APPENDIX 1

MORAY COUNCIL
Response to Consultation issued by Scottish Government on
APPLICATION FOR S.36 CONSENT
ERECT 48 WIND TURBINES WITH BLADE TIP HEIGHT BETWEEN 136 AND 176 METRES WITH INSTALLED CAPACITY IN EXCESS OF 50MW AT CLASH GOUR WIND FARM, MORAY

(MORAY COUNCIL REFERENCE 19/01591/S36)

INTRODUCTION

The applicant, Clash Gour Holdings Limited has applied for consent under Section 36 of the Electricity Act 1989 for the proposed windfarm at Clash Gour, south of Forres in western Moray.

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

In determining the Section 36 application, the views of the 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 If the planning authority objects to the proposed development and the objection is not later withdrawn, or the areas of objection cannot be addressed by conditions then ECU are likely to convene a public local inquiry.

Prior to determination, 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

- Erection of up to 48 turbines and foundations, each assumed to have an external transformer, with tip heights varied between 130m and 176m. The rotor diameter may range between 112 – 152m. The hub heights may range between 75 -112.5m. These ranges would also cover both scenarios inclusive of the options to have 20 of the eastern turbines either at a height of 176m which is the default proposal, or 'scenario B' where the same 20 turbines would 149.5m high.
- The precise output of the turbines is not yet known, as the final model and type has not yet been selected, but the applicant has indicated that the output is likely to be somewhere in the region of 225-256mW (depending upon

available wind turbine technology. Permission is sought for a 30 year operating period from commissioning.

- 50mW battery storage facility composed of a compound containing storage containers. This would be located near the main substation location.
- Each turbine will sit upon a circular concrete foundation pad 22-29m in diameter.
- Each turbine location will have a crane and vehicle hardstanding at its base.
- Existing access tracks will be used into the site from the Berryburn site entrance but additional access tracks will be formed throughout the site
- Erection of three internal substations (two configuration options have been included in the application)
- Control buildings which would link to the 275kV grid line to the north west of the site. One of the control buildings would host welfare facilities would be located within the chosen main substation compound location and be served by a private water supply and a private septic tank.
- A transformer kiosk/building may be positioned at the base of each turbine and measure 4m x 6.25m x 3.6m and have a flat roof.
- Up to 11 new borrow pits are proposed across the site.
- A site entrance compound and up to 5 temporary construction compounds and construction signage.
- Construction hours anticipated to be between 07:00 to 19:00 Monday to Friday and 07:00 to 16:00 on Saturdays. Other working outwith these periods, for tasks such as abnormal load deliveries or concrete delivery would require the prior approval of Moray Council.
- Up to 6 permanent anemometer lattice masts, ranging in height from 93.5-112m in height. Details are submitted for both permanent and temporary designs of anemometers which may be erected.
- Substantial compensatory planting, tree felling and re-stocking proposed.
- A micro-siting allowance of 50m for the turbines and site infrastructure is sought.

THE SITE

- The site is located approximately 10km south of Forres and adjacent to the existing Berryburn windfarm. The site lies close to the western boundary of Moray.
- The site is approximately 3,191 hectares in area.
- It will be accessed via the existing Berryburn windfarm entrance onto the minor public Half Davoch which links onto the A940 Forres to Grantown Road Turbine deliveries are proposed to come via the A96 and Forres to the windfarm. The site boundary includes a route from the east linking the site to the minor public road C13E for forestry extraction purposes.

- Other than the Spey catchment area the windfarm area within the site is not subject to any international, national, regional or local landscape, built environment or nature conservation designations, and there are no known archaeological assets within the site. Groundwater dependent Terrestrial Ecosystems (GWDTE's are present on site).
- No part of the site would lie within the Area of Great Landscape Value (AGLV) designation which lies 6km to the south east. The River Findhorn AGLV lies to the west of the site. Of note the landscape within Highland (approximately 3km to the south is a Special Landscape Area, and the windfarm would also lie approximately 5km north of the Cairngorms National Park.
- The Dava Way core path sits approximately 2km west of the windfarm site.
- Romach Hill, Mill Buie to the north and Carn Kitty to the south are designated landmark hills within the adopted Moray Onshore Wind Energy 2017 Policy Guidance (MOWE). The site sits within Landscape Character Type (LCT) 11 Open Rolling Uplands identified within the Moray Wind Energy Landscape Capacity Study 2017 (MWELCS).
- It is noted that the site boundary extends northward encompassing the U89E public road (half Davoch Road) where various road widening and enhancement measures would be required on the public road.
- There are a number of windfarms close to the proposed windfarm site. Most notably Hill of Glaschyle, Berryburn and Pauls Hill are all located within approximately 2km of the proposed site.

HISTORY

For the site.

17/00549/S36SCO – Environmental Impact Assessment (EIA) Scoping for Clash Gour undertaken for Electricity EIA Regulations to establish the 'scope' and content of the EIA Report. Scoping Opinion issued by the ECU in October 2017.

Relevant wind energy developments in the wider area.

01/02055/S36 - Construct and operate wind powered electricity generating station (28 turbines and ancillary equipment and works) at Paul's Hill, Ballindalloch, Banffshire. Approved by the Scottish Government in spring 2003. Moray Council did not object to the proposed windfarm. Clash Gour would be located approximately 2.5km north and north west of this site.

03/01426/S36 – Section 36 application to an extension to already consented windfarm (increase individual turbine capacity from 2mW to 2.3mW) at Paul's Hill windfarm comprises of 28 turbines, each 100m to blade tip. Pauls Hill has been operational for approximately 12 years.

01/02056/SCO - Construct and operate wind powered electricity generating station (28 turbines and ancillary works) at Cairn Uish Rothes Estate - consent granted

under S.36 of the Electricity Act 1989 by Scottish Ministers for turbines 100m high to blade tip, 82 m rotor diameter (Rothes I). Now operational and located approximately 7km north east of Clash Gour.

04/02473/S36 - Section 36 application for a wind farm at Berry Burn, Altyre Estate, Forres, Moray. 29 turbines at 104m in height. Operational since 2014 and producing approximately 66mW. This windfarm is located within and in close proximity to the proposed site, with Clash Gour sitting to the north, west and south of the operational Berryburn windfarm.

07/02800/S36 - Extension of wind farm at Rothes Wind Farm - consent granted under S.36 of the Electricity Act 1989 by Scottish Ministers for 18 turbines, 125m high to blade tip, 80m rotor diameter (Rothes II). Now operational located approximately 6km north east of Clash Gour.

13/00053/EIA - Erect 12no wind turbines (rotor diameter 71m) at Hill of Glaschyle, Dunphail, Forres, Moray. Application allowed at Appeal by Ministers in April 2014 (see 15/01148/APP below). Located 2km north west of the proposed windfarm.

13/00615/EIA - Erection of 4 wind turbines (110m high to blade tip (70m hub height, rotor diameter 80m)) and associated infrastructure at Kellas House, Kellas (consented but not yet constructed, works commenced). This is located 8km north east of the Clash Gour

14/01087/EIA - Erection of wind farm comprising 6 wind turbines 126.5m high to tip and associated access track and ancillary infrastructure erection of 1no permanent anemometer mast temporary formation of construction compound and erection of 2 no temporary anemometer masts at Meikle Hill, Dallas (see 17/01003/APP below). This located 5.5km north east of Clash Gour.

15/01148/APP - Section 42 application to amend Condition 4 of application 13/00053/EIA (as consented at appeal dated 18/03/2014) to allow for revised turbine model (from Enercon E70 to E82) increasing maximum blade tip height from 99.5m to 99.91m and increasing rotor diameter from 70m to 82m at Hill Of Glaschyle, Dunphail, Forres. Approved by Committee in October 2015.

17/01003/APP - Variation of conditions 3, 7, 14, 20, 24 and 25 of planning permission 14/01087/EIA for Meikle Hill, Dallas. Approved by Committee in October 2017 and effectively extends permission for a further 5 year period. Not yet constructed.

17/01509/APP - Amend condition 8 (aviation lighting) of the associated permission to allow the use of infra-red lighting at Hill Of Glaschyle, Dunphail, Forres, Moray. Approved in December 2017. New lighting has now been implemented.

19/00156/S36 - Erect 29 wind turbines consisting of 18 turbines of an overall height from base to tip not exceeding 225m 8 turbines of an overall height from base to tip

not exceeding 200m and 3 turbines of an overall height from base to not exceeding 149.9m associated infrastructure includes external transformer housing crane pads turbine foundations access tracks 2 substation underground electricity cables anemometry mast at Rothes III Wind Farm, Moray. The Section 36 consultation has recently been received by Moray Council and will be subject of recommendation report to a future committee.

A number of other windfarms exist within Moray further to the east and south east, which have all been given appropriate consideration in the recommendation put forward below.

In Scoping (EIA scoping has been undertaken for the following proposals).

Berryburn II scoping submitted to the Scottish Government for up to 10 turbines at a height up to 149.9m in height. This would constitute an extension to the existing Berryburn windfarm and would be located immediately adjacent to Clash Gour.

Within Highland

Cairn Duhie – Permission was issued by Scottish Ministers in October 2017 for 20 wind turbines at a height of 110m. This site lies 10km west of Clash Gour within Highland. This site has recently been constructed.

Ourack – Up to 50 turbines, but no height specified at present. This site sits 3km south west of Clash Gour and a scoping opinion was issued by the Energy Consents Unit in February 2016. No application has come forward to date.

ADVERTISEMENTS

Advertisements will have been carried out by the ECU who is the determining authority for the application.

CONSULTATIONS

Development Plans – The proposals must be considered in relation to Moray Onshore Wind Energy 2017 Policy Guidance (MOWE), which is statutory supplementary guidance and The Moray Wind Energy Landscape Capacity Study 2017 (MWELCS), a technical appendix to the above MOWE, but also approved as a material consideration in its own right.

Council planning officers met with the applicant on several occasions and offered early policy advice at these meetings and through the Scoping process. The advice has consistently been that the geographic extent, number of turbines and height of turbines were all contrary to the Council's policies and spatial frameworks for wind energy development, with the applicant encouraged to consider fewer, smaller turbines set well back into the interior of the landscape, in accordance with the Landscape Capacity Study.

The response addresses matters relating to national policy, policies ER1 Renewable Energy Proposals, Moray Council onshore wind energy supplementary guidance, landscape capacity study, policy PP1 Sustainable Economic Growth, natural environment, woodland (including compensatory planting), policy E7 *Areas of Great Landscape Value (AGLV) and impacts upon the wider landscape*, EP6 *Waterbodies,* BE1 *Scheduled Monuments and National Designations,* BE2 *Listed Buildings,* BE5 *Battlefields, Gardens and Designed Landscapes* and IMP1 *Developer Requirements.* Comments on these topics are considered and integrated into the observations below.

In summary the proposal, due to the height and siting of the proposed turbines is therefore contrary to Policy ER1 of the Moray Local Development Plan 2015, the Moray Onshore Wind Energy Policy Guidance 2017 (MOWE) and Landscape Capacity Study 2017(MWELCS) as it would result in unacceptable significant effects in terms of;

- Landscape, visual and cumulative impacts
- Impacts on tourism and recreational interests

While some of the turbines are located within the SPP compliant Spatial Framework areas with potential, the southern group is not. Some of the turbines are also located within areas with the greatest potential identified in Supplementary Guidance, however 6 of the turbines in the eastern cluster, 9 in the western and all of the southern cluster fall outwith Areas of Potential for large scale turbines 80-130m to tip. The proposal does not conform with the Guidance on Very Large scale proposals, as the Guidance states that there is only some very limited scope for very large turbines around 150m high to be accommodated in upland landscapes and does not conform with the siting guidance which requires turbines to be set well back into the core of upland areas, avoiding being sited on or nearby landmark hills.

Detailed landscape, visual and cumulative impact assessment undertaken by the Council's appointed landscape advisor has highlighted significant concerns. The turbines would appear overly large and dominant and have not been pulled back into the core upland area when seen from the west. There will be significant adverse effects on longer views from the Spey Valley and Ben Rinnes.

Turbines should be set well back from the minor Dallas to Upper Knockando road. The effects on LCT 10 and 11 would be significant and adverse, with much of the Open Rolling Uplands and western part of the Upland Moorland and Forestry becoming "Wind Farm Landscapes."

A small part of the Spey Valley AGLV would be significantly adversely affected, with significant adverse effects experienced from viewpoints 1-4,10,13,16, 25-28. Significant adverse recreational effects will be experienced from Ben Rinnes and the

Dava Way and significant adverse cumulative effects from viewpoints 1,10,16,17,25-27,28.

While the proposal would bring benefits in terms of sustainable energy production, this has to be balanced with the impacts upon Moray's natural heritage. For the reasons outlined above, the proposal is considered to be contrary to policies PP1 and ER1 of the Moray Local Development Plan 2015 and contrary to the Onshore Wind Energy Policy Guidance (which forms part of the statutory plan) and Landscape Capacity Study.

Access Manager – The planning submission includes a Public Access Management Plan (PAMP) referred to in 5.3.2. of the Design and Access Statement.

The PAMP is included in draft form as Technical Appendix 14.3. It is suggested due to the time that will be needed to refine this document and to consult with the Moray Local Outdoor Access Forum, that the Final version of this be required as a suspensive planning condition subject to approval of the Outdoor Access Manager and consultation with the MLOAF. The final version should be agreed and approved prior to commencement of development with the actions identified in the Plan implemented prior to completion of development.

The MLOAF have already communicated to the developers the main elements they want the PAMP to address as specified below. It is important that time is taken to ensure these elements are adequately covered in any finalised document.

Access Management During Construction: To take account of the rights of access during construction by the provision, where necessary, of alternative routes, defined on the ground by maps and signage.

Longer Term Access Proposals: This would include the specification for the proposed additional paths which should be to a multi-use standard as well as details of the enhancement of through routes including the Lone Road, which forms the northern boundary of the development. Details should also be provided of car parking, mapping and other information at the appropriate road heads, e.g. Divie viaduct, Craig Roy and Knockando/Dallas road. The specification of access controls (e.g. locked gates) should make provision for all non-motorised users.

A wider Integrated Path Network Vision: There is an opportunity for the path system developed as part of the windfarm to be linked with the wider path network to provide long distance walking and cycle routes from both east/west and north/south. This could incorporate, for example, the Dava Way and the ancient drove road, Via Regia, which follows the Ourack burn south towards Grantown. Although such a vision would not be the responsibility of the Windfarm developers to implement, through close liaison with local interested groups future integration of the path network would be facilitated.

Officer Note – agreement would need to be reached about what proposals would be reasonable, relevant and proportionate for the developer to achieve, but the PAMP could set out a framework for future focus and wider connections.

Environmental Health – Following discussion with the applicant over noise limits, and agreement that day time noise limits can be set lower than as stated in the EIA Report, no objection subject to conditions relating to noise, noise compliance monitoring, hours of construction, amplitude modulation effect, hours of any blasting required at borrow pits, vibration from the borrow pits operating and shadow flicker.

Environmental Health, Private Water – It is noted that until a specific option has been selected for the control building (and staff welfare) no specific water supply has been tested, if approved a suspensive condition would need to be attached. Several water supplies have the potential to be affected by the development. Furthermore a condition requiring notification to the Council and urgent, restorative, remedial work to be undertaken on any supply where negative effect(s) on water quality or quantity caused by any aspect or phase of the project are identified.

Environmental Health, Contaminated Land - No objection

Aberdeenshire Archaeology Service - No objections to the development subject to a condition relating to consideration of an archaeological written scheme of investigation (WSI). 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.

Transportation Manager – It is noted that abnormal roads are intended to be taken from the Inverness direction, then via Forres Some sections of the local minor roads must not be used. , and iIf approved conditions are required about to prevent restrictions of the use of used on the U88E Glenernie Road from the A940 at Glenearnie and the southern section fo the U89E Half Davoch Road from the A940 under the Divie Viaduct lower section of the U89E road and the U88E Glenernie road should not be used by construction and any other site associated traffic, other than emergency vehicles. The proposals include various works to U89E Half Davoch public road, such as widening, to accommodate the proposed abnormal loads. No objection subject to various conditions and informatives, including provision/agreement of a roads construction bond, to protect the public road asset that is the Half Davoch Road (U89E).

Developer Obligations - None sought for wind energy proposals. Community Benefit considered separately to the planning system.

Moray Flood Risk Management – The site is not susceptible to flooding and following consideration of the information provided the MFRM team raise no

objection. A condition would be required for the final, definitive designs and calculations of all watercourse crossings to MRFM team to confirm that post development run-off rates do not exceed pre-development run-off rates, or increase the risk of flooding to surrounding watercourses, or downstream. Evidence required to show that any development on the site does not affect the flow of the watercourses changing the catchment of the watercourse.

Building Standards – A Building Warrant will be required for the control building and the foul water treatment.

REPRESENTATIONS

All objections/representations in the relation are to be submitted directly to the Scottish Government Energy Consents Unit, who is the determining Authority. It is understood that 180 representations from the public have been received in relation to the proposals. They will be considered by the ECU and do form part of the Moray Council consideration (as consultee to the Section 36 process).

OBSERVATIONS

The proposed Clash Gour Windfarm 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.

The proposal was scoped previously (see history section) under the 2000 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 Design and Design and Access Statement. Chapter 17 Schedule of Mitigation at the end of the EIA Report summarise the various mitigation measures required or that have been imbedded in the design of the development.

As the 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 the 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 SNH. The Councils 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 local development plan would remain a significant material consideration, 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. On 18 December 2018, at a special meeting of the Moray Council Planning and Regulatory Services Committee, the Proposed Plan was approved as the "settled view" of the Council and minimal weight will be given to the Proposed Plan, with the 2015 MLDP being the primary consideration. Its policies are included for reference at the end of this Appendix for reference, in general terms the policy position and criteria for renewable energy proposals relatively similar between the current and proposed local development plans.

Pre Application Consultation
For this Section 36 application, the submitted Pre-application Consultation report (PAC) indicates the extent of engagement with the local community. Public events were undertaken in March 2017 and May 2018. These events took place in Elgin Community Centre, Elgin Town Hall, Edinkillie Village Hall, Archiestown Village Hall, Houldsworth Institute (Dallas), Grant Arms Hotel (Grantown) and Forres Community Centre. Approximately 158 people attended the exhibition in 2017 and 100 people in the events in 2018. The Pre Application Consultation PAC report is very thorough and details the content and discussions undertaken, The PAC report identifies various issues raised by the public with some in favour, some against the proposals and some making more specific comments regarding design and other aspects of the proposal, such as in relation to the particular lighting arrangements.

In addition to these main consultation events which were open to the general public, a Community Liaison Group has been established for the proposed development. This group would be used to assist in allocation of any Community Benefit fund. Further consultation and conference were help in relation to Community Shared Ownership Offer, but this is separate and in addition to the main pre-application public consultations undertaken.

The applicant states that they have sought to address/incorporate feedback from the pre-application consultation process as evidenced in Chapter 2 Site Description and Design Evolution of the EIA Report. It is acknowledged that the design has been modified and improved since the consultation was undertaken.

The main planning issues are considered below.

Relationship of proposal to national renewable energy policy/guidance

International and UK policy frameworks are generally supportive of renewable energy proposals which help to facilitate a transition to a low carbon economy. National Planning Framework (NPF3) for Scotland sets out the spatial strategy for Scotland's development. NPF3 makes specific reference to onshore wind energy having an important role in delivering the commitment to a low carbon energy generation.

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). This figure is likely to increase to 90% by 2050 when the Climate Change Bill, published in June 2017 becomes legislation in 2019.

The commitment to the creation of a low carbon place is reiterated in Scottish Planning Policy. The agent's submissions regard national policy as being significant and supportive of this proposal where this development, as a proven technology providing a source of safe and locally produced renewable energy for many years, will make a significant contribution towards renewable energy production at the national and local level.

The applicants have submitted a Planning, Design and Access statement which identifies the pertinent national policy and guidance in relation to the onshore wind energy proposals. Consideration has been given to these various policies and guidance documents. Of particular note there is a recurring theme in favourable of renewable energy proposals.

Scottish Planning Policy (SPP) requires that “planning should direct the right development to the right place”, which is an important issue in this proposal. The policy principles set out for “Delivering Heat and Electricity” in SPP *include*;

- Support the transformational change to a low carbon economy, consistent with national objectives and targets……
- Support the development of a diverse range of electricity generation from renewable energy technologies- including the expansion of renewable energy generation capacity and the development of heat networks
- Guide developments to appropriate locations and advise on the issues that will be taken into account when specific proposals are being assessed.

(SPP) requires planning authorities to set out in the development plan a spatial framework identifying those areas that are likely to be most appropriate for onshore wind farms as a guide for developers and communities, following a set methodology (para 161). This has been done through the spatial framework included within the Moray Local Development Plan 2015, with the proposal site partially located within an area with potential for wind farm development of turbines over 35m to tip height,

with no upper height limit identified. This is a broad-brush approach required to comply with Scottish Planning Policy and covers approximately 40% of the Moray Local Development Plan Area.

SPP (para 162) recognises the limitations of the strategic spatial framework and further requires that local development planning authorities should identify where there is strategic capacity for wind farms and areas with the greatest potential for wind development.

Following Examination of the Proposed Moray Local Development Plan 2015 (MLDP), the wording of the policy was amended by the Reporter to state that "further detail on the above assessment process will be addressed through supplementary guidance to include:

- Peat mapping once this becomes available
- Detailed mapping of constraints
- Guidance on areas with greatest potential for small/ medium and large scale wind farms."

The detailed mapping of constraints and guidance on areas with greatest potential is set out in the Moray Onshore Wind Energy Guidance 2017, with the proposal site located partially within an area identified as having opportunities for extension and repowering. Of note, the 2017 MOWE was approved following consultation and an amendment introduced by the Scottish Government and is therefore in accordance with current national guidance.

Renewable Energy Proposals (ER1)

Policy ER1 Renewable Energy Proposals sets out a comprehensive set of criteria to assess the details of the proposal against, with assessment of some criteria determined by consultee responses. The policy 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.

Proposals must be compatible with policies to safeguard and enhance the built and natural environment. They must also avoid or address any unacceptable significant adverse impacts including landscape and visual impacts, traffic, tourism/recreation interests, impact on peat land hydrology and watercourse engineering. These matters will be addressed below under the relevant headings, many of the criteria within ER1 have been satisfied or can be satisfied via condition in the event that the development was ultimately consented.

The applicant has advised that the grid connection point and precise route of cabling has not yet been determined. As stated in the supplementary guidance, grid connections should be considered when the project is at an early stage so that the

environmental effects can be considered fully. The Council's preference is for connections to be underground. Where undergrounding is deemed unviable, the alternative options must be supported fully by evidence that clearly shows that the alternative option chosen is the best method of connection. As no details have been provided in respect of connection to the grid, the environmental effects cannot be assessed, although given the size of the proposed windfarm this may likely be subject of a separate Electricity Act Section 37 application. If this were the case, Moray Council would be consulted.

Landscape and Visual Impact Assessment LVIA (PP1, ER1 and IMP1)

MLDP Policy ER1 Renewable Energy Proposals favourably considers renewable energy proposals where they meet set criteria, including the need to safeguard the built and natural environment and avoid or address any unacceptable significant landscape and visual impacts. The policy states that the council is likely to support onshore wind turbine proposals in areas with potential (as identified in the Spatial Framework) subject to detailed consideration through assessment of the details of the proposal, including its benefits and the extent to which it avoids or mitigates any unacceptable significant adverse impact.

Policy IMP1 Developer Requirements requires any development to be sensitively sited, designed and serviced, and integrated into the surrounding landscape.

Landscape and Visual Impact Assessment (LVIA) for onshore energy proposals in Moray is assessed by the Moray Onshore Wind Energy 2017 Policy Guidance (MOWE) and The Moray Wind Energy Landscape Capacity Study 2017 (MWELCS) which is a technical appendix to the MOWE.

Detailed mapping of constraints and guidance on areas with greatest potential is set out in the Moray Onshore Wind Energy (MOWE) Policy Guidance 2017. This is adopted Supplementary Guidance forming part of the statutory Local Development Plan and the Landscape Capacity Study is a material consideration, referenced in policy ER1.

The Strategy within the Guidance states that Moray enjoys a very high quality and diverse natural and built environment, which must be safeguarded from inappropriate developments…. and "there is very limited scope to accommodate further large scale wind turbine developments in Moray in landscape and visual terms."

Moray Council have been involved in the consultation process, commenting on design iterations at pre-scoping to application stage. Comments made by the Council on the developing proposal are summarised in Table 7-1 of the EIA Report. The key concerns of the Council were the size of the turbines and their location towards the edges of more extensive upland areas where they would significantly and adversely affect recreational routes, roads and settlement. It is noted that subsequently modifications to the design and layout were made, prior to application to improve

aspects of the matters raised. The extent to which the current design is acceptable is discussed below.

The proposed development as submitted straddles the Upland Moorland and Forestry (10) and the Open Rolling Uplands (11) landscape character types (LCT) identified in the 2017 Moray Wind Energy Landscape Capacity Study (MWELCS). The MWELCS concludes that there is some very limited scope for turbines 80-150m high to be accommodated in both the Open Rolling Uplands and the Upland Moorland and Forestry LCTs for turbines 80-150m high.

The constraints and guidance for development set out in the MWELCS for both these LCTs include the need to set turbines well back into the core of upland areas to reduce effect on smaller scale settled valleys and upland fringes, avoiding being sited on or nearby landmark hills, setting turbines well back from the minor road between Dallas and Upper Knockando to minimise visual impact and cumulative effects with other wind farms, avoiding significant cumulative effects experienced from the A95 (a route commonly used by tourists) and minimising effects of wind farm development seen on immediate and sensitive skylines above the Broad Farmed Valley LCT.

In terms of LCT10 *Upland Moorland and Forestry* the Guidance for development at para 16.3 of the LCS states that there is some limited scope identified for very large turbines around 150m high to be accommodated in this more extensive upland landscape. Turbines should be set well back into the core of upland areas, avoiding ridges and hills which form immediate skylines to the adjacent smaller scale settled LCT's 5a, 13 and 7. The small scale and richly diverse upper Lossie Valley to the south west of Dallas would be particularly sensitive to large turbines sited on the hills which contain this valley. Turbines should not be sited on or close by the landmark hills of Mill Buie, Carn na Cailliche, Hunt Hill and Brown Muir. Adverse effects on views from the minor road between Dallas and Knockando should be minimised by siting turbines well back from the diverse moorland and regenerating native woodland which provides an attractive feature particularly seen to the west of this route. Significant cumulative effects on the Dava Way and on the A95, which is well used by tourists, should be avoided.

In terms of LCT 11 *Open Rolling Uplands* the Guidance for development also identifies that there is some very limited scope for very large turbines around 150m high to be accommodated in this more extensive upland landscape. Turbines should be set well back into the core of upland areas, avoiding being sited on or nearby the landmark hills of Knock of Braemoray, Carn Biorach and Roy's Hill. Development on these landmark hills within this character type would impact on views from key scenic routes into Moray and could also affect views and the setting of Dava Moor and Lochindorb. Turbines should be sited to avoid smaller scale more complex landform and lochans lying to the north of Carn Kitty. Views from the minor road between Dallas and Knockando should be protected with turbines being sited well

back from the diverse moorland and regenerating woodland which provides an attractive feature particularly to the west of this route. Significant cumulative effects could be experienced from the Dava Way and from the minor Knockando to Dallas road.

Landscape effect

It is noted that the submitted LVIA finds significant adverse effects would arise on the Open Rolling Uplands and the Upland Moorland and Forestry LCTs. Effects on other LCTs lying in the Study Area would not be significant. The LVIA considers that effects on the Darnaway and Brodie Castle Inventory listed Garden and Designed Landscapes (GDL) would not be significant. Effects on the Pluscarden and Speyside AGLVs lying within Moray would also not be significant.

Officers are in agreement with the LVIA set out in the EIA Report that effects on the Open Rolling Uplands and Upland Moorland and Forestry LCTs would be significant and adverse. Also that the degree of change incurred by the proposal would result in much of the Open Rolling Uplands and the western part of the Upland Moorland and Forestry LCTs becoming 'Wind Farm Landscapes' (where wind farms comprise the key defining feature).

The LVIA correctly considers cumulative effects with other existing wind farms in determining the magnitude of change incurred by the proposed development. While effects on smaller scale features such as settlement, woodlands and farmland within the Divie and Dorback valleys, which occur in the Open Rolling Uplands are considered as factors influencing the magnitude of change in the LVIA, similar smaller scale features occurring on the fringes of the Upland Moorland and Forestry LCT are not specifically noted. These features include the more confined valley and complex landform associated with Glen Lossie at the transition with the Rolling Farmland and Forests with Valleys LCT and dispersed settlement, farmland and woodland in the Upper Knockando area at the transition with the Broad Farmed Valley LCT. The scale of this proposal would dominate these smaller scale upland fringes and contribute to the significant adverse impacts that would occur on the Upland Moorland and Forestry LCT. Similarly, the size and closeness of turbines to the Divie valley would (contrary to the views expressed in paragraph EIA Report 7.160) strongly contrast with small scale buildings, woodlands and farmland and this is demonstrated in Viewpoint 3.

Significant adverse effects would be unlikely to occur on other LCTs with the exception of the Broad Farmed Valley LCT. While operational wind farm development is already visible on containing skylines in views from parts of the Broad Farmed Valley LCT, this proposal would introduce a greater extent of wind farm development with very large turbines seen between 6-13km affecting the background of hills to the north-west of the Spey (where existing wind farms are

generally well-contained) adversely affecting the appreciation of the character of this landscape. Significant adverse effects would occur on a small part of this LCT, principally affecting the appreciation of smaller scale features in the upper Knockando area but also a small part of the narrow incised valley floor of the Spey.

Effects on designated and other valued landscapes

Effects on Brodie Castle and Darnaway Garden and Design Landscapes GDLs are unlikely to be significant due to the presence of dense screening woodlands.

Effects on the Pluscarden AGLV would not be significant due to the strong containment of this designated landscape and limited visibility of the proposal. The more incised lower sides and floor of the Spey Valley are currently designated as an Area of Great Landscape Value (AGLV). The part of the designation closest to the wind farm (generally in the Carron to Ballindalloch area) is notably diverse and intimately scaled. While there would be relatively limited visibility of the proposal from this part of the AGLV due to the screening provided by landform and woodland, a small part of the incised valley which is a key feature of the AGLV would be significantly and adversely affected by this proposal. The character of settled and more open hill slopes in the upper Knockando area would also be adversely affected. The LVIA acknowledges that the proposal would appear to increase the influence of wind energy development in views north from this AGLV with some contrasts of scale evident.

The Area of Great Landscape Value (AGLV) designation has recently been reviewed and replaced by 11 candidate Special Landscape Areas (SLA) and some of these may have been effected more detrimentally by the proposal. However, as mentioned above ‘minimal weight’ is being attached to the Proposed Moray Local Development Plan 2020 at present.

Effects on visual amenity

The applicants LVIA found that significant effects would occur on representative Viewpoints 1, 2, 3, 4, 10, 16, 25, 26, 27 and 28 which lie within Moray (both the proposal and Scenario B) (ES, 7.370). Both the proposal and Scenario B would incur similar effects on views from all the above listed viewpoints except for Ben Rinnes where significant effects would only apply to the proposal (which includes much larger turbines) in the East 2 group.

Key significant effects on views:

Officers agree with the findings of the LVIA that the effects of the proposed wind farm on views from Viewpoints 1-4, 10, 16, 25-28 would be adverse and significant.

However the susceptibility of receptors using the A95 is under-estimated in the LVIA and significant adverse effects would also occur on views from Viewpoint 13, near Brodie Croft on the A95. The assessment set out on page 7-24 of EIA Technical

Appendix 7.2 notes as a factor decreasing the magnitude of change that the Paul's Hill and Rothes I wind farms 'provide a clearly developed skyline'. Paul's Hill wind farm is however barely visible in this view with a small number of blade tips mostly seen and Rothes I is largely screened by woodland as can be seen from EIA Figure 7.35a.

Key significant visual effects include:

- Views from the Upper Knockando area and from the settlement of Carron where large turbines (in both the proposal and Scenario B) will form a focus seen in the context of the confined Spey valley (Viewpoint 10). EIA representative Viewpoint 5 north of Knockando illustrates views towards the proposal in this area and although plantation woodland presently provides screening this could change in future as felling occurs. More open views to the proposal will be possible from the minor road close to this viewpoint which is well-used by cyclists and local walkers.

- Views and the experience associated with travelling on the minor road between Dallas and Upper Knockando where this proposal would be seen in combination with the operational Berry Burn, Rothes I and II and Paul's Hill wind farms. Two representative viewpoints are considered in the LVIA from this road; Viewpoint 1 at Yellowbog and Viewpoint 27 at Scottackley. In these views, this proposal will appear much closer to the west side of the road (3.5km) than the operational Pauls Hill and Berry Burn developments which are set well back and additionally comprise much smaller turbines. The operational Rothes II wind farm lies close to the eastern side of the road at 2.29km but comprises substantially smaller turbines. Both the proposal and Scenario B would make a major contribution to the creation of a dominant 'tunnel' effect of wind turbines seen from much of this road.

- Views and the experience of walking and cycling on the Dava Way. While the operational Berry Burn windfarm is seen in the more remote part of this route near Knock of Braemoray, this proposal will extend larger turbines much closer to the route significantly affecting the appreciation of remoteness and space associated with the open basin of Moidach More. The operational Hill of Glaschyle wind farm is also visible from this route although is intermittently screened by woodland. EIA Report representative Viewpoints 2 and 3 illustrate the dominant nature of the wind farm on views.

- Views from Ben Rinnes (which is very popular with walkers) where this proposal together with the operational/under-construction wind farms of Dorenell, Hill of Towie, Rothes I and II, Paul's Hill and Berry Burn would result in significant adverse impacts in terms of contrasts of scale between turbines and on the appreciation of the Moray landscape. It is consider that both the proposal and Scenario B would incur significant effects on views from Ben Rinnes.

- Views from the A95 west of Aberlour, which although relatively fleeting, would be likely to affect the perception of the Spey Valley landscape for both local people

and the many tourists who use this route to Moray and when undertaking whisky distillery tours.

Lighting of larger turbines

EIA Report Appendix 7.6 contains the detailed assessment of night time lighting on the larger turbines within the east group. Effects have been considered on 5 representative views with significant adverse night time effects concluded to occur from Viewpoint 10 at Carron and Viewpoint 28 near Dallas. There is considerable uncertainty about the lighting of the larger turbines within the proposal with possible mitigation measures including a reduction in lighting intensity and radar activated lighting being noted in the EIA Report. It would be hoped for a development of this scale that if it were to progress, radar activated lighting would be selected. It is noted in the EIA Report that visible lighting would be design to minimise its impact at ground level, while maintaining the correct intensity at aircraft height.

Clearly if the Scenario B was progressed for the eastern grouping, aviation lighting across the development site (falling entirely beneath the 150m requirement for visible aviation lighting) would not be visible at night time, or as noticeable at dusk. This would diminish the visual impact of the development for road users and residents in line of site of the eastern grouping of turbines.

Visual effects on residential properties

The LVIA considers effects on 44 residential properties lying up to 4km from the proposed wind farm. Significant visual effects are concluded to occur on 10 of these properties although none of these effects are judged to be overbearing. The assessment of the judgement (informed by wireline visualisations) set out in Technical Appendix 7.4 appears to be reasonable in its approach. This gives more detailed information about the extent of visibility from individual properties, although it is acknowledged that subsequent tree felling, close to such properties could alter these assessments.

Cumulative landscape and visual effects

The LVIA considers operational wind farms to form part of the landscape and visual baseline. Consented and application stage wind farms are considered in the cumulative assessment with significant adverse effects concluded to arise on the western part of the Upland Moorland and Forestry and on the Open Rolling Upland LCTs. This proposal with consented wind farms would incur significant adverse effects on EIA Report Viewpoint 28. Both consented and application stage wind farms together with this proposal would result in significant adverse effects on Viewpoints 1, 10, 16, 17, 25-27 which lie within Moray.

It should be noted that the Rothes III wind farm proposal is not considered in the cumulative assessment as the application was only submitted in February 2019.

Moray Council has additionally considered the Rothes III application-stage wind farm in its appraisal of cumulative effects with this proposal. ZTV figure 8.3 and visualisations from Viewpoints 5.6.7,11 and 18 in the Rothes III EIA Report have been compared with similar visualisations in the Clash Gour EIA Report to gauge likely effects.

Cumulative landscape effects with consented and application-stage wind farms

Significant adverse cumulative effects would arise on parts of the Rolling Farmland and Forests with Valleys LCT and the Broad Farmed Valley LCTs in combination with consented and application stage wind farms. The consented Meikle Hill and Kellas wind farms would, together with this proposal, greatly increase the extent of turbines seen on the skyline of hills containing the upper Lossie valley in the Dallas area with significant combined cumulative effects arising on part of the Rolling Farmland and Forests with Valleys LCT. The Paul's Hill II and Rothes III application-stage wind farms seen in combination with the Clash Gour proposal would have a significant adverse cumulative combined effect on part of the Broad Farmed Valley LCT and the Speyside AGLV.

Cumulative visual effects with consented and application-stage wind farms

The addition of the consented Meikle Hill wind farm to a baseline which includes operational wind farms would exacerbate the dominant effect of wind farm development seen from the northern sections of the minor Dallas to Upper Knockando road. The Meikle Hill wind farm would be sited much closer to the east of the road but seen in conjunction with Rothes II and would have a compatibility in turbine size. The more extensive spread and size of turbines (in both the proposal and Scenario B), the obvious discordant contrasts in size between the existing Berry Burn turbines and the dominant effect of large turbines on the foreground of diverse pasture, moorland and small woodlands and settlement will result in the Clash Gour proposal making a major contribution to cumulative effects and creation of a dominant 'tunnel' effect of wind farms experienced from the road.

Significant cumulative effects on views would be experienced from parts of the Spey Valley in the Upper Knockando/Archiestown area where this proposal would be seen in combination with the application stage Paul's Hill II and Rothes III wind farms. Simultaneous and sequential cumulative effects would also occur from the A95 between Tormore distillery and Aberlour where this proposal would be seen together with baseline wind farms and the consented and application stage Paul's Hill II, Rothes III and Hill of Towie II wind farms.

The Clash Gour proposal would also make a major contribution to significant cumulative effects on views and the experience of the Moray landscape from Ben Rinnes particularly when seen in combination with the Rothes III and Paul's Hill II application stage proposals. The extent of operational, consented and application-stage wind farm developments seen in almost 270-degree views from Ben Rinnes would result in a perception of Moray's uplands being largely occupied by wind farms.

This proposal will make a major contribution to significant cumulative effects on views in the upper Lossie area around Dallas where it would be seen in combination with the consented Kellas and Meikle Hill wind farms and a baseline of operational wind farms (Rothes I and II).

Conclusions on the landscape and visual impacts of the proposal

While the MWELCS found there to be some scope to accommodate turbines up to 150m in the *Open Rolling Uplands* and the *Upland Moorland and Forestry* LCTs the guidance in this document clearly advises that turbines should be kept well back from more sensitive settled edges of these uplands and avoid cumulative effects experienced from Dallas to Upper Knockando minor road and on the Dava Way.

Having reviewed the detailed visualisations and EIA Report the proposal comprises turbines that are too large and sited too close to more sensitive settled landscapes lying on the upland fringes in the upper Lossie and Divie valleys and the Upper Knockando area. As a consequence, this proposal would incur significant adverse effects on the appreciation of the character of these smaller scale areas and on views from settlement, recreational routes and roads.

This proposal would change the western part of the *Upland Moorland and Forestry* LCT and much of the *Open Rolling Uplands* LCT to a landscape where wind farms comprised the dominant and defining feature. Both the proposal and the variant Scenario B would have similar effects with some improvement associated with the use of smaller 149.5m high turbines evident at Viewpoints 1, 10, 13, 16, 26, 27 and 28. However, the proximity of the turbines within the East 2 group to more sensitive upland fringes in the Upper Knockando/Upper Lossie area and their impact on longer views such as from the Spey Valley and Ben Rinnes, would result in significant adverse effects whether turbines were 176m or 149.5m. It is therefore considered that both the proposal and Scenario B are inappropriate in terms of their significant adverse impacts on landscapes and views within Moray.

The proposals therefore depart from the landscape requirements identified within policies ER1 and IMP1. The proposals also fail to comply with the guidance set out in MWELCS.

Policy PP1 Sustainable Economic Growth: While the proposal will contribute towards the transition of Moray towards a low carbon economy, the proposal is considered to be contrary to the latter part of this policy, i.e. it does not safeguard the quality of the natural environment or meet the relevant policy requirements for the reasons outlined above.

Policy IMP1 Developer Requirements: The proposal is considered to be contrary to criteria a) and b) of this policy as the scale of the proposal is not in accordance with the MOWE or MWELCS. In terms of policy IMP1 the proposal would fundamentally and simply fail to provide a development that is sensitively sited or integrated into the surrounding landscape.

Impact on residential amenity including noise, shadow flicker (ER1, EP8, EP12, IMP1)

SPP paragraph 164 states that “individual properties and those settlements not identified within the development plan will be protected by the safeguards set out in the local development plan policy criteria for determining windfarms and development management considerations accounted for when determining individual applications.” This for Moray is reflected in the material considerations in the form of the MOWE and the MWELCS which seek to direct wind energy development into the interior of Landscape Character Types.

It is noted that some turbines are as close as approximately 1.5km from the nearest properties such as Tomcork East and Ribreck, the size of the turbine and its elevation may affect their visual amenity in what is currently a location distant from or obscured from wind energy development. The scale of the proposed closest turbines will likely affect the external amenity of these properties had it not been that the properties are surrounded by woodland and are most cases orientated away from the windfarm location. These impacts may be further informed by any representations submitted directly from occupants to the ECU.

In the event of approval, the Environmental Health Manager would seek various conditions to be attached relating to noise, hours of construction, amplitude modulation effect, hours of any blasting required at borrow pits, vibration from the borrow pit operating and shadow flicker. The parameters in terms of noise limits and shadow flicker identified within the EIA Report do demonstrate that subject to conditions these effects could be adequately controlled or will not cause a detrimental affect due to the design of the proposed windfarm extension. Of note the Councils Environmental Health Section in discussion with the applicant would seek to impose a stricter daytime noise limit in the interests of protecting amenity.

The proposed turbines are sufficiently far from neighbouring residences (more 10x rotor diameter away, that shadow flicker is not identified as an issue in the EIA Report (Chapter 17) however it is noted that dependent upon micro siting one property may potentially be susceptible to effects of shadow flicker at Ribreck. An appropriate condition to safeguard against unacceptable impacts of shadow flicker should be attached to any decision to approval the windfarm, but it does not appear from submissions that the effect is unlikely to occur. The Environmental Health Manager in responding has recommended construction working hours between 0700 – 1900 hours, Monday to Friday and 0700 – 1600 hours on Saturdays only. Allowances for working outwith those hours would only be permitted with prior agreement with the council on the grounds of operational constraints and necessity.

While construction traffic using the existing site access would use the same public road as some neighbours to the site, the construction traffic would only be for a temporary period, with the normal amount of traffic going to the site, not dissimilar to the current staff attending the Berryburn windfarm. While the construction phase would see the locality becoming much busier, this would only be for the construction and decommissioning periods of the development. The extended passing places and

widening on the Half Davoch road would go some way to reducing disruption to local traffic. It should be acknowledged that the road is already a forestry haul route.

Given the distance of the proposed excavations and other construction activities from the sensitive receptors such as dwellings or other public/occupied buildings, air quality matters, assessed under policy EP12, such as dust will not be significant for the proposed development.

The applicants have also agreed (in the event of approval) to the inclusion of a condition relating to mitigating Amplitude Modulation. While the phenomenon is difficult to anticipate and may not occur, a precautionary condition providing the local authority with a mechanism to see the matter addressed is required.

The amenity impact as such does not depart from these aspects of policies ER1 and IMP1 but effects such a noise could be sufficiently controlled so as not to impact upon residential properties. This does not detract from other assessments on wider visual amenity and recreation discussed elsewhere in this report. It is noted in Chapter 17 that the proposed schedule of mitigation should minimise impacts to residents, especially during the construction phase.

Impact on natural environment (E1, E2, E3, EP10, ER1 and IMP1)

In relation to policy E1 Natura 2000 Sites and National Nature Conservation Sites and E2 Local Nature Conservation Sites and Biodiversity there are no international, national or local environmental designations are present. The site sits close on its western Boundary to the ‘Moidach More’ Special Area of Conservation which is also a biological SSSI (peat). It is noted it is separated from the site by the River Divie.

As noted in the proposals section above in the upland windfarm area of the application site, there are no national, regional or local environmental designations. The merit of the location of open countryside and the habitat it provides has however been considered in the EIA Report. The report does thoroughly consider the ecological, soil, geological and water environment implications upon the site.

Policy E3 Protected Species seeks to ensure proposals do not have an adverse effect on protected species. The EIA Report identifies a variety of species upon or using the site and most notably as moorland these were mainly birds species including raptors observed. Chapter 8 Ecology and Chapter 9 Ornithology Assessment refer to the various species surveys that were undertaken, including the water environment. Groundwater Dependent Terrestrial Ecosystems are discussed in Chapter 10: Soils, Geology and Hydrogeological Assessment. It is noted that extensive survey work has been undertaken, but SNH and the RSPB are best placed to comment if necessary on the validity of surveys undertaken. The proposed mitigation measures including a Habitat Management Plan (HMP) that would be prepared in the event of approval. The range of assessment carried out in the EIA

Report gives comfort that any HMP would adequately cover the protection of a habitat.

Evidence of certain protected species within the vicinity of the proposed windfarm extension as evidenced by the studies undertaken by the applicant would require the provision of measures to protect specific species identified such as otter and hen harrier. In the event of approval, specific management plans (such as Species Protection Plan proposed) would be required to ensure the mitigation of impacts of these species was followed through. Given the majority of works would occur in the vicinity of the existing windfarm, to existing tracks and upon open moorland, the impact is less complex than had it been wholly new development. Reliance upon existing tracks, and infrastructure exporting energy off site significantly reduced the need for invasive works, and the extension of the windfarm makes best use of existing infrastructure in seeking to increase energy production.

As referred to earlier in the report, national guidance encourages the development of renewable energy for a variety of reasons. Reduction of the reliance upon fossil fuel power generation is clearly to the benefit of the wider environment, including that of the natural environment within Moray. Notwithstanding the physical impact of the new sections of track, borrow pits, cable laying and turbines foundations, the wider benefits of increased electricity generation conform to national policies and guidance on climate change.

Flood Risk and surface water drainage (EP5, EP6, EP7, EP10 and IMP1)

The site is not identified on SEPA's flood maps as being at risk from flooding. The focus of consideration may be as to how the development affects drainage and water courses downstream.

Chapter 10 ‘Soils, Geology, and the Water Environment’ considers the impact on surface water and the windfarm has been laid out to keep all turbines at least 50m from any watercourses although there will be various water crossings. These water crossings are illustrated in the technical appendix and are designed to ensure the crossing account for any 1:200 flood event plus climate change. No departure from Policy EP6 Waterbodies is anticipated where the above approach is followed. The Moray Flood Risk Management team would seek a condition to consider the definitive designs and calculations for the water crossings to ensure that the proposals do not alter watercourse run-off rates.

The chapter refers to various imbedded and proposed mitigation measures that would be identified in any detailed Construction Environmental Management Plan. This would cover matters such as pollution prevention, runoff and sediment management, site drainage and management of concrete works. It is not intended to have any outfall to watercourses from surface water drains and it is intended to utilise SUDS measures on site where necessary. 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. A condition to this effect would be required if the development were to be approved. The principals and approach contained within the EIA Report and appendices, the imbedded mitigation in layout design, in addition to the condition referred to would ensure compliance with policy EP5 Surface Water Drainage Sustainable Urban Drainage Systems (SUDS). The mitigation measures proposed and best practice adopted would also ensure that Groundwater Dependent Terrestrial Ecosystems (GWDTE) interests are protected. Moray Flood Risk Management would require a condition confirming that post development run-off rates do not exceed pre-development run-off rates, or increase the risk of flooding to surrounding watercourses, or downstream (which would aid control of impacts on the water environment).The mitigation measures identified in Chapter 17 of the EIA Report specifically seek to protect GWDTE and the appointed Ecological Clerk of Works would monitor these areas during construction.

It is noted that the proposed substation and welfare building would propose to use a new septic tank and soakaway. The consideration of individual septic tank and soakaways is now dealt with more thoroughly under Building Standards Regulations, and if the proposal is to commence then there would be a need for a Building Warrant for the proposed building which would include the design and specifications of the proposed foul drainage. No departure from policy EP10 Foul Drainage has therefore been identified.

Water Supplies (EP4)

Policy 4 Private Water Supplies seeks to ensure that development provides evidence of wholesome and adequate supply to be provided. The applicant has assessed the likely impact on any private water supplies within the locality of the development, and this is shown in chapter 10 Hydrology, Geology, Hydrogeological Assessment. A Private Water Risk Assessment was also undertaken and this is included in the technical appendix. It is noted that several private water supplies could be affected, but mitigation relating to this possible impact is provided in the proposed mitigation measures in Chapter 17 including if temporary supply interruption occurred.

The councils Environmental Health Manager have not objected to the proposals, subject to a precautionary condition in the event of approval that would seek appropriate remedial action in the event that a private water supply is affected or disturbed. The EIA Report proposes specific mitigation in the form of monitoring of one supply, and the proposed windfarm layout has sought to avoid water courses inclusive those used for private water. For clarity no departure from the water policies would occur for either the proposal or the scenario B turbine option.

It is further noted that SEPA would comment on this matter also as separate consultee to the Energy Consents Unit.

Impact on cultural heritage (BE1, BE2, BE5, ER1)

The applicants EIA Report has identified all local archaeological features, listed buildings and inventory listed Garden and Design landscapes (GDL) within the site and beyond. There are several archaeological assets within the site, but all listed buildings and GDL lie outwith the site boundary. Several of the listed buildings such as Edinkillie House lie relatively close to the development.

The Council's Archaeologist has not objected but has recommended a condition (in the event of approval) that would ensure that any archaeology uncovered is properly assessed and recorded. The location of the proposed turbines and new tracks would not lie upon any known archaeological assets and the proposals are considered to accord with Policy BE1 Scheduled Monuments and National Designations and other related policies. This conclusion is aided by wirelines for some of the proposed development from key historic assets in the area such as the Darnaway and Brodie Castle Inventory listed Garden and Designed Landscapes (GDL) would not be significantly affected.

In terms of Policy BE2 Listed Buildings the potential impact on the setting of Listed Buildings or their curtilage visible potentially visible from the proposed development as assessed under Chapter 11 Cultural Heritage and Archaeology of the EIA Report. The Council has considered Chapter 11 and its analysis of impacts on listed properties such as Darnaway and Blervie Castles, where there will be minimal visual impact upon the listed building. The proposals are therefore considered to comply with policy BE2. The ECU will also receive separate advice on heritage matters directly from Historic Environment Scotland. There are no battlefields within the immediate or wider locality of the proposed windfarm that would be affected, and therefore the proposal complies with policy BE5 which addresses the protection of such heritage features. For clarity no departure from the heritage policies would occur for either the proposal or the scenario B turbine option.

Access and traffic impacts, and paths (T2, T5, T7, ER1 and IMP1)

Policy T2 Provision of Road Access considers both the implications of the development during and after construction and would also be relevant to any subsequent decommissioning.

In Chapter 13 Site Access, Traffic and Transport of the EIA Report has provided information relevant to assess of traffic implications. The delivery route would relate to the route previously used for Berryburn windfarm, and the applicant has provided a detailed swept path analysis for indicative turbine blades to assist in the proposed road widening proposals along the route of the U89E.

As the proposal involves the utilisation of the existing access road to Berryburn windfarm, the provision of new roads will be limited to the new spurs required to access and serve the proposed new turbines, although submissions do refer to the upgrade of the existing tracks into the windfarm The blades will be up to 65m in length. The tower sections will be segmented with the base tower sections

measuring up to 4.5m in diameter. The heaviest components are stated as either the base tower or nacelle at around 70-90 tonnes. Two cranes will be required. These will be standard, mobile cranes with likely lift capacities of 500 tonne and 200 tonne.

The proposed delivery route for abnormal loads is from the Port of Inverness along the following roads:

Stadium Road, The A9, the A96 via Nairn, the A940 (Market Street, St Catherine's Road, Grantown Road), Half Davoch Road (U98E) and then via private tracks to site.

Use of access onto the C13E Dallas – Knockando Road has also been indicated for the extraction of timber (Approx. 80% (69,200 tonnes)) associated with construction activities within the Dallas Forest and all remaining timber (approx. 20% (17,300 tonnes)) assumed to be removed via the U89E. The total 86,500 tonnes of timber is anticipated to be extracted over a 30 month period which equates to approx. 6,900 timber lorry movements.(10 two-way trips per day).

All construction HGV traffic, including importing of materials, are indicated to be routed via the A940 and Half Davoch Road (U89E).

Transportation advise that the U88E from the A940 at Glenernie and the southern section of the U89E from the A940 under the Divie Viaduct must not be used by construction traffic or vehicles associated with staff travel to the development. The developer shall investigate option(s) to gate the end of the U88E to control use of this route by development traffic.

Moray Council Roads Maintenance considers the proposed mitigation works to the public road as a result of the proposed development traffic to be inadequate. The proposed mitigation works are primarily to accommodate the abnormal delivery vehicle movements and to provide inter-visible passing places or to accommodate two-way traffic movements in sections where either vehicles would not have inter-visibility or are likely to over-run road edges. No detailed assessment of the structural integrity of the road pavement has been undertaken to demonstrate that the road is capable of sustaining the level of development traffic indicated and no strengthening of the existing pavement is proposed.

Whilst the U89E is listed as an Agreed Timber Transport route there is a concern that the cumulative effect of timber transport and construction traffic will have a disproportionate impact on the public road due to increased cyclic action which will result in reduced recovery time between heavy vehicles.

There is a potential risk of damage to the public road and road users during the construction works primarily due to the size of the components and vehicles, and the volume, frequency and tonnage of traffic. To mitigate for this a security bond to cover the repair of the road, has been identified by Moray Council Transportation officers as a robust and reasonable method to ensure that the condition of the road can be restored to a safe standard upon completion of the development. The developer

would still be required to maintain the road to a safe standard throughout the period of the construction and also for undertaking winter maintenance to an agreed standard as necessary in order to ensure the road is safe for all road users whilst the road is used by construction traffic.

Transportation and Roads Maintenance are seeking all carriageway widening up to 6m wide to be permanent works. Where widening is proposed between 6m and 7.3m wide, the extent of permanent works need to be agreed although this is likely to be required at bends in the road. The works proposed on the A940 at the Mundole junction are also required to be permanent. Widening required to facilitate the manoeuvres of abnormal loads may be formed with an unbound surface during the construction phase, and shall be covered with a good volume of soil and re-grassed after completion of deliveries. During the delivery period, road cones / bollards / barriers should be used to delineate the edge of carriageway and significant widening points.

The proposed frequency and locations of the existing passing places on Half Davoch Road are considered acceptable, although some will need to be improved to provide a passing width of 6m over a 20m length with appropriate tapers. Two areas of continuous 6m width road have been suggested, namely the S-bend running south from the Dava Way crossing and the smaller S-bend 500m north of the Craigroy Y-junction. Details will need to be agreed with Transportation.

Road Bond/Security

Prior to the commencement of any part of the development, evidence shall be provided to confirm that a Bond or other financial security has been agreed by both parties (Developer and the Roads Authority) and put in place to cover the construction period of the development and to be called in the event that the developer fails to meet their obligations under the Wear and Tear Agreement to maintain the road in a safe condition during the construction phase of the development and to restore the road to its original predevelopment condition within 1 year of the completion of construction or the development becoming operational. The bond/security shall relate to the full extent of the U89E Half Davoch from its junction to the north on the A940 (in proximity to County Houses) to the site access (which is currently indicated in proximity to Tomnamoon) and is required to mitigate the potential risks from damage to the public road occurring during the construction phase of the development.

The Council as Roads Authority as well as Planning Authority would therefore require definitive details of all abnormal loads once known. The EIA Report notes that substantive works would be required prior to any abnormal load deliveries. The 11 proposed borrow pits should however reduce or prevent the need for importing materials to the site.

Of note if the windfarm were approved a number of conditions would be required from the Transportation Manager relating road improvements, abnormal loads movements and routes, a CTMP, a wear and tear agreement and provision of passing places and road widening.

The applicant has also included the entire access route to the windfarm from the A940. This does give some comfort in terms of any suspensive matters regarding the local road network that might arise and notwithstanding the above reservations, the application is not considered at present to departure from policies T2 Access and traffic related aspects of policies ER1 Renewable Energy Proposals and IMP1 Developer Requirements. For clarity no departure from the traffic/transport policies would occur for either the proposal or the scenario B turbine option.

In relation to policy T7: Safeguarding & Promotion of Walking, Cycling, & Equestrian Networks considers the impacts of movement through and past the site. Other than the Dava Way to the west, there are limited formal walking routes through or near the site. The applicant has identified other rights of way in the vicinity. The proposed Public Access Management Plan (PAMP) referred to in 5.3.2. of the Design and Access Statement gives a good basis to protect and enhance movement through the site. The proposal would therefore comply with policy T7.

Impact on agricultural land/soil resources/minerals (ER1, ER4, ER5 and ER6)

Policies ER1 Renewable Energy Proposals, ER4 Minerals, ER5 Agriculture and ER6 soil resources presume against the loss of agricultural land, or impacting unduly upon area of peat and other carbon rich soils. ER4 considers borrow pits and is generally favourable towards them where the meet certain criteria discussed below.

Policy ER4 acknowledges that there are benefits to borrow pits where the winning of materials on site can significantly reduce the need to import materials from beyond the site. The operational, community and environmental benefits of allowing borrow pits to be located on site must be demonstrated. 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 11 borrow pits on site. It is noted that these borrow pits would be positioned across the site, with some more inconspicuous than others. Some borrow pits such as 10 and 11 may be more prevalent from the west (mainly on foot) and in the event of approval they would require to be properly restored and landscaped. A technical assessment of borrow pits is contained in technical appendix 10.9 of the EIA Report inclusive of reference to their restoration following completion. A condition requiring their restoration would be required in the event of approval.

The land subject of the proposal is host to heathland and forestry and is of no agricultural merit, so no departure from policy ER5 will arise where no prime agricultural land will be lost.

This development would see the introduction of turbines foundations, crane pads etc. into areas up upland peat, although the applicant has demonstrated in their EIA Report how the site selection sought to avoid areas of deeper peat. A Soil and Peat Management Plan has been submitted by the applicant, and propose monitoring of peat stability and compliance with best practice and mitigation proposed being adhered too. Therefore in relation to soil resources the proposal would not conflict with the requirements of policy ER6 Soil Resources and it is anticipated that the ECU would attach any conditions deemed necessary to ensure compliance with the assessment if permission were granted. For clarity no departure from the soils/minerals policies would occur for either the proposal or the scenario B turbine option.

It is noted that SEPA will also contribute to these matters in their separate consultation response.

Impact upon Woodland (ER2, E4, MOWE, Trees and Development SG, Moray Woodland and Forestry Strategy SG and Scottish Government Control of Woodland Removal Policy)

Policy ER2 Woodlands (in line with the Scottish Government policy) permits removal of woodland where it can be demonstrated that its loss is clearly outweighed by social or economic benefits at national/regional/local level, and if compensatory planting has been agreed. Policy E4 Trees and Development protects trees/woodland and where this is removed in association with development, the provision of compensatory planting (also supported by the MOWE). The Council's Supplementary Guidance 'Trees and Development' (2015) confirms that compensatory planting should be provided on a like for like basis and will be required for development proposals resulting in the loss of woodland exceeding 0.1ha. Recently adopted supplementary guidance 'Moray Woodland and Forestry Strategy (2017)' contains further advice in this regard and seeks to protect and enhance the woodlands in Moray.

Chapter 3 of the EIA Report and related appendices identify that there would be substantive tree felling, re-stocking and compensatory planting carried out. The proposed development would require 377.63ha of conifer woodland to be felled in order to facilitate the proposed development and associated infrastructure. 299.57ha of this area would be replanted, primarily with commercial conifers, and an internal network of broadleaved woodland, resulting in a requirement for 78.06ha of compensatory planting to be delivered through a Compensatory Planting Plan. The felling and re-stocking of the forestry would be phased. The present of Forestry haul routes and the maturity of the some of the woodland implies that timber extraction may occur in the location regardless of the proposed development, albeit brought forward by the current proposals.

From the above commitment for compensatory woodland planting and subject to conditions if approved, the proposal is not considered to have unacceptable significant adverse effects on forestry and as such the proposal would be considered to accord with development plan policy and guidance. It is noted that the Forestry

Commission will be separately consulted on the Section 36 and will inform the ECU on this matter also.

Social and economic issues (ED7, IMP1)

Policy ED7 Rural Business Proposals is supportive of rural business developments where there is a locational justification, sufficient infrastructure capacity, no adverse impact on natural and built heritage, and appropriate controls over siting, design, landscape and visual impact and emissions. In terms of a locational justification as the propose windfarm would share some of its existing infrastructure with Berryburn in terms of the site access, and in a location where wind energy development is already present this matter requires little further consideration. The site does also lie partially in an area with acknowledged potential for windfarm development.

The proposal does meet other criteria within this policy where the development would generate construction and business activity in the area as described in Chapter 14 Socio-economics, tourism, recreation and land use. The merit of which would be most notable during the construction period where more personnel would be present on site and the applicant states that the development would create employment and opportunities for the duration of the operation of the windfarm. The applicant makes reference to the benefits the proposed shared ownership scheme community fund payments. These matters will be discussed below, but weight must be attached to the economic benefit of a development of this scale. The applicants submitted technical report on socio-economic states the case for various benefits from the proposal.

Policy ED7 d) does require consideration to be given to siting, design, landscape and visual impact of proposed rural development The applicant make the case the development would improve tourism in terms of enhanced access to the countryside, and the implementation (via community benefit) of enhanced facilities for recreation and tourist purposes. These points are valid, and there will members of the public who enjoy visiting windfarms and utilising the improved access they create.

Consideration must also be given however to what impact upon tourism will occur from an accumulation of wind energy development upon the landscape. The section above on Landscape and Visual Impact Assessment details the implications upon landscape so do not require to be re-iterated. Fundamentally, where the north west side of Moray would increasingly become a ‘windfarm landscape’ this would detract from the experience and enjoyment of the countryside that would be the appeal to many visitors and to those using the countryside for recreation. Successive views from locations such as Viewpoint 1 Yellowbog, clearly illustrate that for either the proposal or Scenario B, the dominance of wind energy developments has reached a critical stage where their dominance would detract the natural landscape in which they are set.

For the landscape and visual concerns identified above the proposal cannot be considered to comply with all the requirement of policy ED7.

Aviation Issues (ER1, EP13 and IMP1)

MLDP Policy ER1 seeks to ensure that renewable energy proposals avoid any impacts resulting from aviation and defence constraints including flight paths and aircraft radar.

The EIA Report acknowledges potential effects of the wind farm upon aircraft activity including radar systems and there has been a history in Moray of radar conflict. While aviation conflict is a specific issue within policy ER1, the Council ordinarily relies upon the expertise of the MoD and other aviation bodies to form a view on the matter. As the Ministry of Defence, National Air Traffic (NATS) and Inverness Airport have been directly consulted by the ECU this element of compliance will be left for ECU to determine upon.

Period of consent and arrangements for decommissioning and site restoration (ER1)

Development of this nature has a limited lifespan and permission is sought for a 30 year period and if permitted it would fall to the ECU to determine the period of energy production commencement. The EIA Report contains information about decommissioning and site reinstatement, which would see the preparation of a Decommissioning Method Statement prior to decommissioning. The ECU would condition appropriate decommissioning requirement or provision of a bond to ensure that the development is in place only for the operational lifetime of the equipment and the site is appropriately restored at the end of that period, the proposal is considered to comply with the restoration requirements of Policy ER1.

Planning Obligations and community investment opportunities (IMP3)

No planning obligations contribution are due as such development would not have any impact on community facilities, schools etc. Separate to this it was decided by the Planning and Regulatory Services Committee on the 18th October 2012 to remove the pursuit or contribution of funds to "Community Benefit Funds" from the development management system.

The setting up of a community benefit fund should not be a matter that influences the planning decision and would be arranged separate to the planning process in the event that permission is granted. This approach is highlighted in Annex A ‘Defining a Material Consideration’ of the Circular 3/2013: Development Management Procedures.

The applicants are separately offering community groups the opportunity to invest a ‘Community Shared Ownership’ scheme that would see communities investing in and sharing the profit from the development. This matter being and opportunity for

individual communities may have positive outcomes, but it is difficult to attach any material weight too at this stage. It is therefore being treated as a separate matter to the consideration of the Section 36 consultation. This is consistent with the decision by Scottish Ministers in relation to Section 36 Pencloe Wind Energy Ltd decision in East Ayrshire in December 2018 where community shared ownership was not taken into account.

Conclusion

This proposal represents a significant renewable energy development for Moray. The scheme is in line with aspects of local and national policy on the expansion of renewable energy including its contribution to renewable energy targets and the furtherance of a sustainable rural economy within Moray. The development will not adversely impact on heritage and environmental matters, subject to appropriate measures and conditions being put in place.

In this case, for the reasons identified in the above section on landscape and visual impact the proposed turbines (by virtue of their size and location) would have a detrimental impact upon the landscape character of this part of Moray and upon tourist and recreational interests. Moray is clearly host to a number of wind energy developments, but the capacity of the landscape and the need to preserve the natural landscape for the benefits of other interests means that wind energy proposals must not dominate the landscape (inclusive of views from the AGLV).

On balance, the benefits of the proposal would not outweigh the detrimental landscape and visual impact. Officers consider that the potential for larger turbines identified within the 2017 Moray Wind Energy Landscape Capacity Study (MWELCS) could be re-visited by the applicant. This also results in a departure from ED7, E7, ER1 and IMP1 where the development would not be sensitively sited, designed and serviced, and integrated into the surrounding landscape, preventing a negative landscape and visual impact.

<u>Recommended decision to Committee</u>

The proposed development is contrary to Moray Local Development Plan 2015 policies PP1 Sustainable Economic Growth, ED7 Rural Business Proposals, ER1 Renewable Energy Proposals, E7 Areas of Great Landscape Value and Impacts Upon the Wider Landscape, IMP1 Developer Requirements and Moray Onshore Wind Energy 2017 Policy Guidance and The Moray Wind Energy Landscape Capacity Study 2017 for the following reasons;-

I. The turbines wuold be located close to the edges of the areas of potential for larger turbines within both Landscape Character Type (LCT) 10 Upland Moorland and Forestry and LCT 11 ‘Open Rolling Upland’. The proposed turbines would (both the proposed scheme and for Scenario B) by virtue of

their size and position have significant adverse effects and dominate the sensitive settled landscapes lying on the upland fringes in the upper Lossie and Divie valleys and the Upper Knockando area.

II. The proposal (both the proposal and Scenario B) are inappropriate in terms of their significant adverse impacts on landscapes and views within Moray. Views from varying distances such as those from Ben Rinnes, the A95 south of Aberlour and the Dava Way would excessively diminish the recreational and visitor experience where the countryside would be overly populated with windfarm developments.

III. The proposal would increase the influence of wind energy development in views north from a limited area within the Spey Valley Area of Great Landscape Value (AGLV) near Upper Knockando with some contrasts of scale evident. As development must not diminish the landscape quality within this designation the policy directly guides wind energy development proposals to compliance with the 2017 Moray Wind Energy Landscape Capacity Study (MWELCS). The proposal departing from the MWELCS therefore has an unacceptable impact upon the AGLV where the landscape would be detrimentally affected.

IV. The proposed windfarm would result in complex and unacceptable cumulative views of wind energy development (in combination, successive and sequential views). These cumulative views are illustrated in the various Combined Zones of Theoretical Visibility (CZTV) figures. The propose windfarm from varied locations within Moray would bring into view an agglomeration of windfarms, with no distinct separation. At present Hill of Glaschyle, Berryburn and Pauls Hill are largely discernible from each other, but the proposed windfarm would see almost continual wind turbines from the Altyre Estate south ward to the Spey Valley. This would result in significant adverse cumulative effects upon the landscape and upon visual amenity resulting in the creation of a ‘windfarm landscape’. The cumulative impact for Scenario B would be slightly lessened by a reduction in turbine heights, but would still result in significant adverse cumulative effects as described above.

RELEVANT POLICIES OF THE MORAY LOCAL DEVELOPMENT PLAN 2015

Primary Policy PP1: Sustainable Economic Growth

The Local Development Plan identifies employment land designations to support requirements identified in the Moray Economic Strategy. Development proposals which support the Strategy and will contribute towards the delivery of sustainable economic growth and the transition of Moray towards a low carbon economy will be supported where the quality of the natural and built environment is safeguarded and the relevant policies and site requirements are met.

Primary Policy PP2: Climate Change

In order to contribute to reducing greenhouse gas emissions, developments of 10 or more houses and buildings in excess of 500 sq m should address the following:

- Be in sustainable locations that make efficient use of land and infrastructure
- Optimise accessibility to active travel options and public transport
- Create quality open spaces, landscaped areas and green wedges that are well connected
- Utilise sustainable construction techniques and materials and encourage energy efficiency through the orientation and design of buildings
- Where practical, install low and zero carbon generating technologies
- Prevent further development that would be at risk of flooding or coastal erosion
- Where practical, meet heat and energy requirements through decentralised and local renewable or low carbon sources of heat and power
- Minimise disturbance to carbon rich soils and, in cases where it is agreed that trees can be felled, to incorporate compensatory tree planting.

Proposals must be supported by a Sustainability Statement that sets out how the above objectives have been addressed within the development. This policy is supported by supplementary guidance on climate change.

Policy ED7: Rural Business Proposals

New business developments, or extensions to existing industrial/economic activities in the countryside, will be permitted if they meet all of the following criteria:

a) There is a locational justification for the site concerned, particularly if there is serviced industrial land available in a nearby settlement.

b) There is capacity in the local infrastructure to accommodate the proposals, particularly road access, or that mitigation measures can be achieved.

c) Account is taken of environmental considerations, including the impact on natural and built heritage designations, with appropriate protection for the natural environment; the use of enhanced opportunities for natural heritage integration into adjoining land.

d) There is careful control over siting, design, landscape and visual impact, and emissions. In view of the rural location, standard industrial estate/urban designs may not be appropriate.

Proposals involving the rehabilitation of existing properties (e.g. farm steadings) to provide business premises will be encouraged, provided road access and parking arrangements are acceptable.

Where noise emissions or any other aspect is considered to be incompatible with surrounding uses, there will be a presumption to refuse.

Outright retail activities will be considered against retail policies, and impacts on established shopping areas, but ancillary retailing (e.g. farm shop) will generally be acceptable.

Policy E1: Natura 2000 Sites and National Nature Conservation Sites

Natura 2000 designations

Development likely to have a significant effect on a Natura 2000 site which is not directly connected with or necessary to its conservation management must be subject to an appropriate assessment of the implications for its conservation objectives. Proposals will only be approved where the appropriate assessment has ascertained that there will be no adverse effect on the integrity of the site.

In exceptional circumstances, proposals that could affect the integrity of a Natura site may be approved where;

a) there are no alternative solutions; and

b) there are imperative reasons of over-riding public interest including those of a social or economic nature, and

c) if compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.

For Natura 2000 sites hosting a priority habitat or species (as defined in Article 1 of the Habitats Directive), prior consultation with the European Commission via Scottish Ministers is required unless either the imperative reasons of overriding public interest relate to human health, public safety or beneficial consequences of primary importance to the environment.

National designations

Development proposals which will affect a National Park, Site of Special Scientific Interest (SSSI) or National Nature Reserves will only be permitted where:

a) the objectives of designation and the overall integrity of the area will not be compromised; or

b) any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

Policy E2: Local Nature Conservation Sites and Biodiversity

Development likely to have a significant adverse effect on Local Nature Reserves, native woodlands identified in the Native Woodland Survey of Scotland, raised peat bog, wetlands, protected species, wildlife sites or other valuable local habitat or conflict with the objectives of Local Biodiversity Action Plans will be refused unless it can be demonstrated that;

a) local public benefits clearly outweigh the nature conservation value of the site, and

b) there is a specific locational requirement for the development

Where there is evidence to suggest that a habitat or species of importance exists on the site, the developer will be required at his own expense to undertake a survey of the site's natural environment.

Where development is permitted which could adversely affect any of the above habitats or species the developer must put in place acceptable mitigation measures to conserve and enhance the site's residual conservation interest.

Development proposals should protect and where appropriate, create natural and semi natural habitats for their ecological, recreational and natural habitat values. Developers will be required to demonstrate that they have considered potential improvements in habitat in the design of the development and sought to include links with green and blue networks wherever possible.

Policy E3: Protected Species

Proposals which would have an adverse effect on a European protected species will not be approved unless;

- there is no satisfactory alternative; and

- the development is required to preserve public health or public safety, or for other reasons of overriding public interest, including those of a social or economic nature, and beneficial consequences of primary importance for the environment; and the development will not be detrimental to the maintenance of the population of species concerned at a favourable conservation status of the species concerned.

Proposals which would have an adverse effect on a nationally protected species of bird will not be approved unless;

- There is no other satisfactory solution

- The development is necessary to preserve public health or public safety

- The development will not be detrimental to the conservation status of the species concerned.

Proposals which would have an adverse effect on badgers or their setts must be accompanied by a Badger Protection Plan to avoid, minimise or compensate for impacts. A licence from Scottish Natural Heritage may be required as well as planning permission. Where a protected species may be affected a species survey should be prepared to accompany the application to demonstrate how any offence under the relevant legislation will be avoided.

Policy E4: Trees and Development

The Council will serve Tree Preservation Orders (TPO's) on potentially vulnerable trees which are of significant amenity value to the community as a whole, or trees of significant biodiversity value.

Within Conservation Areas the Council will only agree to the felling of dead, dying, or dangerous trees. Trees felled within Conservation Areas or subject to TPO protection should be replaced, unless otherwise agreed with the Council.

Woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits. Where woodland is removed in association with development, developers will generally be expected to provide compensatory planting. The Council may attach conditions on planning consents ensuring that existing trees and hedges are retained or replaced.

Development proposals will be required to meet the requirements set out in the Council's Trees and Development Supplementary Guidance. This includes carrying out a tree survey to identify trees on site and those to be protected. A safeguarding distance should be retained between mature trees and proposed developments.

When imposing planting or landscaping conditions, native species should be used and the Council will seek to promote green corridors.

Proposals affecting woodland will be considered against Policy ER2.

Policy E6: National Parks and National Scenic Areas (NSA)

Development that affects National Parks or National Scenic Areas will only be permitted where:

- the objectives of designation and the overall integrity of the area will not be compromised; or

- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

Policy E7: Areas of Great Landscape Value (AGLV) and impacts upon the wider landscape

Development proposals which would have a significant adverse effect upon an Area of Great Landscape Value will be refused unless:

a) They incorporate the highest standards of siting and design for rural areas

b) They will not have a significant adverse effect on the landscape character of the area, in the case of wind energy proposals the assessment of landscape impact will be made with reference to the terms of the Moray Wind Energy Landscape Capacity Study.

c) They are in general accordance with the guidance in the Moray and Nairn Landscape Character Assessment.

New developments should be designed to reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area in which they are proposed.

Proposals for new hill tracks should ensure that their alignment minimises visual impact; avoids sensitive natural heritage features, avoids adverse impacts upon the local hydrology; and takes account of the likely type of recreational use of the track and wider network.

Policy BE1: Scheduled Monuments and National Designations

National Designations

Development Proposals will be refused where they will adversely affect Scheduled Monuments and nationally important archaeological sites or their settings unless the developer proves that any significant adverse effect on the qualities for which the site has been designated are clearly outweighed by social or economic benefits of national importance.

Local Designations

Development proposals which will adversely affect sites of local archaeological importance or the integrity of their settings will be refused unless it can be demonstrated that;

a) Local public benefits clearly outweigh the archaeological value of the site, and

b) There is no suitable alternative site for the development, and

c) Any adverse effects can be satisfactorily mitigated at the developers expense

Where in exceptional circumstances, the primary aim of preservation of archaeological features in situ does not prove feasible, the Council shall require the excavation and researching of a site at the developers expense.

The Council will consult Historic Scotland and the Regional Archaeologist on development proposals which may affect Scheduled Monuments and archaeological sites.

Policy BE2: Listed Buildings

The Council will encourage the protection, maintenance, enhancement and active use of listed buildings.

Development proposals will be refused where they would have a detrimental effect on the character, integrity or setting of the listed building. Alterations and extensions to listed buildings or new developments within their curtilage must be of the highest quality, and respect the original structure in terms of setting, scale, materials and design.

Enabling development may be acceptable where it can be shown to be the only means of retaining a listed building(s). The resulting development should be of a high design quality protecting the listed building(s) and their setting and be the minimum necessary to enable its conservation and re-use.

No listed building should be demolished unless it can be clearly demonstrated that every effort has been made to retain it. Where demolition of a listed building is proposed it must be shown that;

a) The building is not of special interest; or

b) The building is incapable of repair; or

c) The demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or

d) The repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable price.

New development should be of a comparable quality and design to retain and enhance special interest, character and setting of the listed building(s).

Buildings which are allowed to fall into a state of disrepair may be placed on the Buildings at Risk Register and remedial works to buildings in disrepair may be enforced in the public interest.

Proposals should be in accordance with guidance set out in the Scottish Historic Environment Policy (SHEP) and the Managing Change in the Historic Environment guidance note series.

EP4: Private Water Supplies

All proposals to use a private water supply must demonstrate that a wholesome and adequate supply can be provided. Applicants will be required to 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. The applicant will also be 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.

Policy EP5: Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)

Surface water from development should be dealt with in a sustainable manner that has a neutral effect on the risk of flooding or which reduces the risk of flooding. The method of dealing with surface water should also avoid pollution and promote habitat enhancement and amenity. All sites should be drained by a sustainable drainage system (SUDS). Drainage systems should contribute to enhancing existing "blue" and "green" networks while contributing to place-making, biodiversity, recreational, flood risk and climate change objectives.

Specific arrangements should be made to avoid the issue of permanent SUD features becoming silted-up with construction phase runoff. Care must be taken to avoid the introduction of invasive non-native species during the construction of all SUD features.

Applicants must agree provisions for long term maintenance of the SUDS scheme to the satisfaction of the Council in consultation with SEPA and Scottish Water as appropriate.

A Drainage Assessment (DA) will be required for developments of 10 houses or more, industrial uses, and non-residential proposals of 500 sq metres and above.

The Council's Flood Team will prepare Supplementary Guidance on surface water drainage and flooding.

Policy EP6: Waterbodies

Proposals must be designed to avoid adverse impacts upon water environment and should seek opportunities for restoration. The Council will only approve proposals impacting on water features where the applicant provides a satisfactory report that demonstrates that any impact (including cumulative) on water quality, water quantity, physical form (morphology), river hydrology, sediment transport
and erosion, nature conservation, fisheries, recreational, landscape, amenity, and economic and social impact can be adequately mitigated.

The report should consider existing and potential impacts up and downstream of the development particularly in respect of potential flooding. The Council operates a presumption against the culverting of watercourses and any unnecessary engineering works in the water environment.

A buffer strip of at least 6m between any new development and all water features is required. These should be designed to link with blue and green networks and can contribute to open space requirements. Developers may be required to make improvements to the water environment as part of the development.

Policy EP7: Control of Development in Flood Risk Areas

New development should not take place if it would be at significant risk of flooding from any source or would materially increase the possibility of flooding elsewhere. Proposals for development in areas considered to be at risk from flooding will only be permitted where a flood risk assessment to comply with the recommendations of National Guidance and to the satisfaction of both the Scottish Environment Protection Agency and the Council is provided by the applicant. This assessment must demonstrate that any risk from flooding can be satisfactorily mitigated without increasing flood risk elsewhere. Due to continuing changes in climatic patterns, the precautionary principle will apply when reviewing any application for an area at risk from inundation by floodwater.

The following limitations on development will also be applied to take account of the degree of flooding as defined in Scottish Planning Policy;

a) In areas of little to no risk (less than 0.1%) there will be no general constraint to development.

b) Areas of low to medium risk (0.1% to 0.5%) will be considered suitable for most development. A flood risk assessment may be required at the upper end of the probability range (i.e. close to 0.5%), and for essential civil infrastructure and most vulnerable uses. Water resistant materials and construction may be

required. Areas within this risk category will generally not be suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during extreme flooding events.

c) Areas of medium to high risk (0.5% or above) may be suitable for:

- Residential, institutional, commercial and industrial development within built up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood management plan;

- Essential infrastructure within built up areas, designed and constructed to remain operational during floods and not impede water flow;

- Some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place and

- Job related accommodation e.g. for caretakers or operational staff.

Areas within these risk categories will generally not be suitable:

- Civil infrastructure and most vulnerable uses;

- Additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water based recreation, agriculture, transport or utilities infrastructure (which should be designed to be operational during floods and not impede water flow), and

- An alternative, lower risk location is not available and

- New caravan and camping sites.

Where development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. Water resistant materials and construction should be used where appropriate. Elevated buildings on structures such as stilts are unlikely to be acceptable.

Policy EP8: Pollution

Planning applications for developments that may cause significant pollution in terms of noise (including RAF aircraft noise), air, water and light emissions will only be approved where a detailed assessment report on the levels, character

and transmission of the potential pollution is provided by the applicant. The assessment should also demonstrate how the pollution can be appropriately mitigated. Where the Council applies conditions to the consent to deal with pollution matters these may include subsequent independent monitoring of pollution levels.

Policy EP9: Contaminated Land

Development proposals on potentially contaminated land will be approved provided that:

a) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment; and

b) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/or treatment of any hazardous material.

The Council recommends early contact with the Environmental Health Section, which can advise what level of information will need to be supplied.

Policy EP10: Foul Drainage

All development within or close to settlements (as defined in the Local Development Plan) of more than 2,000 population equivalent will require to connect to the public sewerage system unless connection to the public sewer is not permitted due to lack of capacity. In such circumstances, temporary provision of private sewerage systems may be allowed provided Scottish Water has confirmed investment to address this constraint has been specifically allocated within its current Quality Standards Investment Programme and the following requirements apply:

- Systems shall not have an adverse impact on the water environment;

- Systems must be designed and built to a standard which will allow adoption by Scottish Water.

- Systems must be designed such that they can be easily connected to a public sewer in the future. Typically this will mean providing a drainage line up to a likely point of connection.

All development within or close to settlements (as identified in the Local Development Plan) of less than 2000 population equivalent will require to

connect to public sewerage system except where a compelling case is made otherwise. Factors to be considered in such a case will include size of the proposed development, whether the development would jeopardise delivery of public sewerage infrastructure and existing drainage problems within the area. Where a compelling case is made, a private system may be acceptable provided it does not pose or add risk of detrimental effect, including cumulative, to the natural and built environment, surrounding uses or amenity of the general area. Consultation with Scottish Environment Protection Agency will be undertaken in these cases.

Where a private system is deemed to be acceptable (within settlements as above or small scale development in the countryside) a discharge to land (either full soakaway or raised mound soakaway) compatible with Technical Handbooks (which sets out guidance on how proposals may meet the Building (Scotland) Regulations 2004) should be explored prior to considering a discharge to surface waters.

Policy EP12: Air Quality

Development proposals, which, individually or cumulatively, may adversely affect the air quality in an area to a level which could cause harm to human health and wellbeing or the natural environment must be accompanied by appropriate provisions (deemed satisfactory to the Council and Scottish Environment Protection Agency as appropriate) which demonstrate how such impacts will be mitigated.

Some existing land uses may have a localised detrimental effect on air quality, any proposals to locate development in the vicinity of uses and therefore introduce receptors to these areas (e.g. housing adjacent to busy roads) must consider whether this would result in conflict with the existing land use. Proposals which would result in an unacceptable conflict with existing land use and air quality will not be approved.

Policy ER1: Renewable Energy Proposals

All Renewable Energy Proposals

All renewable energy proposals will be considered favourably where they meet the following criteria:

i) They are compatible with policies to safeguard and enhance the built and natural environment

ii) They do not result in the permanent loss or damage of agricultural land

iii) They avoid or address any unacceptable significant adverse impacts including:

- Landscape and visual impacts
- Noise impacts
- Electromagnetic disturbance
- Impact on watercourse engineering
- Impact on peat land hydrology
- Electromagnetic disturbance
- Impact on watercourse engineering
- Traffic Impact
- Ecological Impact
- Impact on tourism and recreational interests

Onshore wind turbines

In addition to the assessment of impact outlined above the following considerations will apply:

a) The Spatial Framework

Areas of Significant Protection*: where the council will apply significant protection and proposals will only be appropriate in circumstances where any significant effects on the qualities of these areas can be substantially overcome by siting, design and other mitigation.

Areas with Potential: where the council is likely to support proposals subject to detailed consideration.

* This protection will also apply to areas with carbon rich soils, deep peat and priority peatland habitat. This constraint is not currently included on the spatial strategy mapping but will be addressed through Supplementary Guidance once the relevant data becomes available.

b) Detailed Consideration

The proposal will be determined through assessment of the details of the proposal, including its benefits, and the extent to which it avoids or mitigates any unacceptable significant adverse impact. Detailed assessment** of impact will include consideration of the extent to which:

Landscape and visual impact:

- The proposal addresses the Guidance set out in the Moray Windfarm Landscape Capacity Study
- The landscape is capable of accommodating the development without significant detrimental impact on landscape character or visual amenity
- The proposal is appropriate to the scale and character of its setting, respects the main features of the site and the wider environment and addresses the potential for mitigation.

Cumulative Impact

- Any detrimental impact from two or more wind energy developments and the potential for mitigation is addressed.

Impact on local communities

- The proposal addresses any detrimental impact on communities and local amenity including the impacts of noise, shadow flicker, visual dominance and the potential for associated mitigation.

Other

- The proposal addresses any impacts arising from location within an area subject to potential aviation and defence constraints including flight paths and aircraft radar.
- The proposal avoids or adequately resolves other impacts including on the natural and historic environment, cultural heritage, biodiversity; forest and woodlands; and tourism and recreational interests- core paths, visitor centres, tourist trails and key scenic routes.
- The proposal addresses any physical site constraints and appropriate provision for decommissioning and restoration.

** Further detail on the above assessment process will be addressed through supplementary guidance to include:
  • Peat mapping once this becomes available
  • Detailed mapping of constraints
  • Guidance on areas with greatest potential for small/medium and large scale wind farms.

Biomass

Proposals for the development of commercial biomass facilities will be supported if the following criteria are met.

- Proposals should confirm which form of biomass will fuel the plant and if a mixture of biomass is proposed then what percentage split will be attributed to each fuel source.

- Proposals can demonstrate that they have taken account of the amount of supply fuel over the life of the project.

- When considering woody biomass proposals the scale and location of new development is appropriate to the volume of local woodfuel available.

- The location must have suitable safe access arrangements and be capable of accommodating the potential transport impacts within the surrounding roads network.

- A design statement should be submitted, which should include photomontages from viewpoints agreed by the Council.

- There should be a locational justification for proposals outwith general employment land designations. The proposed energy use, local heat users and connectivity of both heat users and electricity networks should be detailed. Proposals which involve potential or future heat users will not be supported unless these users can be brought online in conjunction with the operation of the plant.

- Details of the predicted energy input and output from the plant demonstrating the plant efficiency and utilisation of heat should be provided.

- Where necessary appropriate structural landscaping must be provided to assist the development to integrate sensitively.

- The criteria set out in relation to other renewables should also be met.

The Council will consult with the Forestry Commission Scotland (FCS) to help predict potential woodfuel supply projections in the area.

Policy ER2: Development in Woodlands

All woodlands

Development which involves the loss of woodlands will be refused where the development would result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the forest. Woodland removal will only be supported where it can be demonstrated that the impact on the woodland is

clearly outweighed by social or economic benefits of national, regional and local importance, and if a programme of proportionate compensatory planting has been agreed with the Planning Authority.

Protected Woodlands

Woodland removal within native woodlands, ancient semi natural and woodlands within sites protected under the terms of policies E1 and E2 will not be supported.

Tree surveys and new planting

Development proposals must take account of the Council's Trees and Development supplementary guidance. The Council will require the provision of compensatory planting to mitigate the effects of woodland removal.

Where appropriate the Council will seek opportunities to create new woodland and plant native trees in new development proposals. If a development would result in the severing or impairment of connectivity between important woodland habitats, mitigation measures should be identified and implemented to support the wider green network.

Policy ER3: Safeguarding Mineral Reserves

The Council will safeguard all existing workable mineral reserves/operations from incompatible development which is likely to prejudice it unless;

- There are no alternative sites for development, and
- The extraction of mineral resources will be completed before development commences.

Policy ER4: Minerals

The Council will support, in principle, mineral extraction in the following circumstances;

- Extension to existing operations/sites,
- Reopening of a dormant quarry,
- A reserve underlying a proposed development where it would be beneficial to extract prior to development.

New minerals sites will only be permitted where it has been demonstrated that existing reserves have been exhausted or are no longer viable and for construction aggregates it has been evidenced that there is less than the minimum 10 year supply available.

Borrow pits will be supported to allow the extraction of minerals near to or on the site of associated development (e.g. wind farm and roads construction, forestry and agriculture) provided it can be demonstrated that the operational, community and environmental benefits of the proposal can be evidenced. These consents will be time limited, tied to the proposal and must be accompanied by full restoration proposals and aftercare.

Taking into account PAN 50 Controlling the Environmental Effects of Surface Minerals Workings sufficient information should be provided to enable a full assessment of the likely effects of the mineral development together with proposals for appropriate control, mitigation and monitoring.

Minerals developments should avoid or satisfactorily mitigate impacts, in determining proposals the Council will give consideration to the following issues;

- Impact on natural heritage and historic environment including landscape and visual impact,

- Disturbance and disruption from noise, blasting vibration, and potential pollution of land, air and water,

- Effect on communities,

- Cumulative impact,

- Transport impacts,

- Restoration and aftercare proposals.

Once a mineral working has ceased the land should be reinstated at the earliest opportunity. Restoration should be designed and implemented to the highest standard and after uses should result in environmental improvement and add to the cultural, recreational or environmental assets of the area. If operators cannot demonstrate that their programme of restoration (including the necessary financing, phasing and aftercare of the sites) is sufficient a financial guarantee may be sought;

Proposals should be accompanied by an Extractive Waste Management plan.

Policy ER5: Agriculture

The Council will support the agricultural sector by:

a) Presuming against irreversible development on prime agricultural land (classes 1,2 and 3.1) unless the site is required for settlement expansion and there is no other suitable alternative.

b) Supporting farm diversification proposals in principle and supporting business proposals which are intended to provide additional income/ employment on farms.

Proposals for agricultural buildings with a locational requirement will be subject to visual, landscape and amenity considerations and considered against the relevant environmental policies.

Policy ER6: Soil Resources

Where peat and other carbon rich soils are present disturbance to them may lead to the release of carbon dioxide contributing to the greenhouse gas emissions. Developers should assess the likely effects associated with any development work and aim to mitigate any adverse impacts arising.

For major developments, minerals and large scale (over 20MW) renewable energy proposals, development will only be permitted where it has been demonstrated that unnecessary disturbance of soils, 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.

Major developments, minerals and large scale renewable energy proposals on undisturbed areas of deep peat (defined as 1.0m or more) will only be permitted for these uses where:

a) the economic, social and/or environmental benefits of the proposal outweigh any potential detrimental effect on the environment (in particular with regard to the release of carbon dioxide into the atmosphere); and

b) it has been clearly demonstrated that there is no viable alternative.

Where development on undisturbed peat is deemed acceptable, a peat depth survey must be submitted which demonstrates that the areas of deepest peat

have been avoided. Where required, a peat management plan must also be submitted which demonstrates that unnecessary disturbance, degradation or erosion of peat is avoided.

Large scale commercial peat extraction will not be permitted.

Policy T2: Provision of Access

The Council will require that new development proposals are designed to provide the highest level of access for end users including residents, visitors, and deliveries appropriate to the type of development and location. Development must meet the following criteria:

- Proposals must maximise connections and routes for pedestrian and cyclists, including links to active travel and core path routes, to reduce travel demands and provide a safe and realistic choice of access.

- Provide access to public transport services and bus stop infrastructure where appropriate.

- Provide appropriate vehicle connections to the development, including appropriate number and type of junctions.

- Provide safe entry and exit from the development for all road users including ensuring appropriate visibility for vehicles at junctions and bends.

- Provide appropriate mitigation/modification to existing transport networks where required to address the impacts of new development on the safety and efficiency of the transport network. This may include but would not be limited to, the following measures, passing places, road widening, junction enhancement, bus stop infrastructure and drainage infrastructure. A number of potential road improvements have been identified in association with the development of sites the most significant of these have been shown on the Settlement Map as TSPs.

- Proposals must avoid or mitigate against any unacceptable adverse landscape or environmental impacts.

Developers should give consideration to aspirational core paths (under Policy 2 of the Core Paths Plan) and active travel audits when preparing proposals.

New development proposals should enhance permeability and connectivity, and ensure that opportunities for sustainable and active travel are protected and improved.

The practicality of use of public transport in more remote rural areas will be taken into account however applicants should consider innovative solutions for access to public transport.

When considered appropriate by the planning authority developers will be asked to submit a Transport Assessment and Travel Plan.

Significant travel generating proposals will only be supported where:

- Direct links to walking and cycling networks are available;

- Access to public transport networks would involve walking no more than 400m;

- It would not have a detrimental effect on the capacity of the strategic road and/or rail network; and

- A Transport Assessment identifies satisfactory mechanisms for meeting sustainable transport requirements and no detrimental impact to the performance of the overall network.

Access proposals that have a significant adverse impact on the surrounding landscape and environment that cannot be mitigated will be refused.

Policy T5: Parking Standards

Proposals for development must conform with the Council's current policy on parking standards.

Policy T7: Safeguarding & Promotion of Walking, Cycling, & Equestrian Networks

The Council will promote the improvement of the walking, cycling, and equestrian networks within Moray. Priority will be given to the paths network including Core Paths and the wider Moray Paths Network. There are several long distance routes that cross Moray including the Speyside Way, Dava Way, Moray Coastal Trail and Aberdeen to Inverness National Cycle Route.

Development proposals that would have an unacceptable impact on access rights, core paths, rights of way, long distance routes and other access routes that cannot be adequately mitigated will not be permitted. Where a proposal will affect any of these, proposals must:

- incorporate the route within the site layout and the routes amenity value must be maintained or enhanced; or

- provide alternative access that is no less attractive and is safe and convenient for the public to use.

Policy IMP1: Developer Requirements

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It should comply with the following criteria

a) The scale, density and character must be appropriate to the surrounding area.

b) The development must be integrated into the surrounding landscape

c) Road, cycling, footpath and public transport must be provided at a level appropriate to the development. Core paths; long distance footpaths; national cycle routes must not be adversely affected.

d) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water.

e) Where of an appropriate scale, developments should demonstrate how they will incorporate renewable energy systems, and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria.

f) Make provision for additional areas of open space within developments.

g) Details of arrangements for the long term maintenance of landscape areas and amenity open spaces must be provided along with Planning applications.

h) Conservation and where possible enhancement of natural and built environmental resources must be achieved, including details of any impacts arising from the disturbance of carbon rich soil.

i) Avoid areas at risk of flooding, and where necessary carry out flood management measures.

j) Address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.

k) Address and sufficiently mitigate any contaminated land issues

l) Does not sterilise significant workable reserves of minerals or prime quality agricultural land.

m) Make acceptable arrangements for waste management.

Policy IMP2: Development Impact Assessments

The Council will require applicants to provide impact assessments in association with planning applications in the following circumstances:

a) An Environmental Assessment (EA) will be required for developments that are likely to have significant environmental affects under the terms of the regulations.

b) A Transport Assessment (TA) will be sought where a change of use or new development is likely to generate a significant increase in the number of trips being made. TAs should identify any potential cumulative effects which would need to be addressed. Transport Assessments should assess the effects the development will have on roads and railway infrastructure including stations and any crossings. Transport Scotland (Trunk Roads) and Network Rail (Railway) should be consulted on the scoping of Transport Assessments. Moray Council's Transportation Service can assist in providing a screening opinion on whether a TA will be sought.

c) In order to demonstrate that an out of centre retail proposal will have no unacceptable individual or cumulative impact on the vitality and viability of the identified network of town centres, a Retail Impact Assessment will be sought where appropriate. This may also apply to neighbourhood shops, ancillary retailing and recreation/tourism retailing.

d) Where appropriate, applicants may be asked to carry out other assessments (e.g. noise; air quality; flood risk; drainage; bat; badger; other species and habitats) in order to confirm the compatibility of the proposal.

Policy IMP3: Developer Obligations

Contributions will be sought from developers in cases where, in the Council's view, a development would have a measurable adverse or negative impact upon existing infrastructure, community facilities or amenity, and such contributions would have to be appropriate to reduce, eliminate or compensate for that impact.

Where the necessary contributions can be secured satisfactorily by means of planning conditions attached to a planning permission, this should be done, and only where this cannot be achieved, for whatever reason, the required contributions should be secured through a planning agreement.

The Council will prepare supplementary guidance to explain how the approach will be implemented in accordance with Circular 3/2012 on Planning Obligations. This will detail the necessary facilities and infrastructure and the scale of contributions likely to be required.

In terms of affordable housing, developments of 4 or more units will be expected to make a 25% contribution, as outlined in policy H8.

PROPOSED MORAY LOCAL DEVELOPMENT PLAN 2020 (LIKELY RELEVANT POLICIES)

PP2 SUSTAINABLE ECONOMIC GROWTH.

"Development proposals for employment land which support the Moray Economic Strategy to deliver sustainable economic growth will 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. "

DP1 DEVELOPMENT PRINCIPLES.

This policy applies to all developments, including extensions and conversions and will be applied proportionately.

The Council will require applicants to provide impact assessments in order to determine the impact of a proposal. Applicants may be asked to determine the impacts upon the environment, transport network, town centres, noise, air quality, landscape, trees, flood risk, protected habitats and species, contaminated land, built heritage and archaeology and provide mitigation to address these impacts.

Development proposals will be supported if they conform to the relevant Local Development Plan policies, proposals and additional guidance, meet the following criteria and address their individual and cumulative impacts:

(i) Design

•a) The scale, density and character must be appropriate to the surrounding area and create a sense of place (see Policy PP1) and support the principles of a walkable neighbourhood.

•b) The development must be integrated into the surrounding landscape which will include safeguarding existing trees and undertaking replacement planting to include native trees for any existing trees that are felled, and safeguarding any notable topographical features (e.g. distinctive knolls), stone walls and existing water features by avoiding channel modifications and culverting. A tree survey and tree protection plan must be provided with planning applications for all proposals where mature trees are present on site or that may impact on trees outwith the site. The strategy for new tree provision should follow the principles of the "Right Tree in the Right Place".

•c) Make provision for new open space and connect to existing open space under the requirements of Policy EP5 and provide details of the future maintenance of these spaces. A detailed landscape plan must be submitted with planning applications and include information about green/blue infrastructure, tree species, planting, ground/soil conditions, and natural and man-made features (e.g. grass areas, wildflower verges, fencing, walls, paths, etc.).

•d) Demonstrate how the development will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape.

•e) Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity.

•f) Proposals do not result in backland development or plots that are subdivided by more than 50% of the original plot. Sub-divided plots must be a minimum of 400m2, excluding access and the built-up area of the application site will not exceed one-third of the total area of the plot and the resultant plot density and layout reflects the character of the surrounding area.

•g) Pitched roofs will be preferred to flat roofs and box dormers are not acceptable.

•h) Existing stone walls on buildings and boundaries must be retained.

•i) Alteratons and extensions must be compatible with the character of the existing building in terms of design, form, choice of materials and positioning and meet all other relevant criteria of this policy.

i) Proposals must orientate and design buildings to maximise opportunities for solar gain

(ii) Transportation

•a) Proposals must provide safe entry and exit from the development, including the appropriate number and type of junctions, maximise connections and routes for pedestrians and cyclists, including links to active travel and core path routes, reduce travel demands and ensure appropriate visibility for all road users at junctions and bends. Road, cycling, footpath and public transport connections and infrastructure must be provided at a level appropriate to the development and connect people to education, employment, recreation, health, community and retail facilities.

•b) Car parking must not dominate the street scene and must be provided to the side or rear and behind the building line. Minimal (25%) parking to the front of buildings and on street may be permitted provided that the visual impact of the parked cars is mitigated by hedging or low stone boundary walls. Roadways with a single carriageway must provide sufficient off road parking to avoid access routes being blocked to larger service vehicles and prevent parking on pavements.

•c) Provide safe access to and from the road network, address any impacts on road safety and the local road and public transport network. Any impacts identified through Transport Assessments/ Statements must be identified and mitigated. This may include but would not be limited to, passing places, road widening, junction improvements, bus stop infrastructure and drainage infrastructure. A number of potential mitigation measures have been identified in association with the development of sites and the most significant are shown on the Proposals Map as TSP's.

•d) Provide covered and secure facilities for cycle parking at all flats/apartments, retail, community, education, health and employment centres.

•e) Garages and parking provision must be designed to comply with Moray Council parking specifications see Appendix 2.

•f) The road layout must be designed to allow for the efficient mechanical sweeping of all roadways and channels, paviors, turning areas and junctions. The road layout must also be designed to enable safe working practices, minimising reversing of service vehicles with hammerheads minimised in preference to turning areas and to provide adequate space for the collection of waste and movement of waste collection vehicles.

•g) The road and house layout in urban development should allow for communal refuse collection points where the design does not allow for individual storage within the curtilage and / or collections at kerbside. Communal collection points may either be for the temporary storage of containers taken by the individual householder or for the permanent storage of larger containers. The

requirements for a communal storage area are stated within the Council's Kerbside Collection Policy, which will be a material consideration.

•h) Road signs should be minimised designed and placed at the back of footpaths to reduce street clutter, avoid obstructing pedestrian movements and safeguarding sightlines.

•i) Within communal parking areas there will be a requirement for electric car charging points. Parking spaces for car sharing must be provided where a need is identified by the Transportation Manager.

iii) Water environment, pollution, contamination.

•a) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water including temporary/ construction phase SUDS (see Policy EP12).

•b) New development should not be located in areas at flood risk or increase vulnerability to flooding (see Policy EP12). Exceptions to this would only be considered in specific circumstances, e.g. extension to an existing building or change of use to an equal or less vulnerable use. Where this exception is applied the proposed development must include resilience measures such as raised floor levels and electrical sockets.

•c) Proposals must avoid major hazard sites and address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.

•d) Proposals must protect and wherever practicable enhance water features through for example naturalisation of watercourses by introducing a more natural planform and removing redundant or unnecessary structures.

•e) Proposals must address and sufficiently mitigate any contaminated land issues.

•f) Make acceptable arrangements for waste collection and management and encourage recycling.

•g) Avoid sterilising significant workable reserves of minerals, prime agricultural land or productive forestry.

•h) Proposals must avoid areas at risk of coastal erosion and coastal change.

BUSINESS & INDUSTRY

a) Development of employment land is supported to deliver the aims of the Moray Economic Strategy. A hierarchical approach will be taken when assessing proposals for business and industrial uses. New and existing employment designations are set out in Settlement Statements and their description identifies where these fall within the policy hierarchy.

Proposals must comply with Policy DP1, site development requirements within town and village statements, and all other relevant policies within the Plan. Office development that will attract significant numbers of people must comply with Policy DP7 Retail/Town Centres.

b) Business Parks.

Business parks will be kept predominantly for 'high-end' businesses such as those related to life sciences and high technology uses. These are defined as Class 4 (business) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. This applies to new proposals as well as redevelopment within established Business Parks.

Proposals for the development of new business parks must adhere to the key design principles set out in town statements or Development Frameworks adopted by the Council.

c) Industrial Estates.

Industrial Estates will be primarily reserved for uses defined by Classes 4 (business), 5 (general) and 6 (storage and distribution) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. This applies to new proposals as well as redevelopment within established Industrial Estates. Industrial Estates could be suitable sites for waste management facilities.

d) Existing Business Areas.

Long established business uses will be protected from non-conforming uses (e.g. housing). The introduction or expansion of non-business uses (e.g. retail) will not be permitted, except where the total redevelopment of the site is proposed.

e) Other Uses.

Class 2 (business and financial), 3 (food and drink), 11 (assembly and leisure) and activities which do not fall within a specific use class (sui generis), including waste management facilities will be considered in relation to their suitability to the business or industrial area concerned, their compatibility with neighbouring uses and the supply of serviced employment land. Retail uses will not be

permitted unless they are considered ancillary to the principal use (e.g. manufacture, wholesale). For this purpose, 'ancillary' is taken as being linked directly to the existing use of the unit and comprising no more than 10% of the total floor area up to a total of 1,000 sq metres (gross) or where a sequential approach in accordance with town centre first principles has identified no other suitable sites and the proposal is in accordance with all other relevant policies and site requirements are met.

f) Areas of Mixed Use.

Proposals for a mix of uses where site specific opportunities are identified within Industrial Estate designations in the Settlement Statement, will be considered favourably where evidence is provided to the authority's satisfaction that the proposed mix will enable the servicing of employment land and will not compromise the supply of effective employment land. A Development Framework that shows the layout of the whole site, range of uses, landscaping, open space and site specific design requirements must be provided. The minimum levels of industrial use specified within designations must be achieved on the rest of the site.

g) Rural Businesses and Farm Diversification.

Proposals for new business development and extensions to existing businesses in rural locations including tourism and distillery operations will be supported where there is a locational need for the site and the proposal is in accordance with all other relevant policies.

A high standard of design appropriate to the rural environment will be required and proposals involving the rehabilitation of existing properties (e.g. farm steadings) to provide business premises will be encouraged.

Outright retail activities will be considered against policy DP7, and impacts on established shopping areas, but ancillary retailing (e.g. farm shop) will generally be acceptable.

Farm diversification proposals and business proposals that will support the economic viability of the farm business are supported where they meet the requirements of all other relevant Local Development Plan policies.

h) Inward Investment Sites.

The proposals map identifies a proposed inward investment site at Dallachy which is safeguarded for a single user business proposal seeking a large (up to

40ha), rural site. Additional inward investment sites may be identified during the lifetime of the Plan.

Proposals must comply with Policy DP1 and other relevant policies.

DP9 RENEWABLE ENERGY.

a) All Renewable Energy Proposals.

All renewable energy proposals will be considered favourably where they meet the following criteria:

i) They are compliant with policies to safeguard and enhance the built and natural environment.
ii) They do not result in the permanent loss or damage of agricultural land.
iii) They avoid or address any unacceptable significant adverse impacts including:

• Landscape and visual impacts.
• Noise impacts.
•Air quality impacts.
• Electromagnetic disturbance.
• Impact on water environment.
• Impact on carbon rich soils and peat land hydrology.
• Impact on woodland and forestry interests.
• Traffic impact-mitigation during both construction and operation.
• Ecological Impact.
• Impact on tourism and recreational interests.

b) Onshore wind turbines.

In addition to the assessment of the impact outlined above the following considerations will apply:

i) The Spatial Framework.
Areas of Significant Protection (Map 2): where the Council will apply significant protection and proposals will only be appropriate in circumstances where any significant effects on the qualities of these areas can be substantially overcome by siting, design and other mitigation.

Areas with Potential (Map 1): where wind farms are likely to be acceptable subject to detailed consideration against policy criteria, the Moray Onshore Wind Energy Supplementary Guidance and the Moray Wind Energy Landscape Capacity Study.

ii) Detailed Consideration.

The proposal will be determined through assessment of the details of the proposal, including its contribution to renewable energy generation targets and effect on greenhouse gas emissions, net economic impact, including socio-economic benefits such as employment, associated business and supply chain opportunities and the extent to which it avoids or mitigates any unacceptable significant adverse impact. Detailed assessment of impact will include consideration of the extent to which:

iii) Landscape and visual impact:

- The proposal addresses the Guidance set out in the Moray Windfarm Landscape Capacity Study and Moray Onshore Wind Energy Supplementary Guidance.

- The proposal is capable of accommodating the development without significant detrimental impact on landscape character or visual amenity.

- The proposal is appropriate to the scale and character of its setting, respects the main features of the site and the wider environment and addresses the potential for mitigation.

iv) Cumulative impact.

- Any detrimental impact from two or more wind energy developments and the potential for mitigation is addressed.

v) Impact on local communities.

- The proposal addresses any detrimental impact on communities and local amenity including the impacts of noise, shadow flicker, visual dominance and the potential for associated mitigation.

vi) Other.

- The proposal addresses any impacts arising from the location within an area subject to potential aviation and defence constraints including flight paths and aircraft radar.

- The proposal avoids or adequately resolves other impacts including on the natural and historic environment, cultural heritage, biodiversity, forest and woodlands and tourism and recreational interests- core paths, visitor centres, tourist trails and key scenic routes.

- The proposal addresses any physical site constraints and appropriate provision for decommissioning and restoration.

c) Biomass.

Proposals for the development of commercial biomass will be supported if the following criteria are met.

- Applicants must confirm which form of biomass will fuel the plant and if a mixture of biomass is proposed then what percentage split will be attributed to each fuel source.

- Proposals must demonstrate that they have taken account of the amount of supply fuel over the life of the project.

- When considering wood biomass proposals, the scale and location of new development is appropriate to the volume of local woodfuel available. Sources of fuel must be identified and must be sustainable.

- The location must have suitable safe access arrangements and be capable of accommodating the potential transport impacts within the surrounding roads network.

- A design statement must be submitted, which should include photomontages from viewpoints agreed by the Council.

- There must be a locational justification for proposals outwith general employment land designations. The proposed energy use, local heat users and connectivity of both heat users and electricity networks must be detailed. Proposals which involve potential or future heat users will not be supported unless these users can be brought online in conjunction with the operation of the plant.

- Details of the predicted energy input and output from the plant demonstrating the plant efficiency and utilisation of heat must be provided.

- Where necessary appropriate structural landscaping must be provided to assist the development to integrate sensitively.

The criteria set out in relation to other renewables must also be met.

The Council will consult with the Forestry Commission Scotland (FCS) to help predict potential woodfuel supply projections in the area.

EP1 NATURAL HERITAGE DESIGNATIONS.

a) Natura 2000 designations.

Development likely to have a significant effect on a Natura 2000 site and which is not directly connected with or necessary to the conservation management of that site must be subject to an appropriate assessment of the implications for its conservation objectives. Proposals will only be approved where the appropriate assessment has ascertained that there will be no adverse effect on the integrity of the site.

In exceptional circumstances, proposals that could affect the integrity of a Natura 2000 site may be approved where:

i) There are no alternative solutions; and

ii) There are imperative reasons of over-riding public interest including those of a social or economic nature; and

iii) Compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.

For Natura 2000 sites hosting a priority habitat or species (as defined in Article 1 of the Habitats Directive), prior consultation with the European Commission via Scottish Ministers is required unless the imperative reasons of overriding public interest relate to human health, public safety or beneficial consequences of primary importance to the environment.

b) National designations.

Development proposals which will affect a National Park, National Scenic Area (NSA), Site of Special Scientific Interest (SSSI) or National Nature Reserve will only be permitted where:

i) The objectives of designation and the overall integrity of the area will not be compromised; or

ii) Any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

c) Local Designations

Development proposals likely to have a significant adverse effect on Local Nature Reserves, wildlife sites or other valuable local habitats will be refused unless it can be demonstrated that;

i) Public benefits clearly outweigh the nature conservation value of the site, and

ii) There is a specific locational requirement for the development, and

iii) Any potential impacts can be satisfactorily mitigated to conserve and enhance the site's residual conservation interest.

d) European Protected Species

European Protected Species are identified in the Habitats Regulations 1994 (as amended in Scotland). Where a European Protected Species may be present or affected by development or activity arising from development, a species survey and where necessary a Species Protection Plan should be prepared to accompany the planning application, to demonstrate how the Regulations will be complied with. The survey should be carried out by a suitably experienced and licensed ecological surveyor.

Proposals that would have an adverse effect on European Protected Species will not be approved unless;

i) The need for development is one that is possible for SNH to grant a license for under the Regulations (e.g. to preserve public health or public safety).

ii) There is no satisfactory alternative to the development.

iii) The development will not be detrimental to the maintenance of the favourable conservation status of the species.

e) Other protected species.

Wild birds and a variety of other animals are protected under domestic legislation, such as the Wildlife and Countryside Act 1981 (as amended in Scotland by the Nature Conservation (Scotland) Act 2004 and the Wildlife and Natural Environment (Scotland) Act 2011), Protection of Badgers Act 1992 and Marine (Scotland) Act 2010. Where a protected species may be present or affected by development or activity arising from development, a species survey and where necessary a Species Protection Plan should be prepared to accompany the planning application to demonstrate how legislation will be complied with. The survey should be carried out by a suitably experienced ecological surveyor,

who may also need to be licensed depending on the species being surveyed for.

Proposals which would have an adverse effect on badgers or their setts must be accompanied by a Badger Protection Plan demonstrating how impacts will be avoided, mitigated, minimised or compensated for.

EP2 BIODIVERSITY

All development proposals must retain, protect and enhance features of biological interest and provide for their appropriate management. Developments must safeguard and connect into wildlife corridors, green/blue networks and prevent fragmentation of existing habitats.

Development should integrate measures to enhance biodiversity as part of multi-functional spaces/ routes.

Proposals for 4 or more housing units or 1000 m2 or more of commercial floorspace must create new or, where appropriate, enhance natural habitats of ecological and amenity value.

Developers must demonstrate through a Placemaking Statement which incorporates a Biodiversity Plan, that they have included habitat creation in the design of the development. This can be achieved by providing links into existing green and blue networks, wildlife friendly features such as wildflower verges and meadows, bird and bat boxes, amphibian friendly kerbing, wildlife crossing points such as hedgehog highways and planting to encourage pollination, wildlife friendly climbing plants, use of hedges rather than fences, incorporating biodiversity measures into SUDS and retaining some standing or lying dead wood, allotments, orchards and woodlands.

Where development results in the loss of natural habitats of ecological and amenity value, compensatory habitat creation will be required on an alternative site in Moray.

EP3 SPECIAL LANDSCAPE AREAS AND LANDSCAPE CHARACTER.

i) Special Landscape Areas (SLA's).

Development proposals within SLA's will only be permitted where they do not prejudice the special qualities of the designated area set out in the Moray Local Landscape Designation Review, adopt the highest standards of design in accordance with Policy DP1 and other relevant policies, avoid adverse effects

on the landscape and visual qualities the area is important for, and are for one of the following uses;

a) In rural areas (outwith defined settlement and rural grouping boundaries);

i) Where the proposal involves an appropriate extension or change of use to existing buildings, or
ii) For uses directly related to distilling, agriculture, forestry and fishing which have a clear locational need and demonstrate that there is no alternative location, or
iii) For nationally significant infrastructure developments identified in the National Planning Framework.

b) In urban areas (within defined settlement, rural grouping boundaries and LONG designations);

i) Where proposals conform with the requirements of the settlement statements, Policies PP1, DP1 and DP3 as appropriate and all other policy requirements, and
ii) Proposals reflect the traditional settlement character in terms of siting and design.

c) The Coastal (Culbin to Burghead, Burghead to Lossiemouth, Lossiemouth to Portgordon, Portgordon to Cullen Coast), Cluny Hill, Spynie, Quarrywood and Pluscarden SLA's are classed as " sensitive" in terms of Policy DP4 and no new housing in the open countryside will be permitted within these SLA's.

Proposals for new housing within other SLA's not specified in the preceding para will be considered against the criteria set out above and the criteria of Policy DP4.

Where a proposal is covered by both a SLA and CAT or ENV policy/ designation, the SLA policy will take precedence.

ii) Landscape Character.

New developments must be designed to reflect the landscape characteristics identified in the Landscape Character Assessment of the area in which they are proposed.

Proposals for new roads and hill tracks associated with rural development must ensure that their alignment and use minimises visual impact, avoids sensitive natural heritage and historic environment features, including areas protected for nature conservation, carbon rich soils and protected species, avoids adverse

impacts upon the local hydrology and takes account of recreational use of the track and links to the wider network.

EP7 FORESTRY, WOODLANDS AND TREES.

a) Forestry.

Proposals which support the economic, social and environmental objectives and projects identified in the Moray Forestry and Woodlands Strategy will be supported where they meet the requirements of all other relevant Local Development Plan policies. The Council will consult Forestry Commission Scotland on proposals which are considered to adversely affect commercial forests.

b) Woodlands.

In support of the Scottish Government's Control of Woodland Removal Policy, development which involves permanent woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits and where removal will not result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the woodland.

Where woodland is removed in association with development, developers must provide compensatory planting to be agreed with the planning authority either on site, or an alternative site in Moray which is in the applicant's control or through a commuted payment to the planning authority to deliver compensatory planting and recreational greenspace within Moray.

Woodlands identified in the Ancient Woodland Inventory are important not just for the trees, but for the soil structure, flora and fauna that rely on such woodlands. Ancient woodland ecosystems have been created over hundreds of years and are irreplaceable. Woodland removal within native woodlands identified as a feature of sites protected under Policy EP1 or woodland identified in the Ancient Woodland Inventory will not be supported.

c) Trees and Tree Preservation Orders.

Development proposals must to retain existing healthy, mature trees and incorporate them within the proposal. Where mature trees exist on or bordering a development site, a tree survey and tree protection and mitigation plan must be provided with planning applications if the trees (or their roots) have the potential to be affected by development and construction activity. Proposals must identify a safeguarding distance to ensure construction works, including

access and drainage arrangements, will not damage or interfere with the root systems in the short or longer term.

The Council will serve Tree Preservation Orders (TPO's) 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.

Within Conservation Areas, the Council will only agree to the felling of dead, dying, or dangerous trees. Trees felled within Conservation Areas or subject to TPO must be replaced, unless otherwise agreed by the Council.

EP8 HISTORIC ENVIRONMENT.

a) Scheduled Monuments and National Designations.

Where a proposed development potentially has a direct impact on a scheduled monument, the written consent of Historic Environment Scotland is required, in addition to any other necessary consents.

Development proposals will be refused where they will adversely affect Scheduled Monuments and nationally important archaeological sites or their settings unless the developer proves that any significant adverse effect on the qualities for which the site has been designated are clearly outweighed by social or economic benefits of national importance.

b) Local Designations.

Development proposals which adversely affect sites of local archaeological importance or the integrity of their settings will be refused unless;

a) Local public benefits clearly outweigh the archaeological value of the site, and
b) There is no suitable alternative site for development, and
c) Any adverse effects can be satisfactorily mitigated at the developer's expense.

The Council will consult Historic Environment Scotland and the Regional Archaeologist on development proposals which may affect Scheduled Monuments, nationally important archaeological sites and locally important archaeological sites.

EP12 MANAGEMENT AND ENHANCEMENT OF THE WATER ENVIRONMENT.

a) Flooding.

New development will not be supported if it would be at significant risk of flooding from any source or would materially increase the possibility of flooding elsewhere. For development at or near coastal locations, this includes consideration of future flooding that may be caused by sea level rise and/or coastal change eroding existing natural defences in the medium and long term.

Proposals for development in areas considered to be at risk from flooding will only be permitted where a flood risk assessment to comply with the recommendations of Scottish Planning Policy and to the satisfaction of Scottish Environment Protection Agency and the Council is provided by the applicant.

There are different levels of flood risk assessment dependent on the nature of the flood risk. The level of assessment should be discussed with the Council prior to submitting a planning application.

Level 1 - a flood statement with basic information with regard to flood risk.

Level 2 - full flood risk assessment providing details of flood risk from all sources, results of hydrological and hydraulic studies and any appropriate proposed mitigation.

Assessments must demonstrate that the development is not at risk of flooding and would not increase the probability of flooding elsewhere. Level 2 flood risk assessments must be signed off by a competent professional. The Flood Risk Assessment and Drainage Impact Assessment for New Development Supplementary Guidance provides further detail on the information required.

Due to continuing changes in climatic patterns, the precautionary principle will apply when reviewing any application for an area at risk from inundation by floodwater. Proposed development in coastal areas must consider the impact of tidal events and wave action when assessing potential flood risk.

The following limitations on development will also be applied to take account of the degree of flooding as defined in Scottish Planning Policy;

a) In areas of little to no risk (less than 0.1%), there will be no general constraint to development.

b) Areas oflow to medium risk (0.1% to 0.5%) will be considered suitable for most development. A flood risk assessment may be required at the upper end of the probability range i.e. (close to 0.5%) and for essential civil infrastructure and the most vulnerable uses. Water resistant materials and construction may be required. Areas within this risk category will generally not be suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is

being substantially extended, it should be designed to be capable of remaining operational and accessible during flooding events.

c) Areas of medium to high risk (0.5% or above) may be suitable for:

• Residential, institutional, commercial and industrial development within built up areas provided that flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood management plan;

• Essential infrastructure within built up areas, designed and constructed to remain operational during floods and not impede water flow;

• Some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place, and

• Employment related accommodation e.g. caretakers or operational staff.

Areas within these risk categories will generally not be suitable for the following uses and where an alternative, lower risk location is not available;

• Civil infrastructure and most valnerable uses.

• Additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons e.g. for navigation and water based recreation, agriculture, transport or utilities infrastructure (which should be designed to be operational during floods and not impede water flows).

• New caravan and camping sites.

Where development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. Water resistant materials and construction must be used where appropriate. Land raising and elevated buildings on structures such as stilts are unlikely to be acceptable as they are unsustainable in the long term due to sea level rise and coastal change.

b) Surface Water Drainage: Sustainable Urban Drainage Systems (SUSDS)

Surface water from development must be dealt with in a sustainable manner that has a neutral effect on flooding or which reduces the risk of flooding. The method of dealing with surface water must also avoid pollution and promote habitat enhancement and amenity. All sites must (except single houses) be drained by a sustainable drainage system (SUDS) designed in line with current

CIRIA guidance. Drainage systems must contribute to enhancing existing "blue" and "green" networks while contributing to place-making, biodiversity, recreational, flood risk and climate change objectives.

When considering the appropriate SUDS design for the development the most sustainable methods, such as rainwater harvesting, green roofs, bio retention systems, soakaways, and permeable pavements must be considered first. If it is necessary to include surface water attenuation as part of the drainage system, only above ground attenuation solutions will be considered, unless this is not possible due to site constraints.

If below ground attenuation is proposed the developer must provide a robust justification for this proposal. Over development of a site or a justification on economic grounds will not be acceptable. When investigating appropriate SUDS solutions developers must integrate the SUDS with allocated green space, green networks and active travel routes to maximise amenity and biodiversity benefits.

Specific arrangements must be made to avoid the issue of permanent SUDS features becoming silted-up with run-off. Care must be taken to avoid the spreading and/or introduction of invasive non-native species during the construction of all SUDS features. On completion of SUDS construction the developer must submit a comprehensive Operation and Maintenance Manual. The ongoing maintenance of SUDS for all new development will be undertaken through a factoring agreement, the details of which must be supplied to the Planning Authority.

All developments of less than 3 houses or a non-householder extension under 100 square metres must provide a Drainage Statement. A Drainage Assessment will be required for all developments other than those identified above.

c) Water Environment

Proposals, including associated construction works, must be designed to avoid adverse impacts upon the water environment including Ground Water Dependent Terrestrial Ecosystems and should seek opportunities for restoration and/or enhancement, if appropriate. The Council will only approve proposals impacting on water features where the applicant provides a report to the satisfaction of the Council that demonstrates that any impact (including cumulative) on water quality, water quantity, physical form (morphology), river hydrology, sediment transport and erosion, coastal processes (where relevant), nature conservation (including protected species), fisheries, recreational, landscape, amenity and economic and social impact can be adequately mitigated.

The report must consider existing and potential impacts up and downstream of the development particularly in respect of potential flooding. The Council operates a presumption against the culverting of watercourses and any unnecessary engineering works in the water environment.

A buffer strip of at least 6 metres between any new development and all water features is required and should be proportional to the bank width and functional river corridor (see table on page 104). This must achieve the minimum width within the specified range as a standard, however, the actual required width within the range should be calculated on a case by case basis by an appropriately qualified individual. These must be designed to link with blue and green networks, including appropriate native riparian vegetation and can contribute to open space requirements.

Developers may be required to make improvements to the water environment as part of the development. Where a Water Framework Directive (WFD) water body specific objective is within the development boundary, or in proximity, developers will need to address this within the planning submission through assessment of potential measures to address the objective and implementation, unless adequate justification is provided. Where there is no WFD objective the applicant should still investigate the potential for watercourse restoration along straightened sections or removal of redundant structures and implement these measures where viable.

Width to watercourse (top of bank)	Width of buffer strip (either side)
Less than 1m	6m
1-5m	6-12m
5-15m	12-20m
15m+	20m+

The Flood Risk Assessment and Drainage Impact Assessment for New Development Technical Guidance provides further detail on the information required to support proposals.

EP13 FOUL DRAINAGE

All development within or close to settlements (as defined in the Local Development Plan) of more than 2,000 population must connect to the public sewerage system unless connection is not permitted due to lack of capacity. In such circumstances, temporary provision of private sewerage systems may be allowed provided Scottish Water has confirmed investment to address this constraint has been allocated within its investment Programme and the following requirements have been met;

• Systems must not have an adverse effect on the water environment.

• Systems must be designed and built to a standard which will allow adoption by Scottish Water.

• Systems must be designed such that they can be easily connected to a public sewer in the future. Typically this will mean providing a drainage line up to a likely point of connection.

All development within or close to settlements (as above) of less than 2,000 population will require to connect to public sewerage except where a compelling case is made otherwise. Factors to be considered in such a case will include size of the proposed development, whether the development would jeopardise delivery of public sewerage infrastructure and existing drainage problems within the area. Where a compelling case is made, a private system may be acceptable provided it does not pose or add a risk of detrimental effects, including cumulative, to the natural and built environment, surrounding uses or amenity of the general area.

Where a private system is deemed to be acceptable, within settlements as above or small scale development in the countryside, a discharge to land, either full soakaway or raised mound soakaway, compatible with Technical Handbooks (which sets out guidance on how proposals may meet the Building Regulations) must be explored prior to considering a discharge to surface waters.

EP14 POLLUTION, CONTAMINATION & HAZARDS.

a) Pollution.

Development Proposals which may cause significant air, water, soil, light or noise pollution or exacerbate existing issues must be accompanied by a detailed assessment report on the levels, character and transmission of the potential pollution with measures to mitigate impacts. Where significant or unacceptable impacts cannot be mitigated, proposals will be refused.

b) Contamination.

Development proposals on potentially contaminated land will be approved where they comply with other relevant policies and;

i) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment, and

ii) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/ or treatment of any hazardous material.

c) Hazardous sites.

Development proposals must avoid and not impact upon hazardous sites or result in public safety concerns due to proximity or use in the vicinity of hazardous sites.

EP16 GEODIVERSITY AND SOIL RESOURCES.

Where peat and other carbon rich soils are present disturbance to them may lead to the release of carbon dioxide contributing to the greenhouse gas emissions. Applications should minimise this release and must be accompanied by an assessment of the likely effects associated with any development work and aim to mitigate any adverse impacts arising.

Where areas of important geological interest are present, such as geological Sites of Special Scientific Interest (SSSI) or Geological Conservation Review (GCR) sites are present, excavations or built development can damage, destroy and/or prevent access to the irreplaceable geological features. Development should avoid sensitive geological areas or otherwise demonstrate how the geological interests will be safeguarded.

For major developments, minerals and 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.

Major developments, minerals and large scale renewable energy proposals on areas of peat and/or land habitat will only be permitted for these uses where:

a) The economic, social and/or environmental benefits of the proposal outweigh any potential detrimental effect on the environment (in particular with regard to the release of carbon dioxide into the atmosphere); and

b) It has been clearly demonstrated that there is no viable alternative.

Where development on peat is deemed acceptable, a peat depth survey must be submitted which demonstrates that the areas of deepest peat have been avoided. Where required, a peat management plan must also be submitted which demonstrates that unnecessary disturbance, movement, degradation or erosion of peat is avoided and proposes suitable mitigation measures and appropriate reuse.

Commercial peat extraction will not be permitted.