes).
- The application is considered to be a departure from the development plan and reasons for departure have been provided.

Procedure:

- This is a major application and requires to be determined by the Planning and Regulatory Services Committee – Prior to issuing any consent an appropriate legal agreement will require to be concluded to secure developer contributions in relation to footway improvements.

Recommendation

Approve subject to the following conditions and subject to conclusion of a legal agreement.

Conditions/Reasons

1. No development shall commence until photographic evidence has been submitted to the local planning authority from a qualified tree surgeon that all trees have been protected in accordance with the approved Tree Protection and Removal plan and tree surveys. The trees shall be protected throughout the duration of the construction works and retained thereafter throughout the lifetime of the development hereby approved unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure that the development is integrated into the surrounding landscape/townscape and that features of value to the local area are retained.

2. No development shall commence on the erection of the office building until full details of the foul drainage arrangements have been submitted to and approved in writing by the Council as Planning Authority. The development shall thereafter be completed in accordance with the approved details.

Reason: To ensure that the development is satisfactorily serviced and that there are no adverse effects on the natural and built environment and amenity.

3. No development shall commence until an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the Council as planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological work.

Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be brought into use until a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the Council as planning authority. The PERD shall thereafter be carried out in accordance with the approved detail.

The above works should be undertaken as a trial trenching evaluation of 7-10% of the total proposed development site as well as an archaeological watching brief over ground breaking works associated with the formation of the discharge pipe towards the River Spey.

These works to be undertaken by a suitably qualified archaeological contractor.

Reason: To safeguard and record the archaeological potential of the area.

4. No development shall commence until a detailed Biodiversity Plan has been submitted to and approved in writing by the Council as Planning Authority. This plan shall show the siting and details of all proposed insect and bird boxes, and details of ongoing monitoring of biodiversity enhancements. The development shall thereafter proceed in accordance with the approved details.

Reason: To ensure that biodiversity is enhanced.

5. No development shall commence until a detailed Decarbonisation Strategy has been submitted to and approved in writing by the Council as Planning Authority. This plan shall expand on the principles contained in the indicative

Decarbonisation Strategy and shall include (a) measures to improve the efficiency of the operation of the development (including, but not limited to industrial processes and building operations) in order to reduce potential carbon emissions; (b) commitment to annually review operations, improve efficiencies where practicable and further reduce carbon emissions throughout the lifetime of the development, should new technology/methodologies allow and (c) details of the carbon saving calculations and timescales for implementation of actions in the indicative strategy. The strategy and actions shall thereafter be implemented in accordance with the approved details and timescales, unless otherwise agreed in writing with the Council, as Planning Authority.

Reason: To ensure carbon emissions are minimised during the operation of the development, in accordance with National Planning Framework Policy 26 – Business and Industry.

6. No development shall commence until a Community Wealth Building Plan has been submitted to and approved in writing by the Council as Planning Authority. This plan shall include measures, targets and monitoring for the following areas as appropriate (a) improving community resilience, reducing inequalities and maximising local job creation (b) increasing spending within communities and ensuring the maximum use of local supply chains and services (c) creation of new firms and (d) enabling community ownership of buildings and infrastructure. The measures and monitoring shall thereafter be implemented in accordance with the plan unless otherwise agreed in writing with the Council, as Planning Authority.

Reason: To support a new strategic approach to economic development that helps to build a wellbeing economy in accordance with National Planning Framework Policy 25 – Community Wealth Building.

7. No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Environmental Health Manager. The plan shall include:
- a) measures to minimise construction related noise (including vibration), dust and artificial lighting on nearby residential properties and ecology;
 - b) a waste management strategy for the construction stage to cover:
 - i. identification of the likely waste sources associated with the construction of the development;
 - ii. proposed waste management requirements, including provisions to maximise waste reduction and waste separation at source; and
 - iii. proposed waste management and storage strategy, which shall include details of measures to minimise cross-contamination of materials, storage of waste (including measures to ensure waste is secure from wind/weather);
 - c) a scheme for surface water management to prevent run-off from the site during construction works;

- d) Soil management plan including measures to ensure soil disturbance is minimised during construction;
- e) Construction Method Statement;
- f) Measures to ensure that any felling or vegetation clearance works happen outside of the nesting bird season (typically March – August, inclusive).

The above measures shall be accompanied by information for the timing of their provision. Thereafter the development shall be carried out in accordance with the approved details unless otherwise agreed with the Council, as Planning Authority, in writing.

Reason: In order to ensure environmental impacts are suitably managed and minimised during the construction phase and in order that environmental emissions are considered and managed at the construction phase, in order to protect the amenity of local residents.

- 8. The development hereby approved shall be operated in accordance with the approved Operational Plan drawing number AA6913/P/106 Revision A, Site Masterplan and Noise Impact Assessment, including removal of the existing log line unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To protect local residents from noise nuisance.

- 9. Construction works (including vehicle movements) associated with the development audible at any point on the boundary of any noise sensitive dwelling shall be permitted between 0800 - 1900 hours, Monday to Friday and 0800 - 1300 hours on Saturdays only, and at no other times out with these permitted hours (including National Holidays). The above construction hours shall apply, unless otherwise agreed in writing with the Planning Authority, and where so demonstrated exceptional operational constraints require limited periods of construction works to be undertaken out with the permitted construction hours.

Reason: To protect local residents from noise nuisance in ensuring the construction phase is restricted within permitted hours.

- 10. The development hereby approved shall not be brought into operation/use until the arrangements for the disposal of surface water have been implemented in accordance with the approved plans/ Surface Water Drainage Strategy and certification from an appropriately qualified person confirming that the drainage arrangements have been implemented in accordance with the approved plans and strategy has been submitted to and approved in writing by the Council as Planning Authority. The drainage systems shall thereafter be maintained in accordance with the approved details including the maintenance details set out in the approved Landscape Notes throughout the lifetime of the development hereby approved.

Reason: To ensure that the development is appropriately serviced and that surface water is dealt with in a sustainable manner.

- 11. All landscaping works shall be implanted in accordance with the approved plans, landscape notes and biodiversity plan in the first planting season following

completion or occupation (whichever is the sooner) of the development hereby approved. Tree planting shall take place only when the soil is sufficiently damp but not waterlogged. The landscaping shall be maintained thereafter in accordance with the approved details throughout the lifetime of the development hereby approved. After planting the trees will be inspected regularly and sufficient watering will be undertaken to fully hydrate the trees as necessary. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless otherwise agreed in writing by the Council, as Planning Authority.

Reason: To ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area and to create a good landscape setting for the development.

12. The development hereby approved shall be constructed in accordance with the approved plans and site sections.

Reason: To ensure that the development is appropriate to the surrounding area and is integrated into the surrounding landscape.

13. The boundary fence around the site shall be constructed and coloured green in accordance with the approved plans.

Reason: To ensure that the development is appropriate to the surrounding area and is integrated into the surrounding landscape.

14. The noise emissions associated with the development (inclusive of existing sawmill operations) during daytime hours (0700 to 2300 hours) shall not exceed the predicted sound levels stated in table 6, page 11 of the approved Noise Impact Assessment supporting document by FEC Acoustics, dated 10th February 2023, for James Jones & Sons Ltd and titled "Noise Impact Assessment for proposed expansion of the James Jones timber yard at Mosstodloch, Fochabers, Morayshire, Version 4." For the avoidance of doubt the sound levels shall be determined as the free field equivalent continuous sound pressure level determined (by measurement or calculation) over a reference period of one hour and measured in accordance with BS 7445 -1 2018 – Description and measurement of environmental noise. The location of dwellings is marked as Figure 1, page 4 and as "Receivers" with Eastings and Northings in Table 2 numbered 8, 10, 11, 12 and 14 of the approved Noise Impact Assessment supporting document by FEC Acoustics, dated 10th February 2023, for James Jones & Sons Ltd and titled "Noise Impact Assessment for proposed expansion of the James Jones timber yard at Mosstodloch, Fochabers, Morayshire, Version 4".

Reason: To protect local residents from noise nuisance due to the use of the development.

15. During the time period of 2300 to 0600 hours, the site attributed noise associated with the development (inclusive of existing sawmill operations) shall not exceed 37 dB at the nearest noise sensitive dwelling which is lawfully existing or has planning permission at the date of this permission.

For the avoidance of doubt the sound levels shall be determined (by measurement and or calculation) as the free field equivalent continuous sound pressure level determined over a reference period of 15 minutes and measured in accordance with BS 7445 -1 2018 – Description and Measurement of Environmental Noise.

Reason: To protect local residents from noise nuisance due to the use of the development.

16. During the time period of 0600 to 0700 hours, the site attributed noise associated with the development (inclusive of existing sawmill operations) shall not exceed 42 dB(A) at the nearest noise sensitive dwelling which is lawfully existing or has planning permission at the date of this permission. For the avoidance of doubt the sound levels shall be determined (by measurement and or calculation) as the free field equivalent continuous sound pressure level determined over a reference period of 15 minutes and measured in accordance with BS 7445 -1 2018 – Description and Measurement of Environmental Noise.

Reason: To protect local residents from noise nuisance due to the use of the development.

17. The log sorting line and associated loading and unloading of the line shall only be permitted between 0600 and 2300 hours and the log sorting line shall be constructed in accordance with the approved plans unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To protect local residents from noise nuisance due to the use of the development within permitted hours.

18. Sawmill operations within the designated sawmill building and the closed production buildings shall be permitted between 0600 and 0200 hours.

Reason: To protect local residents from noise nuisance due to the use of the development within permitted hours.

19. No development shall commence on site until a scheme of mitigation has been submitted to and approved in writing by the Council as Planning Authority detailing measures to implement a 10 dB(A) noise reduction to sound power levels at the south east corner of the Processing Shed of the existing sawmill, as detailed in table 1 and located in figure 1, item 6 of the approved Noise Impact Assessment supporting document by FEC Acoustics, dated 10th February 2023, for James Jones & Sons Ltd and titled “Noise Impact Assessment for proposed expansion of the James Jones timber yard at Mosstodloch, Fochabers, Morayshire, Version 4”. The agreed scheme of mitigation shall be implemented prior to the commencement of sawmilling operations at the approved development and be thereafter maintained throughout the lifetime of the development.

Reason: To protect local residents from noise nuisance due to the use of the development in addition with the existing sawmill operations.

20. Throughout the lifetime of the development hereby approved, the dust extraction system of the existing sawmill operations shall have silencers maintained to achieve a 10 dB(A) noise reduction in accordance with the agreed details in Appendix C “Information on Mitigation Measures”(pages 38-43) of the approved Noise Impact Assessment supporting document by FEC Acoustics, dated 10th February 2023, for James Jones & Sons Ltd and titled “Noise Impact Assessment for proposed expansion of the James Jones timber yard at Mosstodloch, Fochabers, Morayshire, Version 4”.

Reason: To protect local residents from noise nuisance due to the use of the development.

21. Unless otherwise agreed in writing with the Planning Authority, a 4m high earth bank with a surface density of at least 10kg/m² shall be provided on the north and east boundary of the development as detailed in Figure 3, Appendix B (page 34 and titled “Existing Sound Map”) of the approved Noise Impact Assessment supporting document by FEC Acoustics’ dated 10th February 2023, for James Jones & Sons Ltd and titled “Noise Impact Assessment for proposed expansion of the James Jones timber yard at Mosstodloch, Fochabers, Morayshire, Version 4”, and located in drawing No. AA6913/LP/10, Revision K and titled “Proposed Site Landscape Proposals”.

Reason: To protect local residents from noise nuisance due to the use of the development.

22. No development shall commence until details (in terms of material, design, and surface density) of the proposed 4 metre high acoustic barrier on the east boundary of the existing sawmill , as detailed and located in Figure 3, Appendix B of the approved Noise Impact Assessment supporting document by FEC Acoustics, dated 10th February 2023, for James Jones & Sons Ltd and titled “Noise Impact Assessment for proposed expansion of the James Jones timber yard at Mosstodloch , Fochabers, Morayshire, Version 4.”, and marked on drawing No. AA6913/LP/10 Revision K, and titled “Proposed Site Landscape Proposals” has been submitted to and approved in writing by the Council as Planning Authority.

The barrier shall thereafter be installed and maintained throughout the lifetime of the development.

Reason: To protect local residents from noise nuisance due to the use of the development in addition with the existing sawmill operations.

23. No development shall commence until a scheme of mitigation has been submitted to and approved in writing by the Council as Planning Authority detailing measures to implement a 5 dB(A) noise reduction to the log sorter, as identified in table 5 and illustrated in figure 3 of the approved Noise Impact Assessment supporting document by FEC Acoustics, dated 10th February 2023, for James Jones & Sons

Ltd and titled “Noise Impact Assessment for proposed expansion of the James Jones timber yard at Mosstodloch, Fochabers, Morayshire, Version 4.” and the indicative plan AA 6913/P303 titled “Log sorting line covered areas”. The agreed scheme of mitigation shall be implemented prior to the commencement of sawmilling operations at the approved development and be thereafter maintained throughout the lifetime of the development. These details shall reflect the requirement for any enclosures to be of muted colours and finishes.

Reason: To protect local residents from noise nuisance due to the use of the development and to ensure that the development is appropriate to the surrounding area and is integrated into the surrounding landscape.

24. Unless otherwise agreed in writing with the Planning Authority, a 4m high barrier of stacked timber logs shall be located and maintained north of the log line similarly to or at the locations identified in figure 3 and marked in green as item 8 in page 9 of the approved Noise Impact Assessment supporting document by FEC Acoustics, dated 10th February 2023, for James Jones & Sons Ltd and titled “Noise Impact Assessment for proposed expansion of the James Jones timber yard at Mosstodloch , Fochabers, Morayshire, Version 4”.

Reason: To protect local residents from noise nuisance due to the use of the development.

25. No development shall commence until details of the final chosen design of operational site lighting have been submitted to and approved in writing by the Council as Planning Authority. These details to ensure during the operational phase that the lighting levels do not exceed that stated in Section 3 and the related Appendices in the supporting document by LightSIM Limited, dated 16th June 2022 - Issue 03 and titled “James Jones Sawmill, Mosstodloch, Moray. External Lighting Assessment for Planning Application ref 21/01290/PEMAJ”. Thereafter, the agreed lighting details shall be maintained throughout the lifetime of the development.

Reason: To protect local residents from light nuisance due to the use of the development.

26. Prior to completion of the development or any part of the development becoming operational, the works to widen Garmouth Road to 7.3m and provide a 3 metre wide cyclepath on its west side shall be completed in accordance with the approved details unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure acceptable infrastructure is provided on the route to/from the development in the interests of road safety and the provision of infrastructure to support the use of low carbon transport.

27. Prior to the completion or occupation of the development (whichever is soonest) a 2 metre wide grass verge shall be provided in accordance with the approved details as shown on drawing AA6913/P/400 Rev F, any fences or other features shall be removed or set back behind the verge and any planting shall be removed or cut back and maintained behind the verge.

Reason: In the interests of road safety for the proposed development and other road users.

28. Notwithstanding the details for the visibility splays submitted on drawing AA6913/P/400 Rev F (which are not accepted as they do not show the land to the north within control of the applicant and do not show walls fences and planting set back behind the visibility splay.) no work shall commence until;
- i) a detailed drawing (scale 1:1000 min which shall also include details to demonstrate control of the land) showing the visibility splay 4.5 metres by 215 metres to the north, and 4.5 metres by 120 metres to the south, showing boundary walls/fences/hedges set back to a position behind the required visibility splay, and a schedule of maintenance for the splay area has been submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority; and
 - ii) the visibility splay shall be provided in accordance with the approved drawing prior to any works commencing (except for those works associated with the provision of the visibility splay); and
 - iii) thereafter, the visibility splay shall be maintained at all times free from any obstruction exceeding 0.6 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.

Reason: To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road.

29. Notwithstanding the information contained in the submitted Construction Traffic Management Plan no works shall commence on site until a detailed Construction Traffic Management Plan has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The Construction Traffic Management Plan shall include the following information:
- duration of works;
 - construction programme;
 - number of vehicle movements (i.e. materials, plant, staff, components);
 - anticipated schedule for delivery of materials and plant;
 - full details of any temporary construction access and traffic management measures;
 - measures to be put in place to prevent material being deposited on the public road;
 - measures to be put in place to safeguard the movements of pedestrians;
 - traffic management measures to be put in place during works including any specific instructions to drivers; and
 - parking provision, loading and unloading areas for construction traffic.

Thereafter, unless otherwise agreed in writing by the Planning Authority the development shall be implemented in accordance with the approved details.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site.

30. Notwithstanding the details submitted for the proposed car parking (which are not

acceptable as they do not include disabled parking provision) details shall be submitted to demonstrate the provision of:

- 39 standard spaces (minimum);
- 2 disabled parking spaces;
- 10 cycle spaces (secure and weatherproof).

Thereafter the parking and cycle spaces shall be provided in accordance with the approved details prior to completion or the development becoming operational (whichever is soonest), and shall be maintained and available for that purpose unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for staff/visitors, the provision of infrastructure to support the use of low carbon transport and to ensure an acceptable development through the provision of details currently lacking.

31. Notwithstanding the details submitted, no development works shall commence until a detailed drawing (scale 1:200) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority confirming the provision of 4 Electric Vehicle (EV) charging units connected to an appropriate electricity supply, including details (written proposals and/ or plans) to confirm the provision of the necessary cabling, ducting, and consumer units capable of supporting the charging units and infrastructure; and thereafter the EV charging infrastructure shall be provided in accordance with the approved drawing and details prior to the completion of the development.

Reason: In the interests of an acceptable form of development and the provision of infrastructure to support the use of low carbon transport, through the provision of details currently lacking.

32. Prior to completion or the development becoming operational (whichever is soonest), the first 20m of the site access onto the B9105 Garmouth Road, measured from the edge of the public road, shall be constructed to the Moray Council specification and surfaced with bituminous macadam.

Reason: To ensure an acceptable vehicular access is provided to the development in the interest of road safety.

33. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0 metre in height and fronting onto the public road shall be within 2.4 metres of the edge of the carriageway, measured from the level of the public carriageway, unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To enable drivers of vehicles leaving driveways to have a clear view over a length of road sufficient to allow safe exit, in the interests of road safety for the proposed development and other road users.

Reason(s) for Decision

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

The proposed development is for an expansion of an existing sawmill which will help to process future volumes of timber from the north east of Scotland, increase production, and number of employees, and help support other businesses/jobs within the supply chain. This aligns with the objectives of the Moray Economic Strategy and the Forestry and Woodland Strategy with a suitable locational justification as required by policy PP2 provided.

The application is considered to be an acceptable departure from policies EP6 Settlement Boundaries, and DP5 Business and Industry of the Moray Local Development Plan 2020 given the locational justification and the sustainable economic benefits associated with the proposal.

The proposed development is for an expansion of an existing sawmill which will help to process future volumes of timber from the north east of Scotland, increase production, and number of employees, and help support other businesses/jobs within the supply chain. This aligns with the objectives of the Moray Economic Strategy and the Forestry and Woodland Strategy with a suitable locational justification as required by policy PP2 provided.

The application is considered to be an acceptable departure from policies EP6 Settlement Boundaries, and DP5 Business and Industry of the Moray Local Development Plan 2020 given the locational justification (relating to the expansion of a long established business and operational requirements of expanding beside the existing site whereby alternative sites are not feasible) and the sustainable economic benefits associated with the proposal.

The proposal is in accordance with all other aspects of the Moray Local Development Plan 2020 and National Planning Framework, and there are no material considerations that indicate otherwise.

It is considered that the development will not have any significant impacts on the environment.

List of Informatives:

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

A Building Warrant will be required for the proposals. Should you require further assistance please contact the Building Standards Duty Officer between 2pm and 4pm or telephone on 03001234561. No appointment is necessary. Alternatively e-mail buildingstandards@moray.gov.uk

The developer should contact Scottish Water regarding connections to their systems – more detail in their consultation response.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Before commencing development, the applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new roads. The applicant will be required to provide technical information, including drawings and drainage calculations, and may be required to provide a Road Bond to cover the full value of the works in accordance with the Security for Private Road Works (Scotland) 1985 Regulations. Advice on this matter can be obtained from the Moray Council web site or by emailing transport.develop@moray.gov.uk

Construction Consent shall include a CCTV survey of all existing roads drainage to be adopted and core samples to determine the construction depths and materials of the existing road.

Any requirement for a Stage 3 or 4 Road Safety Audit will be determined through the Roads Construction Consent process.

Requirements for any traffic calming, road construction materials and specifications and any SUDs related to the drainage of the public road must be submitted and approved through the formal Roads Construction Consent process. Any alterations to the street lighting required as a consequence of the proposed alterations to the public road shall be determined through the Roads Construction Consent process. All costs for the design and provision of any alterations required shall be met by the developer.

Planning consent does not carry with it the right to carry out works within the public road boundary and the applicant is obliged to contact the Transportation Manager for road opening permit in accordance with the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road.

If required, street furniture which needs to be repositioned will be 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 e-mailing transport.develop@moray.gov.uk

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

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into his property.

No water or loose material shall drain or be carried onto the public footpath/carriageway for the life-time of the development.

The applicant shall ensure that their operations do not adversely affect any Public Utilities, which should be contacted prior to commencement of operations.

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.

The Transportation Manager must always be contacted before any works commence. This includes any temporary access, which should be agreed with the Roads Authority prior to work commencing on it.

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.

SEPA has commented that:-

The developer should engage with them regarding the aspects of the proposed development which will be regulated by SEPA, in particular water engineering and in relation to any outfalls near the River Spey. Please see the CAR Practical Guide and contact their water permitting team at waterpermitting@sepa.org.uk

They have noted that activity at the existing site is authorised by Pollution Prevention Control (PPC) Part A and Part B Permits (PPC/A/1133615 and PPC/B/1003194) and the developer would require a Variation of the Part B permit for the proposed activities.

They further note that SEPA regulates several matters covered by this planning application and they will address all matters relating to regulation when the appropriate regulatory application is made.

It is an applicant's responsibility to ensure their proposals will meet all relevant regulatory requirements and they are working within regulatory guidelines. They prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application.

They consider it to be at the applicant's commercial risk if planning permission is granted for a development/process which cannot gain authorisation from them, or if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. Details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of their website.

Proposals which impact on the water environment may be regulated under The Water Environment (Controlled Activities) (Scotland) Regulations 2011. Refer applicants to [car_a_practical_guide.pdf](#) and our water permitting team at waterpermitting@sepa.org.uk

Proposals such as industrial processes which have air emissions, or intensive agriculture may require a permit under the Pollution Prevention and Control (Scotland) Regulations 2012 (PPC 2012). Refer applicants to the Pollution Prevention and Control section of their website and their Waste and Industry Team at wasteandindustry@sepa.org.uk

Proposals which involve the treatment, storage or disposal of waste may require a waste management licence under The Waste Management Licensing (Scotland) Regulations 2011. Refer applicants to the Waste section of their website and their waste permitting team at wastepermitting@sepa.org.uk

SCOTTISH GAS NETWORKS have commented that:-

There are a number of risks created by built over gas mains and services; these are:

Pipework loading - Pipes are at risk from loads applied by the new structure and are more susceptible to interference damage.

Gas entry into buildings - Pipework proximity increases risk of gas entry in buildings. Leaks arising from previous external pipework able to track directly into main building from unsealed entry.

Occupier safety - Lack or no fire resistance of pipework, fittings, or meter installation. Means of escape could be impeded by an enclosed meter.

Please note therefore, if you plan to dig, or carry out building work to a property, site, or public highway within our gas network, you must:

Check your proposals against the information held at <https://www.linsearchbeforeudig.co.uk> / to assess any risk associated with your development and contact our Plant Protection team to let them know. Plant location enquiries must be made via email, but you can phone us with general plant protection queries. See our contact details below:
Phone 0800 912 1722 / Email plantlocation@sgn.co.uk

In the event of an overbuild on our gas network, the pipework must be altered, you may be temporarily disconnected, and your insurance may be invalidated.

Further information on safe digging practices can be found here:
<https://www.sgn.co.uk/damage-prevention>

Our free Damage Prevention e-Learning only takes 10-15 minutes to complete and highlights the importance of working safely near gas pipelines, giving clear guidance on what to do and who to contact before starting any work

Further information can also be found here <https://www.sgn.co.uk/help-and-advice/digging-safely>

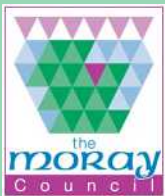
SGN personnel will contact you accordingly.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	Title/Description
AA6913/P/200 B	Location plan
AA6913/P/403	Garmouth Road widening setting out
AA6913/P/202	Initial site strip and soil management
AL(0)010	Office - elevations and floor plans
AA6913/P/20 B	Peculation test locations - sheet 1 of 2
AA6913/P/21 B	Peculation test locations - sheet 2 of 2
AA6913/P/404	Proposed junction swept path
AA6913/EW/07	Typical roadworks details
AA6913/P/201 B	Site masterplan
AA6913/P/20 C	Percolation test locations sheet 1 of 2
AA6913/U/01	Utilities plan
AA6913/P/107	Construction Traffic Management
AA6913/LP/14	woodland planting details
AA6913/P/30	Tree survey map
AA6913/P/303	Log sorting line covered area
AA6913/P/104 B	Entrance area general arrangement and drainage
AA6913/P/203 A	Fence layout
AA6913/P/400 F	Garmouth Road widening general arrangement
AA6913/P/401 B	Garmouth Road widening general arrangement service and utilities alterations
AA6913/P/402 C	Garmouth Road widening location and shared cycle path & footway
AA6913/P/102 C	Off site drainage layout
AA6913/P/101 D	On site drainage layout surface water
AA6913/LP/11 H	Planting layout and sections
AA6913/LP/10 K	Proposed site landscape proposals
AA6913/P/312 D	Rounding line kiln - elevations and floor plans
AA6913/P/310 C	Rounding line - elevations and floor plans
AA6913/P/311 C	Rounding line treatment - elevations and floor plans
AA6913/P/301 E	Sawmill and Co-products elevations
AA6913/P/300 B	Sawmill and Co-products - floor plan
AA6913/P/100 C	Site plan

AA6913/P/103 D	Site sections
AA6913/P/105 A	Sawmill general arrangement and drainage
AA6913/P/302 D	Sawmill and Co-products - roof plan
AA6913/P/106 A	Operational plan
AA6913/LP/15 B	Entrance landscape planting
AA6913/LP/13 A	Tree protection and removal

Documents to be stamped Approved

- Tree surveys
- Biodiversity Plan
- Walkway photos 1 and 2
- Noise Impact Assessment version 4
- Surface water drainage strategy and percolation test information
- Landscape Notes
- Lighting Assessment and supporting lux and lighting plans
- Road Safety Audit
- Transport Statement
- Design and Access Statement
- Decarbonisation Strategy



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:
22/00981/APP

Site Address:
Site at Garmouth Road
Mosstodloch
Moray

Applicant Name:
James Jones & Sons Ltd

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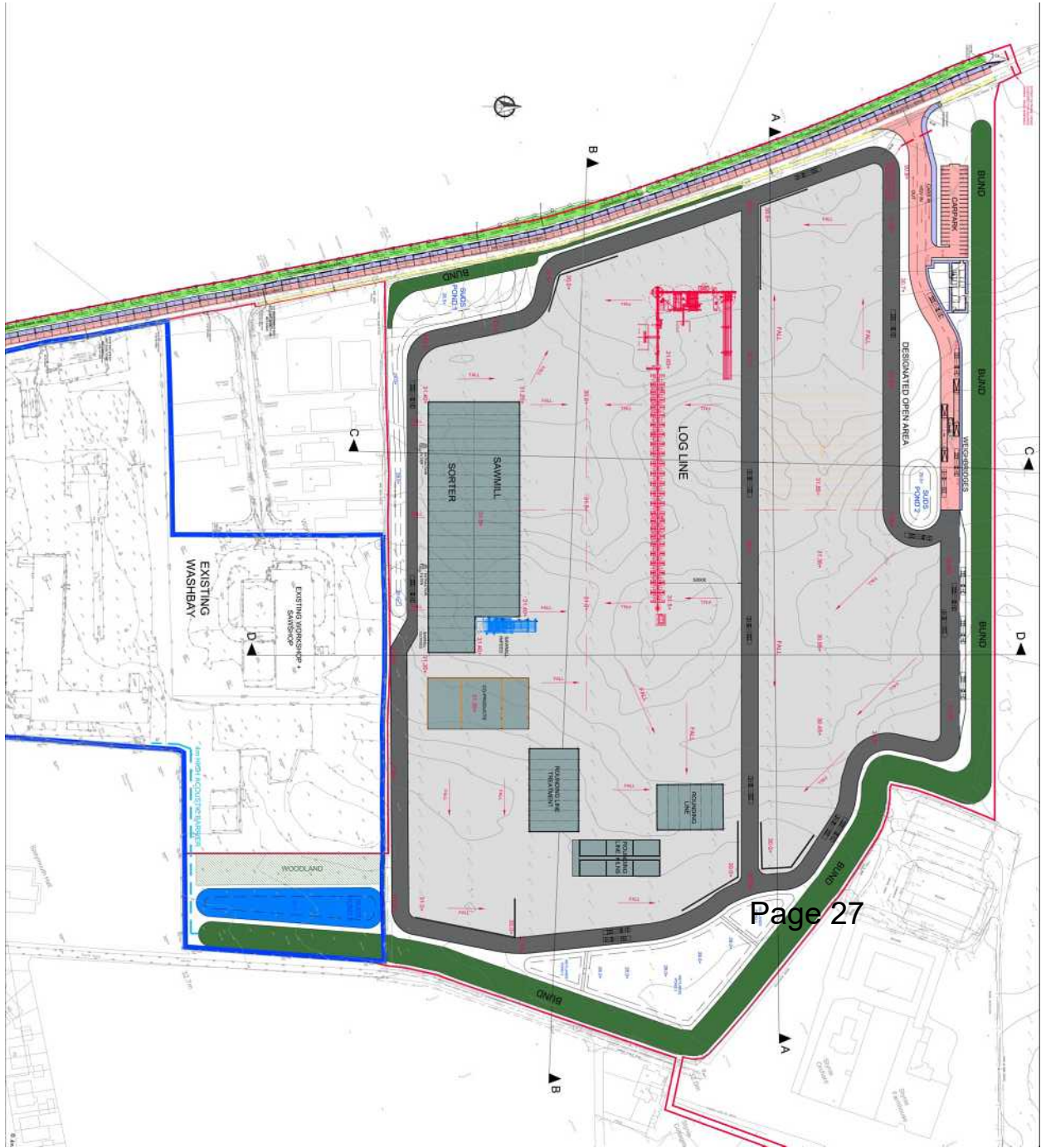
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Location Plan



Site Location

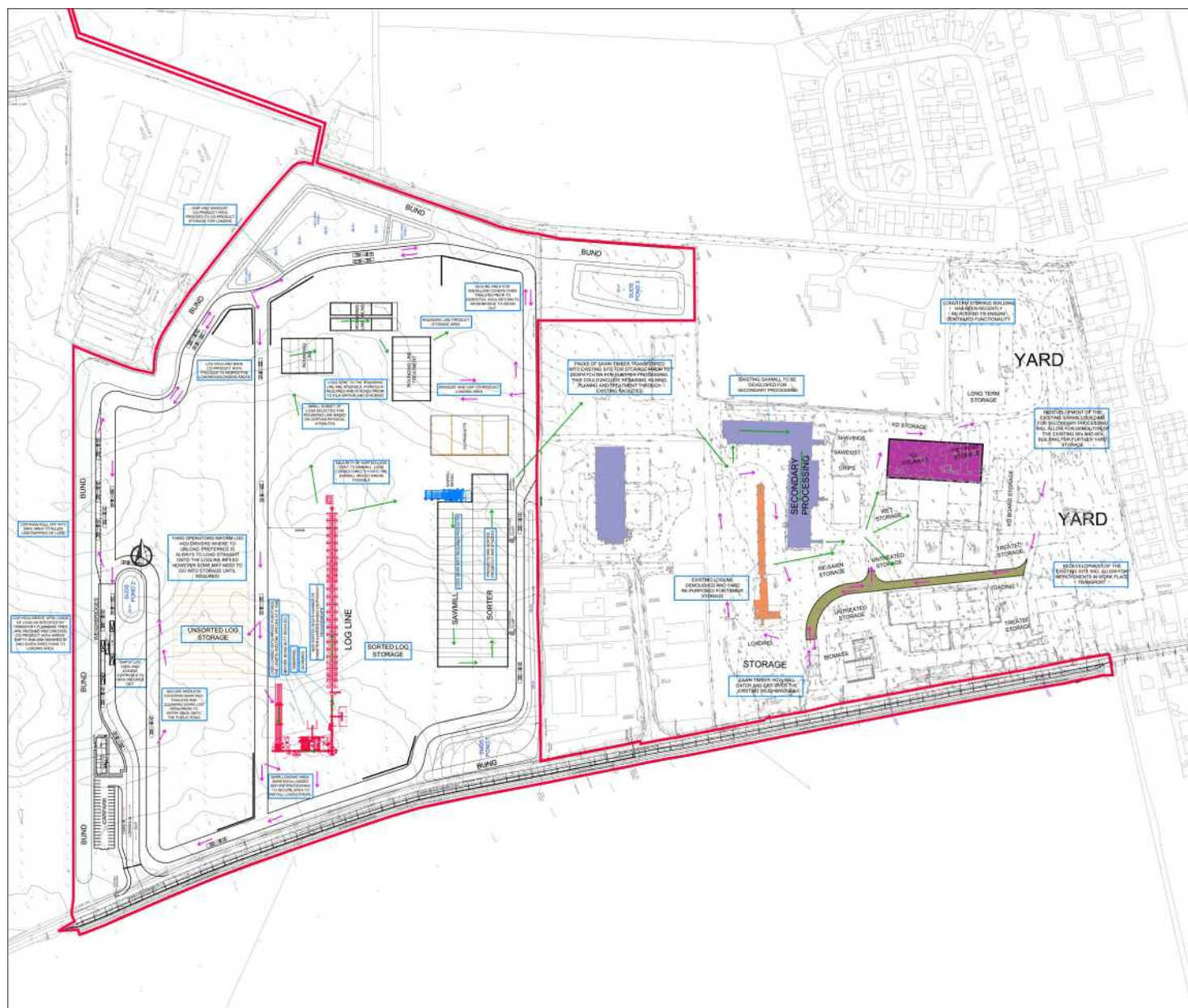




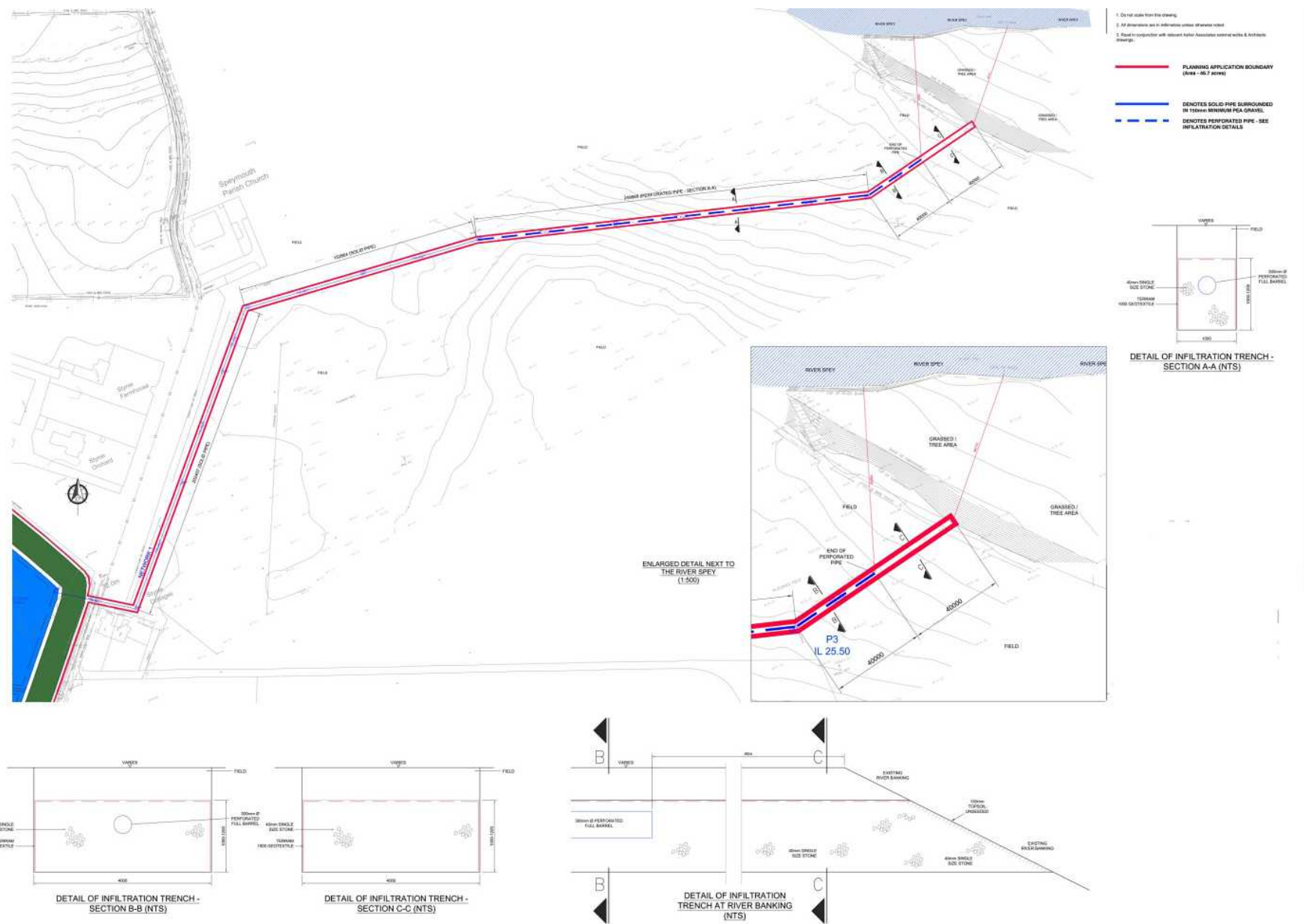
Landscape Proposal



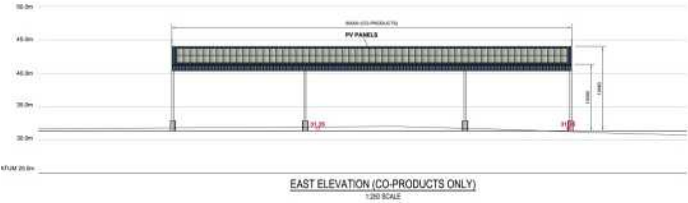
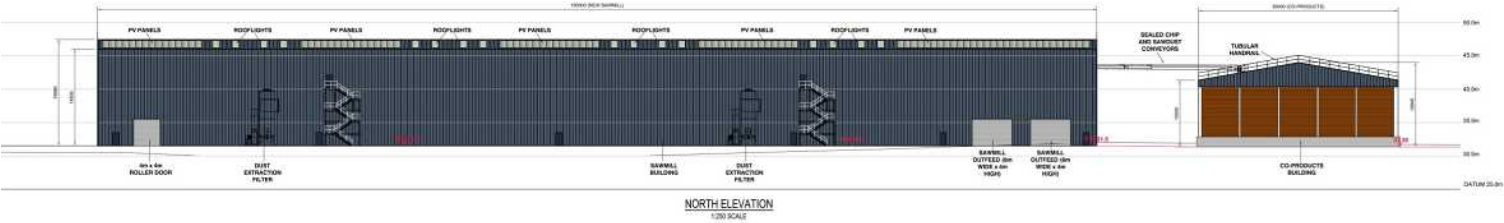
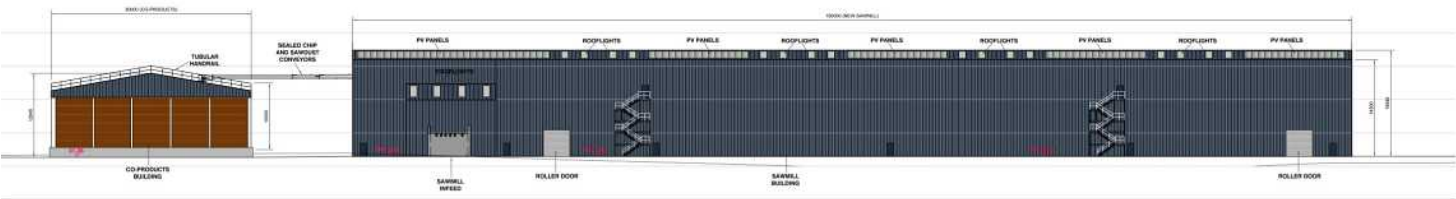
Operational plan



Off Site Drainage



Elevations of Sawmill and Co Production Building



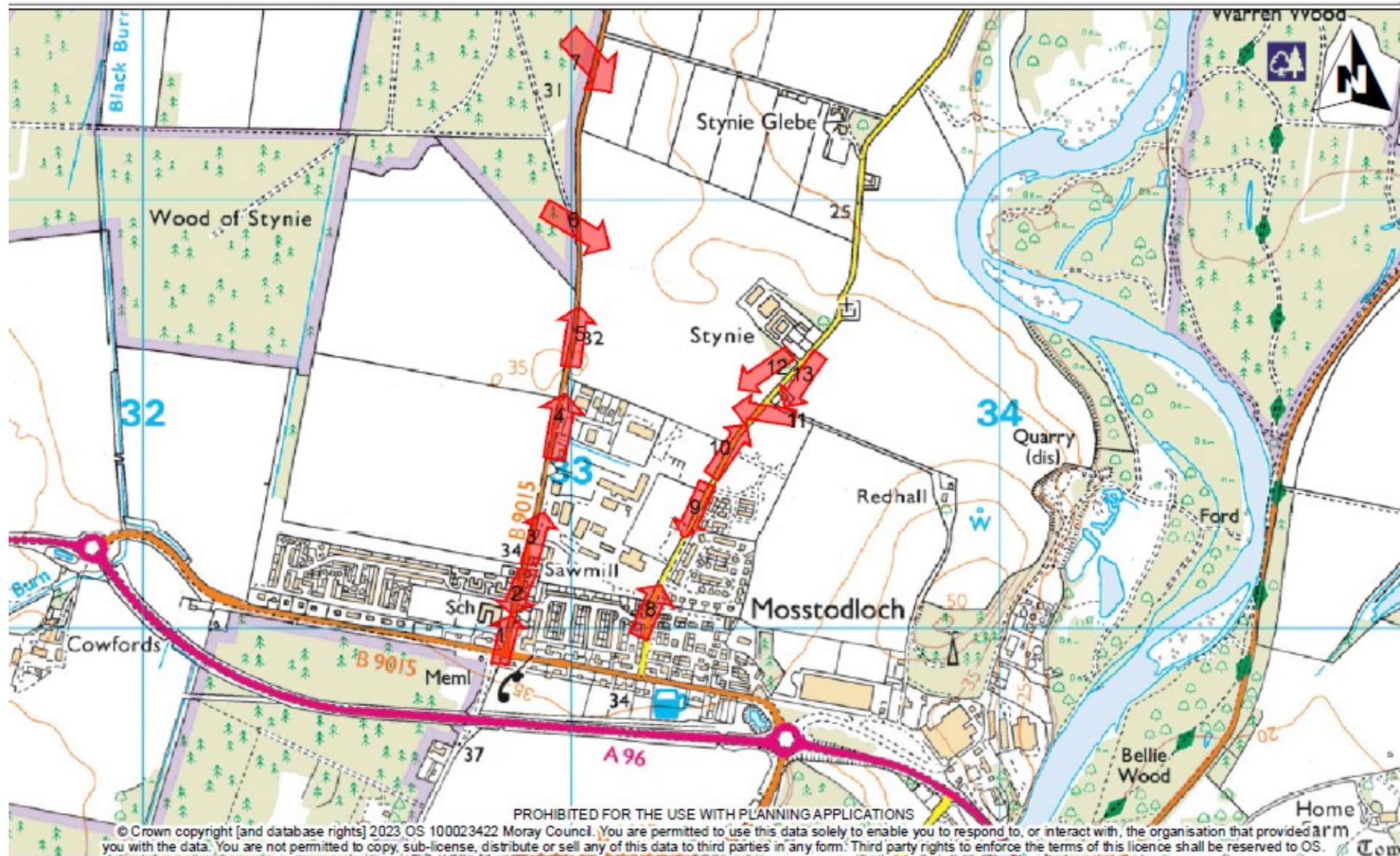
Visualisation looking over B9015 south to site



Visualisation looking over Stynie south to site



22/00981/APP Photograph Positions



Map Description: Arrows point in direction photograph was taken

Scale: 1:11,494 @ A4



Photo 1



Photo 2



Photo 3



Photo 4



Photo 5



Photo 6



Photo 7



Photo 8



Photo 9



Photo 10



Photo 11



Photo 12



Photo 13



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

- Full planning permission is sought for the redevelopment and expansion of an existing sawmill site at the James Jones site at Mosstodloch to increase production capacity at the site.
- Access will be via a new access point from the B9015 road from Mosstodloch to Garmouth, with the road frontage along the entire sawmill site frontage widened to 7.3 metres and a new 3 metre wide shared cycle way/footway provided along western side of the road with roadside swale adjacent. Other existing accesses to the south serving the wider sawmill site will be retained.
- A perimeter road will be formed within the new site coming in off the new access point.
- Cars will use new access to lead to a new car parking area in the north-west corner of the site, with turning lane for cars proposed to segregate HGV and car traffic.
- Car parking area will accommodate 41 spaces with electric charging points and cycle parking to be provided – no details of covered cycle parking provided at this stage. Parking area will be broken up by landscaping along its southern frontage with screen planting/bunding to north.
- New office building adjacent to car park measuring some 28.3 metres 8.2 metres and height to ridge of just under 4 metres. This building is of pitched roof design finished in timber with grey roof tiles and is to be connected to either septic tank drainage or public systems. (The existing office building further south in the site will remain).
- The perimeter road leads eastwards past a new weighbridge then circling round the new site to serve the various components.
- A new log line area is proposed with timber storage area in the northern part of the site where logs will be unloaded from the HGVS then loaded and graded into different sizes/uses for onwards processing within the site. Logs are debarked and bases trimmed as necessary at the log line. The majority of logs then proceed to the sawmill, with a small amount diverted to other processes such as the rounding line for fencing production.
- New sawmill building proposed to south of the log line closest to the existing industrial site at Mosstodloch and the existing James Jones workshop building (former British Steel/Tata steel building). Double pitched roof design finished in blue sheeting and roof, measuring some 150 metres by 55 metres and height to ridge of just under 16 metres. There will be dust extraction filters on the building and photovoltaic panels

on the roofs. Logs will be sawn into the required sizes/products in this building. Packs of sawn timber will be transferred into the existing site for storage or further processing which may include re-sawing, kilning, planing, and treatment at existing facilities here.

- The in-feed area into the sawmill will be enclosed to help contain noise - this is located on the eastern elevation of the building.
- Co-products building measuring some 60 metres by 30 metres and height to ridge of around just over 12.5 metres proposed to east of sawmill connected by upper level sealed chip and sawdust conveyors – this will be an open sided pitched roof building with photovoltaic panels on roof.
- To the east of this building is an area where sawdust and chip produced will be loaded and there is also a secure area where covers can be installed on trailers prior to dispatch.
- To north east of new sawmill a rounding line and treatment pitched roof building is proposed measuring some 50 metres by 30 metres and height to ridge of just over 8.5 metres. Proposed finishes are blue sheeting roof and walls with photovoltaic panels on roof. Logs which have been kiln dried will be treated here.
- Rounding line kilns are proposed to the north of the treatment building- 6 kilns are contained within a flat roofed structure measuring around 52 metres by 22 metres and height to top of roof of 9 metres. Logs will be kiln dried here and the external finish will be aluminium sheeting.
- Rounding line building measuring some 40 metres by 27.5 metres and height to ridge of just under 8.5 metres is proposed to north of the kilns. Proposed finishes are blue sheeting roof and walls with north elevation finished in timber and photovoltaic panels on roof. Some of the logs arriving at the site, dependent on their properties, will be rounded here and pointed if necessary before proceeding to kiln area.
- Surface water is to be drained and treated through three levels of treatment including solids interceptor, SUDS ponds, swales and a final wetland area in the eastern part of the site which is split into three sections. A high level overflow is proposed for high rainfall events in the form of a perforated pipe running eastwards over agricultural land and terminating in an infiltration trench in the field. Trench will be some 64 metres away from the River Spey to the east and the end of the perforated pipe will be around 80 metres from the Spey.
- 4 metre high rounded top landscaped bunding (varying in width from around 10 -15 metres) is proposed around east and north perimeters of site, and for part of the western boundary with further landscaping around the SUDS ponds including wildflowers and native species edge planting.
- Pedestrian access to the landscaped areas and SUDS ponds is to be provided for employees to access these areas via barked walkways with timber barriers.
- Biodiversity enhancements by way of bird and insect boxes to be located within the landscaped bunding to north of site.
- Existing trees along the western (B9015) and eastern boundaries (Stynie Road) to be retained.
- An area of trees to the north west of the site on the other side of the public road is to be removed to facilitate road widening and visibility – compensatory planting of equivalent area is proposed beside the SUDS pond in the south east corner of the site.

- Co-products will be used locally.
- Existing logging line at the existing sawmill complex will no longer be required with this area used for storage.
- Existing sawmill will be used for secondary processing.
- Mitigation works are proposed at the existing sawmill site to reduce noise emissions.

The application is a major application as defined in the Scottish Government's hierarchy of developments and as such statutory pre application consultation with the community was carried out. The results of the consultation are detailed in the accompanying pre application consultation report.

The development was also screened prior to submission as to whether Environmental Impact Assessment (EIA) was required and it was concluded EIA was not required in this instance.

The application is supported by a suite of supporting documents and plans including:

- Operational Plan which explains the wider (proposed and existing) site layout and processes.
- Utilities Plan.
- Biodiversity Plan.
- Visualisations to show how development may sit in the landscape.
- Design and Access Statement.
- Public Consultation Report.
- Planning Statement setting out how applicants consider proposals to comply with policy.
- Transport Statement.
- Junction Swept Path Plans and Road Safety Audit and Road Widening Drawings.
- Construction Traffic Management Plan.
- Drainage Strategy and Plans.
- Tree Surveys.
- Landscape Plans, Sections and Notes.
- Visual Appraisal.
- Ecological Assessment which concludes that there will be no impacts on the River Spey designated site with no protected habitats or species on the site.
- Initial Site Strip and Soil Management Plan.
- Lighting Assessment and Plans.
- Noise Impact Assessment.
- Site Masterplan which sets out the wider site is to be developed and includes a phasing programme with the SUDS network, road improvements, office weighbridge, log line, internal roads and yard programmed for 2023 to 2024. Phase 2 is construction of sawmill and demolition of existing log line by 2026 and erection of rounding and kiln buildings by 2027.

2.

THE SITE

- The site lies immediately adjacent to the north of the designated settlement boundary of Mosstodloch.
- Comprises around 17 hectares of undulating agricultural land - it is not designated prime agricultural land.
- It is located to the north of the existing James Jones site at Mosstodloch (which is a site of around 11 hectares) and the Mosstodloch Industrial Estate.
- To the northeast are agricultural fields leading to the River Spey. Stynie Cottage is also located here.
- To the south east on the other side of the Stynie road which marks this boundary is new housing at Speymouth Drive.
- Speymouth Hall and recreation grounds lie to the south of the site beside an area shown for SUDS provision.
- To the west is the B9015 Mosstodloch to Garmouth public road which runs alongside the site boundary.
- Beyond this, further west, is more agricultural land.
- There are some assorted trees along the west boundary which are to be retained.
- On the west side of the public road is whin/gorse bushes with woodland to the north west.
- To the south west is a core path running westwards and to the south of this is the residential properties at Pinewood Road.
- To the north is further agricultural land and to the north east are some residential properties at Stynie House and Stynie Orchard, farm building and commercial garages/outbuildings separated from the site by mature trees. Stynie Cottages lie to the east of the site.
- Stynie House is a category B listed building of architectural and historic importance, as is Speymouth Parish Church further north.
- To the south lies an industrial estate, the former British steel/Tata building which is now under the control of the applicant and the wider James Jones sawmill site.
- The access road B9015 Garmouth Road leading to the site runs northward from the main road through Mosstodloch – (former A96) road then up past Mosstodloch Primary School.

3.

HISTORY

There have been numerous applications for new development within the confines of the existing sawmill site some dating from the 1990s. More recent history includes:

19/01615/APP - Proposed Biomass building and storage area approved.

21/01290/PEMAJ -The applicants sought pre application advice under the major applications enquiry process in 2021 and advice was provided on key policy and technical requirements.

21/01316/SCN - An Environmental Impact Assessment Screening request submitted - advice was provided to confirm that EIA was not required in this instance.

21/01817/PAN - Proposal of Application Notice submitted which set out the measures to be taken for pre application consultation with the community.

4. POLICY

National Planning Framework

Sustainable Places

Policy 1 – Tackling the climate and nature crises

Policy 2 – Climate mitigation and adaption

Policy 3 – Biodiversity

Policy 4 – Natural places

Policy 5 – Soils

Policy 6 – Forestry, woodland and trees

Policy 7 – Historic assets and places

Policy 9 – Brownfield, vacant and derelict land and empty buildings

Policy 12 – Zero waste

Policy 13 – Sustainable transport

Liveable Places

Policy 14 – Design, quality and place

Policy 18 - Infrastructure First

Policy 20 Blue and Green Infrastructure

Policy 22 – Flood risk and water management

Policy 23 – Health and safety

Productive Places

Policy 25 Community Wealth Building

Policy 26 – Business and industry

Policy 29 – Rural development

Moray Local Development Plan 2020

Primary Policies

PP1 – Placemaking

PP2 – Sustainable Economic Growth

PP3 – Infrastructure and Services

Development Policies

DP1 – Development Principles

DP5 – Business and Industry

Environment Policies

EP1 – Natural Heritage Designations

EP2 – Biodiversity

EP5 – Open Space

EP6 – Settlement Boundaries
EP7 – Forestry, Woodlands and Trees
EP8 – Historic Environment
EP12 – Management and Enhancement of the Water Environment
EP13 – Foul Drainage
EP14 – Pollution, Contamination and Hazards

5. **ADVERTISEMENTS**

- 5.1 The application was advertised in the Northern Scot as a departure from the development plan and a Schedule 3 development.

6. **CONSULTATIONS**

Scottish Water - No objections - note that public water and drainage supplies are available. Surface water will not be accepted to their combined systems. Confirm that there are no Scottish Water drinking catchments or water abstraction sources designated as drinking water protected areas which may be affected by the proposals.

Scottish Forestry - Have advised that it is encouraging to see the proposal coming forward in terms of net zero targets and valuable jobs in the fragile rural economy. Their main interest areas are availability of sustainably managed timber without the necessity to haul from source a distance of more than around 50 miles, albeit sea and rail alter that equation to a degree. They would also like to see a much increased capacity to utilise Scots pine both because it is native and better suited to the north east climate. They are encouraged to note that the applicant mentions the increase supply of pine in the North East as a reason for the investment, and the resilience the increased capacity will provide for events such as last winter's storms.

Spey Fishery Board - No comments provided.

Nature Scot - Following submission of further detail on drainage arrangements they have noted that the end point of the perforated storm water pipe and soakaway will be in an agricultural field, beyond which there is an embankment and vegetated/treed area leading to the riverside. The off-site drainage layout drawing (AA6913/P/102) shows this in relation to the current bank of the River Spey and the applicant's surface water drainage strategy states that there will be no new hard permanent outfall structure to the River Spey.

The River Spey Special Area of Conservation is internationally important for its populations of Atlantic salmon, European otter, freshwater pearl mussel and sea lamprey, all of which are dependent on the quality of the freshwater environment.

They advise that there will be no likely significant effect on any of the interests of the River Spey SAC as a result of this proposal and therefore an appropriate assessment is not required.

SEPA - Have no comments on the planning application. They note that the applicant should engage with them regarding the aspects of the proposed development which will be regulated by SEPA, in particular water engineering. They further note that activity at the existing site is authorised by Pollution Prevention Control (PPC) Part A and Part B Permits and they have advised that applicants that they would require a Variation of the Part B permit for the proposed activities.

They have confirmed that SEPA will address all matters relating to regulation when the appropriate regulatory application is made.

Environmental Health Manager - Initially requested additional information relating to operations, noise mitigation and queries on aspects of the Noise Impact Assessment (NIA). On receipt of further information and revised NIA they have advised that they have no objections to the proposed development subject to conditions relating to controls over construction hours, provision of Construction Environment Management Plan, adherence to noise levels during both night times and day times, operational hours of log line and sawmill, details of (and implementation of) noise mitigation measures at existing and proposed sawmill sites, ensuring the existing log line is phased out at the existing sawmill once the new one becomes operational and details of lighting.

Contaminated Land - No objections.

Private Water Supplies - No objections.

Access Manager - No objections.

Archaeology Service - Note that the application affects two areas of cropmarks indicative of prehistoric activity, with many other known archaeological sites in the surrounding landscape indicating the potential for previously unrecorded archaeological features to survive within the proposed development area. They have therefore requested a planning condition requiring a written scheme of investigation and a programme of archaeological works.

Transportation Manager - The Team have recommended that a developer obligation be sought to undertake the design and construction of improvements to the narrow footway on the east side of the B9015 Garmouth Road between numbers 1 and 13 Garmouth Road. On this basis the Team has no objections to the proposals subject to appropriate planning conditions to secure final details relating to parking provision and visibility splays.

Flood Risk Management Team - No objections. Following receipt of revised layout of SUDS pond to enable more compensatory planting the Team has confirmed they have no objections to the changes.

Developer Obligations - No developer obligations sought other to cover transportation requirements.

Strategic Planning - Initially sought further information including landscaping details to fully consider the proposals. On receipt of further information they

have noted that the proposal is for an expansion to the existing sawmill at Mosstodloch and that it is understood that expansion is required to upgrade the sawmill in order to process future volumes of timber from the north east of Scotland. The expanded mill site will increase production, increase the number of employees on the site and will support other businesses/jobs within the supply chain. The proposal is therefore considered to closely align with the objectives of the Moray Economic Strategy and the Forestry and Woodland Strategy.

The team has considered the proposal in relation to the policies of the Moray Local Development Plan and the National Planning Framework and the application is considered to comply with these policies, but due to its location outwith the settlement boundary of Mosstodloch it is considered to be a departure from policies EP6 Settlement Boundaries, and DP5 Business and industry of the Moray Local Development Plan. However given the locational justification provided in terms of Policy PP2 Sustainable Economic Growth and the sustainable economic benefits associated with the proposal it is considered an acceptable departure subject to comments from other consultees in respect of safeguarding the environment, mitigation of impacts and submission of decarbonisation strategy.

Innes Community Council - As this is a major application the local Community Council were consulted. They have raised serious concerns as follows:

- Lack of awareness of proposals in the community.
- *Note: the applicants have undertaken pre application consultation with the community as required by statute as set out elsewhere in this report.*
- SUDs proposals do not take sufficient account of impacts on River Spey
- Number of HGVs using the site will increase.
- Community concern regarding volume of traffic at certain times and backspills onto the old A96 with no parking provision for parents dropping off children at the primary school and no safety measures in place other than a flashing school sign. No parking provision for carers working in the area either.
- Concern regarding possible vibration on Balnacoul Road.
- Conclude that the proposals will have severe/dangerous impacts on the community and recommend that the applicants/Moray Council look at funding from HIE to construct a feeder road from the Cowfords roundabout avoiding housing and schools.
- Suggest short term mitigation such as funding a school crossing patroller; funding a permanent pelican crossing outside the school; regular monitoring of vehicle emissions and 20 mph limit from old A96 to extent of new development.

NOTE: The points raised above will be addressed throughout the objections and observations sections below.

7. OBJECTIONS-REPRESENTATIONS

NOTE: Following the determination of this application, name and address details will be/have been removed (i.e. redacted) in accordance with the

General Data Protection Regulations (paragraph 3 of Minute, Planning & Regulatory Services Committee 16 September 2014).

Mr Paul Legge - Stynie Orchard Fochabers Moray IV32 7LE - O

Mr Stuart Hunter - 64 Pinewood Road Mosstodloch Fochabers Moray IV32 7JU - O

Mr Barry Derbyshire - Stynie House Fochabers Moray IV32 7LE - O

Mrs Evelyn Archer - Glebe Cottage Fochabers Moray IV32 7LE - O

Crown Estate Scotland - Quartermile Two 2nd Floor 2 Lister Square Edinburgh EH3 9GL - S

Mr Kenny Henderson - 7 Glebe Road Mosstodloch Fochabers Moray IV32 7JH - O

Mr Graham Wyllie - 2 Redhall Cottages Mosstodloch Fochabers Moray IV32 7LE - O

Key issues raised are as follows:

Access and Traffic

Issue: Road safety and inadequate road network serving site including the junction of B9015 onto Garmouth Road where it is currently not possible for lorries to enter and exit from any direction without crossing lanes so creating a road safety hazard. This also results in damage to drainage systems and verges.

Comments (PO): The applicant's submission includes a Transport Assessment and Road Safety Audit which has concluded that there will be no material traffic impacts upon the safe and efficient operating of the surrounding road network and the technical consultee (Transportation Team) has raised no objections. It is therefore considered by the appropriate authorities that the road network is physically suitable and has capacity for the additional HGV traffic with the new access onto the B9015 taking into consideration the turning movements of heavy goods vehicles entering and exiting the development, including the widening of the road at the access and the re-surfacing of the B9015 across the entire width of the road at the new access point.

Issue: Alternative road access should be looked at for example coming from Cowfords roundabout so avoiding big lorries coming through the village, with the Community Council recommending that the applicants/Moray Council look at funding from HIE to construct a feeder road from the Cowfords roundabout avoiding housing and schools.

Comments (PO): The applicants have explained that it is not economically feasible for them to install a new feeder road. Such a road would require planning consent in its own right and does not form part of the application under consideration. The Planning Authority requires to consider whether the current proposals are acceptable or not in road safety terms and it has been concluded that they are, subject to the footway infrastructure improvements and conditions suggested by the Transportation Team.

Issue: Road safety issues relating to proximity to school with no lollipop service in place and no way to control when lorries arrive at site to avoid school times. This area is congested with cars parked on roads which results in lorries constantly being on the wrong side of the road to avoid them creating a road

safety hazard. As noted earlier the Community Council conclude that the proposals will have severe/dangerous impacts on the community, noting that carers also park in this area and need to access their clients. Community Council suggest that short term mitigation such as funding a school crossing patroller; funding a permanent pelican crossing outside the school; regular monitoring of vehicle emissions and 20 mph limit from old A96 to extent of new development be looked at.

Comments (PO): These concerns regarding the potential conflicts with HGV traffic and pedestrians/school children are appreciated and were a key issue when considering this application. At present HGVs from the sawmill site and from the industrial estate use this B9015 road past the primary school where there is a temporary 20 mph speed limit with the required supporting signage in operation at key times during the school day. Whilst this proposed development will add to the traffic levels, as noted earlier, it is considered that the network is physically capable of coping with the additional traffic. The key issue to consider with regard to these concerns is any potential for unacceptable conflicts in terms of pedestrian safety as a result of the increased traffic.

At school dropping off/picking up time there is evidence of indiscriminate parking on the roads which is similar to many other schools in Moray, despite many schools trying to encourage more sustainable travel options such as walking to school. The suggestion of a school crossing patroller would be contrary to a decision taken by the Moray Council on patrollers. Scottish Government are currently gathering information for a National Strategy for 20mph. Any consideration of promoting a permanent 20mph speed limit on the B9015 within Mosstodloch would need to comply with the national approach to 20mph speed limits.

The Transportation Team have considered these issues and conclude that the situation may be mitigated by improving the narrow footway on the east side of the B9015 road from the junction onto Main Road northwards to 13 Garmouth Road which is located immediately adjacent to the existing sawmill site. This will help to improve pedestrian safety in the area and the applicant is agreeable to funding such works.

The Primary School has also recently been approached by officers, following complaints from residents, to see if they would like to take part in a 'Park Smart' initiative which encourages parents and carers to park appropriately during school drop off and pick up times and to consider active travel instead of driving.

Issue: No continuous footpath link on west side of Garmouth road to link in with the proposed cycleway/pathway.

Comments (PO): The provision of the improved footway on the east side of the B9015 as noted above should help address this concern, whilst the applicants have extended the proposed cycle way on the western side of the road to come as far south as the core path which runs along the rear (north) of Pinewood Road.

Issue: Drainage issues with sawdust and bark from lorries already affecting drainage of road network.

Comments (PO): The applicants have advised that they have a procedure in place for lorries to be cleaned before leaving site – this is essentially a management issue. If there are regular issues on the road then the Roads Authority can ask for it to be cleared.

Residential amenity Issues

Issue: Traffic pollution especially around the school.

Comments (PO): It is not considered that the additional traffic will cause an undue issue. The site is not located within an Air Quality Management Area with no such areas designated in Moray.

Issue: Vibration Impacts.

Comments (PO): The technical consultees (Environmental Health Service) has considered the impacts of the development and has no objections subject to conditions regarding operation. Vibration was not highlighted as a particular issue and it is not considered overall that the increased traffic movements along the road will give rise to particular impacts.

Issue: Light and noise pollution affecting both wildlife and residents - spotlights can already be seen from some distance away and this will be aggravated by new development Screening by trees for noise and light pollution affected when trees lose their leaves, also proposed screening will take time to establish.

Comments (PO): As noted earlier the technical consultees (Environmental Health Service) has considered these impacts and has no objections subject to conditions including the requirement for a more detailed lighting plan which will help ensure there is no light pollution issues arising from the proposed development. With regard to impacts on wildlife it is noted that the applicant's lighting assessment refers to blue light content to minimise effect on flora and fauna. It explains lighting may be on 24 hours so impacts have been assessed on this basis, and proposes use of light shields on some 10 metre high floodlights to minimise impacts on amenity.

With regard to noise emissions it is not considered that the new development will adversely affect wildlife particularly given the proposals for extensive landscaping and biodiversity enhancements throughout the site which will offer opportunities for habitat creation as well as providing a buffer between the site and the wider countryside around it. Noise impacts on residents have been fully considered by the technical consultee (Environmental Health Service) with mitigation proposed for both the existing and proposed operations. The Service is satisfied that subject to conditions to control noise levels, with lower levels at night, and other operational controls as set out in their suggested planning conditions, the development should be able to operate without significant or unacceptable impacts.

It is also noted that there is significant landscaped bunding proposed between the development and the residences at Stynie (including the cottages) which will also offer mitigation in addition to the existing tree belt south of Stynie Orchard. Whilst trees may lose leaves in the winter the sizeable bunding will remain.

Issue: Increased working hours and disturbance, activity at unsociable hours - existing sawmill already starts at 6 am with associated noise, beeping of alarms, logs being loaded/unloaded and bringing the development closer to residences will make this worse.

Comments (PO): The applicants' Noise Impact Assessment (NIA) has demonstrated to the satisfaction of the technical consultee (Environmental Health Service) that noise should not be worse as a result of the development as a result of mitigation measures proposed at the existing site together with the mitigation measures proposed for the expanded site where modern equipment and insulated buildings will be used. Whilst there could be a potential increase in noise levels at night if both sawmills were on occasion operating, the Environmental Health Service has sought to control this by setting overall noise limits at night as well as daytime, bearing in mind there are presently no noise restrictions at this site. The applicant has also set out in their NIA how the site may be operated to reduce noise including the potential for limits on reversing beepers with use of lighting or other alternatives.

The Environmental Health Service has proposed conditions setting out noise levels to be met at residences based on this information which may help to secure more control over the existing situation given that there are currently no noise conditions in place for the wider sawmill site. Key pieces of equipment such as the log liner and sawmill will also have some limits on the operational hours which again provides more control over the new site. In addition the Environmental Health Service do have the ability to take action under their regulations should noise nuisance arise- hopefully this should not arise as the suggested conditions should ensure that levels are below any potential nuisance levels.

Issue: Existing extraction system at sawmill is very loud and strategically placed logs will not address this.

Comments (PO): Mitigation has now been implemented with regard to reducing noise levels from the dust extraction system at the existing sawmill whilst with the proposed new sawmill it is proposed to site the dust extraction system to the rear of the building furthest away from housing. These measures should help address this issue whilst strategically placed log piles are intended to help to act as a barrier to sound propagation from operations in the yard.

Issue: Submission suggests that sound insulation will be discussed with residents affected – this is not welcomed due to the upheaval etc. Note that there is no way of sound proofing a garden.

Comments (PO): Any measures to install sound insulation in existing properties would involve the agreement of third parties and as such cannot be enforced by the Planning Authority, but rather is a matter for the applicants to agree with such parties. The application has not therefore been assessed on the basis of such proposals, but rather upon the mitigation proposed which is within the applicant's control. The technical consultee has therefore considered the impacts in this manner.

Issue: Dust Issues.

Comments (PO): Dust extraction systems are proposed for the sawmill and this is not considered to be likely to be a significant issue. It is noted that both

SEPA and the Environmental Health Service have regulatory provisions to control any dust nuisance which may arise.

Issue: Residents are already affected by noise from the premises and this has not been addressed to date.

Comments (PO): Complaints about noise from the existing premises are investigated by the Environmental Health Service. This will continue to be the case. It is understood that there have been a limited number of complaints over recent years, which have been appropriately investigated by the Service.

Issue: Noise readings should be carried out by independent party and be over at least a 7 day period – note that there are unexplained high noise reading near residences –this may be due to seagull noise. Consider noise assessment is vague and believe the reported figures are less than they actually are.

Comments (PO): The submitted Noise Impact Assessment has been fully considered by the technical consultee (Environmental Health Service) who requested further information and clarifications during the course of this consideration. The Service is now satisfied with the accuracy and conclusions of the assessment. The Service has not taken the unexplained high noise background noise readings mentioned in the NIA into account when setting noise levels given that following investigation by the Service these levels appear to relate to bird noise. Instead the Service has set levels related to more standard lower background levels which are considered to be more representative of a rural area.

Policy Issues

Issue: Site not zoned for development in local plan - site too large for small village and is overdevelopment.

Comments (PO): The site is indeed located outside the designated settlement boundary of Mosstodloch and as such represents a departure from the development plan. As explained later in this report it is considered to represent an acceptable departure from policy. In summary the proposed development is for an expansion of an existing sawmill which will help to process future volumes of timber from the north east of Scotland, increase production, and number of employees, and help support other businesses/jobs within the supply chain. This aligns with the objectives of the Moray Economic Strategy and the Forestry and Woodland Strategy with a suitable locational justification as required by policy PP2 provided. Consequently the application is considered to be an acceptable departure from policies EP6 Settlement Boundaries, and DP5 Business and Industry of the Moray Local Development Plan 2020 given the locational justification and the sustainable economic benefits associated with the proposal.

Although the site is large this is necessary to accommodate the functional processes, ensure safe operations and importantly to make provision for sustainable urban drainage systems (SUDS) within the site and also deliver the level of landscaping necessary to create a good visual setting and provide noise attenuation.

Environmental Issues

Issue: Affecting natural environment - increased noise and light pollution may affect wildlife.

Comments (PO): The application is supported by an Ecological Assessment which has concluded that there are no particular habitat or species interests on the site which is on part of an agricultural field. The technical consultee (Environmental Health Service) is satisfied that the lighting will not cause pollution, subject to planning conditions. It is also noted that the applicant's lighting assessment refers to blue light content to minimise effect on flora and fauna. It explains lighting may be on 24 hours so impacts have been assessed on this basis - proposes use of light shields on some 10 metre high floodlights to minimise impacts on amenity.

With regard to noise emissions it is not considered that the new development will adversely affect wildlife, with the proposed landscaping, SUDS ponds/wetland and insect/bird boxes offering the opportunity to create connecting wildlife corridors over time which should be beneficial to wildlife.

Issue: SUDs proposals do not take sufficient account of impacts on River Spey.

Comments (PO): There will be no discharge to the River Spey and the proposed storm water discharge pipe and infiltration trench is separated from the Spey by a vegetated bank and agricultural land whereby the proposals are not considered to have any significant effects. This is confirmed by the consultation response from Nature Scot. As such it is considered that there will be no likely significant effect on any of the interests of the River Spey SAC whereby an Appropriate Assessment is not required in this case.

Other Issues raised

Issue: Property devaluation arising from introducing industrial development in rural area.

Comments (PO): Property devaluation is not a material land use planning consideration, although loss of residential amenity is a land use planning consideration. In this regard the proposed development is located beside an existing industrial estate and sawmill and is considered to be suitably sited and landscaped with appropriate noise mitigation proposed whereby it is not considered that there will be any significant adverse effects on the amenity of the surrounding area.

Issue: Adverse effect on views over open countryside and loss of privacy – being overlooked.

Comments (PO): Again loss of view is not a material land use planning consideration. The fit of the development in the countryside/landscape is however a consideration which is fully considered later in this report where it has been concluded that the development will not have an adverse impact on visual and landscape qualities. Due to distances of existing properties from the development site with proposed intervening landscaping/screening there is not considered to be any particular privacy issues arising.

Issue: Works will only create temporary jobs which are likely to be outsourced with plant likely to be automated, again not providing full time jobs of benefit to the village.

Comments (PO): The applicants have explained in their supporting documentation that at present direct employment at the site is 100 and it is anticipated that this will increase to 150 employees once the development is completed- these jobs are understood to be for highly skilled operator/engineering roles. In addition they consider that there will be a positive impact upon rural employment with an estimated 600 related jobs created across a range of associated industries such as forestry, engineering, transport and administration as well as jobs at the construction stage.

In these circumstances it is considered that the proposed development will be of economic benefit to the surrounding locality.

Issue: One supporting letter has been received which welcomes the development noting that the sawmill is a key business and employment source in Mosstodloch with the proposed expansion being a positive way to sustain the business.

Comments (PO): Noted.

Issue: Community Council raised concern regarding lack of public awareness of the proposals.

Comments (PO): Statutory pre application consultation with the community was carried out prior to submission of the application as outlined later in this report. This was considered to be satisfactory with all necessary steps taken to ensure that the public were aware of the proposals.

8. OBSERVATIONS

- 8.1 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. The main issues are now considered below.

Pre Application Consultation with the Community

- 8.2 As this is a major planning application, under the terms of the Scottish Government's Hierarchy of Developments there is a requirement for statutory pre application consultation with the community. The applicants Pre Application Consultation Report explained that a public consultation exhibition was held on 9 December 2021 in the Speymouth Hall which is adjacent to the development site. This was advertised in the local press. At this event fliers were provided for people to take away and e mail their comments, as well as the noting of questions at the event. Around 62 people attended and the report summarises how comments were taken into account. The information boards and feedback forms were also provided online so that people could input and it is understood

that fliers were delivered to all households in the village advising them of the events in advance.

- 8.3 The form and scope of the pre-application consultation was considered to be suitable, and was agreed by the Planning Service in response to Proposal of Application Notice (reference 21/01817/PAN).
- 8.4 A further event was held in the Speymouth Hall on 10 August 2022 prior to formal consideration of the application by the Planning Authority. Around 26 people attended and the results of any feedback was summarised in the report.

Environmental Impact Assessment

- 8.5 Prior to submission the proposed development was screened in relation to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 as it is a Schedule 2 development in terms of the regulations. Having considered the characteristics of the development, the location of the development and characteristics of the proposed development it was concluded that the proposal was not an EIA development.

Principle of development and Locational Justification (NPF4 1, 9 ,26 & 29 MLDP 2020 PP2, EP6, EP7 & DP5)

- 8.6 The NPF sets out the objective of wanting future places to work for everyone, bringing together environmental, social and economic objectives to achieve sustainable development, highlighting that the global climate emergency and the nature crises have formed the foundations of the strategy as a whole. With this in mind a series of planning policies are contained in the NPF which seek to support development that helps to meet greenhouse gas emissions targets, with Policy 1 Tackling the Climate and Nature Crises setting out that when considering all development proposals significant weight will be given to the global climate and nature crises.
- 8.7 Set against this background the principle of the development which secures the ongoing future of a local sawmill with the intention of enabling the expansion of processing of locally grown timber and so reducing transport is in line with these objectives.
- 8.8 With regard to the principle of development NPF Policy 29 Rural Development is also relevant. This policy seeks to support development proposals that contribute to the viability, sustainability and diversity of rural communities and the rural economy. This includes production and processing facilities for local produce and materials with sawmills given as an example. The proposal to expand the existing sawmill business here with the associated benefits to local supply chains is considered to comply with the principles of policy 29.
- 8.9 However the NPF takes a similar policy approach to the MDLP with respect to new business proposals outwith designated areas with Policy 26 Business and Industry stating that development proposals for business, general industrial and storage and distribution sites outwith areas identified for those uses in the LDP will only be supported where it is demonstrated that there are no alternatives allocated within the LDP or identified within the employment land audit. The

nature and scale of the development must also be compatible with the surrounding area. Policy 9 also states that development of Greenfield sites will not be supported unless the site has been allocated for development or the proposal is explicitly supported by policy in the LDP.

- 8.10 The overarching primary policy of the MDLP is also relevant to the principle of development here. Policy PP2 Sustainable Economic Growth sets out that development proposals that support the Moray Economic Strategy to deliver sustainable economic growth can be supported where the quality of the natural and built environment is safeguarded, there is a clear locational need and all potential impacts can be satisfactorily mitigated.
- 8.11 The proposed expansion of the existing sawmill is located on land which lies outwith the designated settlement boundary of Mosstodloch as defined in the Moray Local Development Plan 2020 (MDLP). As such Policy EP6 Settlement Boundaries applies. This explains that settlement boundaries are drawn around each of the towns, villages and rural groupings representing the limit to which the settlement can expand during the MLDP period. Policy EP6 this sets out that development proposals immediately outwith settlement boundaries will not be acceptable unless on a designated LONG site which this site is not. The aim of the policy is to maintain a clear distinction between town and country. Accordingly this application has been advertised as a “departure” from policy EP6.
- 8.12 It has also been advertised as a departure from Policy DP 5 Business and Industry which seeks to direct employment uses to the most appropriate site within a hierarchy of designations. Mosstodloch is a tertiary settlement with land designated for employment uses. The scale of the proposal and level of employment associated with this are reflective of a location within a tertiary growth area. The proposal is for the expansion of an existing business that is located within the settlement boundary however the proposal is on undesignated land outwith the settlement boundary. This proposal is therefore a departure from the hierarchical approach within the policy.
- 8.13 In this case MDLP Policy EP7 Forestry Woodland and Trees is also relevant setting out that proposals which support the economic, social and environmental objectives and projects of the Moray Forestry and Woodlands Strategy will be supported where they meet the requirements of other relevant MLDP policies.
- 8.14 It is understood that the development is required to expand the sawmill site in order to process future volumes of timber from the north east of Scotland. The expanded mill site will increase production, increase the number of employees on the site and will support other businesses/jobs within the supply chain. Jobs will primarily be highly skilled relating to machine operation, engineering and administration/management support.
- 8.15 The applicants have explained in their Planning and Design and Access Statements that the total volume of timber growing in north east Scotland forests is forecast to increase by 40% over the next 20 years with the volume of pine logs due to increase by up to 80% with an increase in the average size of these sawlogs. This is due to forests reaching maturity and it notes that the

growth of the forests is outpacing the locally available processing capacity. The proposed development will realise the value of this resource, ensuring that timber is processed and utilized as close to the forest as possible and adding value to the local economy. This increased capacity will also provide flexibility to process unplanned volumes of windblown timber as occurred with recent seasonal storms and so minimising losses for growers, business and landowners.

- 8.16 The applicants also explain that the proposed development represents a continuation of their investment in the site, with expansion on an adjacent site being the most efficient way to develop the operations. This will involve an investment of around £65-70 million and would increase the capacity at the site from processing 180,000 cubic metres of logs into 100,000 cubic metres of sawn timber and 80,000 cubic metres of co products (bark, sawdust, woodchip) to a total of 300,000 cubic metres of logs to be processed into 180,000 cubic metres of timber. At present direct employment at the site is 100 and it is anticipated that this will increase to 150 employees once the development is completed- these jobs would be for highly skilled operator/engineering roles. In addition they consider that there will be a positive impact upon rural employment with an estimated 600 related jobs created across a range of associated industries such as forestry, engineering, transport and administration as well as jobs at the construction stage.
- 8.17 The applicants have explained that this will help respond to the increased demand for timber as a sustainable construction material with sales focussed on the local and Scottish market, displacing imported timber so providing wider environmental benefits. Processes for adding value will focus on fencing, construction timber, pallet and packaging materials with increased production helping to explore further opportunities for product development and co products such as horticulture and biomass uses supporting local industries including distilleries. They conclude that this will secure the long term sustainability of the business, and support a move to a net zero carbon economy.
- 8.18 Related to this background the Moray Woodland and Forestry Strategy is framed around a 20 year vision of growth of forests and woodlands and recognises the contribution of the forestry sector, including timber processing, to the local economy. Harnessing the economic potential of Moray's woodland is a key theme of the strategy and the employment associated with the wider industry is recognised. It also looks to promote local processing to reduce timber miles. The role of timber industries is also recognised within the Moray Economic Strategy as contributing significantly to economic growth and states that the scope of innovation in this subsector provides exciting future opportunities.
- 8.19 In these circumstances the proposed development has clear links to the Moray Economic Strategy and sustainable economic growth and is considered to be in line with MDLP policy PP2 Sustainable Economic Growth, providing any potential impacts can be satisfactorily mitigated and the locational need is established. It is also closely aligned to the objectives of the Forestry and Woodland Strategy, complying in principle with Policy EP7.

- 8.20 In these overall circumstances it is considered that the principle of the expansion of a long established existing forestry related business in Moray complies with key and overarching planning policies, subject to the locational need for a site immediately outwith the designated settlement boundary of Mosstodloch being established.
- 8.21 The locational need for the proposal is set out by the applicants in their Planning and Design and Access Statements. This explains that the proposed site allows for the expansion of the existing business. Location on other designated sites would split operations in two and would result in increased vehicle movements between the existing site and any alternative location. This would also mean double handling of timber/logs. Location. Alternative locations were therefore not considered to be suitable or viable.
- 8.22 Expansion of the existing site will enable the applicants to increase processing capacity, improve production efficiency and process larger diameter logs, and to reach the development's full potential economically and commercially. It will also help to address existing health and safety issues on site in relation to separation of vehicular and pedestrian movement and upgraded welfare facilities.
- 8.23 In these overall circumstances the locational justification is considered acceptable and to provide grounds for a departure from Policy EP6 Settlement Boundaries on the basis of the sustainable economic benefits associated with the proposal and its delivery of sustainable economic growth. This is of course subject to the quality of the natural and built environment being safeguarded and potential impacts being satisfactorily mitigated which will be considered later in this report.
- 8.24 Similarly it is considered that a satisfactory case has been made for departure from Policy DP5 Business and Industry with sufficient locational justification provided as required by Policy PP2 on the grounds of the sustainable economic benefits associated with the proposal.
- 8.25 This locational case and the economic benefits of the proposals are also considered to enable compliance with NPF policies 9 and 26.
- 8.26 The detail of the design, siting, layout and impacts of the proposed development will also require to be fully considered in order to assess compliance with all relevant NPF and MDLP policies and will be considered below.

Transport Issues (NPF Policy 13, MLDP PP1, PP3 & DP1))

- 8.27 NPF Policy 13 Sustainable Transport supports new development where it is line with the sustainable transport and investment hierarchies. Various criteria are set out to achieve this including, where appropriate, the need to provide safe links to local facilities via walking, wheeling and cycling networks, be accessible by public transport, provide low or zero emission charging points and secure cycling parking, designed to incorporate safe crossing for walking and wheeling and reducing the speed of vehicles. This policy also refers to when transport assessments will be required.

- 8.28 MDLP Policy PP3 Infrastructure and Services sets out how new development should be coordinated with infrastructure to ensure that places function properly and are adequately serviced, highlighting that mitigation/modification to the existing transport network to address impacts of development may be required. MDLP policies PP1 Placemaking and DP1 Development Principles set out the need for appropriate servicing, parking and access. As noted earlier, the proposed development proposes to take access from the existing Mosstodloch to Garmouth B9015 road which runs north past the Primary School then past the existing and proposed sawmill site. Objections received raise concerns regarding the adequacy of this roads network to serve the additional traffic associated with the new development, with particular concern around conflicts at school times and also with existing parking provision in the area which makes the area congested. Officer comments in the representations section of this report seek to address these concerns.
- 8.29 It is not economically feasible for the applicants' to construct a new feeder road from the Cowfords roundabout - this also involves land outwith the control of the applicants. Accordingly the applicants submitted this application which involves widening of the B9015 along the site frontage and provision of a new cycle /path way along the western edge of the road to improve connectivity to the site and deliver some road improvements. Suggestions made by the Community Council and objectors to consider for example measures such as introduction of school crossing patroller are not within the applicant's control and are also contrary to previous decisions of the Moray Council.
- 8.30 Accordingly the proposals have been considered as submitted by the technical consultee (Transportation Team) who have noted that the proposals estimate an increase in staff numbers from 100 to 150 and an increase in HGV traffic from 60 to 100 vehicles movements per day. Given this increase in traffic a Transport Statement (TS) was provided in support of the proposals the scope of which was agreed with the Team. Due to the low traffic numbers at the B9015 (Main St/Garmouth Rd) junction no capacity testing of this junction was undertaken. However surveys were undertaken of pedestrian crossing movements on Garmouth Road and Main Street to identify the peak times, volume and locations where the main crossing movements occurred. These highlighted the peak periods to be 0800-0900 and 1500-1600 and that the main crossing location was located between the school main entrance and the Glebe Road/Pinewood Road crossroads.
- 8.31 The Team further noted that surveys undertaken of the background traffic (which also break down the trips related to the applicants and the existing industrial estate) highlight that there were 10 HGV movements during the morning school peak (0800-0900) of which 4 related to the existing sawmill operations. In the afternoon school peak (1500-1600) 13 of a total of 19 HGV movements related to the existing operations.
- 8.32 The Transport Statement estimates that the number of HGV movements will increase by 3 during the morning school peak hour and 9 during the afternoon school peak hour. The total HGV traffic in the afternoon peak school hour is therefore estimated to be 27 movements of which 22 will be related to the applicants. This equates to approximately 1 HGV movement every 2 minutes

compared to approximately 1 every 3 minutes previously.

- 8.33 The Transport Statement concludes that *'The proposed development will not have any material traffic impacts on the safe and efficient operation of the surrounding road network'*.
- 8.34 A Stage 1 and 2 Road Safety Audit (RSA) was undertaken and submitted in support of the application. Issues raised in the RSA related to the proposed scheme of road widening and cyclepath provision. The Transportation Team sought clarity to confirm that the RSA had also considered any existing issues associated on the B9015 from the scheme south to its junction with Main Street and requested confirmation of the extent of the network, which had been assessed. A further submission was received (Drawing AA6913/SK/25) which indicates that this section of Garmouth Road was considered as part of the RSA and raised no issues.
- 8.35 Having considered this information the Transportation Team have recommended that a developer obligation be sought to undertake the design and construction of improvements to the narrow footway on the east side of the B9015 Garmouth Road between 1 Garmouth Road (at the southern end of the B9015 just to the north of the filling station) and 13 Garmouth Road further north just beside the existing sawmill site) This will provide more space for pedestrians to pass each other on the existing footway and enhance pedestrian safety in the vicinity of the Primary School. It would be in line with MDLP Policy PP3 Infrastructure and Services which seeks to secure mitigation/modification to the existing transport network to address impacts of development in terms of safety and efficiency as considered necessary and appropriate by the Planning Authority. It is also in line with NPF policy 13 Sustainable Transport which seeks to prioritise sustainable travel and NPF Policy 18 Infrastructure First which seeks to ensure that the impacts of development proposals on infrastructure are mitigated.
- 8.36 Whilst the applicant's Transport Assessment concluded that no further improvements are needed, there is no doubt that there will be additional traffic generated by the development. The application represents the opportunity to secure improvements which will be of benefit to the community (as well as to the applicants in terms of the relationship between HGVs and pedestrians), and to address the impacts of the development upon the community in a proportionate manner. These works are considered to be necessary to make the development acceptable in planning terms, relate to the impacts of the proposed development and serve a planning purpose, with the scale of the works considered to relate fairly and reasonably in scale and kind to the development. The work would be undertaken by the Moray Council and funded by the applicants. The Transportation Team has assessed the potential to achieve this improvement on site and it is considered to be feasible. The team has provided indicative costings for the design and construction of such a scheme. This includes legal costs, contingencies, land costs, estimated inflation of costs and an allowance any compulsory purchase orders which may be required, dependent on the scheme design. The applicants have confirmed their willingness to enter into an appropriate agreement to fund these works. If the application is supported then an appropriate legal agreement would be required to secure the funding.

- 8.37 On this basis the Team have raised no objections to the proposals.
- 8.38 In terms of the details of the site layout and access arrangements the Team has noted that parking for 41 cars has been indicated on the site layout plan with no details for the provision of disabled parking, electric vehicle (EV) charging or cycle parking provided. A lay-by for approximately 4-5 HGV vehicles is also indicated adjacent to the internal road layout at the northern boundary of the site. No details are provided to confirm the number of vehicles, which would be stored at the site however the internal road layout allows for two-way vehicle movements at most locations and could potentially be utilised to accommodate parked vehicles.
- 8.39 Planning conditions are recommended to secure outstanding details, and also to secure visibility improvements at the access point onto the B9015 and full details of the new cycle path alongside the B9015. On this basis the Team has no objections to the proposals and it is considered that relevant policies are complied with.

Amenity Issues (NFP Policy 23 & MLDP, EP14)

Background

- 8.40 NFP Policy 23 – Health and Safety has requirements with regards to noise and air quality. The policy explains that development proposals which will have an adverse effect on health will not be supported. NFP Policy 26 Business and Industry also explains that development proposals must take into account the impact on surrounding residential amenity, sensitive uses and the natural and historic environment.
- 8.41 MDLP Policy EP14 Pollution, Contamination and Hazards sets out that proposals which may cause significant air, water, soil or light or noise pollution or exacerbate existing issues must be accompanied a detailed assessment report with measures to mitigate any impacts. In this case the operation and construction of a sawmill could give rise to potential pollution whereby detailed assessments were required. To this end Noise Impact and Lighting Assessments have been carried out and have been assessed by the technical consultee (Environmental Health Team).
- 8.42 Set against this background the key amenity issue to consider is whether the proposed expansion of the existing sawmill site will give rise to adverse impacts upon the amenity of the surrounding area. There has been an existing operational sawmill at Mosstodloch for many years which has no operational restriction upon it in terms of planning conditions. It is understood that these operations have given rise to limited complaint over the years However the new sawmill site will move closer to some properties, notably those at Stynie Orchard , farmhouse and cottages to the north and will significantly extend and expand the operations so it is important to fully assess how this will impact upon the area.
- 8.43 In this regard the applicant's Noise Impact Assessment (NIA) considered the existing and proposed development setting out that the aim is to ensure that noise emissions from the new site do not significantly increase the sound

emissions from the existing site which has been operating without complaint as far as the applicants are aware, with new housing approved nearby without any need for noise assessment.

In regard as noted earlier there have been limited complaints about this site, most recently about a mobile chipper which was addressed.

Proposed Noise Mitigation Measures

- 8.44 Mitigation for the new site is proposed by way of works to enclose or shield the log sorter input, 4 metre high landscape bunding around the site, use of strategically placed log stacks in the timber yard to help absorb sound when loaders are working, positioning of sawmill air extraction system to rear of new sawmill building in order to shield houses, and enclosing the log intake into the new sawmill.
- 8.45 The NIA explains that the applicants are also considering further noise reduction measures such as more concrete at structure of infeed to help deaden noise with less steel plate reverberation: curtains or series of open curtains on open sides, limit on reversing beepers replacing them by lights or other alternatives; and the use of quieter electric vehicles/cranes where possible. The NIA also explains that the applicants are in discussion with nearby neighbours about other mitigation measures should the need arise e.g. double glazing although this would be a third party agreement outwith the remit of the Planning Authority.
- 8.46 It is also proposed to implement mitigation measures at the existing yard in order to reduce overall noise levels by way of enclosing the dust extraction system (this has now been implemented and has reduced the sound power level from this system by 10 Dba) mitigation measures at the south east corner of the processing shed, and a proposed 4 metre high acoustic barrier to north of Speymouth Park. In addition the existing log line will be removed once the new site is operational thereby removing an existing noise source which has no particular mitigation at present.
- 8.47 With regard to operating hours the applicants have explained the current yard has no time restrictions whereby the sawmill has been able to operate at any time of day and night if required. This has not caused any disturbance as far as the applicants are aware and they consider that with the proposed reduction in sound emissions of the existing facility, (both proposed and implemented) there is not a case to change this. They have clarified that in the proposed extended area the log sorting equipment itself will operate 0600 up to 2300 hours to provide the required capacity for operating the new sawmill and that the new sawmill and other closed production buildings will operate from 0600 up to 0200 hours to ensure the processing of timber is as efficient as possible, The applicants are agreeable to planning conditions relating to the operational hours of these items.
- 8.48 They have also explained that flexibility with the operating hours is required to run this type of operation efficiently and economically. Any other restrictions on operational hours would inhibit the operations and bring into question the long-term viability of the development itself particularly considering the scale of the investment.

Conclusions on Noise Issues

- 8.49 The applicants' Noise Impact Assessment (NIA) has sought to demonstrate that noise should not be worse as a result of the development due a result of mitigation measures proposed at the existing site, together with the mitigation measures proposed for the expanded site where modern equipment and insulated buildings will be used, also explaining how the site may be operated to reduce noise including the potential for limits on reversing beepers with use of light or other alternatives. These conclusions have been accepted by the Environmental Health Service who are satisfied in principle that with mitigation proposed for both the existing and proposed operations and subject to conditions to control noise levels (with lower levels at night) and other operational controls as set out in their suggested planning conditions, the development should be able to operate without significant or unacceptable impacts and that the amenity of residents in the area can be adequately safeguarded.
- 8.50 It could also be considered that the proposed conditions setting out noise levels to be met at residences should help secure more control over the existing situation in that there are presently no noise conditions in place for the wider sawmill site. Key pieces of equipment such as the new log liner (which along with its associated processes is likely to generate noise) will have some limits on the operational hours (0600 to 2300 hours) which again provides more control compared to the existing site. Similarly operating hours are proposed for the sawmill and the associated closed production buildings (0600 to 0200 hours) which again affords more control. In addition the Environmental Health Service do have the ability to take action under their regulations should noise nuisance arise- hopefully this should not arise as the suggested conditions should ensure that levels are below any potential nuisance levels.

Dust Issues

- 8.51 Extraction systems are proposed for the new sawmill and this is not considered to be likely to be a significant issue. It is noted that both SEPA and the Environmental Health Service have regulatory provisions to control any dust nuisance which may arise. Odour is not anticipated to be a particular issue.
- 8.52 The site will also be regulated by SEPA who will control matters such as emissions/dust.

Lighting Issues

- 8.53 The lighting assessment refers to blue light content to minimise effect on flora and fauna. It explains lighting may be on 24 hours so impacts have been assessed on this basis and proposes use of light shields on some 10 metre high floodlights to minimise impacts on amenity. The Environmental Health Service has reviewed this information and consider it to be acceptable in principle, recommending a condition be attached to secure final full details.
- 8.54 In these overall circumstances the development is considered to comply with policies of the NPF4 & MDLP subject to appropriate planning conditions.

These conditions have been discussed with the applicants to ensure that they are workable in terms of their operations.

Sustainability, and Climate change

- 8.55 As noted earlier the NPF is seeking to achieve sustainable development highlighting that the global climate emergency and the nature crises have formed the foundations of the strategy as a whole, with Policy 1 Tackling the Climate and Nature Crises setting out that when considering all development proposals significant weight will be given to the global climate and nature crises.
- 8.56 NPF policy 2 Climate Mitigation and Adaptation also seeks to ensure that development is sited and designed to minimise lifecycle greenhouse gas emissions as far as possible and to be able to adapt to climate change risks. Guidance on how to demonstrate this has been recently agreed by the Council in relation to carbon sequestration, carbon assessment and future management and monitoring.
- 8.57 Underpinning these objectives NPF Policy 26 – Business and Industry requires that all major applications for manufacturing or industry should be accompanied by a decarbonisation strategy to demonstrate how greenhouse gas emissions can be appropriately abated. An indicative strategy has been provided in this case which explains the wider background to the applicants' decarbonisation strategy across their businesses. This is satisfactory in general terms. Specific actions for the application site include transition from natural gas to biomass for kilning and site heating, increased use of renewable energy and PV panels, zero timber waste in manufacture, focus on local supply market to reduce mileage and use of energy efficient motors and lights.
- 8.58 MDLP Policy DP1 Development Principles similarly seeks to ensure that development is designed to ensure that new buildings avoid a specified and rising proportion of greenhouse gas emissions from their use through the installation and operation of low and zero carbon generating technologies.
- 8.59 Set against this policy background in general terms the proposed development, which secures the ongoing future of a local sawmill with the intention of enabling the expansion of processing of locally grown timber and so reducing transport, is considered to be in line in principle with these objectives, supporting a sustainable timber industry and helping to reduce timber miles.
- 8.60 In more detailed terms the proposals incorporate the use of renewable energy technologies on the buildings through the use of photovoltaic panels. A biomass plant is already operational on site and large areas of planting are proposed all of which should help contribute to a sustainable development. The applicant's indicative decarbonisation strategy also sets out actions to achieve these policy objectives as noted earlier. Further detail on the actions and timing of them can be achieved by appropriate planning conditions. This would also ensure compliance with new Council guidance for implementation of Policy 2.

Community Wealth Building (NPF Policy 25)

- 8.61 NPF Policy 25 Community Wealth Building sets out that development proposals which contribute to local or regional community wealth building strategies and which are consistent with local economic priorities will be supported explaining that this could include improving community resilience and reducing inequalities, increasing spending within communities, ensuring the use of local supply chains etc. This proposal is indeed consistent with local economic priorities as outlined earlier.
- 8.62 With regard to the community wealth building guidance on what is expected here, this has only recently been agreed by the Planning and Regulatory Committee with no community wealth building strategy in place at the time of the submission of this application. However it is considered that the proposed development (which will secure local jobs and opportunities) would be able to readily comply with this policy whereby an appropriate planning condition could be attached to secure submission of a satisfactory community wealth building plan as required by the guidance.

Waste and Soils (NPF Policies 5 and 12, MLDP Policy PP3)

- 8.63 The NPF also recognises the need to minimise waste, with Policy 12 – Zero Waste seeking to encourage, promote and facilitate development that is consistent with the waste hierarchy. Similarly MLDP policy PP3 Infrastructure and Services seeks to implement the waste hierarchy.
- 8.64 From a construction perspective and as part of any requirement for a Construction Environment Management Plan here, a waste management strategy will be required to ensure construction waste is minimised and that recycling is undertaken. From an operational perspective, (other than waste from the office/staff building which will be collected by commercial operators for recycling etc.) there is no waste as such generated by the operations. All by products of the processes such as bark and chips are used productively locally including at biomass plants and re-processers creating for example chip board and pellets. The development is therefore considered to readily support zero waste objectives.
- 8.65 Associated with these above objectives to minimise waste NPF Policy 5 – Soils states that development proposals will only be supported where they minimise the amount of disturbance to soils on undeveloped land and is undertaken in a manner that protects soils from damage including compaction and erosion. Whilst the application site does not involve prime agricultural land it is still important to protect soil resources and this should be capable of being readily achieved through a robust soil management plan. In this regard site construction soils should be able to be reused on site following site works/excavations to create the landscaped bunds. Appropriate planning conditions can be attached to this end.
- 8.66 In these circumstances the proposals are considered to comply with both MLDP and NPF Policy.

Design, Siting and Landscape Impacts (NPF policy 14 & MLDP PP1, DP1 & EP5)

- 8.67 NPF Policy 14 – Design states development proposals should improve the quality of an area and be consistent with the six qualities of successful places, echoing the requirements of MLDP Policy PP1 - Placemaking. It also sets out that proposals which are poorly designed and detrimental to the amenity of the area will not be supported.
- 8.68 MDLP Policy PP1 Placemaking seeks to ensure that new development is designed to create successful healthy places that improve people’s wellbeing, safeguard the environment and support economic development, promote character and identity and biodiversity. MDLP Policy DP1 Development Principles sets out the new development will be supported where it meets a number of criteria including ensuring density, scale and character is appropriate to the surrounding area and creates a sense of place and supports the principles of a walkable neighbourhood. DP1 also requires that development does not adversely impact upon neighbouring properties in terms of privacy, daylighting or overbearing loss of amenity. MDLP Policy EP5 Open Space states that all new development must incorporate multi-functional open space of appropriate quality and quantity and provide green infrastructure to connect to wider green/blue networks. It sets out in detail how open space in new development needs to meet the accessibility, quality and quantity standards.
- 8.69 The applicants’ supporting visual appraisal has assessed the landscape and visual impacts, including from a series of viewpoints around site. It concludes that the proposed development will not result in any material adverse effects upon the existing landscape character providing boundary landscape treatments are sensitively designed to interface with the agricultural setting to the north. It notes that the landscape proposals include substantial investment in earth bunds and structural planting which is considered to readily compensate for any loss of hedgerow vegetation. With regard to visual impacts it concludes that there is limited visibility of the development in the surrounding area, and where it is visible impacts are likely to be minor and acceptable with screen planting and bunding providing effective mitigation for any adverse impacts on residential amenity at the closest houses. It is concluded that the substance of residual landscape and visual effects are considered to be minor and acceptable. Their Design and Access Statement also concludes that the development is of an appropriate scale and design, and although of significant scale is simple in terms of design and operation, forming a natural extension to the existing sawmill operations and fitting in with the context of the site.
- 8.70 These conclusions are broadly supported with the layout of the site taking on board pre-application advice to create a good visual setting for the new development which will help to anchor it visually in this rural edge of village landscape. The proposed bunding serves two primary purposes – noise mitigation and creating a visual setting. The proposed planted bunding and rolling profile of the top to the bund seek to achieve a more natural visual effect which over time should help to create a good landscaped setting. Integration of the site with the surroundings has been a key consideration with the proposed landscaping helping to soften and mitigate impacts whilst also creating places for people and nature. Hedging and tree planting is also proposed along the roadside frontage to the B9015. The applicants have also amended the security

fencing which is required around the site to be coloured green with landscaping around it to try and reduce its impact. It is considered that the green colour and proposed bunding will be sufficient to create an acceptable new edge to the north of the settlement of Mosstodloch.

- 8.71 The scale and character of the buildings themselves is dictated by the operational requirements. Importantly they will sit within the context of, and against the backdrop of, the existing sawmill and neighbouring industrial estate when viewed from the north when approaching Mosstodloch, with their positioning designed to site new buildings in the southern part of the site nearest to the existing industrial development here. The materials used are reflective of the design and purpose of the buildings using steel sheeting which helps afford noise insulation. Dark colours are proposed to help the buildings to recede visually in the landscape and the use of timber finishes has been included where possible. Noise mitigation proposals for the intake to the log line and the sawmill itself may involve some additional covered enclosure structures. In the case of the sawmill revised plans have been provided which show the intake (which is located on the eastern gable of the new sawmill) to be a covered extension which has little additional visual impact. Details of any enclosed intake to the log line are required with indicative sketches showing this could be a building located in the western part of the site just north of the sawmill building. This is unlikely to introduce any significant additional visual impacts subject to suitable finishes, such as timber or dark coloured cladding.
- 8.72 With regard to the internal site layout effort, has been made to create multi-purpose open. Space which serves landscape, SUDS and recreational space. These areas may be accessed by the workforce for walking/relaxing at break times via segregated pedestrian routes. The landscape bund proposed and SUDS scheme help to achieve 15% open space across the site while also benefiting biodiversity and minimising impacts on the surroundings. The larger log yard improves safe flow of transport on site with better segregation of transport and pedestrian routes designed into the layout.
- 8.73 The amount of open space provision is considered to comply with MDLP policy EP5 and overall the development is considered to comply with NPF and MDLP policies on siting and design.

Biodiversity, Ecology and Trees (NPF4 Policy 6, MLDP EP1, EP2, EP7)

- 8.74 NPF Policy 6 – Forestry, Woodland and Trees supports development that enhances, expands and improves woodland and tree cover and sets out that development will not be supported where there is adverse impacts on native woodland and hedgerows of high biodiversity value or identified for protection. Fragmentation of woodland habitats is also not supported. Any woodland removal must deliver significant and clearly defined public benefits with compensatory planting required.
- 8.75 For major developments such as this NPF Policy 3 – Biodiversity has a similar approach to MDLP Policies , but also requires the development to ensure that nature based solutions have been integrated into the development, with any negative effects fully mitigated and significant biodiversity enhancements provided along with consideration of local community benefits of the biodiversity

and/or nature networks.

- 8.76 MDLP Policy DP1: Development Principles sets out that development should conserve and enhance the natural and built environment and cultural resources. This is reinforced by Policy EP1 Natural Heritage Designations which seeks to ensure that development does not have an adverse effect on any Protected Species or upon any wildlife sites or other valuable local habitats. Policy EP2 Biodiversity seeks to ensure that all development proposals promote biodiversity. Policy EP7 Forestry Woodland and Trees sets out that healthy trees should be retained and included within a development proposal with protection plans to be included.
- 8.77 The proposals mainly involve development on agricultural land which ecological surveys have demonstrated is of limited habitat value. Mature trees along the site boundaries are to be retained and protected. Scrub whins/gorse to be removed to facilitate road widening along the B9015 road will be compensated for by the proposed landscaping on and around the site. In this regard the proposed layout includes large areas of landscaping which together with the proposed SUDS pond should serve to enhance biodiversity over time and create habitat corridors/links across the site. An appropriate Biodiversity Plan has also been provided which shows insect and bird boxes to be provided and this plan explains how biodiversity has been embedded into the design, setting out how the planted bunds, SUDS/wetland and grassland will help create new habitats and support biodiversity.
- 8.78 There may be some community benefit in that the workers at the site will be able to access and use these open spaces with footpath links now shown on plan.
- 8.79 In terms of impacts on trees, the proposal requires removal of 0.3ha of woodland to the north west of the site to facilitate road improvements. Policy EP7 part c) states that permanent woodland removal will only be permitted where it would achieve significant and clearly defined public benefits and where removal will not result in unacceptable adverse effects on amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice woodland management. The woodland removal is required to facilitate road improvements to support road safety and provide suitable access to the expanded sawmill. The expanded sawmill proposal itself will help support the region's timber industry including reducing timber miles, creating new jobs, and supplying sustainable construction materials. It is therefore considered there are clear and significant public benefits. The scale of removal is relatively small and will remove a strip of woodland along the roadside. Removal of this area is unlikely to have an unacceptable adverse impact on amenity, landscape, biodiversity, or upon the economic or recreational value of the woodland. Removal of this area will also not impact on the wider management of the woodland. Compensatory planting equal to the area to be felled is proposed within the south east corner of the site adjacent to the SUDS pond in line with Policy DP7.
- 8.80 In these overall circumstances the proposed development is considered to comply with NPF and MDLP Policy.

Environmental Impacts (NPF4, MLDP EP1)

- 8.81 NPF Policy 4 – Natural Places does not support development which will have an unacceptable impact on the natural environment or which will have a significant effect on European Site designations which include Special Areas of Conservation and Sites of Special Scientific Interest.
- 8.82 Similarly MDLP Policy EP1 Natural Heritage Designations seeks to ensure that development does not have an adverse effect on any Protected Species or upon any wildlife sites or other valuable local habitats. It also seeks to ensure that any development which is likely to have a significant effect on a European Site and which is not directly connected with its conservation management is subject to an appropriate assessment of the implications for its conservation objectives.
- 8.83 These policies apply here because to the far east of the site lies the River Spey which is designated as a Special Area of Conservation (SAC), internationally important for its populations of Atlantic salmon, European otter, freshwater pearl mussel and sea lamprey, all of which are dependent on the quality of the freshwater environment. The Spey is separated from the application site by agricultural fields. However as noted earlier a stormwater discharge pipe is proposed from the site leading eastwards across these fields and terminating around 80 metres from the banks of the River Spey and within the agricultural field where an infiltration trench will then be formed at the end of the discharge pipe. It is therefore necessary to ensure that there are no significant effects on the designated site.
- 8.84 There will be no discharge to the Spey and the discharge pipe and infiltration trench is separated from the Spey by a vegetated bank and agricultural land whereby the proposals are not considered to have any significant effects, as confirmed in the consultation response from Nature Scot. Consequently it is considered that there will be no likely significant effect on any of the interests of the River Spey SAC as a result of the proposed development and therefore an Appropriate Assessment is not required in this case.
- 8.85 There are no other particular natural heritage interests on the site and in these circumstances the proposed development is considered to comply with these policies.

Flooding and drainage (NPF Policy 20 & 22 & MLDP DP1)

- 8.86 NPF Policy 22 – Flood Risk and Water Management creates a presumption against all development at risk from flooding and seeks to ensure that there is no risk of surface water flooding to others and that all rain and surface water is managed through sustainable urban drainage systems (SUDS) with area of impermeable surfaces minimised.
- 8.87 NPF Policy 20 Green and Blue Infrastructure is also of some relevance. This supports development which incorporates new or enhanced blue and/or green infrastructure with proposals for their future management to be included.
- 8.88 Similarly MDLP Policy DP1 requires that acceptable water and drainage

provision is made including the use of sustainable urban drainage systems (SUDS) for the disposal of surface water. This is expanded upon in Policy EP12 Management and Enhancement of the Water Environment and Policy EP13 Foul Drainage which seek to ensure that surface water is managed in a sustainable manner, the development is not at significant risk of flooding and that developments close to settlements should be connected to public sewerage unless there is a compelling reason not to do so.

- 8.89 In this case the site is not in a flood risk area and the proposed SUDS arrangements are satisfactory to the technical consultee (Flood Risk Management Team) taking on board pre application advice to include wetland areas. The SUDS areas have been incorporated in the landscaping of the site and over time have the potential to offer considerable biodiversity, landscape and habitat benefits. They also provide good biodiversity links across the site as well as offering benefits for employees - for example at break times.
- 8.90 The drainage arrangements for the office building are unclear at present as to whether it is proposed to connect to the public systems, but an appropriate planning condition can be attached to secure this information should the application be supported.

- 8.91 In these circumstances it is considered that the development complies with policies.

Developer contributions (NPF policy 18, MLDP PP3)

- 8.92 Policy PP3: Infrastructure and Services sets out that contributions will be sought from developers in cases where a development would have a measurable adverse or negative impact upon existing infrastructure, community facilities or amenity. This is echoed in NPF Policy 18 Infrastructure First.
- 8.93 In this case the only obligation relates to the impact on the transport network as covered in detail in the transport section. This may be secured by legal agreement which the applicant is agreeable to.

Cultural interests (NPF policy 7 & MLDP EP8, and EP10)

- 8.94 NPF Policy 7 – Historic Assets and Places notes that where there is potential for non-designated buried archaeological remains to exist below a site, developers should provide evaluation of the site at an early stage. This policy also seeks to ensure that any proposals affecting the setting of a listed building should preserve its character and special interest.
- 8.95 Policy EP8 Historic Environments seeks to ensure that there is no adverse effect on sites of local archaeological importance or the integrity of their settings. Policy EP10 on listed buildings also applies given that there are a number of listed buildings in the vicinity at Stynie Farmhouse, Speymouth Church and Speymouth Manse - all Category B. This policy seeks to ensure that there is no detrimental effect on the integrity, character or setting of the buildings.
- 8.96 In this case there is not considered to be any particular impact on the integrity or setting of the listed buildings due to the intervening topography where this is

already mature trees between the application site and the closest listed building at Stynie Farmhouse with further landscaping proposed along this northern site boundary too.

8.97 With regard to cultural heritage, the Regional Archaeologist has requested a planning condition requiring that a Written Scheme of Investigation be undertaken given the potential interest of the wider area here. This can be readily achieved.

8.98 In these circumstances the proposed development is considered to comply with these policies.

Conclusion

The NPF sets out the objective of wanting future places to work for everyone, bringing together environmental, social and economic objectives to achieve sustainable development in order to support the planning and delivery of:

- sustainable places where we reduce emissions, restore and better connect biodiversity;
- liveable places where we can all live better healthier lives;
- productive places where we can have a greener fairer and more inclusive wellbeing economy.

This is similar to MDLP objectives.

The proposed development is considered to perform well on these objectives providing local employment, using natural resources productively, helping to minimise travel and supporting an important primary industry.

It seeks to expand a long established local sawmill securing its sustainable future and creating significant numbers of additional jobs which is welcomed. The design and landscaping of the site will help the new development to sit well in the landscape and it will relate visually to the existing industrial development to the immediate south. The proposed landscaping and bunds will also help to secure the amenity of adjoining residences. The potential for noise impacts has been fully considered by the technical consultee and subject to appropriate planning conditions and implementation of proposed mitigation it is considered that there will not be unacceptable impacts in this regard. The site can be accessed and serviced to the satisfaction of the technical consultees with suggested path improvements having the potential to help improve pedestrian safety.

Overall the proposed development is considered to comply with the policies and objectives of the NPF.

The development also complies fully with the majority of the MDLP policies apart from its location immediately outwith the designated settlement boundary of Mosstodloch whereby it is contrary to Policy EP6 – Settlement Boundaries and Policy DP5 Business and Industry. Consequently it has been advertised as a departure. Departure from policy is considered to be justified as explained earlier in the report due to the clear locational need coupled with the significant economic benefits which will deliver sustainable economic growth and the fact that it is supported by primary policy PP2 Sustainable Economic Growth.

All potential impacts of this proposal on the environment and infrastructure have been fully considered with any potential impacts capable of being mitigated appropriately. Approval is therefore recommended, subject to conditions and a legal agreement to cover developer obligations.

REASON(S) FOR DECISION

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

The proposed development is for an expansion of an existing sawmill which will help to process future volumes of timber from the north east of Scotland, increase production, and number of employees, and help support other businesses/jobs within the supply chain. This aligns with the objectives of the Moray Economic Strategy and the Forestry and Woodland Strategy with a suitable locational justification as required by Policy PP2 provided.

The application is considered to be an acceptable departure from policies EP6 Settlement Boundaries, and DP5 Business and Industry of the Moray Local Development Plan 2020 given the locational justification (relating to the expansion of a long established business and operational requirements of expanding beside the existing site whereby alternative sites are not feasible) and the sustainable economic benefits associated with the proposal. The proposal is in accordance with all other aspects of the Moray Local Development Plan 2020 and National Planning Framework, and there are no material considerations that indicate otherwise.

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Planning Officer

Ext: 01343 563101

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

WARD 02_17

22/01255/HHCOMP **Application for High Hedge Notice at Kilmorack**
28th September 2022 **Broomhill Road Keith Moray**
 for Mr Colin Crocket

Comments:

- A site visit has been carried out.
- The application is being reported to Committee because it relates to an application for a High Hedge Notice.
- The neighbouring houses were notified of the application and comments were received from one of the parties. These properties were notified on the basis that they also could be affected by the hedge.

Procedure:

- If Members are minded to agree to serve a High Hedge Notice (and subject to the outcome of any potential appeal) and the owner of the hedge does not comply with its requirements, the Council may undertake direct action and recover costs from the hedge owner. There is currently no budget for this work.

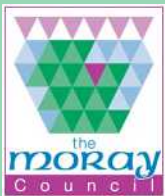
Recommendation

Within Section 8 of The Act provision is given for local authorities to decide that initial and preventative action is to be taken through the service of a high hedge notice.

It is recommended that given the application relates to a high hedge, and that the high hedge is having an adverse impact on the reasonable enjoyment of the applicant's property, a High Hedge Notice should be issued by the Council.

1. The High Hedge Notice should instruct the hedge owner to reduce Portion 2 of the hedge, shown in red in Appendix 2 to the height of 2m and Portion 3 of the hedge also shown in red in Appendix 2 to the height of 3.5m and that these works are to be carried out within twelve weeks of the Notice taking effect.
2. In addition, the Notice should stipulate that Portion 2 of the hedge should be maintained on an annual basis to ensure that its height does not exceed 2.5m and Portion 3 of the hedge should be maintained on an annual basis to ensure that its height does not exceed 4m.
3. The initial reduction in height of the hedge must be conducted out with the bird nesting season which occurs within March, April, May, June, July and August. This exclusion period may be relaxed if a detailed nesting survey of the affected

area confirming that nests are not present/in use is submitted to and agreed by the Moray Council prior to any lopping or pollarding being carried out.



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:

22/1255/HHCOMP

Site Address:

Kilmorack

Broomhill Road

Keith

Applicant Name:

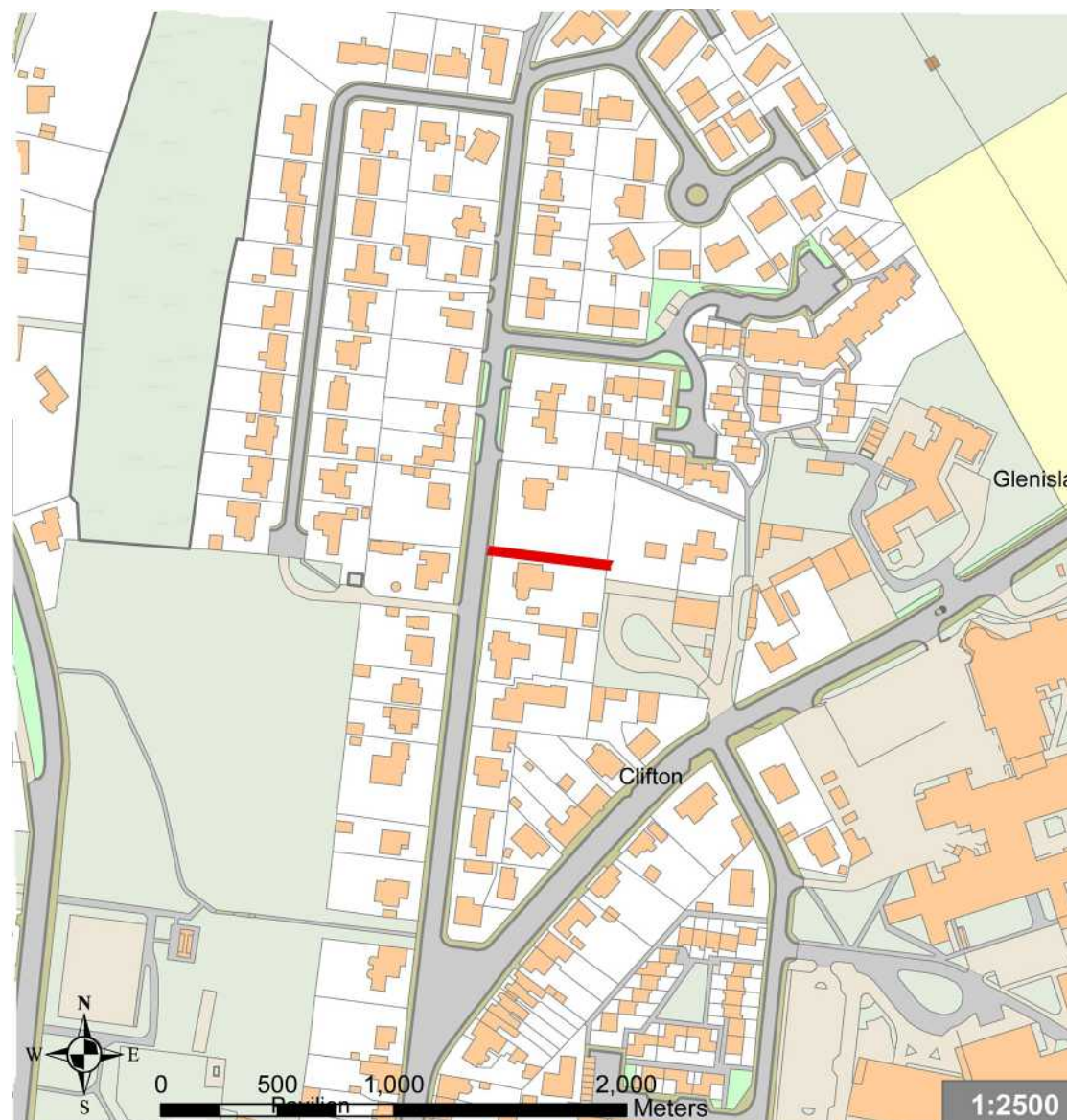
Mr Colin Crocket

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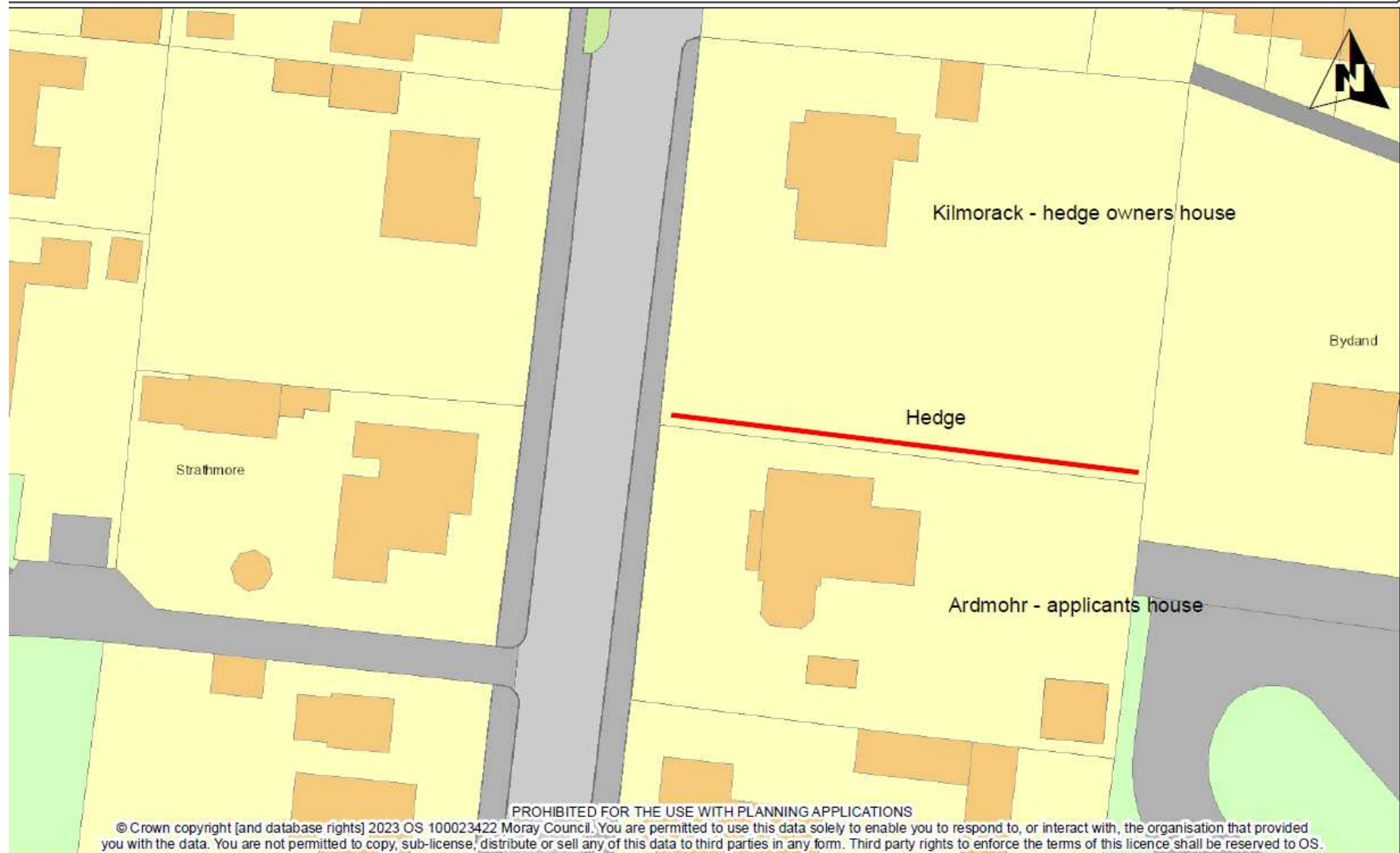
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Location Plan



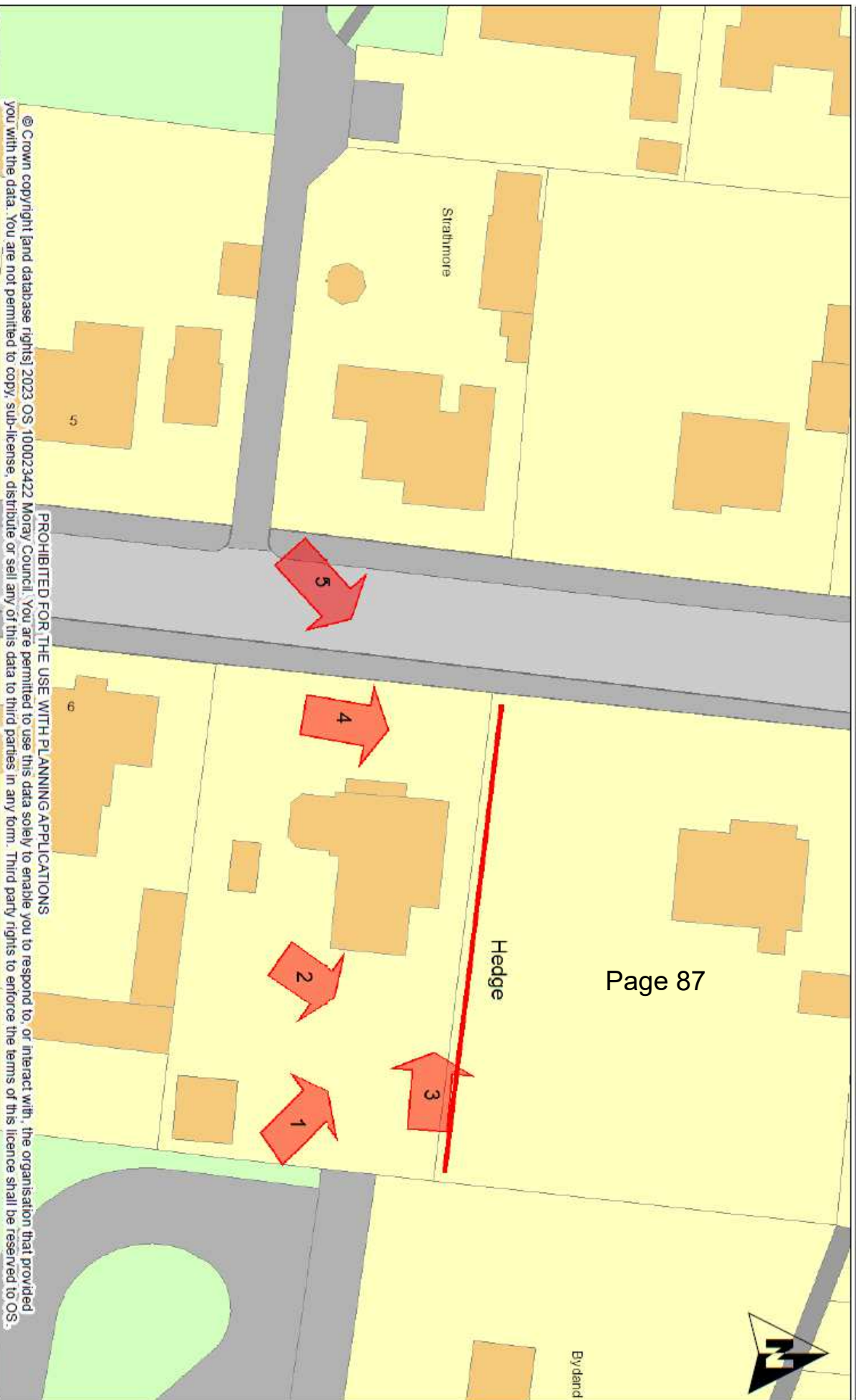
Site Location Plan



Map Description: Site Location Plan

Scale: 1:500 @ A4





Map Description: Photo Location Plan

Photo 1



Photo 2



Photo 3



Photo 4



Photo 5



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. INTRODUCTION

- This report relates to an application for a High Hedge Notice which has been submitted by the owners of the house at Ardmohr, Broomhill Road, Keith, AB55 5EX. The hedge which is the subject of this application is located within the grounds of the neighbouring house at Kilmorack, Broomhill Road, Keith.
- The applicant has responded 'yes' to all the criteria listed in Section 3 (Part B) of the High Hedge application form i.e. hedge is made up of a row of two or more trees, exceeds 2 metres in height, forms a barrier to light, is growing on land owned by someone else, is affecting domestic property and the applicant has attempted to resolve the issue with the hedge owner.
- The applicant seeks to have all of the hedge identified by them within the area marked on their submitted plan to the north of their house reduced in height.
- The Council note that there has been previous dialogue between the applicant and the owner of the hedge going back to August 2022 in an attempt to reach agreement over a reduction in the hedge height, however, to date no agreement has been reached.

2. THE SITE

- The hedge lies along the southern boundary of Kilmorack, Broomhill Road, which is a detached traditional house set within extensive garden grounds containing a multitude of mature trees, bushes and hedging. The hedge as identified by the applicant is made up of Leylandii interspersed with different species of trees, including beech, sycamore and holly, the position of which is shown on the Committee location plan.
- The applicant's house, which is also detached, lies approx. 3m to the south of the hedge, with the side elevation of the house facing towards the hedge. There is a stone wall which lies between the properties under the hedge, which varies in height between 1.9m to the west and 1.5m to the east of the applicants garden ground. The ground levels are approx. 1m higher on the hedge owner's side of the shared boundary wall, as such at the point the tree trunks meet the ground is approx. 1m higher than the base of the wall of the applicant's house. The applicants have windows within their main rooms (kitchen and bedrooms) of the house facing directly onto the hedge from the side of their house and facing to the front and rear of the house.

- The site has been inspected as part of the assessment of this application. The location of the hedge is shown outlined in red together with the applicant and hedge owner's houses on the Committee location plan.
- The hedge varies in height along its length, with the portion which lies adjacent to the applicants house and rear garden measuring approx. 9m in height, before dropping down in height towards the front (west) of the house.
- Given that the hedge has the potential to affect neighbouring properties, neighbours were notified of the application and comments from one party were received who were supportive of the hedge being reduced in height.

Legislative Framework

High Hedges (Scotland) Act 2013

Within the narrative of Section 1 of Act, the meaning of a high hedge is defined as a hedge that is:

- formed wholly or mainly by a row of 2 or more trees or shrubs,
- rises to a height of more than 2 metres above ground level, and
- forms a barrier to light (unless gaps significantly mitigate its overall effect as barrier at heights of more than 2 metres above ground level).

Scottish Government Guidance

High Hedges (Scotland) Act 2013 Revised Guidance to Local Authorities 2019

In addition to the Act, Scottish Government Guidance on High Hedges to local authorities states that;

“Although the Act uses the term ‘neighbouring land’ to describe where the hedge is growing, the hedge doesn’t have to be next door to the applicant’s property. This means that a hedge on ‘neighbouring land’ could be several gardens down the road or across the street, as long as the applicant can show that it has a negative effect on their enjoyment of their house.

An application cannot be made under the Act against single trees or shrubs, whatever their size. Two or more trees or shrubs do not have to form a precisely straight line to qualify as a hedge. As long as they are roughly in line, they may be considered as a hedge under the Act.

The Act applies to hedges that, despite any gaps above the 2-metre mark, act as a barrier to light.

An example of a method of measuring light levels is the Hedge Height and Light Loss (Revised edition 2005) guidelines which were developed by the Building Research Establishment (BRE). These guidelines were created to help local authorities in England and Wales make decisions under the Anti-Social Behaviour Act 2003. However, the method set out in the 2004 guidelines was designed to apply only to evergreen hedges, but the High Hedges (Scotland) Act 2013 covers all types of hedges and so that method cannot be applied in all cases. Whichever method the local authority decide to use to help them make their final decision as to whether a hedge is a barrier to light, they must consider the circumstances of each case.”

3. CONSULTATIONS

Advice was sought from an ecologist/licenced bat worker to establish the likely impact of any proposed hedge reduction works on protected species, such as nesting birds, bats and red squirrels.

The ecologist identified the hedge as being *Cuprocyparis leylandii* interspersed with Beech (*Fagus sylvatica*), Sycamore (*Acer psuedoplatanus*) and small Holly (*Ilex sp.*) and The survey confirmed that there were no squirrel dreys present in the hedge and bat roost potential was low and that any reduction in the hedge height would be unlikely to result in any impact on roosting bats or breeding squirrels. There is however, the potential to impact on nesting birds and therefore, any reduction in height should be done outwith the bird breeding season.

4. SUBMISSIONS

Correspondence has been submitted accompanying the application which includes letter exchanges between the applicants and the owners of the hedge, prior to formal submission of the application. The Act allows for the owner of the hedge to comment on the original application submissions and then for the applicant to respond to the owners comments.

These submissions are summarised below into key points:

Definition of a High Hedge

The Applicant: The applicant has responded 'yes' to all the criteria listed in Section 3 (Part B) of the High Hedge application form i.e. hedge is made up of a row of two or more trees, exceeds 2 metres in height, forms a barrier to light, is growing on land owned by someone else, is affecting domestic property and the applicant has attempted to resolve the issue with the hedge owner.

Hedge owner's response: The owners confirmed that they employed the services of a tree surgeon who in their view confirmed that the line of trees did not comprise a hedge. They consider the trees and shrubbery the applicant has taken issue with are not applicable to this act.

Comment (PO): Section 1 of the Act defines a 'high hedge' as:

- being formed completely or mainly by a row of two or more trees or shrubs;
- rising to a height of more than 2 metres above ground level; and
- forming a barrier to light (unless gaps in the hedge significantly reduce its overall effect as a barrier to light at heights of more than 2 metres above ground level).

As per the above definition, the hedge in question is considered to meet these 3 points and is considered to be a high hedge under the terms of the Act for the purposes of this application.

Concerns regarding the safety of trees and structural impact of roots

The Applicant: Concerns raised regarding tree branches scraping against the applicants house, danger of the trees falling on the house and potential for structural damage to the shared boundary wall and house.

Hedge owner's response: The owners have confirmed that they do not wish the trees to become a safety hazard and have employed the services of a tree surgeon to ensure this is the case and would welcome any future inspection of the trees. The tree surgeon also confirmed that in their opinion that the tree roots pose no threat to the structural integrity of the boundary wall or beyond.

Comment (PO): The Act aims to address the impact on amenity as a result of light loss/overshadowing and does not allow for the consideration of potential damage as a result of roots causing structural damage or trees/hedging falling on neighbouring property.

Overshadowing of garden/house and reasonable expectations

The Applicant: There is little/no light coming in through the 3 windows that are on the gable wall – the kitchen, upstairs bathroom and upstairs bedroom are all in shade due to the hedge and the lights have to be on, even during the day at times – we are getting no solar warmth from the sun at all. This is causing an adverse effect on our enjoyment of these rooms as the hedge is a barrier to the natural light that these rooms should enjoy. The rooms are darker than they should be due to the hedge depriving us of natural light. The tall beech tree and other trees, at the start of the hedge layout cast darkness on the two front rooms of my house – the downstairs lounge and upstairs bedroom. Areas of the garden are also lacking of light due to the high hedge. Due to lack of sun/light and natural ventilation the gable of the house is dark and cold, causing damp and moss build up – all due to the hedge being a barrier to the natural light that we are deprived of.

Hedge owner's response: The applicant describes mature trees standing individually. We question whether this is within the scope of the application. All of the trees along the boundary wall existed prior to 2019 when the applicant purchased Ardmohr. We do not consider the trees to be a barrier to natural light of the neighbouring property. The natural environment is important to us both, we consider ourselves inheritors of the trees, and hope to pass them along. We value the privacy and security that these trees provide.

Comment (PO): As discussed within the observations section of this report, the large beech trees to the west of the hedge and large sycamore to the east of the hedge are not considered to fall within the scope of the Act. Despite the trees/hedge being present when the applicants moved into their house, this does not preclude the applicants from making a high hedge application. The degree to which the hedge affects the applicant's house and garden is discussed in the observations section of this report, where it is concluded using the relevant government guidance and calculations that the hedge does form an unacceptable barrier to light.

5. OBSERVATIONS

- 5.1 In this case the hedge is formed wholly or mainly by a row of 2 or more trees, rises to a height of more than 2 metres above ground level, and forms a barrier to light, and as such falls within the definition of a high hedge and is considered to fall within the terms of the Act.

Assessment of Barrier to Light

- 5.2 The applicant's property is located to the south of the high hedge. It is evident from photographs submitted with the application and observations during the site visit(s) that the hedge is currently obstructing light to the property.
- 5.3 Revised guidance issued by the Scottish Government (SG) to local authorities in 2019 does not specify parameters for light levels and advises that local authorities are free to use any methods that exist if they deem the method reasonable and suitable. An example of such a method is the Hedge Height and Light Loss (March 2005) guidelines developed by the Building Research Establishment (BRE). These guidelines state that these are only applicable to evergreen hedges. In this case the leylandii hedge is interspersed with some different species of trees, some of which are deciduous, however, the majority of the hedge is made up of evergreen leylandii trees, as such the use of the Hedge Height and Light Loss guidance is considered to be appropriate.
- 5.4 The guidelines identify a number of measurements and calculations which need to be taken to provide a final 'action hedge height', these include the orientation, hedge length, separation of the applicant's property from the hedge and any changes in ground levels. The action hedge height is the maximum height that the hedge in question can be without resulting in adverse overshadowing of the neighbouring house and garden. To calculate the action hedge height, the loss of light to the applicant's garden and windows in their house must be calculated separately and the lower of these two heights taken as the action hedge height.
- 5.5 The guidelines also outline that where the hedge lies on higher ground than the base of the wall in which the window is located, then the difference in height must be subtracted from the action hedge height (page 16).
- 5.6 Taking into account the position of the applicant's house relative to the hedge and the way in which the action hedge height is calculated, in this case, it is considered to be appropriate to separate the hedge into three distinct portions along its length. The first portion adjacent to the applicant's front garden, the second adjacent to the applicant's house and the third portion adjacent to the applicants rear garden.
- 5.7 The calculations used to inform the action hedge height for each portion are shown in Appendix 1 along with an associated dimension plan. In summary, it is concluded that no action requires to be taken to reduce the height of the hedge which lies adjacent to the applicant's front garden. The action hedge height of the second portion of hedge adjacent to the applicant's house is 2m and the action hedge height of the third portion of hedge adjacent to the applicant's rear garden area is 4m, see Appendix 2.

- 5.8 The hedge is currently approx. 9m to tip and results in a significant impact on the light levels within the applicant's garden and house. Due to the height and position of the hedge relative to the affected property the hedge creates an unacceptable and overpowering sense of enclosure, and causes a reduction of daylight gained from the skyline. On this basis, it is considered that the hedge has a significant adverse effect on the reasonable enjoyment of the property, which is the test set out in section 6(5)(a) of the Act.
- 5.9 Given that it has been established that action should be taken to lower the hedge, it is also important to consider what length of hedge should be reduced in height. The Hedge Height and Light Loss guidance (page 14) provides guidance in terms of what length of hedge from the rear face and windows of the affected house should be reduced in height. In these circumstances where the hedge is at right angles to rear/east facing windows, the hedge length is calculated by taking the current height of the hedge, subtracting 1m and then doubling this number. The hedge height is 9m and therefore the length of hedge which should be reduced in height from the rear face of the applicant's house is 16m. Taking into account the length of hedge which lies directly adjacent to the applicant's house and this additional 16m from the rear face of the applicant's house, the hedge should be reduced in height as detailed in Appendix 2.
- 5.10 Whilst the action hedge heights calculated represent the limit to which action can reasonably be taken to reduce the hedge height under the terms of the Act, it is recognised that given the characteristics of the hedge, where there are some gaps and bare trunks at lower levels in places, it is possible that much of the hedge will die as a result of the recommended height reduction. The Act does not restrict hedge height reduction in these circumstances, unless the loss of the hedge would result in significant privacy impact on the hedge owner. In this case there is considered to be sufficient window to window separation between the properties and existing other intervening vegetation to ensure acceptable levels of privacy are maintained between the properties, even if the hedge reduction works resulted in the death of the whole hedge. It should be noted that whilst there is a limit to which action can reasonably be taken to reduce the hedge height under the terms of the Act, there is nothing to restrict the owners of the hedge from removing the hedge in its entirety, should they feel the appearance of the reduced hedge is unsightly.
- 5.11 With regard to impact on the character of the area, the hedge does not lie within a conservation area nor is it covered by a tree preservation order. In this instance given the adverse impact of the hedge the recommended reduction in hedge height is considered to be appropriate under the terms of the high hedge legislation.

RECOMMENDATION

Within Section 8 of the Act provision is given for local authorities to decide whether or not initial and preventative action is to be taken through the service of a High Hedge Notice.

It is recommended that given the application relates to a high hedge and that following assessment, taking into account the submissions from both parties the high hedge (as detailed) is having an adverse impact on the reasonable enjoyment of the applicant's property, a High Hedge Notice should be issued.

To ensure there would be minimal impact on nesting birds the works require to be carried out with the nesting period (1st March to 31st August).

The High Hedge Notice has to contain specific recommendations for the owner to carry out and in this case it is recommended that portion two of the hedge, shown in red in Appendix 2 should initially be reduced to the height of 2m which is the maximum height of hedge reduction permitted under the terms of the Act and thereafter maintained at a height not exceeding 2.5m. Portion 3 of the hedge also shown in red in Appendix 2 should initially be reduced to the height of 3.5m, to then allow for growth to 4m which is the action hedge height. These works are to be carried out within twelve weeks of the Notice taking effect.

In addition, the Notice should stipulate that portion two of the hedge should be maintained on an annual basis to ensure that its height does not exceed 2.5m and portion 3 of the hedge should be maintained on an annual basis to ensure that its height does not exceed 4m.

**Author/Contact
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**Beverly Smith
Development Management & Building Standards Manager**

22/01255/HHCOMP – APPENDIX 1 – Calculations

For all calculations below, the base of the hedge lies approx. 1m higher than the base of the wall of the applicant's house, this must be taken into account in all calculations as detailed on page 16 of the Hedge Height and Light Loss (2005) guidelines. i.e. "If the base of the hedge (where the trunks meet the ground) is higher than the base of the window wall, subtract this height difference from the calculated action hedge height."

Hedge portion one (hedge adjacent to applicants front garden) – action hedge height

Calculated in accordance with page 14 & 16 of Hedge Height and Light Loss (2005) guidelines

Hedge at right angles to windows

Distance from centre of the window to the hedge = 4m

Action hedge height = distance from centre of window to hedge + 1m

Action hedge height = $4\text{m} + 1\text{m} = 5\text{m}$

Adjustment for difference in ground level = $5\text{m} - 1\text{m} = 4\text{m}$

Hedge portion one action hedge height = 4m

This portion of hedge is between 2m and 3m high when measured from where the trunks meet the ground. Given the action hedge height of 4m for this portion, no action is recommended in relation to hedge portion one.

.....

Hedge portion two (hedge adjacent to applicants house) – action hedge height

Calculated in accordance with page 13 & 16 of Hedge Height and Light Loss (2005) guidelines

Hedge opposite a window

Horizontal distance between the outside window wall and the boundary on which the hedge stands = 3m

Action hedge height = half the horizontal distance + 1m

Action hedge height = $(3\text{m} \div 2 = 1.5\text{m})$, $1.5\text{m} + 1\text{m} = 2.5\text{m}$

Adjustment for difference in ground level = $2.5\text{m} - 1\text{m} = 1.5\text{m}$

Whilst this calculation concludes an action hedge height of 1.5m, action via the high hedge regulations cannot recommend that hedges be reduced lower than 2m, as this would take the hedge out with the definition of a high hedge, which must be a minimum of 2m in height. As such it is recommended that this action hedge height is adjusted upwards to 2m to remain within the scope of the Act.

Hedge portion two action hedge height = 2m

This portion of hedge is around 9m in height when measured from where the trunks meet the ground. Given the action hedge height of 2m for this portion, a reduction in hedge height is recommended in relation to hedge portion two.

.....

Hedge portion three (hedge adjacent to applicants rear garden) – action hedge height

Calculated in accordance with page 14 & 16 of Hedge Height and Light Loss (2005) guidelines

Hedge at right angles to windows

Distance from centre of the window to the hedge = 4m

Action hedge height = distance from centre of window to hedge + 1m

Action hedge height = 4m+1m = 5m

Adjustment for difference in ground level = 5m-1m = 4m

Hedge portion three action hedge height = 4m

This portion of hedge is around 9m in height when measured from where the trunks meet the ground. Given the action hedge height of 4m for this portion, a reduction in hedge height is recommended in relation to hedge portion three.

Hedge length

As hedge portion 3 extends along the whole length of the rear garden, the length of the hedge to be reduced in height also needs to be calculated as per the guidance on page 14 of the Hedge Height and Light Loss (2005) guidelines.

This hedge length is calculated by taking the current height of the hedge, subtracting 1m and then doubling this number.

The hedge height = 9m

Hedge length = (9m – 1m) x 2 =16m

From the rear face of the applicant's house (measurement to be taken from the section of house where the rear facing window closest to the hedge is located)

.....

Action hedge height – Garden

In accordance with the Hedge Height and Light Loss (2005) guidelines (page 7), both the action hedge height for loss of light to gardens and windows must be calculated and the lower of these figures used. As per the calculation below, the action hedge height of the garden is 13.33m. As this is higher than the window calculations above, this can be discounted from any recommendations in relation to the hedge.

Action hedge height – Garden

Calculated in accordance with page 8 of Hedge Height and Light Loss (2005) guidelines

Firstly the effective depth of the garden must be measured (for a rectangular garden the effective depth is the distance between the hedge and the opposite end of the garden), then multiply the effective depth by a factor (which will vary with the orientation of the hedge and is provided within the hedge height and light loss guidelines) to get the basic action hedge height and make any correction for difference in ground level.

Effective depth – rectangular garden = 20.5m

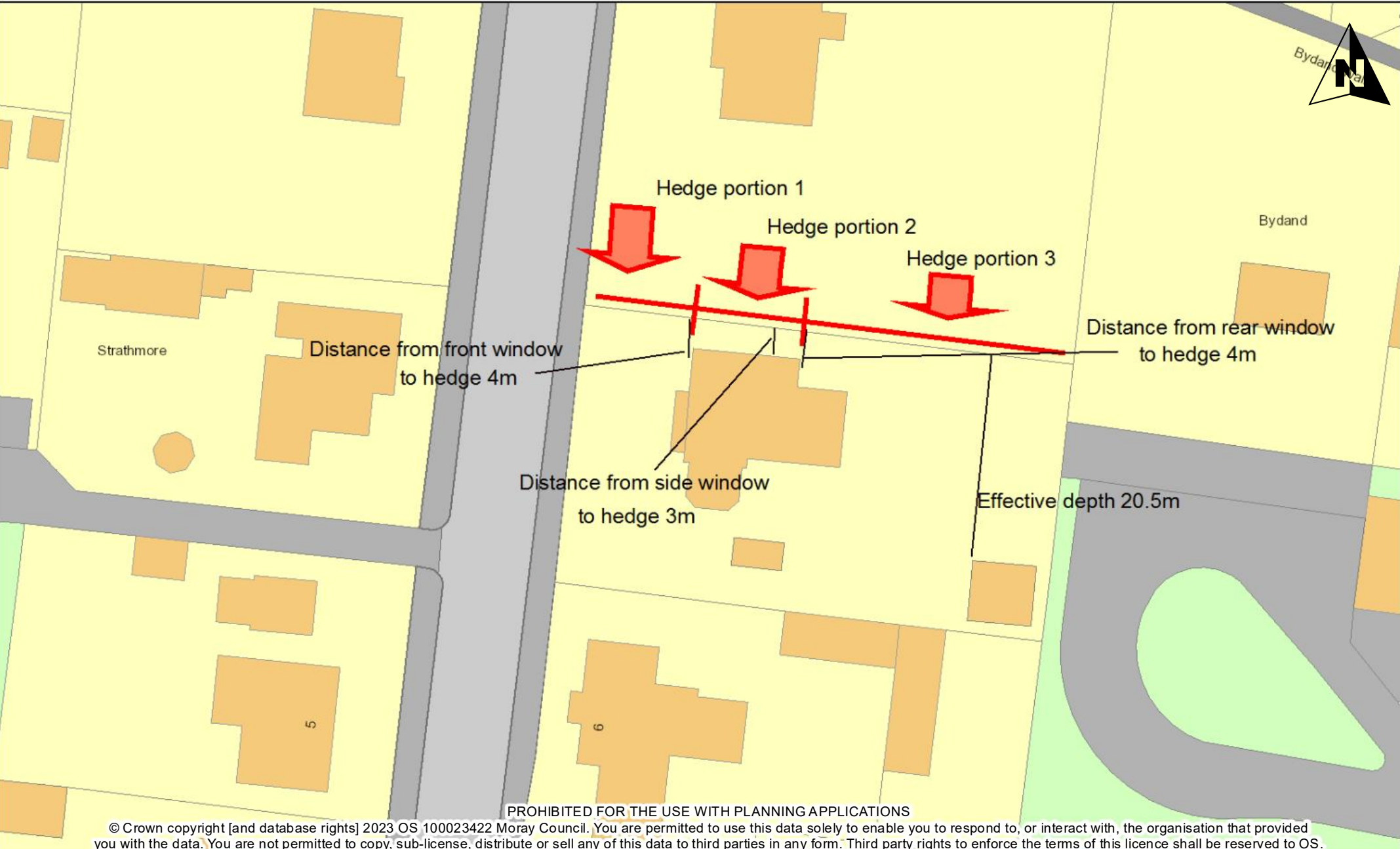
Orientation factor – North = 0.65

Garden action hedge height – $20.5 \times 0.65 = 13.33\text{m}$

Adjustment for difference in ground level – $13.33\text{m} - 1\text{m} = 12.33\text{m}$

.....

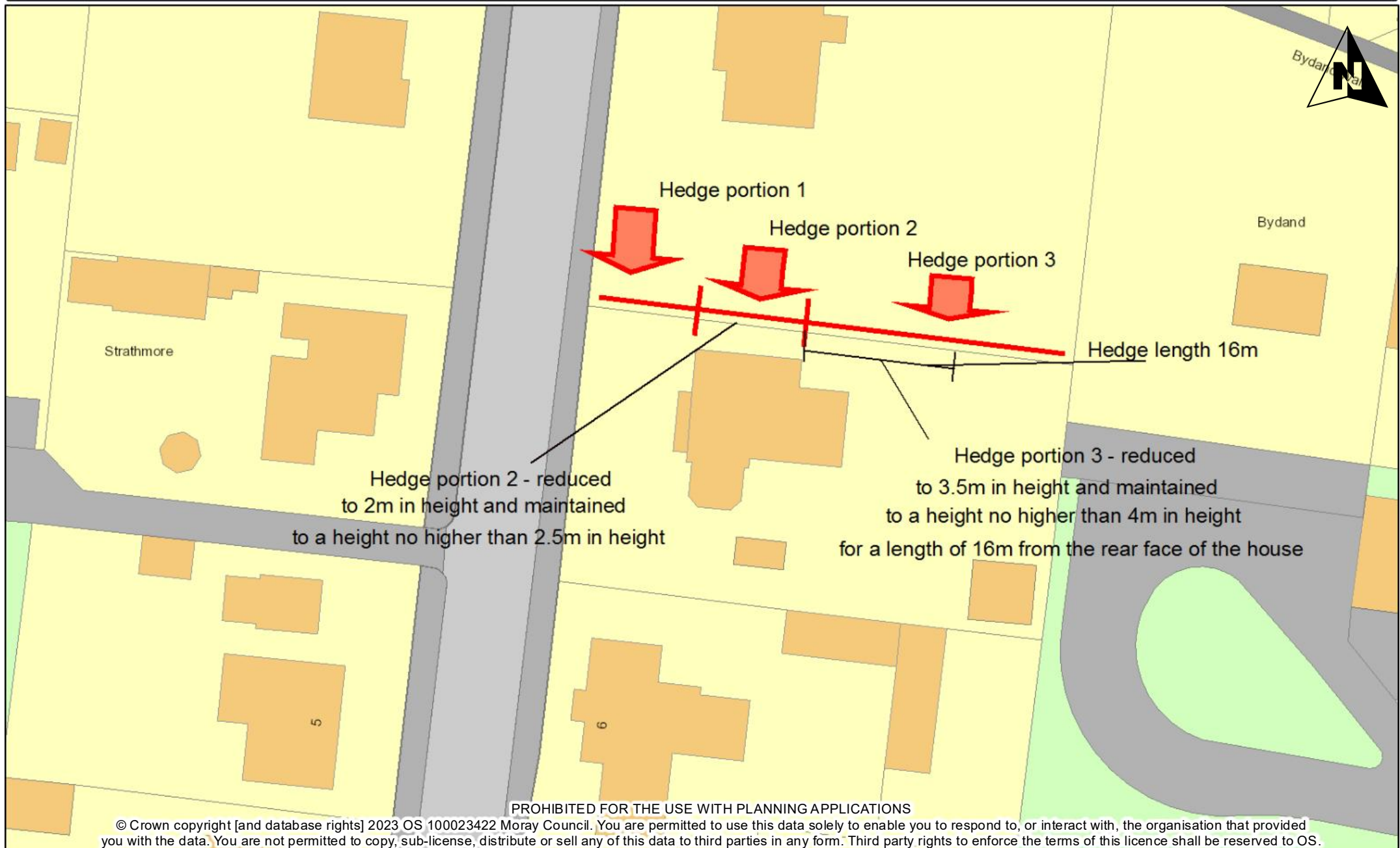
Appendix 1 - Dimension plan



Map Description: Appendix 1 - Dimension plan



Appendix 2 - Hedge reduction plan



Map Description: Appendix 2 - Hedge reduction plan

WARD 06_17

22/01396/PPP
9th November 2022

**Proposed 40 bed care home on Land To The Rear Of
Eight Acres Hotel Morriston Road Elgin Moray
for Parklands Developments Ltd**

Comments:

- A site visit has been carried out.
- Application is for planning permission in principle.
- 3 objections received from members of the public.

Procedure:

- None.

Recommendation:

Approve subject to the following conditions:-

Conditions/Reasons

1. In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended:
 - (a) That in the case of any matter specified in conditions attached to the planning permission in principle, application for approval of matters specified in conditions must be made before:-
 - (i) that expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval for the same matters was refused; or
 - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest, and
 - (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-
 - (i) the expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 2 years from the final approval of the matters specified in conditions or in the case of approval on different dates the final approval of the last such matter to be approved.

If an application for approval of matters specified in conditions has not been made or the development has not begun within the specified dates this planning

permission in principle shall lapse unless there is a specific condition attached to this permission which varies the stated timescales.

Reason: The time limit condition is in accordance with section 59 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the building(s) the means of access thereto and the landscaping of the site shall be obtained from the Council, as Planning Authority.

Reason: In order to ensure that the matters specified can be fully considered prior to the commencement of development.

3. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 4-8 below.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

4. Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes, as well as external lighting of the building, car park and grounds shall be submitted in accordance with condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

5. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent) shall be submitted in accordance with condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

6. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure and screening shall be submitted in accordance with condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

7. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

8. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

9. Prior to the commencement of development details of retention/diversion of a pathway through the northern part of the site connecting the existing access to the north of the hotel and the Quarry Wood to the west shall be submitted and approved in writing by the Council, as Planning Authority. Thereafter the path shall be provided prior to development commencing. Thereafter use of the pathway shall be maintained/provided for use during construction works and post completion unless otherwise agreed in writing with the Council, as Planning Authority.

Reason: To ensure access rights for the public through the northern part of the site are retained.

10. As part of condition 5 in respect of the drainage of the site, all drainage shall be designed in accordance with the information contained in the approved Drainage Impact Assessment (by hga, reference number 3871 issue 1, dated 22 Sept 2022).

Reason: To ensure drainage is designed and provided in accordance with the detailed agreed in the approved Drainage Impact Assessment.

11. As part of condition 4 in respect of the design of the proposed care home, the building shall be no more than two storeys in height.

Reason: To ensure the design of the building is in keeping with the scale and character of development in the surrounding area.

12. The development shall be carried out in full accordance with the mitigation and recommendations contained in section 6 of the approved Preliminary Ecological Appraisal in respect of Flora, Amphibians and Reptiles, Birds, Bats and Other Mammals.

Reason: To ensure the development does not adversely impact on species that may be present on or adjacent to the site.

13. No development shall commence until a scheme of biodiversity enhancement (together with timescale for provision) in line with the recommendations contained in section 6.34 of the approved Preliminary Ecological Appraisal has been submitted to and approved in writing by the Council, as Planning Authority.

Thereafter the measures shall be implemented in accordance with the approved details.

Reason: To ensure suitable biodiversity enhancement is provided as part of this proposal, in accordance with National Planning Framework 4 Policy 3 – Biodiversity.

14. No development shall commence until a statement, which demonstrates the proposal will be sited and designed to meet the following requirements has been submitted to and approved in writing by the Council, as Planning Authority:

- minimise lifecycle greenhouse gas emissions as far as possible; and
- adapt to current and future risks from climate change.

This statement shall address the requirements of the “Moray Council’s Carbon Guidance for Planning Applications and S36 and S37 consents” insofar as they are relevant to the proposal, and provide timescales for the full implementation of any measures specified.

Thereafter the development shall be implemented in full accordance with the approved details unless otherwise agreed with the Council, as Planning Authority.

Reason: To ensure compliance with National Planning Framework 4 Policy 2 – Climate Mitigation and Adaption.

15. No development shall commence until a Waste Management Plan shall be submitted to and approved in writing by the Council. The Waste Management Plan shall relate to the operation of the development hereby approved and include information on the following:

- a) identification of the likely waste sources associated with the operation of the development;
- b) proposed waste management requirements, including provisions to maximise waste reduction and waste separation at source; and
- c) proposed waste management and storage strategy, which shall include details of:
 - i. measures to minimise cross-contamination of materials;
 - ii. storage of waste and by-products (including measures to ensure waste is secure from wind/weather);
 - iii. provision of access for collection of waste, and;
 - iv. recycling and localised waste management facilities.

Thereafter, the Waste Management Plan shall be implemented in full accordance with the details hereby approved prior to the completion or first operation of development hereby approved (whichever is the soonest).

Reason: To ensure waste is minimised as a result of the operation of the proposed development, in accordance with National Planning Framework 4 Policy 12 - Zero Waste.

16. No development shall commence until a Construction Environmental Management

Plan (CEMP) shall be submitted to and agreed in writing by the Council, as Planning Authority in consultation with the Environmental Health Manager. The plan shall include:

- a) measures to minimise construction related noise, vibration, dust and artificial lighting on nearby residential properties and ecology, including the nearby Quarry Wood SSSI;
- b) a waste management strategy that includes:
 - i. identification of the likely waste sources associated with the operation of the development;
 - ii. proposed waste management requirements, including provisions to maximise waste reduction and waste separation at source; and
 - iii. proposed waste management and storage strategy, which shall include details of measures to minimise cross-contamination of materials, storage of waste (including measures to ensure waste is secure from wind/weather), provision of access for collection of waste, and recycling and localised waste management facilities;
- c) measures to ensure soil disturbance is minimised during construction;
- d) protection measures for trees on and adjacent to the site to be provided during the course of works; and
- e) a scheme for the layout and location of construction compound(s) including parking, fencing, plant and temporary buildings, as well as timing for provision and removal/reinstatement.

The above measures shall be accompanied by information for the timing of their provision. Thereafter the development shall be carried out in accordance with the details hereby approved unless otherwise agreed with the Council, as Planning Authority, in writing.

Reason: To ensure environmental impacts are suitably managed and maintained during the construction phase.

17. Prior to development commencing the tree protection measures as specified in Section 7.0 – 7.4 and shown in Appendix Five: Tree Protection Plan of the approved Arboricultural Report shall be provided in full and retained until completion of construction works. Thereafter post construction a survey shall be undertaken in accordance with section 7.5 of the approved Arboricultural Report and its findings reported to the Council, as Planning Authority along with timescale for implementation of any suggested mitigation/remedial works required to ensure tree health and site safety.

Reason: To ensure tree protection measures are provided in full accordance with the details approved as part of this application.

18. No development shall commence until a detailed drawing (scale 1:200) showing the type and specifications of the proposed EV charging units(s) to serve a minimum 3 spaces with a minimum power output of 22Kw (Rapid Charger). EV charging unit is to be connected to an appropriate electricity supply and should include details (written proposals and plans) to confirm the provision of the necessary cabling, ducting, and consumer units capable of supporting the future charging unit.

Thereafter the EV charging facilities shall be provided in accordance with the approved details prior to the development becoming operational or opened to the public and maintained for use thereafter unless otherwise agreed in writing by the Planning Authority in consultation with the Roads Authority.

Reason: In the interests of an acceptable form of development and the provision of infrastructure to support the use of low carbon transport, through the provision of details currently lacking from the submission.

19. As part of condition 5 in respect of parking layout, no development shall commence until a scheme of car parking (including disabled parking spaces) shall be provided at a rate as shown in drawing No. 133-200 F submitted on 28.03.2023. Thereafter, the parking spaces shall be provided in accordance with the approved details and be retained and available for use for the lifetime of the development, unless otherwise agreed in writing by the Council, as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for employees/visitors/others in the interests of an acceptable development and road safety.

20. No development shall commence until details have been submitted and approved in writing by the Council, as Planning Authority (plans scale 1:200 min) showing the design and location for the provision of secure, covered and enclosed cycle parking for a minimum of 4 cycles. Thereafter the cycle parking shall be provided prior to the building being completed or becoming operational and shall be maintained and available for use thereafter for the lifetime of the building use unless otherwise agreed in writing by the Planning Authority.

Reason: In the interests of sustainable transport, the provision of cycle parking and the provision of details currently lacking from the submission.

21. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.

Reason: To ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the new access.

22. The access to the site and vehicle circulation inside the development shall be developed to accommodate vehicle swept paths in accordance with the drawing submitted as Appendix 02 of the updated Transport Statement.

Reason: To ensure acceptable infrastructure at the development access.

23. Prior to the operation or completion of the care home, whichever is the sooner, a pedestrian access shall be provided on the southern boundary of the site connecting to the existing footway along the A96 as shown in the drawing No. 133-200 F submitted on 28.03.2023.

Reason: To minimise the walking distance for staff/visitors who may be arriving by public transport.

24. No development shall commence until a Community Wealth Building Plan has been submitted to and approved in writing by the Council as Planning Authority. This plan shall include measures, targets and monitoring for the following areas as appropriate
- (a) improving community resilience, reducing inequalities and maximising local job creation;
 - (b) increasing spending within communities and ensuring the maximum use of local supply chains and services;
 - (c) creation of new firms and;
 - (d) enabling community ownership of buildings and infrastructure.

The measures and monitoring shall thereafter be implemented in accordance with the plan unless otherwise agreed in writing with the Council, as Planning Authority.

Reason: To support a new strategic approach to economic development that helps to build a wellbeing economy in accordance with National Planning Framework 4 Policy 25 – Community Wealth Building.

Reason(s) for Decision

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

The proposal complies with the development plan, namely National Planning Framework 4 and the Moray Local Development Plan 2020 and there are no material considerations that indicate otherwise.

List of Informatives:

TRANSPORT SCOTLAND has commented that:-

To obtain permission to work within the trunk road boundary, contact the Area Manager through the general contact number below. The Operating Company has responsibility for co-ordination and supervision of works and after permission has been granted it is the developer's contractor's responsibility to liaise with the Operating Company during the construction period to ensure all necessary permissions are obtained.

Area Manager (A96)
Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF
Tel 0141 272 7100

Operating Company – North East
Caledonian House, West Kinfauns, Perth, PH2 7XZ.
Email occr-northeast@amey.co.uk

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

The provision of Electric Vehicle (EV) chargers and/or associated infrastructure shall be provided in accordance with Moray Council guidelines. Cabling between charging units and parking spaces must not cross or obstruct the public road including footways. Infrastructure provided to enable EV charging must be retained for this purpose for the lifetime of the development unless otherwise agreed in writing by the Planning Authority. Guidance on Electric Vehicle (EV) Charging requirements can be found at:

<http://www.moray.gov.uk/downloads/file134860.pdf>

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.

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

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into their property.

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

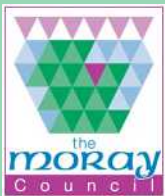
The applicants shall meet all costs of improvements to the road infrastructure, which are required as a result of the development.

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.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT		
Reference No.	Version No.	Title/Description
133-100		Location plan
133-200	F	Site plan

Documents to be Approved.

- Arboricultural Report
- Transport Statement
- Drainage Impact Assessment
- Preliminary Ecological Appraisal



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:

22/01396/PPP

Site Address:

**Land To The Rear Of Eight Acres Hotel
Morrison Road Elgin**

Applicant Name:

Parklands Developments Ltd

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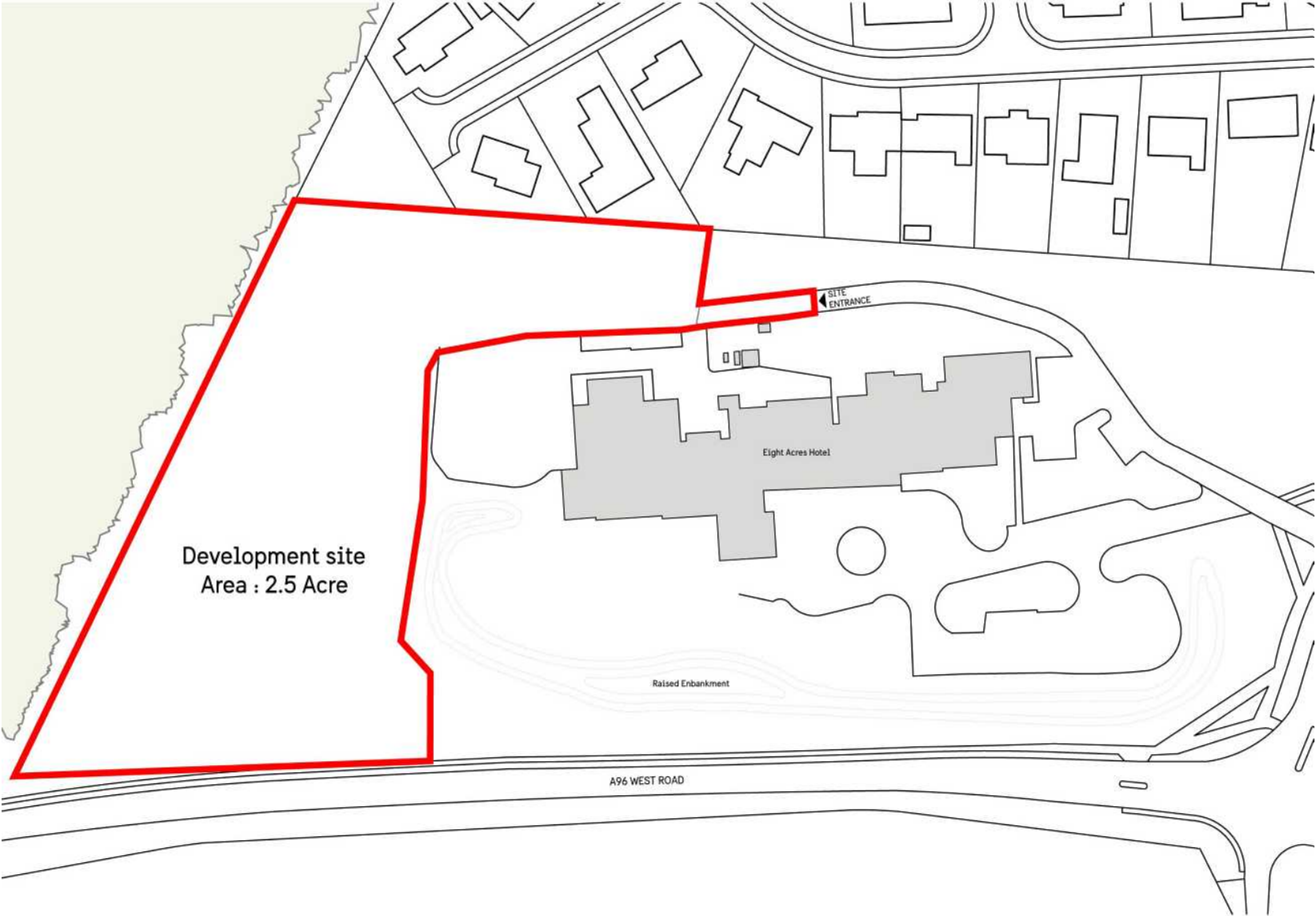
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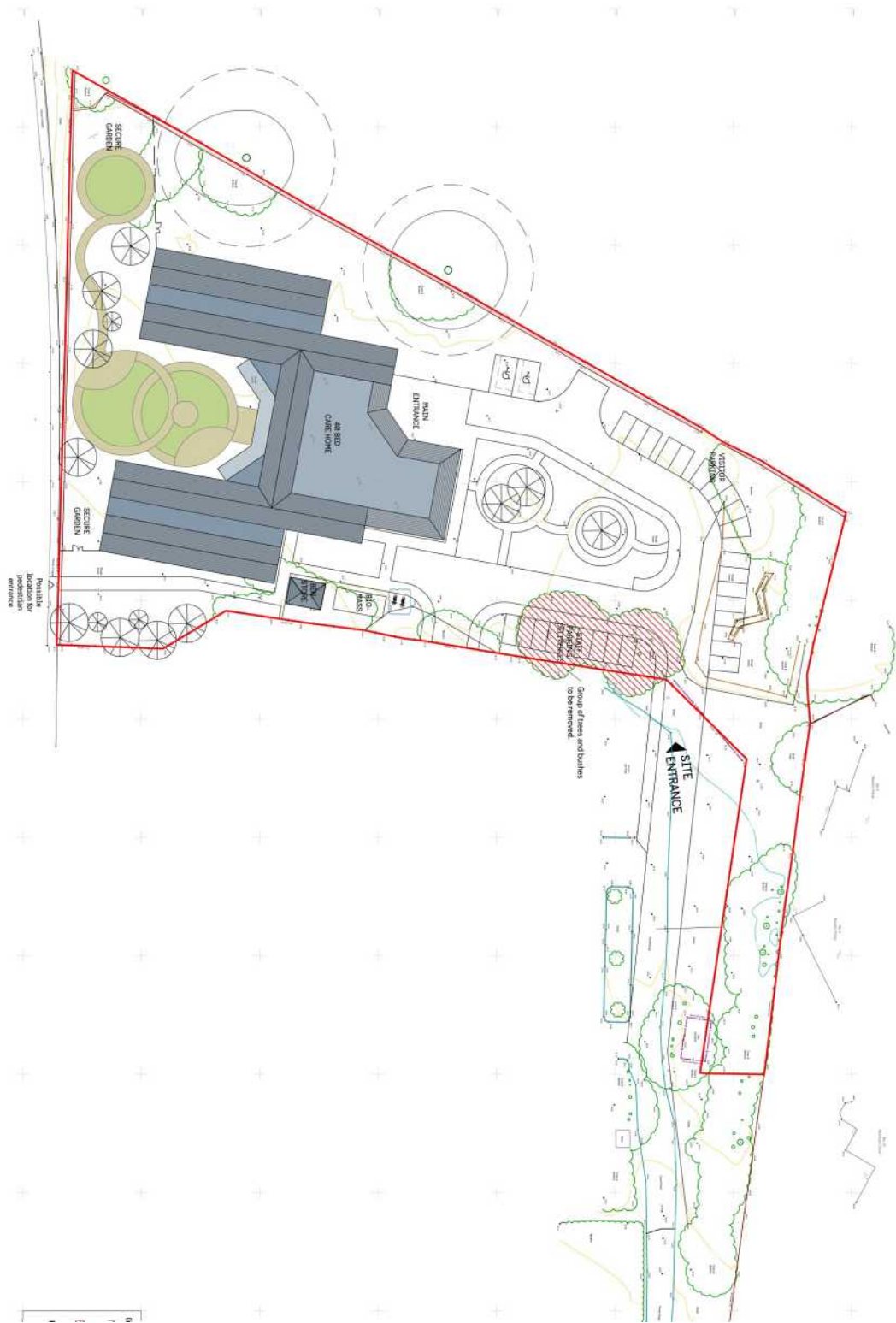
Location Plan



Site Location



Site plan



22/01396/PPP - Photograph Positions

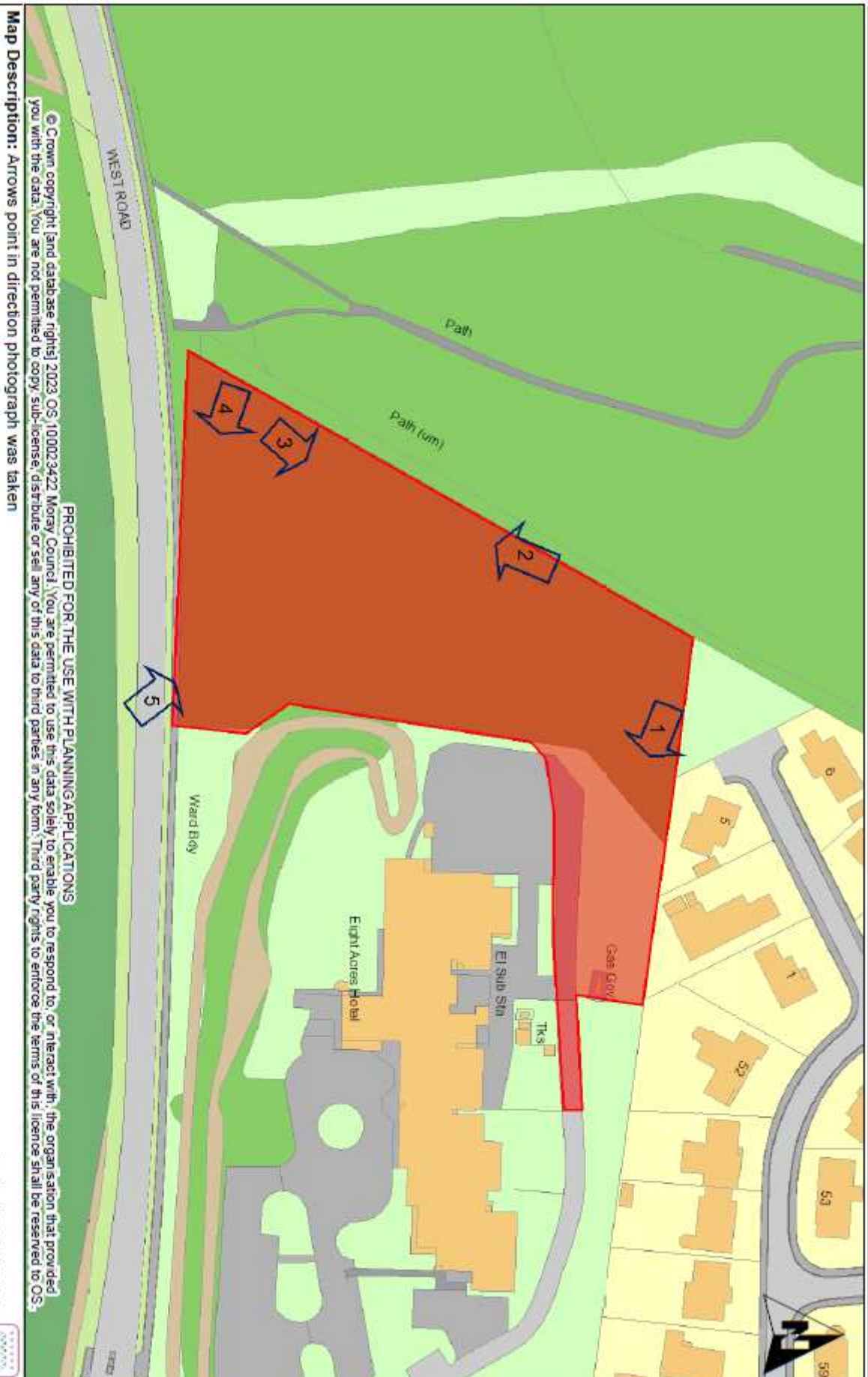


Photo 1—view along proposed access



Photo 2— South view along boundary with Quarry Wood



Photo 3—North East view within site



Photo 4—East view along boundary with A96 West Road



Photo 5—North West from A96 West Road



PLANNING APPLICATION: 22/01396/PPP

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

- Planning permission in principle is sought for the erection of a 40 bed care home, with associated parking, access and landscaping.
- As the application is for planning permission in principle, limited information is provided with the application. The indicative site plan shows a care home building towards the south of the site, with a secure garden between the proposed care home and the A96 to the south.
- Car parking would be to the north, with access taken via the existing access to the rear (north) of the Eight Acres Hotel.
- A new pedestrian access is proposed to the south connecting into the A96 West Road.
- A Tree Survey submitted with the application identifies that a group of trees and bushes adjacent to the function suite of the hotel would be removed to accommodate this proposal.
- A Preliminary Ecological Appraisal, Transport Assessment and Drainage Impact Assessment have also been submitted with this application.

2. THE SITE

- An area of vacant ground (approximately 1 ha) to the west of the Eight Acres Hotel, Morriston Road, Elgin.
- The site is bounded by the hotel to the east, A96 trunk road to the south, Quarry Wood to the west and an area of housing to the north.
- The site is largely overgrown grass, though there are trees and shrubs within the site, more so to the north of the site.
- The site is within the Elgin Settlement Boundary as designated in the Moray Local Development Plan 2020 however the site itself is not covered by any formal land use designation.
- Quarry Wood to the west of the site is designated as a Site of Special Scientific Interest. It is described as ancient woodland with a recorded history extending to at least the eighteenth century and is one of the best examples of oak woodland in Moray and the lowest altitude example in north-east Scotland.

3. HISTORY

11/00232/APP – Erect new 29 bed care home at Eight Acres, Morriston Road, Elgin granted planning permission on 23 August 2011 under delegated powers.

14/01292/APP – Application to renew planning permission ref 11/00232/APP for erection of care home granted planning permission on 19 August 2014 under delegated powers. This application was implemented on 20 February 2017 (small stretch of foundation trench dug) and thus remains a live consent.

4. POLICY

National Planning Framework 4

Policy 1 – Tackling the Climate
Policy 2 – Climate Mitigation and Adaptation
Policy 3 – Biodiversity
Policy 4 – Natural Places
Policy 5 – Soils
Policy 6 – Forestry, Woodland and Trees
Policy 12 – Zero Waste
Policy 13 – Sustainable Transport
Policy 14 – Design, Quality and Place
Policy 16 – Quality Homes
Policy 18 – Infrastructure First
Policy 22 – Flood risk

Moray Local Development Plan 2020

Policy PP3 – Infrastructure and Services
Policy DP1 – Development Principles
Policy EP1 – Natural Heritage Designations
Policy EP2 – Biodiversity
Policy EP5 – Open Space
Policy EP7 – Forestry Woodland and Trees
Policy EP12 – Management and Enhancement Water
Policy EP13 – Foul Drainage

5. ADVERTISEMENTS

- None.

6. CONSULTATIONS

Transport Scotland – No objections, informative notes provided.

SEPA – No objections, refer to standing advice.

Scottish Water – No objections, advise pre-development enquiry is undertaken for water supply (Glenlatterach) and foul drainage (Moray West) connections.

Developer Obligations – No obligations sought.

Moray Flood Risk Management – No objections, condition in respect of surface water drainage recommended.

Environmental Health – No objections.

Contaminated Land – No objections.

Transportation Manager – Following provision of Transport Assessment, no objections subject to conditions in relation to car and cycle parking (including EV charging) and timing for provision of footway to the south A96.

Moray Access Manager – Request that desire line/pathway through the north of the site is retained in detailed layout.

Elgin Community Council – Summary of comments:

- There is definitely a need for more care homes in the area.
- Proximity to trees should be considered in detailed design, especially in respect of maintenance and overshadowing (the latter may impact on health of elderly residents).
- Drystone dyke to west of site – there have been problems with the maintenance of this boundary, what mitigation will be put in place to ensure the boundaries are properly maintained?
- Development density should be considered alongside the existing hotel, and as the site is not designated in the LDP and undeveloped this raises the question whether the site should be developed.
- Access arrangements – how will hotel residents be prevented from wandering into the area of the care home?

Conclude that a sympathetic design and consideration of above points is required to find out if this is a suitable type of development for this site and to make the best of it for residents.

7. OBJECTIONS-REPRESENTATIONS

NOTE: Following the determination of this application, name and address details will be/have been removed (i.e. redacted) in accordance with the General Data Protection Regulations (paragraph 3 of Minute, Planning & Regulatory Services Committee 16 September 2014).

Mr William Bennie - Ashlar 54 McIntosh Drive Elgin Moray IV30 6AW - O
William And Anne Garden - Tranarossan 3 Newton Place Elgin Moray IV30 6AZ - R

John And Susan Meichan - Haughton 5 Newton Place Elgin Moray IV30 6AZ - R

The mains issues can be summarised as follows:

Issue: Will area between the houses to the north and the access road be landscaped? And is this 8 metres wide? No tall trees should be planted that will overshadow houses to north.

Comments (PO): At this “in principle” stage of the application, the final layout of the site including landscaping is yet to be agreed. Consideration will be given to this via a subsequent application for Approval of Matters Specified in Conditions.

Issue: Request assurance that areas next to the boundary of a house to the north will never be used for car parking.

Comments (PO): At this “in principle” stage of the application, the final layout of the site including landscaping is yet to be agreed. Consideration will be given to this via a subsequent application for Approval of Matters Specified in Conditions.

Issue: Trees bounding the houses to the north are resident to red squirrels and should not be felled.

Comments (PO): The tree survey provided identifies that trees along the boundary with housing to the north will be retained. It also notes that red squirrels may utilise the trees to varying degrees, although there is no evidence of permanent residence, as confirmed in the Preliminary Ecological Appraisal.

Issue: How will the existing gas storage tank be impacted by this proposal?

Comments (PO): The indicative layout shows the gas governor being retained, however the final layout of the site is yet to be agreed. Consideration will be given to this via a subsequent application for Approval of Matters Specified in Conditions.

Issue: There has always been a walkway between Newton Place to access hotel and leisure centre, will this be retained?

Comments (PO): A condition will be applied requiring this walkway to be retained.

Issue: Objector has lived in house next to Eight Acres Hotel since 1999 and has been subject to noise from vehicles servicing the hotel. This proposal will exacerbate this. The Transportation Manager’s request for a Transport Assessment should incorporate the impact of the proposal on the access road in the hotel grounds.

Comments (PO): The additional traffic generated by this proposal is not considered to be of a significance that would result in a significant loss of amenity to nearby residential properties. It is also worth noting the principle of a care home on this site is established under the extant consent on site (see Planning History above).

Issue: Support comments submitted by Elgin Community Council.

Comments (PO): These are addressed in Observations below.

Issue: Impact of proposal on ecology of the site.

Comments (PO): The impact of this proposal on ecology has been considered via the Preliminary Ecological Appraisal (PEA) that accompanies the application, and mitigation measures suggested will be conditioned. The Tree Survey provided with the application considers impacts on trees within and adjacent to the site (noting the latter forming the Quarry Wood SSSI), and the presence of wildlife in the trees. The Tree Survey and PEA mitigation recommendations ensures sufficient protection for those in the SSSI, as well as ensuring the soil biodiversity is protected from overplanting. It also notes that red squirrels may utilise the trees to varying degrees, although there is no evidence of permanent residence squirrels. The remainder of the site does not appear to harbour further ecological features that would require further investigative surveys.

Issue: Position of proposed car park and proximity to existing houses to the north will have a detrimental impact on the amenity of the area.

Comments (PO): The indicative layout shows the car parking located in the north of the site, however the final layout of the site is yet to be agreed. This is further away from houses to the north compared to the already consented layout for the site. However this layout is indicative and full consideration will be given to this via a subsequent application for Approval of Matters Specified in Conditions.

Issue: Suggest secure garden is located to north of the site and car parking adjacent to A96 rather than current arrangement shown in indicative plans.

Comments (PO): The layout has to be assessed as submitted though the layout is indicative given the “in principle” nature of this application and full consideration will be given to this via a subsequent application for Approval of Matters Specified in Conditions.

Issue: Newton Place will become busier with walkers parking in the street, blocking driveways and letting dogs fowl in gardens. Request that a “dead end” sign be placed at the entrance to Newton Place.

Comments (PO): This appears to be a right of way that has not been formally confirmed, therefore it will have to be maintained as part of this scheme.

Issue: Can the boundary between the Quarrel Woods and Newton Place be repaired to deny access?

Comments (PO): Boundary treatment will form part of the consideration via a subsequent application for Approval of Matters Specified in Conditions.

Issue: Impact of construction works on residential amenity.

Comments (PO): All construction works have a degree of impact on the amenity of an area, however these are temporary. Works carried out in accordance with best practice and industry standards will ensure impacts are mitigated/minimised where possible. The Environmental Health service have not objected to this proposal, and would be the body that would deal with any complaints should there be any adverse impacts on amenity as a result of this proposal.

8. OBSERVATIONS

8.1 Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan, namely the adopted National Planning Framework 4 and adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.

8.2 The main planning issues are considered below:

Principle of Development

8.3 As noted above under history, the site subject to this application has an extant consent in place for planning permission to erect a care home (14/01292/APP).

This consent remains valid as it has been implemented and therefore the principle of a care home is established on the site.

- 8.4 The site subject to this application is within the Elgin Settlement Boundary (as zoned in the MLDP) but is undesignated. Under NPF Policy 16 supports residential development on undesignated sites when the proposal is for smaller scale development (such as this development) and within the settlement boundary, as well as residential developments which address identified gaps in provision, including care homes (part c (vi)).
- 8.5 Taking account of the above considerations, the general principle of this development is considered suitable.

Design and Siting

- 8.6 Given this application is for planning permission in principle, no detail of the design of the building or layout of the site is provided with this application, however an indicative layout has been submitted with this application. In general, the proposed arrangement is considered suitable. The building presents has a degree of frontage to the A96, with vehicular access and parking contained to the rear (north) of the site. In order to ensure the height of the building is not excessive, and is in keeping with the relatively low rise development in the surrounding area (notably the adjacent hotel and residential properties), a condition will be applied ensuring the care home building is no more than two storey in height. Open space is provided within the site, at a level considered suitable for the proposed use (31% of site area), satisfying MLDP Policy EP5 in respect of open space provision. The indicative layout of the site complies with NPF Policy 14 - Design, quality and place and MLDP Policy DP1 - Development Principles.

Ecology

- 8.7 With regard to Sites of Special Scientific Interest (SSSI), NPF Policy 4 states that development that may affect such areas will only be supported where the objectives of the designation and the overall integrity of the area will not be compromised. MLDP Policy EP1 has an identical requirement in respect of SSSIs. This site's location adjacent to the Quarry Wood SSSI designation (to the west of the site) means consideration must be given to the impact of this application upon it. The SSSI comprises ancient woodland with a recorded history extending to at least the eighteenth century and is one of the best examples of oak woodland in Moray and the lowest altitude example in north-east Scotland.
- 8.8 A Tree Survey has been submitted by the applicant, as well as a Preliminary Ecological Appraisal (PEA), which consider impacts of this proposal on the trees adjacent to the site (as well as those within the site) and ecological interests. The indicative site layout has been amended to ensure the proposed building does not encroach on the root protection areas of the trees within the SSSI.
- 8.9 The Tree Survey also notes that the root systems of these trees are likely to harbour a rich biodiverse make up and thus should be protected during the

course of works (see below in respect of trees). A root protection zone is recommended in light of this. The PEA also comes to this conclusion in respect of the trees forming part of the SSSI.

- 8.10 The PEA provides evaluation on species that may be present on and adjacent to the site. It notes there is no evidence of red squirrels or badgers on the site. It also considers the presence of other species including bats and breeding birds on and adjacent to the site. With regard to breeding birds, due to the presence of nesting habitat adjacent to the site, mitigation is recommended that a pre-commencement breeding bird check be taken prior to any works commencing on site. In relation to bats, they may use the surrounding area for habitats and artificial lighting may impact on foraging and commuting bats. Mitigation measures recommended in respect of these are to ensure lighting is considered, and this is covered by condition for construction and operational phases of the building.
- 8.11 Subject to a condition ensuring recommended measures to protect the root protection zone are put in place during the course of works and mitigation measures of the PEA are implemented, the proposal is not considered to result in an adverse impact on the integrity of the SSSI and complies with NPF Policy 4 and MLDP Policy EP1.

Biodiversity

- 8.12 Under NPF Policy 3 and MLDP Policy EP2, there is a requirement for all development to contribute to the enhancement of biodiversity, and this is echoed under MLDP Policy EP2. As this application is for planning permission in principle, limited information on the final design of the building and site layout is available at this stage. As recommended in the PEA, a condition will be placed requiring a scheme of biodiversity enhancement to be provided as part of this development. Subject to this condition the proposal is considered to comply with the aforementioned policies in respect of biodiversity.

Soils

- 8.13 NPF Policy 5 recognises the importance of ensuring disturbance to soils is minimised by avoiding and minimising areas of soil affected, whilst also ensuring development protects soil from damage including compaction and erosion and minimising soil sealing. In this case, the in principle nature means it is difficult to give full evaluation to the level of soil disturbance. Evaluation will be given to the extent of development via a subsequent AMC application, which will include consideration given to soil loss.

Trees

- 8.14 Development that results in the loss of ancient woodland will not be supported under both NPF Policy 6 and MLDP Policy EP7. The proximity of this site to the Quarry Wood (which is ancient woodland as noted above under ecology) means these trees must be offered sufficient protection from development. The Tree Survey submitted with the application identifies the necessary tree protection measures for those trees on and adjacent to the site (including the Quarry Wood). It also identifies those trees to be removed to accommodate the

proposed development.

- 8.15 The indicative position of the proposed care home has been amended to take account of the root protection area of the trees within the Quarry Wood, which ensure sufficient protection is offered to those trees. As noted above under ecology, a condition ensuring sufficient tree protection measures are in place to protect those trees (as well as others to be retained on site) will be imposed.
- 8.16 The tree survey submitted identifies that 25 trees would be removed to accommodate the proposed development, these would be to the west and immediate north of the hotel. These comprise 12 spruce, 7 pine, 2 silver birch, 1 larch, 1 rowan, 1 willow and 1 holly. Of those trees, all are identified as category C and one (willow) is category U. Category C trees are of low quality with an expected remaining life expectancy of at least 10 years, or young trees with a stem diameter below 150mm. Category U trees are those in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than ten years.
- 8.17 Those trees that are to be removed are either necessary to accommodate the development, or are not suitable for retention. The Arboricultural Impact Assessment within the Tree Survey notes that the care home will have limited impact to trees within the site, and there are very few trees within the site boundary of any note and removal of the large Sitka Spruce trees will enhance the space for development. In order to suitably mitigate the impact of the loss of trees, a condition will be placed requiring a suitable scheme of compensatory planting of native species to be undertaken. Subject to this condition along with protection of existing trees on and adjacent to the site, the proposal complies with NPF Policy 6 and MLDP Policy EP7.

Climate Change/Carbon Considerations

- 8.18 NPF Policy 2 requires all development to be sited and design to minimise lifecycle greenhouse gas emissions as far as possible, and ensure development is sited and design to adapt to current and future risks from climate change. In order to implement this policy, Moray Council has adopted guidance on applying this to proposed developments (Moray Council Carbon Guidance for Planning Applications and S36 and S37 consents – approved by this Committee on 30 May 2023). As this application is in principle, there is no detailed design or final layout of this proposal. On this basis a condition will be placed requiring a statement that details measures to reduce whole life carbon in line with the guidance, to ensure compliance with NPF Policy 2.

Drainage

- 8.19 All development must be served by a suitable drainage arrangement under the requirements of NPF Policy 22 and MLDP Policy 12. A Drainage Impact Assessment that accompanies this application notes the ground conditions within the site are suitable to accommodate the necessary surface water drainage (and manage any risk of surface water flooding on site). A condition will be attached to the decision notice requiring a detailed drainage scheme to be provided, which takes accounts of the recommendation in the submitted DIA to ensure compliance with NPF Policy 22 and MLDP Policy 12. Moray Flood

Risk Management and SEPA raised no objection to this proposal.

- 8.20 Foul drainage from the proposed development would discharge to the public sewers, which given the location of this development (within a settlement served by public sewers) is a requirement under MLDP Policy EP13. Scottish Water have raised no objection to this proposal, noting there is sufficient capacity at Moray West Waste Water Treatment Works to service this development.

Access and Parking

- 8.21 Access to the site for vehicles would be via the existing access to the Eight Acres Hotel from Morriston Road. The existing road to the north (rear) of the hotel (past the leisure club to the function suites) would be used to access the site as shown in the indicative site layout. A pedestrian access to the south of the site from the A96 is also shown. NPF Policy 13 and MLDP Policy PP3 both set out requirements for development to be served by suitable infrastructure, with a particular emphasis on enhancing access for sustainable transport methods such as walking, cycling and public transport.
- 8.22 A Transport Statement has been submitted alongside this application to consider parking provision, pedestrian access and traffic impacts on the Morriston Road/A96 junction.
- 8.23 The proposed layout indicatively shows that sufficient parking can be provided in line with the Council's parking standards. A pedestrian access is shown to the south towards the A96, this would serve to provide enhanced pedestrian access to the site as well as link the site to bus stops on the nearby A96 (opposite the Morriston Road Junction) as noted in the Transport Statement.
- 8.24 With regard to the vehicular traffic impacts of this development, the Transport Statement notes that over the course of a 12 hour day (0700 – 1900 hrs) the care home is predicted to generate in the region of 92 vehicle trips. As a result of this development, the Morriston Road/A96 junction is predicated to see an increase of 15 vehicle movements during the morning peak hour, and an increase of 5 vehicle movements during the afternoon peak hour. The Transport Statement concludes that this increase in vehicle movements is modest and will not impact on the operation of this junction (nor that of the hotel to Morriston Road).
- 8.25 A well-trodden pedestrian route through the north of the site via the hotel grounds to the Quarry Wood, as well as a link to Newton Place. The Moray Access Manager has recommended a condition requiring a pedestrian link to be provided in this area, as it likely is a claimed right of way.
- 8.26 The Transportation Manager has not objected to this application but has recommended a number of conditions ensuring sufficient parking is provided, along with a pedestrian link to the A96 as well as cycle parking. Subject to these conditions being applied, the proposal is considered to comply with NPF Policy 13 and MLDP Policy PP3.

Waste

- 8.27 NPF Policy 12 requires all development that is likely to generate waste should demonstrate how waste will be minimised and managed to increase recycling. A condition will be applied requiring a scheme of waste management to be submitted to ensure its operation is consistent with the waste hierarchy.

Amenity

- 8.28 The nature and layout of the site, which comprises mature trees to the north, means there will be no significant loss of privacy/overlooking of neighbouring properties to the north. The proposal is unlikely to give rise to disruption to these properties as well from general activity, noting the level of additional traffic generated by this development is relatively low. The overall impact of this proposal is unlikely to result in a significant adverse impact on the amenity of neighbouring residential properties to the north.

Community Wealth Building

- 8.29 NPF Policy 25 supports proposals that contribute to local or regional community wealth building strategies and those that are consistent with local economic proprieties. In order to implement this condition, this Committee adopted guidance on 30 May 2023 to apply to larger developments, including development that creates more than 1,000 sqm. The purpose of the guidance is to:
- Increase employment opportunities by helping local businesses to grow and diversify.
 - Increase local spend within the local area through increased use of the local supply chain.
 - Provide local employment and skills development opportunities within the local area, particularly within areas of highest inequalities.
 - To provide opportunities for new business start-ups in the area.
 - To provide opportunities for community ownership of business and assets.
- 8.30 A condition will be applied requiring a Community Wealth Building Plan to be submitted in accordance with the guidance and NPF Policy 25 to demonstrate how this proposal contributes to the points above to contribute to the local economy.

Tackling the Climate and Nature Crises

- 8.31 NPF Policy 1 requires that significant weight is given to the global climate and nature crises. Consideration is given to a variety of topics in the foregoing evaluation, all of which have an impact on the climate and nature crises. This evaluation determines that the proposal is suitable in terms of these topic matters, and overall will assist in tackling the global climate and nature crises. This proposal is therefore not at odds with the aims of NPF Policy 1.

REASON(S) FOR DECISION

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

The proposal complies with the development plan, namely National Planning Framework 4 and the Moray Local Development Plan 2020 and there are no material considerations that indicate otherwise.

**Author/Contact
Officer:**

Andrew Miller
Senior Planning Officer

Ext: 01343 563274

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



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

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

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

1. REASON FOR REPORT

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

2. RECOMMENDATION

2.1 It is recommended that the Committee agrees:

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

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

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

3. BACKGROUND

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

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

4. SUMMARY OF IMPLICATIONS

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

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

(b) Policy and Legal

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

(c) Financial implications

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

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

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

(d) Risk Implications

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

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

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

(e) Staffing Implications

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

(f) Property

None.

(g) Equalities/Socio Economic Impact

None.

(h) Climate Change and Biodiversity Impacts

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

(i) Consultations

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

5. CONCLUSION

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

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

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

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

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

APPENDIX 1

MORAY COUNCIL

**Response to Consultation issued by Scottish Government on
APPLICATION FOR S.36 CONSENT
CONSTRUCT OPERATE AND DECOMMISSION A WIND FARM WITH A
GENERATING CAPACITY IN EXCESS OF 50MW CONSISTING OF UP TO 22
WIND TURBINES AND ASSOCIATED INFRASTRUCTURE INCLUDING A
BATTERY ENERGY STORAGE FACILITY. THIRTEEN OF THE WIND TURBINES
HAVE A GROUND TO BLADE TIP HEIGHT OF UP TO 200M AND NINE HAVE A
GROUND TO BLADE TIP HEIGHT OF UP TO 180M HIGH, ON A SITE WEST OF
CLASHINDARROCH WINDFARM, CABRACH.
(MORAY COUNCIL REFERENCE 23/00047/S36)**

INTRODUCTION

The application, submitted by Clashindarroch Wind Farm Extension Limited, will be determined by the Scottish Government Energy Consents Unit (ECU) and not by Moray Council, as local planning authority.

In determining the Section 36 application, the views of Moray Council, as local planning authority are being sought by the Scottish Government: the Council's role in the process is therefore as a statutory consultee. In responding with comments, the Council has a right to object or not to the application, as well as commenting on the conditioning of the consent. If the planning authority objects to the proposed development and the objection is not later withdrawn, or the areas of objection cannot be addressed by conditions then the ECU are likely to convene a Public Local Inquiry.

Prior to determination, the Scottish Government is responsible for affording publicity of the proposal and taking account of all representations received, whether from the general public or interested parties, and for consulting with agencies and organisations (consultees). Internal consultation with relevant Services/Sections of the Council has been undertaken in order to provide a comprehensive response in responding to the consultation.

The proposal

- Up to 22 wind turbines, thirteen of which with a maximum blade tip height of 200 metres (m) and nine with a maximum tip height of 180m.
- Permission is intended to endure for a 40 year period.
- Associated turbine foundations, wind turbine hard-standings, and crane pads.
- A network of onsite access tracks connecting each of the turbine locations.
- A network of underground cables linking the turbines to an onsite electricity substation and control/maintenance building.
- A battery energy storage array located next to the onsite electricity substation. The indicative plans see these elements occupying a compound approximately 170m x 75m.
- Three temporary borrow working areas and two reserve borrow working search areas.
- An access junction at a point on the A941, to the south of the proposed turbines, where there is an existing estate track to a disused property called Redford.
- A temporary construction compound near the entrance to the site is proposed, adjacent to one of the proposed borrow pit search locations.

- Peat restoration is being proposed as part of the development on an area with approximately 35 hectares to be restored.
- Approximately 15 hectares of deciduous and scrub planting along the existing Clashindarroch forest edge on the east side of the site is proposed.

The site

- The application site (“the site”) is located approximately 11 km south east of Dufftown, 13 km south west of Huntly and 8 km to the north west of Rhynie.
- The site sits wholly within Moray and immediately adjacent to its eastern boundary with Aberdeenshire Council.
- The site covers an area of approximately 881.7 hectares.
- Immediately to the east of the site, is the existing Clashindarroch Wind Farm, which consists of eighteen 110m to tip wind turbines.
- The site sits within the Landscape Character Type (LCT) 14 Open Uplands with Settled Glens as classified with the Moray Wind Energy Landscape Sensitivity Study 2023.
- Other than an area adjacent to the proposed site access, there is no substantive woodland upon the site, but some cutting back of trees will be required for the access to the site for abnormal loads.
- There are no specific national or local environmental designations affecting the site.

History

On site:-

20/01537/PEMAJ – Pre-application advice given for the current S36 site west of Clashindarroch. This advice was given in April 2021.

20/01191/S36SCO - Construct and operation of a wind farm at Clashindarroch, Lower Cabrach, Huntly, Moray. A scoping response for a possible Section 36 application for up to twenty-eight 200m high turbines near the rural grouping of Cabrach, This prospective site is has become the current application submitted under section 36.

Nearby

22/00913/S36 – proposed wind energy comprising of up to 11 wind turbines, up 200m high at Craig Watch 1km north west of Clashindarroch Extension. 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 this summer.

21/00020/EIA – Proposed wind energy development comprising of seven turbines up to a height of 190m located at a Garbet, approximately 2km north of Clashindarroch Extension. Moray Council refused this planning application in November 2021 as the proposal “fails to integrate into the landscape and adversely impacts on landscape and visual amenity and would have significant combined cumulative impact on the Open Uplands with Settled Glens”. The refusal was subsequently overturned by the Scottish Ministers at appeal.

08/01200/S36 - Dorenell windfarm consisting of 59 turbines, all 126m in height to blade tip and associated development including a substation/compound area and composite tower transmission line running northward from the site. The site is located approximately 4km west of Clashindarroch Extension site and has been in operation since 2019.

In Aberdeenshire

Clashindarroch II windfarm proposes to develop fourteen turbines, each with up to a 6MW capacity and with a tip height of 180m. The proposal has been to Public Inquiry in 2022 and lies within Aberdeenshire adjacent to the existing Clashindarroch windfarm.

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.

There are a number of other windfarms in the wider locality within Moray and Aberdeenshire such as Kildrummy to the south, Cairnborrow to the north east, Edintore to the north and many that can be seen from elevated viewpoints and landmark hills within Moray. All have been noted and taken into consideration whether within or outwith Moray.

There is also another possible development has been scoped under EIA Regulations that have yet to be submitted as an application. 21/00612/S36SCO Wind farm comprise 11 wind turbines each up to 200m to turbine blade tip together with ancillary infrastructure site at Glenfiddich Forest, Dufftown, Moray. Scoping response to Energy Consents Unit issued in May 2021. This site is located approximately 6km north west of Clashindarroch Extension.

Consultations (internal only)

Note that external consultees such as Aberdeenshire Council, SEPA, RSPB, Naturescot and the Ministry of Defence are all consulted separately by the Energy Consents Unit.

Strategic Planning & Development – Identifies various policy conflicts with local development plan policies DP1, DP9 and the Moray Wind Energy Landscape Sensitivity Study 2023. It also raises questions over compliance with NPF4 policies 11 Energy, 29 Rural Development as it unlikely (in the absence of any policy guidance) that sufficient efforts have been made to mitigate the impacts of the proposed scheme. This position is informed by the review undertaken by the Councils appointed Landscape Adviser who has reached various conclusions on the Landscape and Visual Impact Assessment undertaken. Limited design mitigation has been applied by the applicants resulting in conflict with local policy and the Moray Wind Energy Landscape Sensitivity Study 2023.

Whilst noting that the Section 37 predates NPF4 in terms of Policy 11 Energy and 25 Community Wealth Building beyond the minor beneficial effect on the economy of Moray, it is considered that the development does not maximise the net economic impact and is therefore contrary to NPF4 Policies 11(c) and 25 (a).

The submissions are not clear on woodland removal from the access route enabling works, and therefore it difficult to assess whether NPF Policy 6 and MLDP EP7 policy are satisfied relating to woodland retention or compensation for loss of.

Access Manager – A Public Access Plan should provide and a condition to this effect is recommended.

Environmental Health – The proposed development would require various conditions relating to noise, vibration and shadow flicker. Noise levels can be kept to an acceptable level subject to compliance with the conditions attached to Appendix 3.

Environmental Health, Private Water – no objections.

Environmental Health, Contaminated Land - No objections.

Aberdeenshire Archaeology Service – Agree with the mitigation recommendations and recommend further conditions.

Transportation Manager – A range of conditions are recommended in the event that approval is granted, and many cover the potential enabling road works that may require to get the abnormal deliveries to the site.

Moray Flood Risk Management (MFRM) – No objections.

Building Standards – A Building Warrant will be required for any welfare building and any foul water treatment required.

Development Plan Policies

National Planning Framework 4

NPF1 - Tackling the Climate
NPF2 - Climate mitigation and adaptation
NPF3 - Biodiversity
NPF4 - Natural Places
NPF5 - Soils
NPF6 - Forestry, woodland and trees
NPF7 - Historic assets and places
NPF11 - Energy
NPF13 - Sustainable transport
NPF18 - Infrastructure first
NPF20 - Blue and green infrastructure
NPF22 - Flood risk
NPF23 - Health and safety
NPF25 - Community wealth building
NPF29 - Rural development
NPF30 - Tourism
NPF33 – Minerals

Moray Local Development Plan 2020

PP2 Sustainable Economic Growth
PP3 Infrastructure and Services
DP1 Development Principles
DP5 Business and Industry
DP9 Renewable Energy
DP10 Minerals
EP1 Natural Heritage Designation
EP2 Biodiversity
EP3 Special Landscape Areas
EP7 Forestry Woodland and Trees
EP8 Historic Environment
EP12 Management and Enhancement Water
EP13 Foul Drainage
EP14 Pollution Contamination Hazards
EP15 MOD Safeguarding

REPRESENTATIONS

All objections/representations in relation to the proposal are to be submitted directly to the Scottish Government Energy Consents Unit, who is the determining Authority. They will be considered by the ECU and do not form part of the Moray Council consideration (as consultee to the Section 36 process).

OBSERVATIONS

The proposed Clashindarroch extension seeks consent under Section 36 of the 1989 Electricity Act and also a direction under Section 57(2) of the Town and Country Planning (Scotland) Act 1997 as amended for the development to be deemed to be granted.

Officers have considered the proposal against National Planning Policy 4 (NPF4) and material considerations including Climate Change (Scotland) Act 2009, the Scottish Government Onshore Wind Policy Statement 2022, and Scotland's Energy Statement. It is noted that the Energy Strategy and Just Transition Plan is still at a draft stage.

The proposal was scoped previously under the 2017 Electricity Works (Environmental Impact Assessment) (Scotland) Regulations, and as such the application has been submitted with a supporting EIA Report with accompanying Appendices and other supporting information such including Pre Application Consultation (PAC) report, Non-Technical Summary, and a Planning Statement. There is no Summary of Mitigation at the end of the EIA Report but the mitigation is largely covered in the heading to be covered in the Construction Environmental Management Plan (CEMP).

As Moray Council is a consultee for the Section 36 process, some matters within the Observations will be assessed differently had it been assessed as a planning application where Moray Council are the determining authority. Matters such as, for example, impact on aviation and the water environment will be informed by direct consultation with the Ministry of Defence or SEPA, as they will be consulted separately and will reply directly to the ECU. Similarly detailed consideration of ornithology will be best commented upon by consultees such as the RSPB and Nature Scot (formerly SNH). The Council's consideration of some matters will therefore be less involved where the ECU are consulting directly themselves on particular areas of interest best addressed by other specialist consultees.

Legislative Context

For consent under Section 36 of the Electricity Act 1989, the decision-making process specified under Section 25 and 37 (2) of The Town & Country Planning (Scotland) Act 1997, as amended is not a statutory requirement. However, the development plans (NPF4 and Moray Local Development Plan 2020 (MLDP)) and Moray Wind Energy Landscape Sensitivity Study 2023 would remain material considerations, but does not take primacy as would be in the case of a planning application. It and all other material considerations are given the appropriate weighting in the consideration of the Section 36 consultation requests from the ECU. Whilst a Section 36 consent application, with a wide scope of consideration in play, NPF4 and the Moray Local Development Plan 2020 are mainly used to determine the majority of development taking place in Moray and remains highly relevant. Its policies are included for reference in the report, in general terms the policy position and criteria for renewable energy proposals and non-statutory guidance are relevant as a consideration in the Section 36 process and reflect local knowledge.

Of note, in arriving at the below recommendation NPF4 is clear that where it conflicts with local development plan policies, it takes precedence being the newer policy document than the MLDP. This is discussed specifically below for the renewables policies.

Pre Application Consultation (PAC)

Prior to submitting the Section 36 application the applicants undertook consultation with various community groups and communities and have submitted with the EIA Report a Pre Application consultation report summarising the details and outcomes of the public consultation undertaken.

The applicants undertook two community open days/public exhibitions: one on Wednesday 5th October 2022, 5-8pm at the Mortlach Memorial Hall in Dufftown and one on Thursday 6th October 2022, 3-7pm at Kirkton, Upper Cabrach. They also undertook an online event was hosted live on Zoom on Monday 24th October 2022, 5.30- 6.30pm. The community open days on 5 and 6 October were visited by 30 local residents. 23 individuals registered for the online consultation event on 24 October and 17 of them attended.

Matters were raised about the method of consultation with local communities, community benefit and concern about further wind turbines in the landscape (inclusive of power lines), construction traffic.

The applicants from the Pre-application consultation report do not appear to have done much to address the LVIA concerns raised via the public consultation, citing that some matters such as future transmission lines are outwith the scope of the current application and that by placing the windfarm next to Clashindarroch windfarm constitutes mitigation. They do commit to adhering to any approved Construction Traffic Management Plan, and some matters raised such as windfarm revenue, unsubstantiated impacts upon tourism do not require further action.

Relationship of proposal to national renewable energy policy/guidance

National Planning Framework 4 (NPF4) which was adopted this year nationally effectively becomes the top tier development plan for use by all planning authorities or bodies making planning related decisions.

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.

The applicants 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.

The applicants have submitted a Planning Statement which identifies the pertinent national policy and guidance in relation to the onshore wind energy proposals, but pre-dates NPF4. Consideration has been given to these various policies and guidance documents. Of particular note there is a recurring theme in favour of renewable energy proposals within national guidance.

Aberdeenshire Council proximity

A transboundary approach, similar to that taken in the EIA Report has been adopted in the assessment of this S36 consultation. Officers and landscape adviser reviewed the LVIA from within and beyond Moray's boundary and took into consideration cumulative issues with wind energy development beyond Moray. It is noted that the ECU will assess any representations received from within and beyond Moray so any representations from Aberdeenshire are not addressed in this report. Of note the watershed of the windfarm generally falls westward into Moray, but ultimately leads to the River Deveron which runs north east toward Banff.

Care was taken however not to duplicate or contradict any view reached by Aberdeenshire Council, who are a separate consultee to the Section 36 process.

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 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 of the north of Scotland.

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.

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. While many of these are addressed or can be addressed via condition one of these states that unacceptable significant adverse landscape and visual impacts must be avoided to be considered favourably. This element specifically departs from the position present in NPF4 Policy 11. In this instance taking the instruction from the Chief Planners letter the NPF4 position must take precedence and therefore the greater tolerance to significant impacts must be applied.

DP9 in recognising the contribution of renewable energy to wider national carbon reduction targets and benefits to the local economy view favourably wind energy proposals subject to criteria discussed below. 16 of the turbines would lie within the 'Areas with Potential for Wind Farm Development' and as such it is acknowledged this offers consideration of such development. The other turbines lie within an area of protection for carbon rich soil, but to justify their presence in areas of deep peat and offer some mitigation such as floating tracks.

Of note some matters raised in the policy such as compatibility with aviation and peat will be separately addressed directly by other consultees to the Section 36 process such as the Ministry of Defence and SEPA.

Landscape and Visual Impact Assessment

The proposed development is located within the 'Open Uplands with Settled Glens' identified in the Moray Wind Energy Landscape Sensitivity Study 2023. The constraints and guidance for development set out in the study for this AU include:

- *The shallow farmed and settled basin of the Cabrach where the scale of the landscape is reduced by a more distinct land cover pattern and by small farms and houses.*
- *The hills and slopes on the outer edges of this landscape which backdrop the more sensitive settled and smaller scale landscapes of the Fiddich and Deveron valleys.*
- *The visual prominence and setting of The Buck, a landmark hill and cumulative effects from its summit where the operational Dorenell, Clashindarroch and Kildrummy wind farms are already visible in close proximity.*
- *The setting of the historically important Auchindoun Castle which lies close to the southern edge of this Assessment Unit and is a popular visitor attraction.*
- *The 'sense of arrival' associated with panoramic views from elevated sections of the A941 and A920 when crossing into Moray.*
- *Cumulative effects with any additional wind energy developments seen in combination with the operational Dorenell and Clashindarroch wind farms on the Deveron Valley and in views from the A941.*
- *Effects on views from popular hill summits and elevated walking routes, including from Ben Rinnes and Ben Aigan where additional development would be seen cumulative with operational wind farms.*
- *The proximity of the Cairngorms National Park and the setting of the Ladder Hills and Glen Buchat to the south of this Assessment Unit.*
- *Increased intrusion on the Open Uplands with Steep Slopes and the Ben Rinnes SLA – larger turbines and/or turbines sited closer to the upland ridge on the south-eastern side of Glen Rinnes could breach the screening it provides to the Dorenell wind farm in low-elevation views from roads and settlement in this sensitive area.*

It is considered that the sensitivities outlined in the first, second, third, fifth and sixth bullet points of the above are most pertinent to this proposal.

Landscape effects

This proposal would be located in the southern part of the *Open Uplands with Settled Glens* Landscape Character Type (LCT). The operational Clashindarroch and Dorenell wind farms are visible from parts of this landscape. The very large turbines of the proposal (and ancillary development) would introduce much closer and significantly more intrusive built development into the simple and secluded basin of the Cabrach, which lies south of the 'pinch point' formed by Hill of Bank and Tornichelt Hill, resulting in significant adverse effects on its character.

The proposal would also have significant adverse effects on the *Narrow Farmed Valley* LCT where it covers the upper Deveron valley as very large turbines would be sited in close proximity on the slopes and hills which immediately contain this narrow and deeply incised valley. The turbines would dominate the scale of this valley and the sense of seclusion that can be experienced in parts of this sparsely settled landscape (these effects will extend eastwards within the valley into neighbouring Aberdeenshire). While the operational Clashindarroch and Dorenell wind farms are already visible from parts of this landscape, the much closer proximity of this proposal and substantial increase in turbine size would create a dominant effect extending between Bridgend and close to the Beldornie area in neighbouring Aberdeenshire.

Visible aviation lighting would extend the duration of significant adverse effects on the dark skies of these two sparsely settled LCTs.

Landscape designations

There would be no significant adverse effects arising on designated landscapes.

Effects on visual amenity

Close visibility of the proposal within 5km will largely occur within the upper Deveron valley, from settlement and roads within the Cabrach basin, including the A941, and from nearby hill ground, including from the hill of The Buck which is promoted in walking guides.

Visibility between 5-10km will principally occur from the generally less frequented uplands to the west within Moray and, beyond 10km, from the summits and upper slopes of the popularly accessed hills of Ben Rinnes, Meikle Conval and Little Conval. These upland areas are already strongly influenced by the Dorenell wind farm.

Principal significant visual effects would occur on:

- **Views from the upper Deveron valley** - as demonstrated by Viewpoints 3 and 4 (the former viewpoint is located in Aberdeenshire although similar views would occur from within Moray on the south-west part of this valley). While the number of visual receptors affected are likely to be relatively low, and the operational Dorenell and Clashindarroch are additionally seen from parts of the upper Deveron, the proposal would form a dominant feature in views due to the size of the turbines and their close proximity to settlement, roads and walking routes.
- **Views from the Cabrach basin and the A941** – Viewpoint 5 illustrates the nature of visibility from the floor of the Cabrach basin where woodland provides some screening (the operational Clashindarroch wind farm is visible from this area although the Dorenell wind farm is largely screened). Open views to the proposal would occur from the broad basin surrounding the loose cluster of buildings close to Viewpoint 5, including from minor roads which are elevated in places where the full array of very large turbines and

ancillary development, such as substation and energy storage facility and borrow pits, would form a dominant feature. While it is acknowledged that Moray Council did not specifically request that a representative viewpoint was selected along the route of the A941, the Moray Wind Energy Landscape Sensitivity Study clearly notes the value of this route in providing a dramatic approach to Moray and it is therefore surprising that no sequential appraisal (using a series of wirelines to illustrate visibility) was undertaken as part of the LVIA.

Visible aviation lighting would extend the duration of significant adverse effects on some views. The wind farm site and its immediate surrounds are sparsely settled with low levels of night-time lighting and the effect of introducing lighting in a context where dark skies are present is a concern. Only the consented Garbet wind farm would feature visible aviation lighting and a condition has been placed on this development to review the lighting strategy as technical solutions to radar activated lighting become available. The applicant for this proposal has noted willingness to adopt a similar condition.

Effects on nearby residential properties

The Residential Visual Amenity Assessment (RVAA) considers residential properties lying within 2km of the proposal. Of the 26 properties assessed in detail, 13 were judged likely to have significant adverse effects but none to such a degree that these would be overbearing in nature. The RVAA appears comprehensive and the findings sound (based on the visualisations, plans and assessment provided in Appendix 7.6) although not all addresses were attended to corroborate this assessment.

While many of the properties considered in the RVAA are either principally orientated away from the proposed development and/or would have views screened by landform/vegetation, the wider setting to some properties is likely to be significantly affected, for example, where the proposed development is seen continuously from more open sections of approach roads and from local informal walking routes close to settlement.

Cumulative landscape and visual effects

This proposal would result in significant adverse additional cumulative effects on landscape and visual receptors within the upper Deveron valley and the Cabrach basin in relation to the baseline situation where the operational Dorenell and Clashindarroch wind farms are present. In terms of cumulative effects with other consented and proposed wind farms, it is considered that this proposal seen in association with the proposed Craigwatch wind farm would result in significant combined cumulative effects on character and views within the upper Deveron valley.

Conclusions on LVIA

This proposal would incur significant adverse landscape and visual effects across two areas within Moray, the Cabrach basin and the upper Deveron valley. The numbers of visual receptors affected by the proposal are likely to be low due to the sparsely settled nature of these parts of Moray, the presence of generally less frequented roads and (excepting the hill of The Buck) relatively few promoted recreational routes. The landscapes affected are also not designated or otherwise formally valued. However, the severity of the effects that would result by virtue of the size and proximity of the proposed turbines also needs to be considered. These are acknowledged in the LVIA to be major, the highest degree of severity,

on the upper Deveron valley and the Cabrach basin area (parts of LCTs 12b and 13) and on representative Viewpoints 4, 5 and 10. In addition to the turbines, the proposed construction compound and borrow pit search area lies close to the A941 and the proposed battery storage and substation would also be likely to be seen in glimpsed views from the A941 and in more sustained views from minor roads in the Cabrach basin.

While the area is not classified formally as having dark skies status, the site occupies an area with very little light pollution and no currently illuminated wind turbines (all falling below 150m). The introduction of any aviation lighting will have detrimental effect outwith daylight hours by introducing lighting into an area with little or no street lighting. These will particularly be notable for significant stretches of the A941 and Deveronside-Cabrach Road.

While the applicant has stated in the evolution of the windfarm that they have modified the design from the pre-application and scoping stage, the extent and nature of significant adverse effects could be mitigated to some degree by removal of the most prominent turbines from the upper Deveron Valley sides. These include Turbines 2, 3, 5 and 6. A far greater number of turbines would need to be removed to attain any meaningful landscape and visual mitigation from the Cabrach basin. In addition, the siting of the construction compound and possible borrow pit should be set further back from the A941 and, if there is no other suitable location for the proposed substation and energy storage facility, a substantial woodland scheme should be implemented to screen and provide more general landscape enhancement (see comments on conditions below). Removal of the most prominent turbines would not reduce major effects on landscape and visual receptors in the Cabrach basin area but would reduce the severity of effects on the upper Deveron valley and the overall extent of major significant adverse effects incurred by the proposal such that they may be more clearly be considered to be 'localised' in nature.

Chapter 3 'Alternatives and Scheme Evolution' of the EIA Report shows little meaningful attempt to sensitively design or mitigate the windfarm, which occupies the ridge line above the upper Deveron Valley and comes to the A941, has borrow pits and the construction compound near the A941 and provides no landscaping mitigation for the large substation and battery compound. It appears that the belief that any impacts being localised only negated any attempt to adopt appropriate design mitigation. Ironically, the lack of adequate design mitigation has led to the impacts being more than localised. Lastly, in terms of design, the applicants seek to propose some of the largest turbine sizes available on the market, rather than meaningfully selecting a turbine type appropriate to the landscape in which it is set. Chapter 3 in para 3.3.5 claims to have altered the configuration of an initial layout to improve visible cohesion of the windfarm and to increase separation from residential properties and reduce residential amenity impacts. The Design and Access Statement covers these issues in earlier iterations also. Whilst these measures may have to a small degree helped, they clearly do not attempt to address the significant impacts acknowledged in the EIA Report to occur from various locations as illustrated by viewpoints 2, 5, various points along the A941, various points along the C8H Deveronside-Cabrach road.

The ZTV map (drawing number P18-1991.002C) showing both the proposed extension and existing Clashindarroch windfarm being visible for a significant proportion of the zone within a 5km radius of the site in all directions, which cannot be classed as a localised impact.

NPF Policy 11 e) i. states that project design and mitigation must evidence how impacts upon communities, individual dwellings, including residential amenity and visual impact are addressed. The design clearly fails to mitigate or address the anticipated significant impact upon the wider community of Cabrach and the Upper Deveron valley. Viewpoint 5 illustrates

just how overbearing and dominant the proposed development would be upon the rural community of Cabrach and the A941 running through it. The nearest turbine being only 1km from the classified road. Policy 11 however states that “where impacts are localised and/ or appropriate design mitigation has been applied, they will generally be considered to be acceptable”. This implies that if the impacts are ‘localised’ only, they need not be mitigated. Clearly little effective mitigation has been provided, so the question over whether the impact a local only is pivotal. In the absence of national policy guidance over whether or not the effect would be sufficiently localised, the fact the windfarm would affect much of the surrounding area within Cabrach and the Upper Deveron valley lead to a conclusion that the proposal departs from Policy 11 where effects are neither local or mitigated. However Policy 11 also states that significant weight will be placed on the contribution of the proposal to renewable energy generation targets and greenhouse gas emissions reduction targets.

It is suggested that a redesign of the proposal would address many of these concerns noting that some calibration of ‘localised’ effects may come in time from the Scottish Government as policy 11 establishes itself. It would appear however from the above that notwithstanding the significant weight to be attached to tackling climate change, the application which pre-dates NPF4 Policy 11 does not mitigate its effects sufficiently.

Natural environment (NPF4-policy 1, 2, 3, 5 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 notwithstanding 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. Of note, Naturescot and RSPB will respond separately on aspect such as ornithology and Groundwater dependent terrestrial ecosystems (GWDTE).

In MLDP EP1 Natural Heritage Designations it is noted that the site has few environmental designations, but clearly provides a substantial area of upland habitat.

Policy EP12 Management and Enhancement of the Water Environment, and EP2 Biodiversity seeks to ensure proposals do not have an adverse effect on protected species. The EIA Report identifies also opportunities to restore or maintain wetland habitat with approximately 35 hectares of peat restored.

The EIA Report refers to various imbedded and proposed mitigation measures that would be identified in any detailed Construction Environmental Management Plan (CEMP). This would cover;-

- Pollution Prevention Plan;
- Drainage Management Plan;
- Traffic Management Plan;
- Site Waste Management Plan;
- Stakeholder Management Plan;
- Habitat Management Plan;
- Peat Management Plan;
- Peat Landslide Hazard and Risk Assessment; and
- Geotechnical Risk Register.

A condition is recommended in the event of approval to see the CEMP provide the above plans.

While the approach is detailed in the EIA Report, the definitive detail for each turbine base would need to be shown once any micro siting had been determined. The mitigation measures identified in Chapter 8 state that enhancement through the peat restoration will improve habitat for upland species, but this is within the context the development will displace more than this with turbine pass and the compound footprint. Fifteen hectares of planting along the eastern edge of the site to enhance habitat for species such as wildcat is proposed, and various pre-construction species surveys are proposed to minimise any impacts. These will tie in with the peat and habitat management plan. The outline peat and habitat management plan should see the enhancement of Juniper already present upon the site.

More landscaping around the substation would also provide valuable habitat which is recommended as a potential condition to aid visually screen the permanent compound.

Flood Risk and surface water drainage (NPF4 Policy 22 and EP12)

NPF policy 22 Flood risk and water management and EP12 Management and Enhancement of the Water Environment covers issues of drainage and flooding. SEPA will be consulted separately, but given the elevation and slope of the site it is noted that no flooding is anticipated across the site. Moray Flood Risk Management team have raised no issues with proposal from a flood management perspective.

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. Within Moray there are several heritage assets within proximity to the site, and most notably Auchindoun Castle to the north would not be within direct line of the site of the proposed development. Whilst elevated views of the castle may include the development, the lack of inter-visibility means the castle and its setting are unaffected. It is noted that the Councils Archaeological service have not objected to the development.

Aberdeenshire Council would comment separately on any possible impact upon Craig Dorney hillfort site to the north east of the current application site, as it lies immediately outwith Moray.

If approved, conditions are recommended to ensure any archaeological assets are recorded.

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. It is noted that Chapter 14 Traffic and Transport of the EIA Report and associated technical appendices/figures consider the transportation matters of the development. It recognises that substantive off site works would be required to facilitate delivery of the windfarm components and materials. The presence of 3 main and 2 reserve borrow pits is

welcomed where the applicants should try and glean materials from the site rather than have them imported.

Various conditions are recommended in appendix 3 if the application is to be approved including wear agreements and a construction traffic management plan (CTMP). The Transportation Manager has not objected to the development subject to appropriate conditions that will be put back to the ECU.

Paths and access (NPF Policy 13, PP3, DP1 and DP9)

NPF4 policy 13 Policy Sustainable transport, DP1 Developer Requirements and PP3 Infrastructure & Services require new development public access through new developments to be enhanced or protected. Policy DP9 Renewable Energy seeks to ensure that wind energy proposals does no impact upon public access to upland areas.

A condition is recommended to seek a Public Access Plan for the development and also it is suggested that an opportunity to create a pedestrian and non-motorised vehicle link the exiting Clashindarroch windfarm and this proposal has not been realised. The applicant should have provided this as part of the proposal, as it would create an attractive link from the Cabrach eastward to Gartly in Aberdeenshire. The preparation of a Public Access Plan and the other provisions of the Construction Traffic Management Plan seek to protect existing and future public access.

Impact on soil resources/minerals (NPF4 Policy 5 and EP16)

While the peat restoration work in Chapter 11 is welcomed, the chapter does not analyse in depth any negative impact on water-tables where new tracks are formed, the substation or turbine pads are to be located. Where even in shallow peat, it is probable that hydrology and water table uphill will be affected.

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. Evidence of the adoption of best practice in the movement, storage, management and reinstatement of soils must be submitted along with any relevant planning application, including, if necessary, measures to prevent the spread of invasive non-native species. The formation of many new tracks, proposed formation of the turbine and crane pads, and upgrading of existing tracks have led to permission being sought for up to 5 borrow pits (two of which are reserves).

The applicants have stated that mitigation on peat is imbedded within the design of the windfarm where avoidance of deep peat has been adopted where possible. The windfarm design also seeks to minimise the disturbance, loss and fragmentation of peat through design and layout. Acknowledging that the loss of peat and peaty soil from the compound etc. will be approximately 53 hectares with a further 9 hectares disturbed temporarily by the temporary construction compound and borrow pits be 9.7hecatres the applicant proposed 35.8 hectares of peat restoration. This is contained within the Peat plans forming part of the wider CEMP to be submitted.

It is noted however that several turbines (turbines 16 and 18-22) would still be located in areas of deeper peat, and Policy 5 does encourage all development to avoid deep peat. Concern is raised that notwithstanding the allowances for renewable energy in peat rich areas within policy 5, more could be done to avoid all deep peat on the site. This is therefore raised as one of the concerns below, and consideration should be given to redesigning the windfarm accordingly.

Of note the allowances made in policy 5 goes beyond those within MLDP policy EP16 which requires applicants to demonstrate that unnecessary disturbance is avoided before support within the policy can occur. Policy 5 therefore takes precedence.

Impact upon Woodland (NPF4-6 and EP7)

NPF Policy 6 'Forestry, woodland and trees' seeks to protect and expand forests, woodland and trees.

Policy EP7 Forestry, Woodlands and Trees is relevant to the issue of any felling that may take place. There is little impact on forestry or woodland, with the site occupying open moorland. There is no felling proposed on the site itself, although it is noted, that for the enabling works along minor public road, some very limited felling may be required by the roadside. A condition relating to the need for further review of what road side trees are to be removed is required. It is noted that the applicant proposes approximately 15 hectares broadleaf and scrub planting on the eastern edge of the site to enhance habitat along the forestry plantation edge. This is welcomed and further woodland is suggested however in terms of landscaping around the substation and battery storage compound.

Lack of clarity on roadside tree felling has been cited as one of the concerns to potentially be passed to the ECU.

Health, Hazards and Safety (NPF4 – 23 and EP14)

NPF Policy 23 Health and safety intends to mitigate risk arising from safety hazards. MLDP EP14 Pollution, contamination and hazards while focussing on hazardous sites and polluting development states its aim is to ensure that new developments do not create pollution which could adversely affect the environment or local amenity. Pollution can take various forms including run off into watercourses, noise pollution, air pollution and light pollution.

The proposal including a battery storage area adjacent to the compound adds the need to ensure such a compound has been fully thought through, and anecdotally it is understood that where issues such as fire occurs on energy storage/management facilities, they are very difficult to extinguish and can cause wider environmental damage. While not normally a planning matter, the above policies do reasonably trigger the need for the applicant to demonstrate that they have fully considered the hazard risks of having a battery storage area in an upland peaty moor. It is recommended below and in the attached conditions Appendix 3 that a condition seeks a contingency plan in the event of an incident at the compound.

It is therefore unlikely at present that the proposal complies with NPF4 policy 23 until assurances are given/demonstrated by the applicant. This has been raised as potential concern to be addressed by the ECU.

Socio Economics (NPF4 – 11, 25 and DP9)

NPF4 Policies 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. These NPF4 policies are new and post-date the applicants' submissions. Chapter 16 'Socio Economics, Tourism and Recreation' of the EIA Report seeks to address the economic implications or opportunities arising from the proposed development. Of note the applicant had not updated this chapter of the EIA Report following the adoption of NPF4 earlier this year.

Chapter 16 'Socio Economics, Tourism and Recreation' needs to more fully illustrate how NPF Policy 11 c) has been complied with the policy states the necessity to maximise net economic impact, including local and community socio-economic benefits and supply chain opportunities. The current system of community benefit is very constrained, and anecdotally it is understood to deliver only a fraction of the £5,000 per MW per year offered by windfarm developers in rural areas such as Cabrach. . Policy 11c) provides examples of the local and community socio economic benefits that need to be evidenced and includes employment, associated business and supply chain opportunities. If such funds were more widely open to Moray wide and Aberdeenshire organisations and bodies such the local authorities, to deliver various improvements/initiatives in the areas host to windfarms, this would more meaningful realise a benefit to the communities affected. Reliance upon the 'Third Sector' and volunteers to deliver projects eligible for community benefit funds effectively limits what can be delivered despite their best efforts.

Policy 25 'Community Wealth Building' seeks as one of its outcomes local economic development that focuses on community and place benefits as a central and primary consideration – to support local employment and supply chains. Achieving this specific outcome and delivering other elements of policy 25 (and maximising net economic impact) has seen work by Moray Councils Strategic Planning and Development Section (in consultation with other local authorities) to consider whether a new model of community benefit is required to meaningfully ensure policy 11 and 25 are met. Guidance on policy 25 has already been progressed by the Strategic Planning and Development Section and consideration is being given as whether policy 11 needs a new model with a £5k mW per annum as a minimum community benefit distributed in the traditional way but also an additional socio economic benefit fund administered by the Council the level of which should be determined by the net economic impacts being achieved by the development and that such a model will provide an evidence base around what "maximise net economic impact" means in a Moray context and will apportion the expected socio economic benefit fund accordingly and should be taken into account before any final decision or conditions are drafted.

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. Similarly this must strike a balance with protecting the natural and built environment. Noting the economic activity the proposals would generate during construction, in terms of any concern over the impact it may have upon recreation and tourism it is worth noting the decision in 2020 of the Scottish Government in relation to Pauls Hill II windfarm. The Reporter concluded that notwithstanding the proximity of the development to specific tourist accommodation, more generally there is little evidence to suggest that wind energy proposals harm or deter tourism. It is therefore not appropriate to attach specific weighting to the any perceived negative impacts on tourism, although this significant visual impact on some occupied areas of Cabrach would alter its character.

NP4 policy 11 has not addressed in particular the need to demonstrate that the net economic impact is maximised including community socio economic benefits such as employment, associated business and supply chain opportunities.

Based on the assumptions in the socio economic impact assessment from a total construction and development expenditure of £165.9 million only 5% (8.6 million) will be spent in Moray and 30% (50.2 million) will be spent in Scotland meaning 65% of expenditure is elsewhere which is not considered to demonstrate that the economic impact of the construction phase is being maximised as required under policy 11.

Although economic benefit from construction activity is welcomed, it also brings pressure on accommodation and the construction sector in general often resulting in short term inflated construction costs for local infrastructure projects and these are not reflected in the report.

In terms of sustainable net economic impact including local community socio economic impacts on employment, business and supply chain the operation phase of the development offers the greatest opportunity for the development to make a positive impact. However, for the operational phase it is assumed Moray will only achieve 14% of the expenditure (0.6m per annum) and Scotland 72% (2.9m per annum). There is no mention of actions to improve the supply chain, support local business to participate in the operational and maintenance phases or to upskill the local workforce as would now be expected under NPF4 policy 11 (albeit recognising that the application precedes NPF4).

Non domestic rates estimated at £1 m per annum have been attributed as an economic benefit to Moray, however Non Domestic rates do not directly benefit the Local Authority collecting them and should have been attributed to Scotland. An operation and maintenance expenditure of 14% in Moray is considered a poor net impact compared to similar windfarms in other areas and would justify the need for a specific socio economic benefit fund for Moray directly related to supply chain development, business support, including tourism and regeneration projects, skills and barriers to employment in Moray and to promote Community Ownership.

Community benefit has been volunteered at 5K per MW estimating an annual payment of 700k and £29 million over the 40 year lifetime.

The assumptions presented conclude that for development and construction:-

- £5.6 million GVA and 88 years of employment in Moray; and
- £32.6 million GVA and 499 years of employment across Scotland.

And for expenditure on Operation and Maintenance:-

- £0.3 million GVA and 5 jobs across Moray; and
- £1.5 million GVA and 22 jobs across Scotland.

And annual payment of non -domestic rates of £1 million and annual payment of Community benefit 0.7 million and that it will have a minor beneficial effect on Moray.

The assessment fails to demonstrate that economic impact is maximised and fails to demonstrate that community socio economic benefits such as employment, associated business and supply chain opportunities are maximised. It is therefore recommended that a condition is imposed to ensure that at the very least the assumptions made in the economic impact assessment are realised and that community benefit which forms part of the assessment is fully realised and appropriately targeted and to ensure a socio economic

benefit fund is provided towards improvements in local employment, business and supply chains. It may be however that the ECU/Scottish Ministers seeks clarification upfront from the application on these matters which have come into focus with the adoption of NPF4 as the national development plan.

In light of the above observations, and in the absence of case law or national guidance relating to policy 11, it is unclear if this policy has been complied with.

The close and overbearing proximity of the development to residences in Cabrach will unquestionably alter the current character of the groupings of houses where the open, undeveloped nature may be a draw to efforts to re-populate and attract new residents to the area. Efforts to re-populate this area, notwithstanding the new jobs created, may be detrimentally affected south west of the windfarm where the rural character would be visually dominated by the windfarm. A better windfarm design, more sensitive to the local residential character and amenity is likely to have a more positive effect upon the nearest community.

Arrangements for decommissioning and site restoration

The ECU and Scottish Ministers have a standard set of decommissioning and site restoration requirement conditions that would be imposed in the event of approval. These would likely be applied in the event of approval.

Overall conclusions and recommendation

The adoption of NPF4 has strengthened further the support for onshore windfarm development but also the need to maximise net economic impact from these developments and the promotion of community ownership. This, added to the undeniable support and approval of almost larger wind energy proposals previously in Moray has to be given significant weighting. More generally NPF4 sees tackling climate change and achieving next zero as the driver for many of its policies, and continued support for onshore renewable development is one of the sectors in which these goals will be achieved. The phrase 'significant weight' is referred to in policies 1 and 11 of the NPF to development that tackling climate change. Policy 11 being a new policy nationally does not provide any calibration of how 'localised' significant landscape impact to be expected extend.

Conflict with NPF4 policies 5, 11 and 25 appear to remain which should be addressed by the applicant and influence a re-design of the proposal and how local and wider communities/economies benefit from such development.

Whilst officers are not recommending that Committee objects, in light of the lack of support to landscape objections nationally and lack of information provided to address NPF4 policies, it is still possible to pass the significant concerns held by the Council over to the ECU which any decision maker should address. These are identified below, but Members may consider there to be less or other concerns they wish to see passed to the ECU in the Councils response.

It is recommended to Committee that in light of the above, Moray does not formally object, but does raise the following significant concerns that the ECU should consider, or which should inform any amendment of the scheme if pursued.

Significant concerns

1. Proposal fails to comply with NPF Policy 11 where significant landscape and visual effects are not either sufficiently localised or mitigated. The lack of design mitigation manifests in:

- a. The proposed development would introduce much closer and significantly more intrusive built development into the simple and secluded basin of the Cabrach, resulting in significant adverse effects on its character;
 - b. Significant adverse effects would occur on upper Deveron valley where the turbines would dominate the scale valley and sense of seclusion that can be experienced in parts of the sparsely settle landscape;
 - c. Whilst the operational Clashindarroch and Dorenell Wind Farms are already visible from parts of the landscape, the much closer proximity and substantial increase in turbine size proposed would create a dominant effect extending between Bridgend and the Beldornie area in neighbouring Aberdeenshire;
 - d. Significant adverse effects on the dark skies qualities would be extended by any visible aviation lighting;
 - e. Principle significant visual effects would occur on views from the upper Deveron valley, as demonstrated by Viewpoints 3 and 4, and from the Cabrach basin and the A941, as demonstrated by Viewpoint 5;
 - f. Significant adverse cumulative effects would occur on landscape and visual receptors within the upper Deveron valley and the Cabrach basin.
 - g. The proposal does not conform with the constraints contained within the adopted 2023 Moray Landscape Sensitivity Study, for the 'Open Uplands and Settled Glens' landscape character type which has a high sensitivity toward wind turbines over 150m.
 - h. Lack of landscaping around the south and west sides of the substation and battery storage compound which has a significant footprint and will likely require excavation of a significant platform if built on the same level.
(condition suggested)
2. Lack of detail about roadside tree felling or subsequent compensatory planting.
(condition suggested)
 3. Impact on rural community by virtue of significant landscape change and amenity impact.
 4. Is this an appropriate location for battery storage, have the applicants the appropriate contingencies in place in the event of a fire incident in line with NPF policy 23?
(condition suggested)
 5. Lack of connectivity for walkers/recreation with the adjoining Clashindarroch windfarm. (condition suggested)
 6. Elements of the windfarm do not avoid deep peat, particularly turbines 16, 17 and 19. Why have they not avoided areas of deeper peat?

Recommended changes/mitigation to pass to ECU.

1. Remove proposed turbines 2-6 to reduce significant impact upon Upper Deveron valley.
2. Re-design southern end of windfarm to mitigate the significant impacts upon Cabrach.
3. Provide substantive landscaping upon the south and west sides of the proposed substation/battery compound.
4. Radar activated aviation lighting only.
5. Consider removing or re-positioning turbines 16, 17 and 19 to avoid deep peat.
6. Create and maintain a path between the proposed windfarm and the existing Clashindarroch windfarms.

APPENDIX 2

MORAY COUNCIL

Response to Consultation issued by Scottish Government on

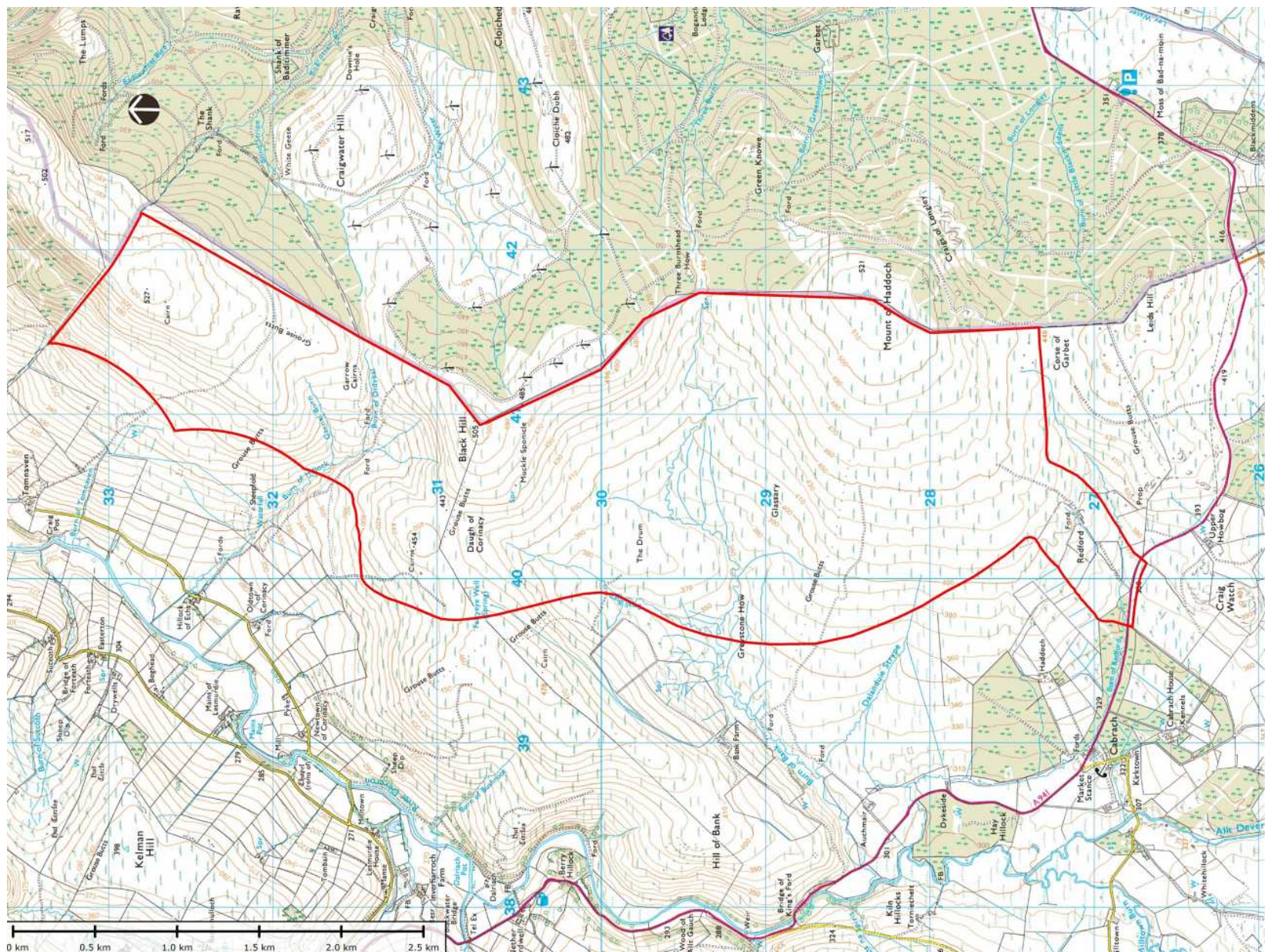
APPLICATION FOR S.36 CONSENT

CLASHINDARROCH WINDFARM EXTENSION, CABRACH.

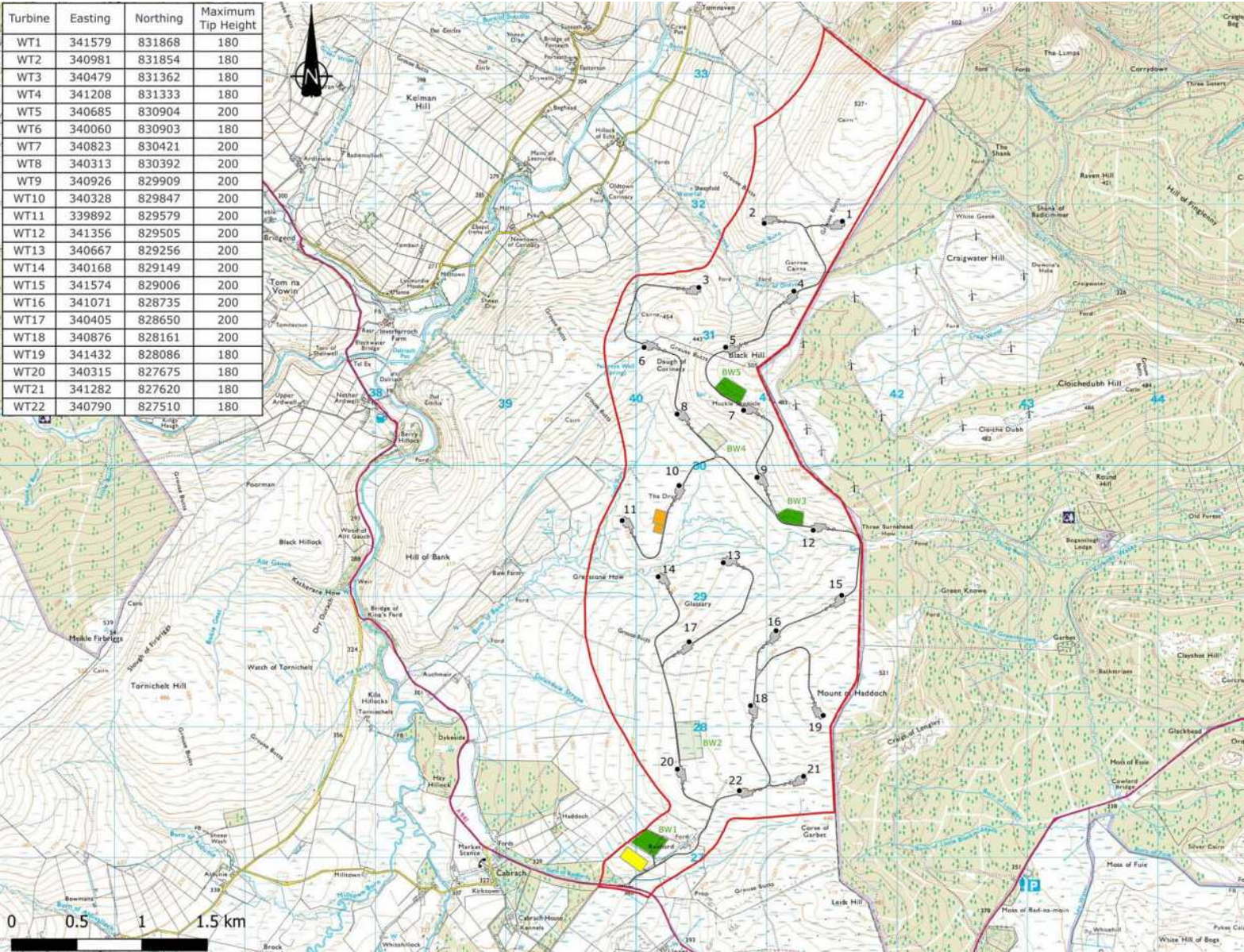
(MORAY COUNCIL REFERENCE 23/00047/S36)

- Location Plan
- Site layout plan
- Indicative compound elevations
- Typical turbine details 180m
- Typical turbine details 200m

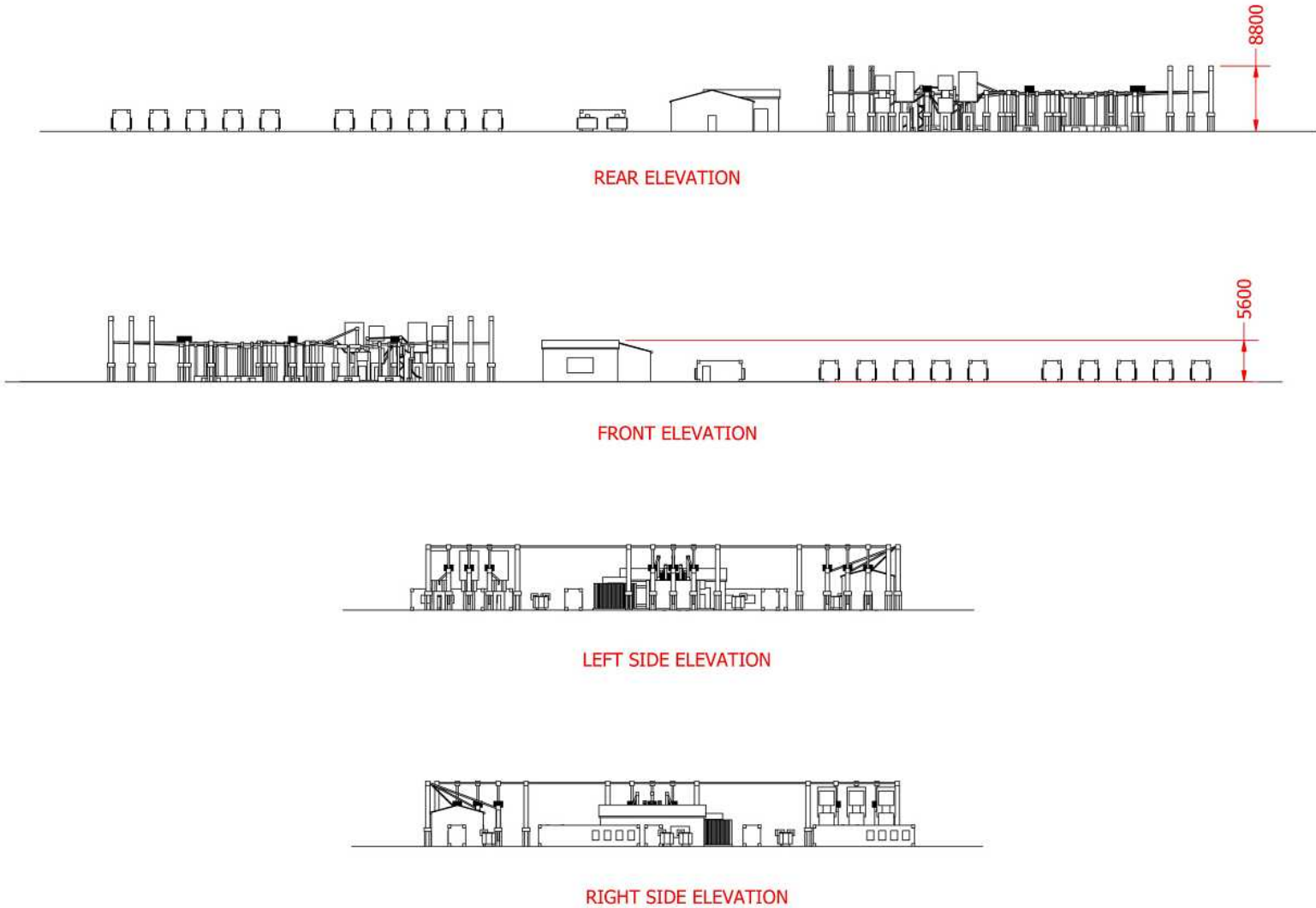
Location plan



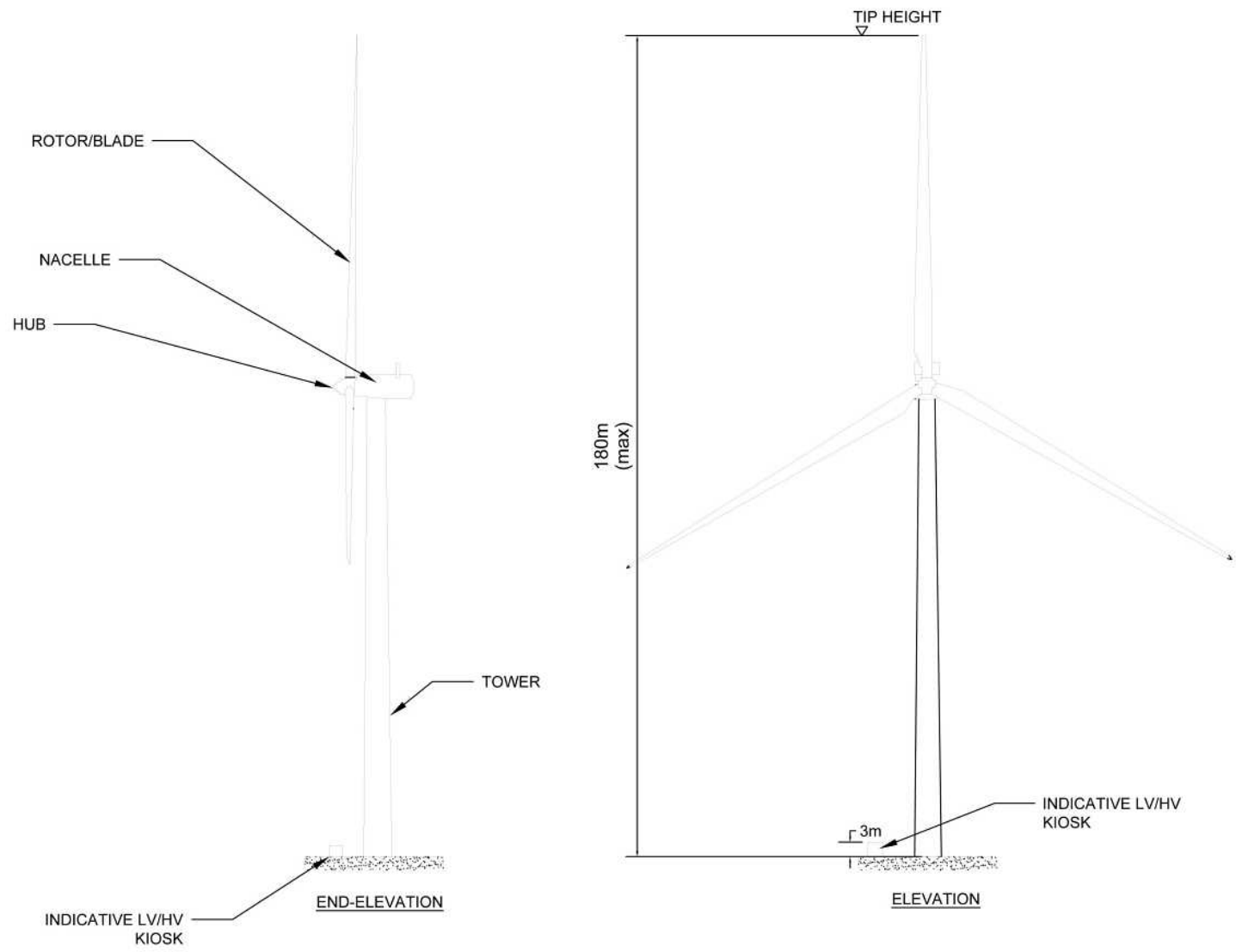
Site layout



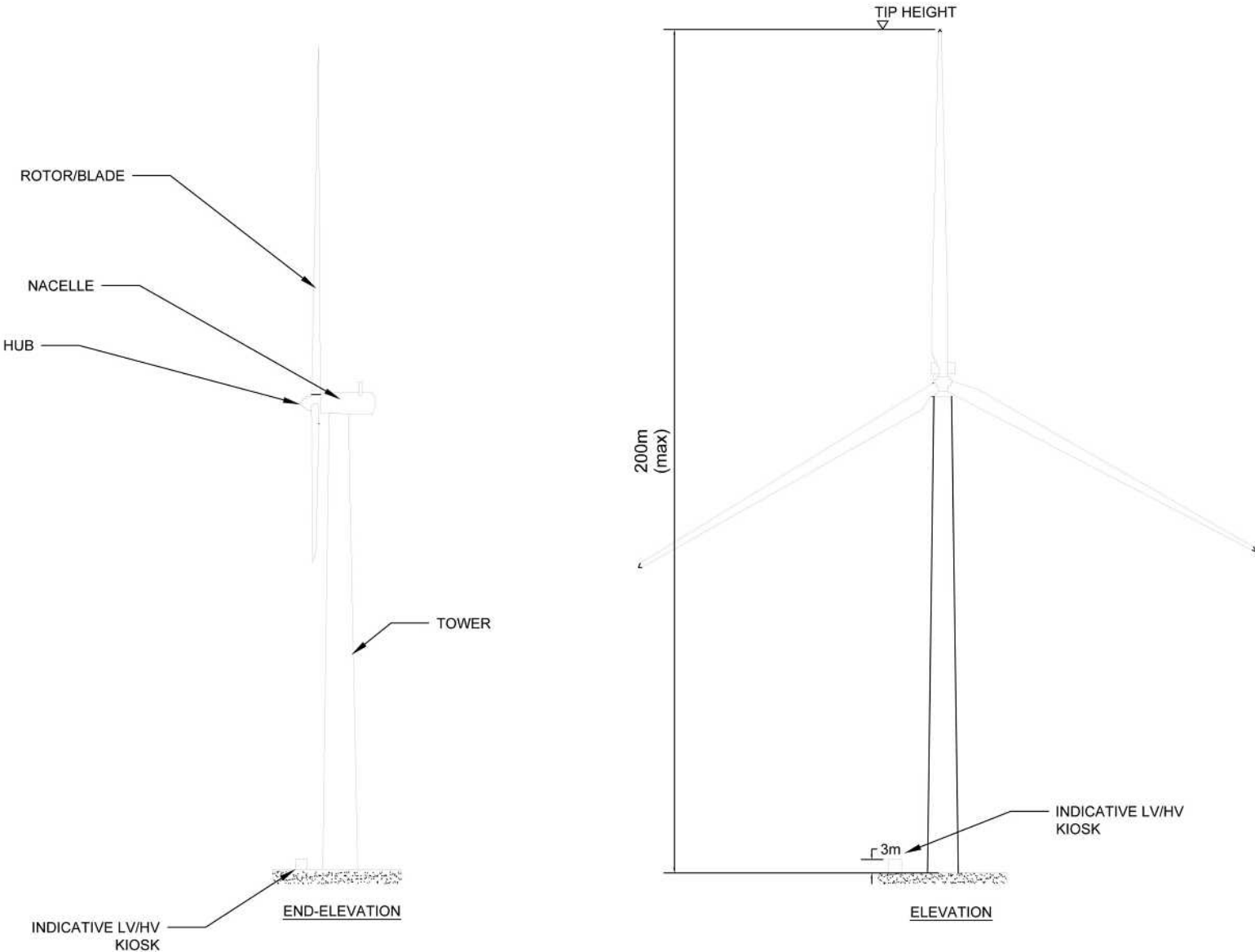
Indicative compound elevations



Wind Turbine 180M



Wind Turbine 200M



APPENDIX 3

Suggested conditions if approval is minded.

1. Prior to development commencing, a detailed plan addressing the procedures and operations to tackle and extinguish a fire or other polluting incident at the battery storage unit adjacent to the substation must be submitted to and approved by the Council (as Planning Authority) in consultation with the HSE, the Building Standards Section of Moray Council and Fire and Rescue Scotland. This should include contingencies for subsequent moorland fire.

Reason – In order to ensure full consideration can be given to the suitability of site for such a use, and to ensure that development has contingencies in place to minimise damage or risk to human health.

2. Prior to development commencing a detailed landscaping scheme must be submitted to and approved by the Moray Council showing 25m deep structural planting to the south and west sides of the proposed sub-station and battery storage compound. This scheme must select site appropriate, indigenous trees and the number, species, and spacing. The scheme must detail how the landscaping will be managed, inclusive of a commitment to replace any dead or severely damaged trees within the first five years of the substation becoming operational.

Reason – In order to address the lack of landscaping and to mitigate the visual impacts of the development.

3. Unless otherwise agreed with the Council as planning authority, and prior to energy production occurring in the interests of improved public access, the public access plan to be provided, must provide a footpath/cycle pathway between the existing Clashindarroch windfarm and the proposed windfarm extension.

Reason - In order to ensure the proposed development maximises public access benefits and potential.

Noise Conditions

4. The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty and amplitude modulation (AM) penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:
 - a) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a

period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.

- b) No electricity shall be exported until the wind farm operator has submitted to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.
- c) Within 21 days from receipt of a written request from the Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise immissions from the wind farm at the complainant's dwelling in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component, or is likely to contain an amplitude modulation (AM) component.
- d) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall, prior to the commencement of any measurements, have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component and/or amplitude modulation (AM) component and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Local Planning Authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.
- e) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Local Planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most

similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.

- f) The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, the assessment shall be accompanied by all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes with the exception of audio data which shall be supplied in the format in which it is recorded. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.
- g) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 5(c), the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (d) above unless the time limit has been extended in writing by the Local Planning Authority.

Table 1: Between daytime (07:00 to 23:00 hours) – Noise limits expressed in dB L_{A90,10 minute} as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods

Location	Standardised 10 metre-height Wind Speed (as defined in accordance with the attached Guidance Notes to the noise condition)								
	4	5	6	7	8	9	10	11	12
Dykeside	40.0	39.8	39.6	39.6	40.7	43.2	45.7	48.2	48.2
Kirkton	40.0	39.9	39.7	39.7	40.8	43.3	45.7	48.3	48.3
Elrick	40.0	39.9	39.8	39.8	40.9	43.3	45.8	48.3	48.3
Boganclogh Lodge	30.0	30.0	30.1	30.6	31.3	32.3	33.5	35.0	36.6
Boganclogh	30.0	30.0	30.1	30.6	31.3	32.3	33.5	35.0	36.6

Finglenny	42.3	43.5	44.9	46.9	48.8	51.0	53.1	55.1	56.9
Corrylair	39.9	39.7	39.1	41.5	44.1	46.7	49.2	51.3	53.1
Meikle Gouls	39.9	39.6	39.1	38.9	38.9	42.5	44.7	47.8	50.9
Tomnaven	39.8	39.5	39.0	39.0	39.0	42.5	44.7	47.9	50.9
Hillock of Echt	39.9	39.5	38.9	38.7	38.7	42.4	44.6	47.8	50.9
Oldtown of Corinancy	39.8	39.5	38.8	38.7	38.7	42.4	44.6	47.8	50.9
Pyke	39.9	39.6	39.1	39.0	39.0	42.5	44.7	47.9	50.9
New town of Corinancy	39.9	39.6	39.1	39.1	39.1	42.6	44.7	47.9	50.9
Milltown	41.6	41.7	42.1	42.9	44.0	45.2	46.8	48.6	48.6
Inverharrock Cottage	41.7	41.8	42.2	43.0	44.0	45.3	46.8	48.6	48.6
Dalriach	41.7	41.8	42.2	43.0	44.0	45.3	46.8	48.6	48.6

Table 2: Between night time periods (23:00 to 07:00 hours) – Noise limits expressed in dB L_{A90,10} minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods

Location	Standardised 10 metre-height Wind Speed (as defined in accordance with the attached Guidance Notes to the noise condition)								
	4	5	6	7	8	9	10	11	12
Dykeside	40.0	40.0	40.0	40.0	40.0	41.1	43.0	43.0	43.0
Kirkton	40.0	40.0	40.0	40.0	40.0	41.1	43.1	43.1	43.1
Elrick	40.0	40.0	40.0	40.0	40.0	41.1	43.1	43.1	43.1
Boganclogh Lodge	33.0	33.0	33.0	33.0	33.0	33.0	33.2	35.0	37.0
Boganclogh	33.0	33.0	33.0	33.0	33.0	33.0	33.2	35.0	37.0
Finglenny	42.0	42.8	43.8	45.5	47.4	49.5	51.5	53.5	55.6
Corrylair	40.0	40.0	40.6	42.4	44.8	47.0	49.0	50.6	51.9
Meikle Gouls	40.0	40.0	40.0	40.0	41.0	42.5	44.7	47.8	49.9
Tomnaven	40.0	40.0	40.0	40.0	41.0	42.5	44.7	47.9	49.9
Hillock of Echt	40.0	40.0	40.0	40.0	41.0	42.4	44.6	47.8	49.9
Oldtown of Corinancy	40.0	40.0	40.0	40.0	41.0	42.4	44.6	47.8	49.9

Pyke	40.0	40.0	40.0	40.0	41.0	42.5	44.7	47.9	49.9
New town of Corinancy	40.0	40.0	40.0	40.0	41.0	42.6	44.7	47.9	49.9
Milltown	42.0	42.2	42.7	42.9	43.6	44.3	44.9	44.9	44.9
Inverharrock Cottage	42.0	42.2	42.7	43.0	43.6	44.4	45.0	45.0	45.0
Dalriach	42.0	42.2	42.7	43.0	43.6	44.4	45.0	45.0	45.0

Table 3: Co-ordinate locations of the dwellings listed in Tables 1 and 2:

Name	Council	Easting	Northing
Dykeside	Moray	338755	827887
Kirkton	Moray	338942	827063
Elrick	Moray	342085	825811
Boganclogh Lodge	Aberdeenshire	343595	829381
Boganclogh	Aberdeenshire	343608	829466
Finglenny	Aberdeenshire	345668	830574
Corrylair	Aberdeenshire	346337	834028
Meikle Gouls	Aberdeenshire	341912	834780
Tomnaven	Moray	340420	833468
Hillock of Echt	Moray	339880	832476
Oldtown of Corinacy	Moray	339713	832053
Pyke	Moray	339302	831897
New town of Corinacy	Moray	339100	831790
Milltown	Moray	338450	831338
Inverharrock Cottage	Moray	338138	831071
Dalriach	Moray	338148	830678

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of 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 Guidance Note 3 and any Amplitude Modulation (AM) penalty applied in accordance with Guidance 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.

Guidance Note 1

- (a) Values of the $L_{A90, 10 \text{ minute}}$ noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 2014 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable amplitude modulation and/or tonal penalties to be applied in accordance with these Guidance Notes.
- (b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her dwelling to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.
- (c) The $L_{A90, 10 \text{ minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine, and at any on site meteorological mast(s), if available, together with the arithmetic mean power generated by each turbine, all in successive 10-minute periods. All 10 minute arithmetic average mean wind speed data measured at 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, as determined from whichever source is agreed in writing with the Local Planning Authority as being most appropriate to the noise compliance measurements being undertaken, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter. Within each of the sub set(s) of data identified, data shall be placed into separate 1 m/s wide wind speed bins.
- (e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Guidance Note 1(d).

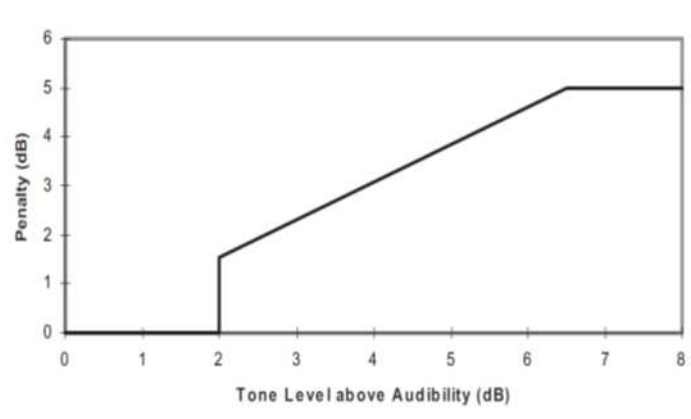
Guidance Note 2

- (a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)
- (b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1.
- (c) For those data points considered valid in accordance with Guidance Note 2(b), values of the $L_{A90, 10 \text{ minute}}$ noise measurements and corresponding values of the 10- minute standardised ten metre height wind speed, as derived from the site measured wind speed source(s) agreed in writing with the Local Planning Authority in accordance with Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a

fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3

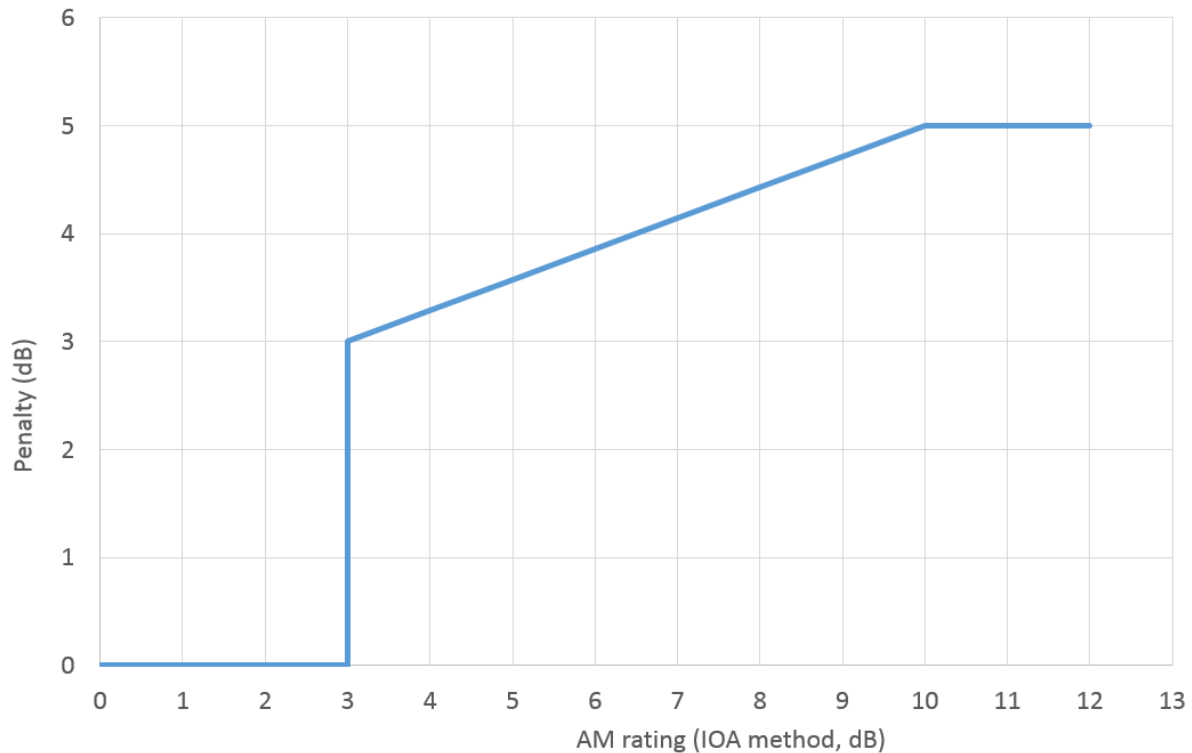
- (a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.
- (b) For each 10 minute interval for which $L_{A90, 10 \text{ minute}}$ data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.
- (c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 to 109 of ETSU-R-97.
- (d) The average tone level above audibility shall be calculated for each wind speed bin, each bin being 1 metre per second wide and centred on integer wind speeds. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) The tonal penalty for each wind speed bin is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

- (a) Where, in accordance with the assessment protocol agreed under the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain an Amplitude Modulation (AM) component, an AM penalty is to be calculated and applied using the following rating 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.



Guidance 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, and shown in the figure for Guidance Note 3 above. 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 necessary wind turbines in the development are turned off for such period as the independent consultant requires to undertake any further noise measurements required under Guidance Note 5(b). If the number of turbines to be turned off are less than the total number of turbines then this shall be agreed in advance with the Planning Authority. The further assessment shall be undertaken in accordance with the following steps:-
- d. To this end, the steps in Guidance Note 2 shall be repeated with the required number of turbines shut-down in accordance with Guidance Note 5(c) in order to determine the background noise (L_3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition. 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.
- e. The wind farm noise (L_1) in each bin shall then be calculated as follows where L_2 is the measured level with turbines running but without the addition of any tonal nor AM penalty:

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

- f. The rating level shall be calculated by adding the tonal and AM penalties to the derived wind farm noise L_1 in that bin.
- g. 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.

5. There shall be no Commencement of Development unless full details of the proposed wind turbines implemented (including the power rating, sound power levels, and tonality assessment carried out on the selected turbine) have been submitted to and approved in writing by the Planning Authority.

Reason – In order to ensure the specific turbines used in the development are made know to the planning authority and the wider public.

6. The relevant enforcing authority on noise, shadow flicker and vibration conditions shall be either Moray Council or Aberdeenshire Council, subject to the location of dwellings within their respective administrative boundaries.

Reason- In order to clarify who the enforcing authority is in the event of a nuisance being caused.

7. The wind farm operator shall employ an independent consultant, approved by the Planning Authority, to measure and where necessary calculate, at the operator's own expense, the level of noise immisions from the wind turbines within the first year of the operation of the turbines. The measurement procedures, which may include filtering data according to wind direction, shall be agreed with the Planning Authority prior to commencement. 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- In order ensure measures are in place to address any noise nuisance arising from the development.

8. a) Construction work shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays , with no construction work taking place on a Sunday or on national public holidays or bank holidays other than concrete pouring if started within those hours , turbine erection and emergency works . 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 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 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- In order to avoid any ambiguity over the permissible construction working times, and in the interests of protecting neighbouring amenity.

9. Prior to the commencement of the development and in accordance with the Outline Construction Environmental Management Plan in Appendix 4.1 of the Environmental Statement supporting document by Infinergy, dated November 2022 and titled "Clashindarroch Wind Farm Extension. EIA Report", a detailed Construction Environmental Management Plan shall be submitted and approved by the Council as Planning Authority.

Thereafter, the development's construction phase shall be carried out in accordance with the approved details described here.

Reason- In order to ensure further consideration and approval can be given to the finalised Construction Environmental Management Plan.

10. 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 receive the written approval of the planning authority.

Reason- In order to ensure that any blasting carried out so as to minimise any amenity or nuisance impacts arising from blasting operations.

11. 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, Bank Holidays or National Holidays.
- c) The above condition 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.

Reason- In order to ensure that any blasting carried out so as to minimise any amenity or nuisance impacts arising from blasting operations.

12. Ground vibration as a result of blasting operations to form borrow pits at the site shall not exceed a peak particle velocity of 10mms^{-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.

Reason- In order to ensure that any blasting carried out so as to minimise any amenity or nuisance impacts arising from blasting operations.

13. 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- In order to ensure that any blasting carried out so as to minimise any amenity or nuisance impacts arising from blasting operations.

14. Prior to the development commencing, a shadow flicker mitigation scheme shall be agreed in writing with the Planning Authority in respect of all dwellings within 11 rotor diameters of any turbine. The agreed scheme shall be in accordance with Section 17.8 and 17.9 of the Environmental Statement supporting document by Infinergy, dated November 2022 and titled "Clashindarroch Wind Farm Extension EIA Report".

Reason- In order to ensure that any incidence of shadow flicker is appropriately addressed.

15. Produce an annual report (12 months from when the windfarm is first fully commissioned) demonstrating the project is meeting the minimum assumptions provided in the net economic impact assessment submitted within the Clashindarroch Wind Farm Extension EIA Report Chapter 16 for both development and construction and operational expenditure and community benefit for both Moray and Scotland.

Reason – In order to ensure compliance with NPF4 Policy 11c) and to maximise the local socio economic benefits of the development to the wider local community and Scotland.

16. Where the annual reports referred to in the condition above show that project expenditure or community benefit has not achieved the assumptions in the net economic impact assessment, a report will be provided by the developer for approval by the planning authority showing how this will be addressed or compensated for in future years to ensure that the economic assumptions for the development are met. Thereafter implemented by the developer. In the absence of action or compensation the socio economic benefit fund will be increased accordingly the following financial year to offset any detriment of economic impact.

Reason – In order to ensure compliance with NPF4 Policy 11c) and to maximise the local socio economic benefits of the development to the wider local community.

17. Prior to commencement of development, approval must be obtained in writing from the planning authority for the acceptance of a Community Benefit plan including the governance arrangements, purpose, relevant community and amounts of Community Benefit including provision for Community Ownership. This approved Community Benefit Plan must then be implemented by the developer and provide a community benefit at a minimum of rate of £5k per MW or equivalent rising in line annually with the Retail Price Index.

Reason – In order to ensure compliance with NPF4 Policy 11c) and to maximise the local socio economic benefits of the development to the wider local community. To contribute to the local community wealth building strategy and ensure economic impact is consistent with local economic priorities which contributes to NPF4 policy 25.

18. Provide a Socio Economic Benefit Fund to be administered by Moray Council at the rate of £5k per MW rising annually from the point of operation in line with the retail price index. The fund will be used to for projects across Moray directly related to supply chain development, business support, including tourism and regeneration projects, skills and barriers to employment in Moray and to promote Community Ownership.

Reason – In order to ensure compliance with NPF4 Policy 11c) and to maximise the local socio economic benefits of the development to the wider local community. To contribute to the local community wealth building strategy and ensure economic impact is consistent with local economic priorities which contributes to NPF4 policy 25

19. Prior to development commencing details of the private water supply and foul drainage arrangements for the staff welfare facilities must be submitted to and approved in writing by the Council as Planning Authority.

Reason- In order than consideration can be given to the information not fully detailed in the current submissions and ensure that the elements of the development providing facilities for staff are properly serviced.

20. Prior to the commencement of works a detailed plan of public access across the site (existing, during construction and upon completion) will be provided for the approval of the Council as planning authority. This will show:

- (a) All existing paths ,tracks and rights of way and any areas currently outwith or excluded from statutory access rights*;
- (b) Any areas proposed for exclusion from statutory access rights, for reasons of privacy, disturbance or curtilage, in relation to proposed buildings or structures;
- (c) All paths and tracks proposed for construction, for use by walkers, riders, cyclists, all ability users, etc;

(d) Any diversions or paths – temporary or permanent – proposed for the purposes of the development.

*Under Part 1 of the Land Reform (Scotland) Act 2003 (Scottish Executive 2005)

Details of how the Public Access Plan should be devised and implemented are given in section 7 of the guidance 'Good practice during windfarm construction 2010'

Reason- In order to ensure that the public access and recreational potential of the development is realised.

21. No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be brought into use unless a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

Reason- To safeguard and record the archaeological potential of the area.

22. Protective fencing during construction - No works in connection with the development hereby approved shall commence unless a site protection plan has been submitted to and approved in writing by the planning authority. Site protection measures shall be shown on a layout plan accompanied by descriptive text and shall include:
- a. The location of the historic environment features to be protected during construction works; and
 - b. The position and details of the warning signs and protective fencing to be erected.

No works in connection with the development hereby approved shall commence unless the site protection measures have been implemented in full in accordance with the approved details. All protective fencing and warning signs shall be retained during the construction period in accordance with the approved details and no works shall take place at any time within the protected areas.

Reason- In the interests of protecting known features of the historic environment.

23. A finalised scheme of aviation lighting to be approved by the MoD must demonstrate efforts to minimise the visual effect of visible lighting upon the areas where they would be visible from. If technically possible a radar activated system for visible lighting should be used.

Reason – In order to minimise the impact of night time visible aviation lighting upon the rural night skies in this locality.



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

SUBJECT: VALIDATION REQUIREMENTS FOR THE DETERMINATION OF PLANNING APPLICATIONS AND OTHER CONSENTS

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

1. REASON FOR REPORT

- 1.1 The Committee is asked to agree the revised standards of validation in the determination of planning applications following the adoption of National Planning Framework 4 (NPF) which now forms part of the statutory development plan.
- 1.2 This report is submitted to Committee in terms of Section III (1) of the Council's Scheme of Administration relating to exercising the statutory functions of the Council as Planning Authority.

2. RECOMMENDATION

2.1 It is recommended that the Committee agrees:

- i) that, for the purposes of Development Management, validation requirements will be enhanced to meet the requirements of National Planning Framework 4;**
- ii) Moray's validation document for planning applications and other consents, attached at Appendix 1; and**
- iii) to hold a workshop with local agents/developers to inform how the enhanced validation requirements are to be used for Development Management purposes.**

3. BACKGROUND

- 3.1 On 5 December 2017, this Committee agreed that the recently published Heads of Planning Guidance note on the standards for the validation and determination of planning applications and other related consents was to be used for the purposes of Development Management as 'best practice' (para 7 of the minute refers).

- 3.2 Over the last five years the standards of submission for planning applications has improved considerably with specific reference to the submission of supporting information covering drainage and private water supply details.
- 3.3 With the introduction of (NPF4) and additional planning policy guidance to support both NPF4 and Moray Local Development Plan (MLDP) 2020 the requirements for applicants and agents are constantly increasing. The pre-application advice service is there to guide applicants and agents through the planning process, ensuring that the final proposals submitted are accompanied by the proportionate amount of supporting information required to undertake a competent assessment.
- 3.4 Delays can be encountered between validation and determination because of requests from internal and external consultees, which can be avoided enabling decisions to be issued more timeously. Often applicant's expectations are that planning decisions should be made instantly once the necessary supporting information has been submitted. This is not always possible due to other applications that have been submitted waiting determination that have been accompanied with the correct supporting information. This can cause frustration with applicants and developers and place unnecessary pressure on all officers involved in the determination process.
- 3.5 Regulation 24 of the Development Management Regulations enables a planning authority to request from an applicant further documents, materials or evidence which they consider are required to determine any planning application. This is once the application has been validated.

4. MORAY'S VALIDATION STANDARDS

- 4.1 Since the Heads of Planning Validation standards were adopted as best practice in 2017 planning policy and guidance has significantly changed. The MLDP 2020 and NPF4 have been adopted and now form part of the statutory development plan. This committee has also agreed various planning policy guidance to support these policies.
- 4.2 The Validation Standards (**Appendix 1**) is based partly on the Heads of Planning Validations Standards documents and has been adapted to include specific reference to Moray's guidance. Information regarding other regulations have also been updated and incorporated into the one document. It is critical for national, major and local applications to have the necessary and appropriately detailed supporting information to enable development proposals to be determined timeously. It is hoped that this guidance will assist in reducing the time that an application remains invalid and reducing the time taken for consultees to complete their consultation assessment.
- 4.3 Introducing a requirement for a Policy Compliance Statement to be submitted with major and local planning applications will require applicants/developers at an early stage to take account of the additional policy requirements whilst preparing their submissions.

- 4.4 Validation standards have to be checked prior to an application being registered and can be held invalid for a number of reasons such as an incorrect fee. We don't receive requests for pre-validation checks and this is an area that could be explored in future once the requirements and guidance associated with NPF have had time to become established.
- 4.5 A workshop is proposed to be held with local agents to help them prepare the necessary information to support their applications in areas where policy guidance is new. This will allow an opportunity for advice to be provided by officers on how the guidance is to be implemented.
- 4.6 The validations standards document will be kept updated and be the subject of an annual review to ensure that the information is updated when new guidance and regulations are introduced.

5. SUMMARY OF IMPLICATIONS

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

Front loading planning applications with a high quality but proportionate set of supporting information will assist with delivering high quality developments in reduced timescales.

(b) Policy and Legal

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 are relevant and regard has been had to them.

(c) Financial implications

None.

(d) Risk Implications

There is a risk that if the validation standards document is not used actively it will in turn have implications for planning performance in the determination of applications and consents.

(e) Staffing Implications

Existing staff resources would be utilised.

(f) Property

None.

(g) Equalities/Socio Economic Impact

No direct implications have been identified.

(h) Consultations

Depute Chief Executive (Economy, Environment & Finance), Head of Economic Growth and Development, Strategic Planning and Development Manager, Legal Services Manager, Lissa Rowan, Committee Services Officer, Principal Planning Officers, Senior Engineer (Transportation), Senior Engineer (Flood Risk Management),

Principal Accountant and the Equalities Officer have all been consulted and any comments incorporated into the report.

6. CONCLUSION

- 6.1 For the purposes of Development Management, Moray's Validation Standards document for planning applications and other consents will be critical to ensure proportionate and quality supporting information is provided to comply with the policy requirements of NPF4, MLDP 2020 and associated planning policy guidance. By placing emphasis on the quality of information at the validation stage, this will support the raising of standards within the applications and consents assessment process.**

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Background Papers: Appendix 1 – Validation Standards for planning applications and other consents

Ref:

ECONOMIC GROWTH & DEVELOPMENT

Development Management Validation Standards 2023



Contents

1.	Introduction	1
2.	The validation Process	1
3.	General Guidance – Planning Permission	2
	Application Forms	2
	Location Plans	2
	Site Plans	3
	Floor Plans	3
	Elevations	4
	Roof Plans	4
	Design and Access Statements	4
	Application Fee	5
	ICNIRP Certificate	6
	Ownership Certificates and Notices	6
4.	Regulations and Procedures	7
	National and Major Developments – Additional requirements	7
	Proposal of Application Notice (PoAN)	7
	EIA Screening and Scoping Opinions	8
5.	Other Supporting Information for Validation purposes	9
6.	Advertisement Consent	12
7.	Certificate of Appropriate Alternative Development	13
8.	Certificate of Lawfulness (Existing Use or Development) and (Proposed Use or Development)	14
9.	Listed Building Consent	15
10.	Conservation Area Consent	15
11.	Modification or Discharge of Planning Obligations	16
12.	Prior Notification – Agricultural & Forestry, Residential & Business use, Private Ways for Agricultural and Forestry	16
13.	Hazardous Substance Consent	17

1. Introduction

- 1.1 Effective validation is critical to the determination of planning applications and issuing other consents. It's main purpose is to firstly ensure that applications meet specific legal requirements and that significant and clear drawings and supporting information are provided to allow the Local Planning Authority to make an informed and competent decision on all applications and consents. As the planning application, process involves consultation with internal and external consultees and neighbour notification with neighbouring properties applications need to be accompanied by information to enable comments to be made by all interested parties.
- 1.2 Submitting an application and then finding it is invalid can be very frustrating for all parties as it involves additional unnecessary resources and causes delays in the processing of applications.
- 1.3 The Council strongly supports successful and early validation of all applications. This document is designed to assist all applicants to achieve an application being valid on the first submission. This will reduce the overall processing time and will assist with issuing a decision on the application sooner.

2. The Validation Process

- 2.1 On receipt of an application, the Council will check the application against the relevant requirements for the application type. The Council aim to register applications, which are valid on receipt within 5 working days.
- 2.2 Where an application is **valid**, an acknowledgement letter will be issued advising who the case officer is. Neighbour notification will take place where necessary, advertisements placed in the local newspaper and consultations will be issued to internal and external bodies. The assessment of the application will then commence.
- 2.3 If it is found that further information is required to make the application valid, you will be advised within 5 working days of receipt. You will then have 28 working days from being notified to submit the required information before a reminder is issued.
- 2.4 The statutory timescale for determination of an application will not commence or any assessment be undertaken whilst the application remains invalid until all the necessary information has been received by the Council.

3. General Guidance – Planning Permission

3.1 This general guidance covers the following application types:

- Planning Permission (detailed/full)
- Planning Permission in Principle
- Approval of Matters Specified in Consent
- Variation of Condition (section 42)

Application Forms

3.2 Moray Council requests that all applications are submitted electronically through the Scottish Government's [e.planning.scot website](https://e.planning.scot)

Applicant and Agent Details

3.3 An application from must always contain both the name and address of the applicant.

3.4 An applicant does not need to have an agent acting on their behalf, however if one is used the agent's name and address must be provided and will be the sole point of contact during the application process. E-mail address and mobile telephone number are also required. The Council will send all correspondence via email to the agent (or applicant where there is no agent).

3.5 An applicant can be an individual, group of individuals, an organisation or group of organisations.

Postal Address or Location

3.6 If a site has a statutory postal address, it must be used. Flat numbers must be given where relevant. When submitting online, the ePlanning systems contain an address gazetteer, which will provide addresses from which you can select the correct one.

3.7 Where a development has no postal address, or only the eastings and nothing grid coordinates have been supplied (for example a field, part of a developments site which is yet to be given an address or an area of road or pavement), a suitable description must be agreed with the local planning authority. In these circumstances, a description of the site in relation to the nearest road or building in terms of the compass points should be sufficient.

Locations Plans

3.8 All types of application (except for a S.42 application) must include a location plan which identifies the position and extent of the application site.

3.9 The plans submitted should typically be Ordnance Survey based to ensure a high level of accuracy.

Scale

- 3.10 A suitable recognised metric scale (1:1250 or 1:2500) must be used and indicated on the plan. A scale bar must also be provided and the direction of the north point included.

Application Boundary

- 3.11 The application site boundaries must be clearly outlined with a continuous solid red line on the location plan. It must include all the land necessary to carry out the proposed development. Any land required to construct a new access to the site, drainage, landscaping proposed, car parking and any engineering operations must all be included within the red line boundary.
- 3.12 All other land shown on the location plan that is not part of the application site (i.e. not within the red line boundary) but which is in the same ownership of the applicant must be edged blue.
- 3.13 Householder applications for extensions or alterations to a property or for development within the garden areas of houses or flats must show the full property boundary as the application site.

Site Plans

- 3.14 Site plans (also referred to as site layout or block plans) must show the layout of the site and position of buildings, car parks, paths and roads, drainage and landscaping. A suitable recognised metric scale (generally 1:500, 1:250) must be used and indicated on the plans. A scale bar must also be provided and the direction of north shown.
- 3.15 Existing and proposed site plans must show:
- The site boundary outlined in red and other land owned by the applicant in blue –this must match the red line on the location plan
 - All land and buildings within a 20 metre radius of the application site
 - Accurate footprint/roof plan of all existing and proposed buildings (on existing and proposed site plans respectively) and structures located within the application site and annotated.
 - The extent of any hardstanding.
 - All boundary treatments such as walls and fences to be included with details of their height.
 - Areas of soft and hard landscaping clearly shown.
 - Where levels are on site to be altered by 0.5m or more, details of the existing and proposed levels will be required. This will be in the form of a layout plan featuring contours or spot heights, showing the level above ordnance datum (AOD). Finished floor levels (FL) or any proposed developments must be shown.

Floor Plans

- 3.16 A suitable recognised metric scale (generally 1:50 or 1:100) must be used and indicated on the plans along with a scale bar.
- 3.17 Existing and proposed floor plans must show:
- All window and door openings
 - All internal room divisions and a note of their current/proposed use
 - The extent of any walls to be demolished.
 - Clearly show the footprint of any proposed extension or free-standing building

Elevations

- 3.18 Existing and proposed elevations will be required in most cases where proposed alterations, extensions or the installation of advertisements would affect the external appearance of an existing building.
- 3.19 A suitable recognised metric scale (generally 1:50 or 1:100) must be used and indicated on the plans along with a scale bar.
- 3.20 Elevations must be marked using the compass points (east, west, south and north). Marking elevations with numbers or letters is not acceptable.
- 3.21 External finishes can be annotated on the drawing or alternatively a schedule of finishes should be provided.
- 3.22 Written dimensions noting the height to eaves and roof ridge must be provided along with the length and width of the building.

Roof Plans

- 3.23 Roof plans are required where proposals involve the construction of new buildings or the extension or alteration of an existing building, which would create a new roof or affect an existing roof.
- 3.24 A suitable recognised metric scale (generally 1:50 or 1:100) must be used and indicated on the plans along with a scale bar.
- 3.25 Existing and proposed roof plans must show:
- The shape of the roof
 - The direction the roof slopes if pitched
 - The roofing materials
 - The location and extent of any windows, rooflights, vents, chimney, flues and mechanical plant

Design and Access Statements

- 3.26 A Design and Access statement is required to be provided on all national and major planning applications. Whilst preparing such a statement the appropriate advice contained in **Planning Advice Note 68: Design statements** should be considered:.
- 3.27 Applications for planning permission for local developments within a Conservation Area, historic garden or designed landscape, site of a schedule monument or the curtilage of a category A listed building will require a Design Statement unless the development comprises the alteration or extension of an existing building.
- 3.28 A Design and Access Statement or Design Statement is not required for a S.42 application, householder development, engineering or mining operations, a material change in the use of land or buildings or for an application for planning permission in principle.

Design Statement

3.29 A Design Statement is a written statement about the design principles and concepts that have been applied to the development and which –

- explains the policy or approach adopted as to design and how any policies relating to design in the development plan have been taken into account.
- describes the steps taken to appraise the context of the development and demonstrates how the design of the development takes that context into account in relation to its proposed use.
- States what, if any, consultation has been undertaken on issues relating to the design principles and concepts that have been applied to the development; and what account has been taken of the outcome of any such consultation.

Design and Access Statement

3.30 A Design and Access Statement is a document containing both a design statement and written statement about how issues relating to access to the development for disabled people have been dealt with. It must explain the policy or approach adopted as to access and how:

- i) policies relating to such access in the development plan have been taken into account; and
- ii) any specific issues which might affect access to the development for disabled people have been addressed.

3.31 This should explain how the applicant's policy/approach adopted in relation to access fits into the design process and how this issue has been informed by any development plan policies relating to access issues.

3.32 Developers should consider setting out in the statement how access arrangements make provision both to and through the site to ensure users have equal and convenient access. Where Scottish Government policy relates to access, for example, the number of parking spaces for disabled people, this should be reference in the statement.

3.33 The statement must 'Describe how features which ensure access to the development for disabled people will be maintained'. The arrangements for long-term management and maintenance are as important as the actual design. Therefore content on maintenance will assist with ensuring maintenance of features are managed in the long-term.

3.34 The statement must 'State what, if any, consultation has been undertaken on issues relating to access to the development for disabled people and what account has been taken of any consultation'. If consultation has taken place this must be included in the statement with an indication of how this has influenced the final proposal. The statement should indicate with whom consultation was undertaken: for example, community groups, user groups or statutory consultees.

Application Fee

3.35. Most application types attract an application processing fee. These are set by the Scottish Government and are explained in the Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022. A **summary of the fees** associated with each type of application is available on the Council's website.

- 3.36 Further information on calculating fees is available in [Scottish Government Circular 2/2022 The Town and Country Planning \(Fees for Applications\) \(Scotland\) Regulations 2022](#)
- 3.37 If your application is required to be advertised for neighbour notification purposes or as a departure a fee will be required for this advert. Some applications require a Schedule 3 ("bad neighbour") or EIA advert and these are charged at a higher rate than other adverts.

ICNIRP Certificate

- 3.38 Where an application relates to an installation of an antenna to be employed in an electronic communication network, and ICNIRP (International Commission on Non-Ionising Radiation Protection) declaration must be provided stating that the antenna is designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of ICNIRP.

Ownership Certificates

- 3.39 An applicant does not need to have a legal interest or ownership of the land, which the application relates to, nor do they need the landowner's permission to make a planning application. If the applicant does not own the land, which relates to the application, they must advise the owner and the agricultural tenant of the land that an applications is being submitted to the local planning authority. This side on be serving the owner with the 'Notice to Owners and Agricultural Tenants', which accompanies the application forms. This also applies to instances where more than one party owns land and not all parties are making the planning application.
- 3.40 All planning applications (except for those for approval of matters specified in conditions) must be accompanied by a land ownership certificate, which certifies that the owner and any agricultural tenant has been notified. It is the applicant's responsibility to serve the notice and then provide the planning authority with the correct certificate.
- 3.41 The form of the notice is specified in Schedule 1 of the regulations.
- 3.42 There are five certificates which cover different scenarios, one should be completed –
- **Certificate A** – to be signed where the applicant is the only owner of the land to which the application relates and none of the land is agricultural land;
 - **Certificate B** – to be signed where the applicant is not the owner or sole owners of the land to which the application relates and or where the land is agricultural land and all owners/agricultural tenants have been identified;
 - **Certificate C** – to be signed where the applicant is not the owner or sole owner of the land to which the application relates and /or where the land is agricultural land and it has not been possible to identify **ALL** or **ANY** owners/agricultural tenants.
 - **Certificate D** – to be signed where the application is for mineral development (mining/quarrying);
 - **Certificate E** – to be signed where the applicant is the sole owner of all the land and the land to which the application relates is agricultural and there are no agricultural tenants.

Crown Land

- 3.43 Where all or part of the site area of the application relates to Crown land, a statement to that effect must accompany it.

4. Regulations & Procedures

- 4.1 The following regulations and circular contain detailed information regarding validation requirements for planning applications:

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Part 3

Development Management Circular 3/2022 – Development Management Procedures

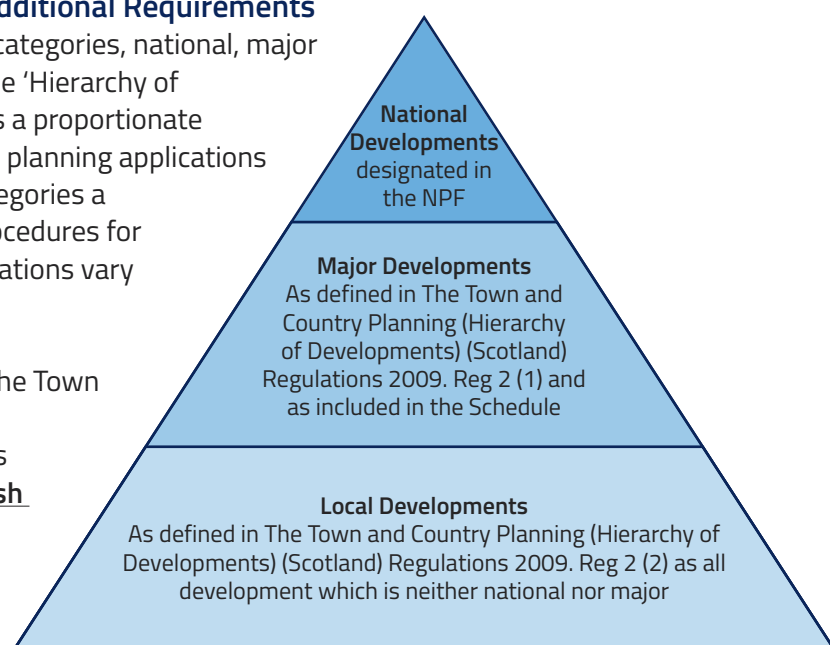
The Town and Country Planning (Scotland) Act 1997 – Section 40

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 – Part 2 and 4

National and Major Developments – Additional Requirements

- 4.2 Planning applications fall into three categories, national, major and local – these are described as the ‘Hierarchy of Developments’. The hierarchy allows a proportionate approach to be used for dealing with planning applications depending on which of the three categories a development falls within and the procedures for making and handling planning applications vary between each.

- 4.3 Major developments are defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. Guidance is available in [Scottish Government Circular 5/2009 \(Hierarchy of Developments\)](#).



Proposal of Application Notice (PoAN)

- 4.4 All applications for national or major developments are required to go through pre-application consultation (PAC) process prior to submission of the application. Where PAC is required, the prospective applicant must provide to the planning authority with a ‘proposal of application notice’ (PoAN) at least 12 weeks prior to the submission of an application for planning permission. Thereafter, the applicant must prepare a pre-application consultation report of what has been done during the pre-application phase to comply with the statutory requirements for PAC and any requirements set out in the planning authority’s response to the PoAN. The consultation report must be submitted with the planning application before it can be validated. Any publication of an event must be placed in the newspaper at least 7 days prior to the event. Each event has to be publicised separately. Further guidance is available in the Development Management Circular 3/2022 – Development Management Procedures – link above. Two public events are now required to be held.

- 4.5 The ePlanning Scotland system cannot be used to apply for this type of from the application. However, a copy of the 'Proposal of Application Notice' is also available from the same website, which can be competed and submitted by e-mail.
- 4.6 The 'description of proposal must outline the general characteristics of the development in terms of the nature of the use, its scale and include any significant infrastructure forming part of the proposal. A very detailed or narrow descriptive content in the proposal of application notice means that relatively minor changes could trigger the need for a fresh notice to be served. A location plans is required it identify the land to which the proposal relates. There is no fee for the submission of a Proposal of Application Notice.
- 4.7 Design and Access statements are required for all national and major planning applications before applications can be validated.

EIA Screening and Scoping Opinions

- 4.8 Environmental Impact Assessment ("EIA") is the process by which information about the likely significant environmental effects of a project, and the potential for reducing, avoiding or offsetting any adverse impacts, is collected and assessed by the developer; this information, together with comments received from the consultation authorities and the public, must be considered by the planning authority before any planning decisions are made.
- 4.9 EIA may be required where a development is a type described in Schedule 1 and may be required for developments of a type described in Schedule 2 of the Regulations:
- a) Schedule 1 development will require EIA in every case. Schedule 1 development includes large scale developments with obvious potential for environmental effects, such as crude oil refineries, major chemical and steel works and larger scale quarries.
 - b) Schedule 2 developments have specific thresholds to be screened against, however screening of development in sensitive areas is required regardless of the threshold and will require EIA only if the specific development in question is judged likely to give rise to 'significant' environmental effects. To determine whether an EIA is needed, a screening opinion will usually be required. Detailed guidance on identifying schedule 2 development is provided in **Planning circulate 1/2017**.
- 4.10 Before applying for planning permission, developers who are in doubt whether EIA will be required may request a screening opinion from the planning authority. If it is determined that EIA is required, a scoping opinion request must be submitted. A scoping opinion is the planning authority's position as to the information, which should be provided, in the environmental report part of the EIA.

5. Other Supporting Information for Validation purposes

5.1 In addition to the minimum validation standards it has been agreed that the following information should accompany planning applications before they are validated:

- **Planning Statement** – A detailed description of the existing used and proposed use (Including numbers of staff/anticipated numbers of clients, proposed hours of working/days of the week, description of existing/lawful use, any amplified music, odour extraction details and any take-away element).
- **Compliance Statement** – A statement outlining how the proposal complies with the both NPF4 and MLDP 2020 policies (National, Major and Local application types).
- **Private Water details** – Provide a National Grid Reference for each supply source and mark the supply (and all works associated) e.g. the source, holding tank and supply pipe, accurately on the application plan. You are also required to provide information on the source type (e.g. well, borehole, spring). This information is necessary to enable the appropriate authorities to advise on the environmental impact, adequacy, wholesomeness, capacity of supply for existing and proposed users and pollution risks. If you are intending to use an existing private water supply for the proposed development please contact Environmental Health at EAdmin@moray.gov.uk, or phone 01343 563088 for specific guidance and advice and provide the details to this office.
- **Drainage Statement - All developments** of less than three new dwellings or a non-householder extension under 100 square metres are required to provide a drainage statement. This statement should describe the proposed drainage arrangements for the development, e.g. a private drainage system such as a soakaway or connection to Scottish Waters drainage network. Plans submitted with the application should include the proposed layout of the drainage proposals. If the proposed drainage system involves infiltration, information on ground conditions should also be provided. The statement should demonstrate, that the post-development runoff rate does not exceed the pre-development runoff rate or increase flood risk through discharge to a receiving watercourse. A Drainage Impact Assessment is required for all development of more than three dwellings (Supplementary Guidance on Flooding and Drainage, link below).

All **householder** extensions over 25sq m square metres or within a flood sensitive area are required to provide a drainage statement. This statement should describe the proposed drainage arrangements for the development, e.g. a private drainage system such as a soakaway or connection to Scottish Waters drainage network. Plans submitted with the application should include the proposed layout of the drainage proposals. If the proposed drainage system involves infiltration, information on ground conditions should also be provided. The statement should demonstrate, that the post-development runoff rate does not exceed the pre-development runoff rate or increase flood risk through discharge to a receiving watercourse.

- **Vehicular Access** – All alterations to existing accesses and formation of a new access should be should on a scaled plans with the required visibility splay to meet Moray Council standards. See [Transport Development webpage](#)

- **Car parking and cycling provision layout** – A scaled site plan should show the car parking and cycling provision layout.
- **Tree surveys** – You have indicated on the application form that there are trees on the site. Any trees and their species should be marked up on the site plan. Please refer to the [supplementary Guidance Trees and Development](#) on the Councils web site.
- **Landscape scheme** is required showing:
 - the location of any existing trees, shrubs and hedgerows on the site and identify those to be retained and those to be removed.
 - details of the measures to be taken to protect any existing trees, shrubs and hedgerows during the course of developing the site.
 - details of the numbers, species, position, planting distances and sizes of all planting to be undertaken.

5.2 Other types of supporting information may be requested from consultees as part of the pre application advice service and include the following:

- **Transport Assessment** – A report detailing existing travel patterns which may be affected by the proposed development, how they may be affected and what measures would be taken to mitigate congestion, road safety concerns. See [Transport Development webpage](#)
- **Flood Risk Assessment** – A report to identify the potential risk of flooding should the proposed development be completed. The report will give details of both the risk to the site itself and the impact of the proposed development on surrounding watercourses.
- **Topographical Survey** – A survey showing both existing and proposed site levels.
- **Habitat Survey** – a report detailing any significant wildlife habitats or species within the locality of the proposed development which may be affected by it, including details of any proposed measures to mitigate any negative impact.
- **Ecological Appraisal** – A report evaluating the importance of any ecological features present within the site.
- **Noise Impact Assessment** – A report, which identifies the potential noise impact of the proposed development on its surroundings and any measures, proposed to mitigate by potential negative impact. This type of report can also be required to show how existing sources of noise may impact on the proposed development and what mitigation measures may be required.
- **Retail Impact Assessment** – A report that details the potential impact of the proposed development on the trade of existing premises within the surrounding area.
- **Contaminated Land Assessment** – A detailed site-specific report covering the type and extent of contamination and what measures are required and will be completed in order to ensure the site is fit for its intended use.

- **Private Water Supply** – A detailed site-specific report relating to the quantity and quality of any proposed private water supply, which should also detail the type of system to be used.
- **Archaeological Assessment** – A report detailing any areas of archaeological interest within the locality of or within the site itself. The report should include any measures proposed to safeguard such sites from being negatively impacted by the proposals.
- **Affordable housing details/mix** – Details of proposed affordable housing mix to comply with development plan policy.
- **Recycling and bin storage** – Details of where bin and recycling facilities are to be provided.
- **Landscape and Visual assessment** - A report showing the anticipated landscape and visual effects of the proposed development.
- **Landscaping Plan** – A plan produced to scale which details the proposed landscaping of the developments site. The plans should clearly show the number and species of all plant and tree types proposed along with grassed areas, hard surfacing and other relevant features. Details of phasing and maintenance should be provided.
- **Structural surveys** – On request.
- **Community Wealth Building Statement** – See link to policy guidance note: [link](#)
- **Carbon and climate considerations:** - Whole Life carbon assessment, Carbon management plan and reporting plan, carbon sequestration statement, renewable energy and heat decarbonisation statement and barriers to net zero statement - See link to policy guidance note.

5.3 See links to NPF4 and Moray Local Development Plan 2020:

NPF 4

MLDP 2020

- 5.4 **Additional Guidance on MLDP 2020 Policies** covering Place making, Inclusive and accessible play equipment, Electric Vehicle charging and Car sharing spaces, Daylight and sunlight, Forestry, cycle parking and woodlands and trees.
- 5.5 **Supplementary guidance on Flood Risk and Drainage Impact Assessment** for new Developments.
- 5.6 **Supplementary Guidance on Developer Obligations.**

6. Advertisement Control

The Town and Country Planning (Scotland) Act 1997 – Section 182

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 – Regulation 15

- 6.1 The display of signs and similar items is controlled by the 1984 advertisement control regulations which defines an advertisement as - 'any word, letter, model, sign, placard, board, notice awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, (excluding any such thing employed wholly as a memorial or as a railway signal) and included any hoardings or similar structures or any balloon used or designed or adapted for use any anything else used or design or adopted principally for use, for the display of advertisements.'
- 6.2 The application description must include the number and type of advertisements for which consent is being sought, i.e. illuminated or non-illuminated, fascia or projecting sign.
- 6.3 The proposed materials for the signs must be provided and colours of the different advertisement component including any lettering, background or logos.

7. Certificate of Lawfulness (Existing Use or Development) Certificate of Lawfulness (Proposed Use or Development)

The Town and Country Planning (Scotland) Act 1997 – Section 150/Section 151

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Regulation 42

- 7.1 A certificate of lawfulness is a remedy for when building work has been carried out in the past or where, for several years, a development or use has existed without meeting a planning condition. A certificate of lawfulness allows the planning authority to make a formal decision that the development or use may continue without enforcement action. An application is most commonly made for one of two reasons but can be made for other reasons :-
- The planning authority take enforcement action and the owner believes they are immune from action because the time limit for taking enforcement action has passed (see below); or
 - The owner discovers, during selling the land or property that that planning permission was never given for the development, and they need to show possible buyers that the planning authority cannot take enforcement action.
- 7.2 If, on the receipt of an application, the planning authority are provided with information satisfying themselves at the time of the application of the use, operations or other matters described in the application, or that description as modified by the planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refused the application. It is therefore the responsibility of the applicant to provide sufficient evidence that the use, operation or other matter is lawful. Supporting information must be clear and convincing and can include photographs, invoices or documents showing the length of time a use has taken place or when building work or other work was finished. Sworn statements are also often requested to support an application.
- 7.3 A certificate of lawfulness for a proposed use or development is a way of getting a formal and definitive decision from the planning authority about whether a proposed use or proposed building work needs planning permission. In determining an application, the planning authority will examine whether the proposals falls under the definition of development, whether it may be permitted development and any existing planning permission, which may exist.
- 7.4 An application can be made online via [ePlanning.scot](https://www.eplanning.scot.nhs.uk/). A copy of the certificate of lawfulness – existing and proposed form is available on the same website.

8. Listed building Consent

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 – section 9 and 10

The Planning (Listed building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 – Regulation 4

- 8.1 Listed buildings are buildings which are included in the Historic Environment's Scotland list of buildings as special architectural or historic interest. The term 'building' can include a wide range of man-made structures such as buildings, fountains, statues, bridges and other engineering structures. Listed Buildings are classified under one of three categories, which in order of significance are A, B or C. Listing covers both the inside and the outside of the property.
- 8.2 Listed building consent is required from the planning authority for any works for the demolition of a listed building or for its alteration or extension in any manner, which would affect its character as a building of special architectural or historic interest and demolition. There is added control on the curtilage of a listed building and often a shed for example, would require planning permission.
- 8.3. Planning permission may also be required for works which affect the exterior of the building or where a change of use is proposed.
- 8.4 An application form can be made online via ePlanning.scot. There is no fee for a listed building application.
- 8.5 Where works are proposed which alter the means of access to the building, an access statement must be submitted, this could involve the creation or alteration of doors, ramps, steps or gates. Regulation 6 of the 2015 regulations states that an access statement is a document containing a written statement about how issues relating to access to the building for disabled people have been dealt with and which:
 - Explains the policy or approach adopted as to such access and how any specific issues arising from the proposed works might affect such access have been addressed;
 - Describes how features which ensure access to the building for disabled people will be maintained; and
 - States that, if any, consultations has been undertaken on issues relating to access to the building for disabled people and what account has been taken of the outcome of any such consultation.

Window survey

- 8.6 Where an application relates to the replacement of windows a window condition survey is required to be submitted.
- 8.7 Further information on replacement windows and doors can be found within our [**guidance note**](#).

Stone Cleaning Report

- 8.8 Where an application relates to the stone cleaning of a building or structure a stone cleaning report should be submitted. This will assess the current condition of the stonework and explain the method of cleaning which is proposed.
- 8.9 For further information on stone cleaning see [Historic Environment Scotland guidance](#)

9. Conservation Area Consent

The Planning (Listed buildings and Conservation Areas) (Scotland) act 1997 – section 66

The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 – Regulation 4

- 9.1 Conservation area consent is required from the planning authority for works involving the total or substantial demolition of unlisted buildings within a Conservation Area. This includes the demolition of a building behind a retained façade but does not include the demolition of a part of a building, e.g. and extension or a shopfront.
- 9.2 Conservation area consent is not required for building less than 115 cubic metres.

10. Certificate of Appropriate Alternative Development

Land Compensation (Scotland) Act 1963

The land Compensation (Scotland) Development Order 1975

- 10.1 Where land is to be acquired using compulsory purchase powers, the owner of the land, acquiring authority or other person with an interest, may apply to the planning authority for a certificate of appropriate alternative development ("CAAD"), which sets out the uses of the land for which planning permission would have been granted if the land had not been compulsorily acquired. This is to assist in establishing the value of the land and thereafter an appropriate amount of compensation to be awarded to the landowner by the acquiring authority.
- 10.2 There is no application form for CAAD applications, therefore submissions should be made in writing or e-mail. The applicant must state whether there are, in their opinion, any classes of development which either immediately or at a future time, would be appropriate for the land in question, if it were not proposed to be compulsorily acquired. The applicant must also state their grounds for holding that opinion.
- 10.3 A location plan is required to identify the land to which the application relates, other drawings can be submitted to support the applicant's position.
- 10.4. The applicant must provide a copy of the application to the other party directly concerned. In most circumstances, the other party will be the acquiring authority who is using compulsory purchase powers e.g. Transport Scotland. The application to the planning authority must include a written statement stating the date when a copy of the application was provided to the other party. There is no fee for the submission of an application for a CAAD.

11. Modification or Discharge of Planning Obligations

The Town and Country Planning (Scotland) Act 1997 – Section 75A (2)

The Town and Country Planning (Modification and Discharge of Planning Obligations (Scotland) Regulations 2010

- 11.1 The planning authority can enter into a planning obligation (also known as a legal agreement, planning agreement, or section 75 agreement) with a developer to secure financial contributions, secure provision of infrastructure or control matters, which cannot be dealt with by attaching condition to a planning permission. A planning obligation is registered in the Land Register of Scotland and binds successors in title to the land to its terms.
- 11.2 A developer may wish to modify an obligation, perhaps due to a change in circumstances or to discharge (remove) it or if they have met all the terms of the obligation, such as making payments. To do this a formal application must be made to the planning authority. A copy of the application form can be used to apply for this application from the ePlanning Scotland system. There is no fee for the submission of an application for the modification or discharge of a planning obligation.
- 11.3 Further guidance can be found in [Scottish Government Circular 3/2012 \(Planning Obligations and Good neighbour agreements\)](#).

12. Prior Notification

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992

- 12.1 Prior notification is a procedure where a developer must tell the planning authority about their proposals before taking advantage of permitted development rights, which allow them to carry out development without applying for planning permission. The result will be a decision that 'prior approval' is or is not needed. If the decision is that approval is needed, the planning authority may ask for information before they can decide whether to give prior approval. If the planning authority decides to grant prior approval, they may set conditions or limitations that the applicant will have to meet as well as any restrictions that apply to the development set out in the General Permitted Development Order (GPDO).
- 12.2 See our website for further guidance:
- [Prior Notifications - Agricultural and Forestry Buildings](#)
- [Prior Notifications – Residential and Flexible Commercial Use](#)
- [Prior Notifications – Private ways for Agricultural and Forestry Use](#)

13. Hazardous Substance Consent

Planning (Hazardous Substances) (Scotland) Act 1997 – Section 5

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 – Regulations 6, 7 and 8

- 13.1 The hazardous substance consent system ensures that hazardous substances can be kept or used in significant amounts only after the responsible authorities have had the opportunity to assess the degree of risk arising to persons in the surrounding area and to the environment.
- 13.2 There are three types of applications related to hazardous substances. These are:
- Application for a new hazardous substances consent (regulation 6)
 - Application for removal of conditions from an existing consent (regulation 7)
 - Application for continuation of hazardous substances consent where there has been a change in the person in control of part of the land – (regulation 8)
- 13.3 The eplanning Scotland website cannot be used to apply for this type of application. An online form wizard is provided through the **Health & Safety Executive**. The wizard will guide applicants through the completion of the relevant application form and produce a completed form, which can be submitted as part of the application.

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

SUBJECT: TREE PRESERVATION ORDERS

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

1. REASON FOR REPORT

1.1 This report asks Committee to confirm the revocation of TPOs at Croft Road (Forres) and Fogwatt, without modification.

1.2 This report is submitted to Committee in terms of Section III (E) (7) of the Council's Scheme of Administration to make, vary and revoke orders for the preservation of trees.

2. RECOMMENDATION

2.1 It is recommended that the Committee agree to confirm, without modification:-

(i) Moray Council (Croft Road, Forres) Revocation of Tree Preservation Order 2023; and

(ii) Moray Council (Fogwatt) Revocation of Tree Preservation Order 2023.

3. BACKGROUND

3.1 Policy EP7 Forestry, Woodlands and Trees of the Moray Local Development Plan (MLDP) 2020 supports the serving of a TPO on potentially vulnerable trees which are of significant amenity value to the community as a whole, trees that contribute to the distinctiveness of a place or trees of significant biodiversity value. Trees contribute significantly to the characteristics of Moray and its conservation areas and the aim of Policy EP7 is to retain healthy trees and prevent the unnecessary felling of such.

3.2 Following an increase in tree works applications and complexity of cases, Officers carried out a holistic review of existing TPOs to ensure that they retained their amenity value and remained appropriate and relevant. The outcome of the review was reported to this Committee on 20 December 2022 and it was agreed to vary Rothiemay TPO, serve a new TPO at Dunkinty and

revoke TPOs at The College, King Street (Elgin), Fogwatt, Dunkinty House (Elgin), Croft Road (Forres), Tomnabat Lane (Tomintoul), Woodland at Damhead Cottage (Kinloss), Woodland at Seapark House (Kinloss) and Groups of Trees at Deskford (para 13 of the minute refers).

- 3.3 TPOs are subject to a minimum 28 days public consultation during the period between Committee giving approval to serve the Order and the Committee confirming the Order. The Order must be confirmed by Committee no more than 6 months after the Order has been served or revoked. During the consultation period, the public can make representation either in support of, or objecting to the Order. In terms of Regulation 5 of the Town and Country Planning (Tree Preservation Orders and Trees in Conservation Areas) (Scotland) Regulations 2010, the Council must consider all representations before confirming the TPO with or without modifications.
- 3.4 As Legal Services are currently significantly under resourced, Orders are being processed in phases with the highest priority work completed first. The remaining Orders will be reported to future meetings of this Committee.

4. PROPOSALS

Confirm Moray Council (Croft Road, Forres) Revocation of Tree Preservation Order 2023, without modification

- 4.1 The TPO revocation was served on land owners and advertised publically between 18 April and 28 May 2023 for representations to be received. No representations were received and it is recommended that the Committee confirm the TPO revocation without modification.

Confirm Moray Council (Fogwatt) Revocation of Tree Preservation Order 2023, without modification

- 4.2 The TPO was served on land owners and advertised publically between 19 April and 29 May 2023 for representations to be received. No representations were received and it is recommended that the Committee confirm the TPO without modification.

5. NEXT STEPS

- 5.1 If the Committee agree to confirm the TPOs as set out in Section 2 of this report, the Council are required to register the TPOs in the Land Register of Scotland.
- 5.2 In addition, notice will be given to Scottish Forestry, interested persons and any person who made a representation. Copies of the TPOs will also be made available for public inspection.
- 5.3 Officers will continue to process the remaining TPOs in phases and once the respective consultation periods are completed, the TPOs will be reported to future meetings of the Committee for confirmation or otherwise.

6. SUMMARY OF IMPLICATIONS

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

The Corporate Plan prioritises the need to maintain and promote Moray's landscape and biodiversity. The 10 Year Plan (LOIP) identifies the need to build a better future for children and young people in Moray by providing the healthiest start in life. TPOs protect significant trees and woodlands and conserves the local natural environment and biodiversity whilst also helping to promote healthier lives.

(b) Policy and Legal

The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 provides for the serving, varying and revoking of TPOs.

Policy EP7 of the MLDP 2020 supports the serving of a TPO on potentially vulnerable trees which are of significant amenity value to the community as a whole, trees that contribute to the distinctiveness of a place or trees of significant biodiversity value.

(c) Financial implications

Land registry and advert costs will be met from existing Strategic Planning and Development section budgets.

(d) Risk Implications

None.

(e) Staffing Implications

The serving, varying or revocation of TPOs has staffing implications for Strategic Planning & Development and Legal Services. Legal Services are currently significantly under resourced and work will be phased with the highest priority work completed first.

(f) Property

None.

(g) Equalities/Socio Economic Impact

No Equality Impact Assessment is required for this report.

(h) Climate Change and Biodiversity Impacts

The report confirms the safeguarding of some trees and removal of legal protection for other trees, however this does not automatically mean that these will be felled. As such, there are no climate change or biodiversity implications arising from this report.

(i) Consultations

The Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Chief Financial Officer, the Legal Services Manager, the Principal Climate Change Strategy Officer, the Equal Opportunities Officer and Lissa Rowan (Committee

Services Officer) have been consulted and *are in agreement* with the contents of the report. Any comments received have been incorporated into the report.

7. CONCLUSION

7.1 TPOs are formal orders attached to important, feature and character-creating trees and woodland to protect the amenity value they contribute to the local community. Following a holistic review of existing TPOs, various proposals were made to ensure that TPOs retained their amenity value and remained appropriate and relevant.

7.2 Following consultation, no representations were received and the Committee is asked to confirm, without modification, the TPO revocations at Croft Road (Forres) and Fogwatt.

Author of Report: Darren Westmacott, Planning Officer (Strategic Planning and Development)

Background Papers:
Ref: