

APPENDIX 1

MORAY COUNCIL

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

INTRODUCTION

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

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 If the planning authority objects to the proposed development and the objection is not later withdrawn, or the areas of objection cannot be addressed by conditions then the ECU are likely to convene a Public Local Inquiry.

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

The proposal

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

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

The site

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

History

On site:-

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

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

Nearby

22/00913/S36 – proposed wind energy comprising of up to 11 wind turbines, up 200m high at Craig Watch 1km north west of Clashindarroch Extension. This Section 36 application is still under consideration by the Energy Consents Unit and Moray Council has yet to respond. It is anticipated that the design of this proposal may be modified and re-consultation occur at some point this summer.

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

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

In Aberdeenshire

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

Clashindarroch Windfarm – Eighteen turbines at 110m. The site is located immediately east of the currently proposed windfarm site and has been in operation since 2015.

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

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

Consultations (internal only)

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

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

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

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

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

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

Environmental Health, Private Water – no objections.

Environmental Health, Contaminated Land - No objections.

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

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

Moray Flood Risk Management (MFRM) – No objections.

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

Development Plan Policies

National Planning Framework 4

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

Moray Local Development Plan 2020

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

REPRESENTATIONS

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

OBSERVATIONS

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

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

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

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

Legislative Context

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

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

Pre Application Consultation (PAC)

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

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

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

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

Relationship of proposal to national renewable energy policy/guidance

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

The Climate Change (Scotland) Act 2009 places a duty on public bodies to act sustainability and meet emissions targets including a requirement to achieve at least an 80% reduction in greenhouse gas emissions by 2050 (over 1990 levels). They are The Scottish Government's Programme for Scotland 2020-21, The Environment Strategy for Scotland, February 2020, Climate Change (Emissions Reductions Targets) (Scotland) Act 2019, Scottish Government Climate Change Plan (2018), Scottish Government Onshore Wind Policy Statement 2017 and Scottish Energy Strategy (2017). These generally stress the need to reduce carbon emissions (for which wind energy will clearly play a part) but do qualify this with the need to protect landscapes, built and natural heritage, residents and other interests.

The applicants submissions regard national policy as being significant and supportive of this proposal where this development, as a proven technology providing a source of safe and locally produced renewable energy for many years, will make a significant contribution towards renewable energy production at the national and local level. Whilst it is noted that some targets have been met for renewable energy production it is noted that the Scottish Governments guidance in pursuit of renewables has not diminish support for renewable energy proposals.

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

Aberdeenshire Council proximity

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

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

Climate Change and Principle of Renewable Energy Proposal (NPF4 Policy 1, 2, 11 and DP9)

NPF4 Policy 1 'Tackling the climate and nature crises' states that significant weight must be attached to the global climate and nature crisis. It aims to reduce emissions and supports development that addresses these goals. Development of renewable energy is one such development and therefore significant weight must be attached to its contribution toward emissions reductions. Similarly Policy 2 'Climate Change and adaptation' seeks to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change. This can directly be linked to other wider objectives of NPF4 in creating sustainable places and the production and transmission of clean energy is part of the spatial strategy of the north of Scotland.

Policy 11 'Energy' states that project design and mitigation will demonstrate how the various impacts are addressed and these are listed in section e) of the policy. One within section e) being significant landscape and visual impacts, recognising that such impacts are to be expected for some forms of renewable energy. Where impacts are localised and/ or appropriate design mitigation has been applied, they will generally be considered to be acceptable. This goes beyond the comparable MLDP policy DP9 by implying that under certain circumstances, even significant landscape impacts are to be accepted.

MLDP Policy DP9 Renewable Energy (informed by Moray Councils - Moray Wind Energy Landscape Sensitivity Study 2023) states that all renewable energy proposals will be considered favourably where they meet criteria identified in policy. DP9a)i) where proposals should be compliant with policies to safeguard and enhance the built and natural environment, while DP9a)iii) gives a list of impacts that must be avoided to prevent an overall unacceptable significant adverse impact occurring. While many of these are addressed or can be addressed via condition one of these states that unacceptable significant adverse landscape and visual impacts must be avoided to be considered favourably. This element specifically departs from the position present in NPF4 Policy 11. In this instance taking the instruction from the Chief Planners letter the NPF4 position must take precedence and therefore the greater tolerance to significant impacts must be applied.

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

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

Landscape and Visual Impact Assessment

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

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

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

Landscape effects

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

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

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

Landscape designations

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

Effects on visual amenity

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

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

Principal significant visual effects would occur on:

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

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

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

Effects on nearby residential properties

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

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

Cumulative landscape and visual effects

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

Conclusions on LVIA

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

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

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

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

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

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

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

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

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

Natural environment (NPF4-policy 1, 2, 3, 5 EP1, EP2 and EP12)

NPF4 policies 1 ‘Tackling the climate and nature crises’ and 2 ‘Climate mitigation and adaption’ as a wider perspective on the natural environment see tackling climate change via carbon reduction, as one of the major priorities. Policy 1 says avoiding the ongoing nature crises as being hand in hand with climate change, and to address both NPF sees development of renewable energy as part of that solution.

Policy 3 Biodiversity however seeks to enhance biodiversity so not withstanding allowances made for energy generation in upland areas elsewhere in NPF4 efforts should still be made to enhance the local biodiversity as a result of development. Of note, Naturescot and RSPB will respond separately on aspect such as ornithology and Groundwater dependent terrestrial ecosystems (GWDTE).

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

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

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

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

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

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

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

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

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

Impact on cultural heritage (NPF4 policy7 EP8 and EP10)

NPF4 Policy 7 Historic assets and places and MLDP EP8 Historic Environment seeks to protect historic and archaeological assets. EP10 Listed Buildings states that development proposals will be refused where they would have a detrimental effect on the character, integrity or setting of a listed building. Structures such as windfarms have the potential to affect the setting of listed buildings other cultural heritage assets some distance away. Within Moray there are several heritage assets within proximity to the site, and most notably Auchindoun Castle to the north would not be within direct line of the site of the proposed development. Whilst elevated views of the castle may include the development, the lack of inter-visibility means the castle and its setting are unaffected. It is noted that the Councils Archaeological service have not objected to the development.

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

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

Access and traffic impacts (NPF4 policy 13 and DP1)

NPF4 policy 13 Policy Sustainable transport and DP1 Development Principles (ii) and its associated appendix in the MLDP identifies the transportation requirement for development in Moray. It is noted that Chapter 14 Traffic and Transport of the EIA Report and associated technical appendices/figures consider the transportation matters of the development. It recognises that substantive off site works would be required to facilitate delivery of the windfarm components and materials. The presence of 3 main and 2 reserve borrow pits is

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

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

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

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

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

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

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

Policy 5 does state that while generally carbon rich soils should be avoided by development, c)ii. within the policy states generation of energy from renewable sources that optimises the contribution of the area to greenhouse gas emissions reductions targets may be accepted in peatland.

Policy EP16 Geodiversity and Soil Resources states that for large scale (over 20MW) renewable energy proposals, development will only be permitted where it has been demonstrated that unnecessary disturbance of soils, geological interests, peat and any associated vegetation is avoided. Evidence of the adoption of best practice in the movement, storage, management and reinstatement of soils must be submitted along with any relevant planning application, including, if necessary, measures to prevent the spread of invasive non-native species. The formation of many new tracks, proposed formation of the turbine and crane pads, and upgrading of existing tracks have led to permission being sought for up to 5 borrow pits (two of which are reserves).

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

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

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

Impact upon Woodland (NPF4-6 and EP7)

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

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

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

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

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

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

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

Socio Economics (NPF4 – 11, 25 and DP9)

NPF4 Policies 11 states that proposals will only be supported where they maximise net economic impact, including local and community socio economic benefits. Policy 25 states

developments that contribute towards local/regional community wealth building strategies and are consistent with local economic priorities will be supported. These NPF4 policies are new and post-date the applicants' submissions. Chapter 16 'Socio Economics, Tourism and Recreation' of the EIA Report seeks to address the economic implications or opportunities arising from the proposed development. Of note the applicant had not updated this chapter of the EIA Report following the adoption of NPF4 earlier this year.

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

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

Policy DP9 Renewable Energy states that the contribution proposals make towards meeting renewable energy generation targets, its effect on greenhouse gas emissions and net economic impact, including socio-economic benefits such as employment is a consideration. Similarly this must strike a balance with protecting the natural and built environment. Noting the economic activity the proposals would generate during construction, in terms of any concern over the impact it may have upon recreation and tourism it is worth noting the decision in 2020 of the Scottish Government in relation to Pauls Hill II windfarm. The Reporter concluded that notwithstanding the proximity of the development to specific tourist accommodation, more generally there is little evidence to suggest that wind energy proposals harm or deter tourism. It is therefore not appropriate to attach specific weighting to the any perceived negative impacts on tourism, although this significant visual impact on some occupied areas of Cabrach would alter its character.

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

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

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

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

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

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

The assumptions presented conclude that for development and construction:-

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

And for expenditure on Operation and Maintenance:-

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

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

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

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

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

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

Arrangements for decommissioning and site restoration

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

Overall conclusions and recommendation

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

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

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

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

Significant concerns

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

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

Recommended changes/mitigation to pass to ECU.

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