APPENDIX 1

MORAY COUNCIL
Response to Consultation issued by Scottish Government on
APPLICATION FOR S.36 CONSENT
ERECT 9 WIND TURBINES WITH BLADE TIP HEIGHT up to 149.9 METRES WITH INSTALLED CAPACITY IN EXCESS OF 50MW AS AN EXTENSION TO BERRYBURN WIND FARM, MORAY

(MORAY COUNCIL REFERENCE 20/01026/S36)

INTRODUCTION

The applicant, BB2 Wind Farm Limited (a wholly owned subsidiary of Statkraft UK Ltd) has applied for consent under Section 36 of the Electricity Act 1989 for an extension to the existing Berryburn windfarm 7km south of Dallas, Moray.

The application 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 If the planning authority objects to the proposed development and the objection is not later withdrawn, or the areas of objection cannot be addressed by conditions then the ECU are likely to convene a Public Local Inquiry.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

- Erect nine three bladed, horizontal axis wind turbines, each up to a maximum tip height of 149.9 metres with associated transformers and switchgear at each turbine.
- Permission is sought for a 30 year operating period from commissioning.
- A network of on-site access tracks. 5.3km of new tracks and approximately 2km of track upgrading required.
- Crane pads will be required adjacent to each turbine.
- A permanent anemometer mast, measuring 92m high.

- Two borrow pit search areas.
- Four watercourse crossings.
- Indicative details show the electricity sub-station and compound 25-40m, with a control building 8.5m by 22m, with roughcast walls and tiled rood to match existing Berryburn substation.
- No visible aviation lighting required, infra-red lighting proposed only.
- Engineering works including improvements to the public road network to facilitate delivery of abnormal loads.
- Underground 33kV electricity cabling connecting proposal to the existing Berry Burn Sub-station located close to the Tomcork.
- Applicants propose that Construction hours Monday to Saturday 0700-1900 with deliveries prohibited after 1300 on a Saturday save for Abnormal Indivisible Load (AIL) component delivery which could take place outside these hours; and No working on Sundays or public holidays without prior written approval from Moray Council.
- Each turbine will sit upon a circular concrete foundation pad 22m in diameter.
- A micro-siting allowance of 50m for the turbines and site tracks is sought.
- Several temporary construction compounds will be required on site.

THE SITE

- The site is located approximately 12 kilometres (km) south of Forres on the Altyre Estate and covers an area of approximately 1800 hectares (ha). The site will be located approximately 7km south of Dallas.
- The site being accessed from the existing Berryburn windfarm entrance will see the proposed turbines adjacent to and access via the existing windfarm. Of note the existing windfarm comprises of 29 turbines, 104m in height and would sit immediately west of the proposed locations.
- The windfarm area site is not subject to any international, national, regional or local landscape, built environment or nature conservation designations, but there are several archaeological assets within the site. No part of the site would lie within the Special Landscape Areas within Moray and lies approximately 9km north east of the Cairngorms National Park.
- The site occupies an undulating area of lochan and moorland and which is relatively inaccessible, other than via Loch Dallas, or via existing windfarm tracks. Recently felled and existing commercial woodland bounds the site to the north and east, with more open moorland rising southward to the south and west.
- The site sits entirely within Landscape Character Type (LCT) 11 Open Rolling Uplands identified within the Moray Wind Energy Landscape Capacity Study 2017 (MWELCS).
- 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.

HISTORY

For the site.

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 immediately west of the proposed site, with the proposed Clash Gour windfarm in the similar vicinity to the east. The proposal would share much of the same access, and link into the existing Berryburn electricity substation.

Pre application discussions took place with Moray Council in 2019.

Relevant wind energy developments in the wider area.

18/00523/S36 – Approved in Dec 2020 by Scottish Ministers for a wind farm extension comprising of 6 wind turbines, 5 of a maximum height base to tip not exceeding 149.9m and 1 of maximum height not exceeding 134m external transformer housing site tracks crane pad foundations underground electricity cable control building temporary construction and compound 2 borrow pits associated works/infrastructure and health and safety signage at Paul's Hill II Wind Farm, Ballindalloch. Located 3.5km south of Berryburn Extension. It has yet to be constructed.

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. The northern end of Pauls Hill windfarm would lie approximately 2km south of the proposed turbines.

02/02099/EIA - Construct 21 x 110m turbines at Hill of Towie, Knockan and McHattie's Cairn Drummuir. This development was approved in 2005 at appeal and is located 25km east of the proposed Berryburn Extension.

03/01426/S36 – Section 36 application for 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 13 years.

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 and is located approximately 7km east the proposed Berryburn Extension.

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 3.5km 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 4km north east of the proposed Berryburn Extension.

13/02057/S36 - Erect 16 wind turbines (125m to blade tip) at Hill of Towie Windfarm, known as Hill of Towie II. Located immediately south of the existing Hill of Towie windfarm, these turbines were approved in 2017 but have yet to be constructed. They are located 24km east of the proposed Berryburn Extension.

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 4km east of the proposed Berryburn Extension.

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.

Pending applications

18/01591/S36 - Erect 48 wind turbines with blade tip height between 130 and 176 metres with installed capacity in excess of 50MW at Clash Gour Wind Farm. This proposed windfarm is located immediately east and north of the proposed Berryburn Extension and is currently with the Energy Consents Unit. The western section of Clash Gour sits further west of Berryburn windfarm and the proposed extension. Moray Council objected to this proposed windfarm earlier in 2019, and Public Local Inquiry into this (and the proposed Rothes III extension) was carried out in Sept 2020.

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 substations underground electricity cables

anemometry mast Rothes III Wind Farm, 3km north of Archiestown. Moray Council objected to this proposed windfarm in 2019, and Public Local Inquiry into this (and the proposed Clash Gour) was carried out in Sept 2020.

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

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 within Highland 9km west of the proposed Berryburn Extension. This site has recently been constructed.

21/00174/S36SCO – Scoping request for proposed development will comprise around 20 wind turbines, each up to 185 m blade tip height, as well as an associated on-site energy storage system, access tracks, crane hardstanding, underground cabling, on-site substation and maintenance building, temporary construction compound(s), borrow pit search areas and a met mast. Its generating capacity is anticipated to be 112 MW with an additional 10 MW of energy storage, giving 122 MW in total at Lethen Wind Farm, Highland. This site lies several km south west of Lochindorb, within Highland.

ADVERTISEMENTS

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

CONSULTATIONS

Strategic Planning & Development;–

Spatial Framework

Scottish Planning Policy (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 (MLDP) 2020, which has been a broad-brush approach required to comply with SPP and covers a significant land area of Moray. Of the 9 (nine) proposed turbines, only 2 (two) are located within an area with potential for wind farm development of turbines over 35 metres to tip height, with no upper height limit identified.

The limitations of the very strategic Spatial Framework are recognised and SPP (para 162) 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. The Moray Onshore Wind Energy (MOWE) Non-Statutory Guidance 2020 identifies such areas and only 3 (three) of the 9 (nine) proposed turbines are located within an area of greatest potential for Very Large

Turbines, Extensions and Repowering.

The site does impact on an area of carbon rich soil, deep peat and priority peatland habitat as identified on Map 2 'Areas of Significant Protection'. However, NatureScot have confirmed that the applicant has located the majority of infrastructure to avoid the most sensitive peatland and agree that the mitigation proposed reduces effects to 'not significant'.

Whilst a majority of the turbines are located out with the Spatial Framework, including the Areas with Greatest Potential, the proposal is subject to determination through site specific consideration of matters as set out in Policy DP9 (b) (ii) and detailed below. On this basis, the proposal is considered to support the principles of SPP highlighted above.

MOWE Non-Statutory Guidance 2020 and Moray Wind Energy Landscape Capacity Study 2017

The MOWE Non-Statutory Guidance and the Landscape Capacity Study are material considerations for development management purposes. Incorporating the outcomes from the Landscape Capacity Study, the Guidance identifies five typologies of wind turbine, including "Very Large 130m-150m" (to blade tip), and highlights that there is very limited scope to accommodate further large scale wind turbine developments in Moray in landscape and visual terms.

The proposed development is located within the *Open Rolling Uplands* (11) landscape character type (LCT) as defined in the Guidance and Landscape Capacity Study. LCT11 is assessed as having a High-Medium sensitivity to the Very Large (>130m) and Large (80-130m) typologies. This landscape extends into neighbouring Highland to the west, covering an extensive swathe of moorland and low hills, and merges gradually to the north and north-east with the *Upland Moorland and Forestry* (LCT10). The *Open Rolling Uplands* (LCT11) form an upland plateau of rounded hills, including the Knock of Braemoray and Roy's Hill, and the broad low lying basin of Moidach More. The operational wind farms at Paul's Hill and Berry Burn are located within this LCT.

In terms of LCT11, the Guidance and Landscape Capacity Study identify that the key issues to consider are:-

- Potential effects on views from the A95 and from settlements within the *Broad Farmed Valley* (LCT7) where Paul's Hill and Hill of Towie Wind Farms are already visible and where any additional development sited in this character type and also in the *Upland Moorland and Forestry* (LCT10) could increase the extent and prominence of turbines seen on containing skylines;
- Sequential and simultaneous views of multiple wind farm developments sited within this character type and LCT10 from the Dava Way – the Berry Burn Wind Farm is already visible and there are also close views of the Hill of Glaschyle Wind Farm from this recreational route;
- Cumulative effects on views from the minor road between Dallas and Knockando. Operational wind farms are already visible but are mostly well set back from the road. The consented Meikle Hill Wind Farm located in LCT10 will lie very close to

the eastern side of this road and any further development seen in close proximity to the west could create a dominant corridor effect; and
- Sequential and simultaneous views from the A940 which provides a scenic approach to Moray over the Dava Moor – the operational Hill of Glaschyle Wind Farm is prominent in views from rare open spaces along this route and additional larger turbines sited to the west of this road would be particularly prominent.

Proposals for extensions to, and clustering of, wind farms will be treated as new applications and assessed against the relevant Local Development Plan policies, the MOWE Non-Statutory Guidance, the Landscape Capacity Study and any other material considerations. Proposals for extensions should also make use of existing infrastructure and resources and limit the need for additional footprint where possible, minimising further disruption of peat and use of primary aggregates or other resources. The proposal largely uses the existing infrastructure associated with Berry Burn Wind Farm. Whilst a second borrow pit is indicatively proposed, the development has minimised disruption of peat, as detailed above.

The MOWE Non-Statutory Guidance and Landscape Capacity Study are strategic level guidance and the Council's appointed Landscape Capacity Adviser has undertaken a detailed review of the proposal. The assessment concludes:-

- The Landscape and Visual Impact Assessment (LVIA) under-estimates some of the landscape and visual effects and notes that some of the photomontages, as a consequence of low light conditions, do not represent a worst-case scenario in terms of the likely visual effect of the proposal.
- Contrary to the findings of the LVIA, significant adverse effects would occur on views from the B9020 near Tor Castle and on views and the experience associated with travelling on the minor road between Dallas and Upper Knockando.
- Effects on the fairly extensive LCT11 overall would not be significant due to the closeness of the proposal to the operational Berry Burn Wind Farm (which would concentrate development) and because of the relatively limited number of turbines (9no) within the proposal.
- Significant adverse effects would not arise on other LCTs lying outside the receiving landscape of LCT11 or on any designated or otherwise valued landscape.

Additional visualisations were requested to consider the impact from the Spey Valley at Carron and from the Upper Knockando area and following submission, the assessment concludes that effects from:-

- Carron are considered not to be significant in nature due to the distance from the proposal and the limited extent of turbines visible and impacts.
- Upper Knockando are considered to be significant and, in conjunction with the consented Paul's Hill II development and would extend wind farm development seen on the skyline in views from this area. However, the proposal would not be as intrusive as the consented Paul's Hill II as the turbine bases are more hidden by landform and would be more distant.

Principally due to the limited number of turbines and their location within the more

central part of the upland landscape, the proposal is likely to incur relatively limited significant adverse effects on the landscape character or visual amenity.

Cumulative impact is a significant concern arising in the area, particularly on the views from the minor road between Dallas and Knockando. In addition to the consented Meikle Hill, Paul's Hill II and Cairn Duhie (within Highland) Wind Farms, an extension to Rothes Wind Farm (Rothes III) and an application for Clash Gour Wind Farm are under consideration following Public Inquiries. A Scoping Report has also been submitted for Lethen Wind Farm (Highland). However, the more central location within the upland area, the smaller size and limited number of turbines in this proposal would result in a relatively minor contribution to overall significant cumulative landscape and visual effects. In regards to the Dallas to Knockando minor road, whilst the proposal is likely to have a significant cumulative effect this is limited to a relatively short section of the route.

The report by the Landscape Capacity Adviser on the proposed development provides a fuller assessment on landscape, visual and cumulative effects.

It should be noted that Moray Council are currently undertaking an update of the Landscape Capacity Study 2017 in accordance with Nature Scot's guidance on Landscape Sensitivity Studies.

Policy DP1 *Development Principles*

Policy DP1 sets out the detailed criteria to ensure that proposals meet siting, design and servicing requirements, provide sustainable drainage arrangements and avoid any adverse effects on environmental interests.

As set out in Part (i), the scale of development must be appropriate to the surrounding area and must be integrated into the surrounding landscape, which include safeguarding existing trees and any notable topographical features (e.g. distinctive knolls), stone walls and existing water features. Development must also conserve and enhance the natural and built environment and cultural heritage resources.

The proposal is likely to incur relatively limited significant landscape and visual effects with these principally being on the character of the development site itself and on views from the B9010 at Tor Castle, the Dallas to Upper Knockando minor road and potentially also from roads and settlement in the Upper Knockando area. If the proposed Clash Gour Wind Farm is consented, significant effects on the aforementioned views would be negated due to the closer, and potentially substantially larger Scenario A turbines, being seen in front of this proposal.

Given the relatively limited significant adverse effects on the landscape, the proposal is considered to comply with Policy DP1.

Policy DP9 *Renewable Energy*

All renewable energy proposals will be considered favourably where they meet criteria set out in Policy DP9, including safeguarding and enhancing the built and

natural environment as well as impacts on landscape and noise. Detailed consideration of onshore wind turbine proposals to be determined through site specific consideration of areas such as landscape and visual impact and cumulative impact on which further guidance is set out in the MOWE Non-Statutory Guidance and as informed by the Landscape Capacity Study.

Whilst cumulative impact in the area threatens to overwhelm the landscape, the proposed development's contribution to the overall significant cumulative landscape and visual effects would be relatively minor due to its more central location within the upland area and the smaller size and limited number of turbines.

The Applicant has stated that the proposed development will generate up to a maximum of 30.1MW of renewable electricity, helping meet the Scottish Government's renewable energy generation targets in the post-2020 period and help work towards the net zero GHG emission target by 2045. Given its relatively limited significant adverse effects on the landscape character and visual amenity, the proposal is considered to comply with Policy DP9.

Policy EP2 *Biodiversity*

All developments must, where possible, retain, protect and enhance features of biological interest and provide for their appropriate management. Proposals must safeguard, and where physically possible extend or enhance, wildlife corridors and green/blue networks and prevent fragmentation of existing habitats.

The development proposes enhancement measures which will lead to a considerable biodiversity gain through the restoration of woodland, habitat connectivity and improvement of sensitive bog habitats, in compliance with Policy EP2.

Policy EP3 *Special Landscape Areas and Landscape Character*

Proposals, including those outwith Special Landscape Areas (SLAs), 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 (www.moray.gov.uk/moray_standard/page_121575.html), adopt the highest standards of design and minimises adverse impacts on the landscape and visual qualities that the area is important for. Policy EP3 also sets out acceptable uses for proposal in rural and urban areas within a SLA.

For reasons detailed elsewhere, the Landscape Capacity Adviser has concluded that the proposal is unlikely to prejudice the special qualities of the designated areas due to its limited significant adverse effects and therefore complies with Policy EP3.

Policy EP7 *Forestry, Woodlands and Trees*

Proposals must retain healthy trees and incorporate them within the proposal unless it is technically unfeasible to retain these.

A Tree Survey has been provided which identifies the removal of 52 trees and

demonstrates that these are technically unfeasible to retain due to safety and logistics of site access for abnormal loads. On this basis, the removal of trees is acceptable in terms of Policy EP7 (b). Compensatory planting on a one-for-one basis therefore must be provided in accordance with Policy EP7 (e).

The Applicant proposes replacement planting however this is directly in relation to woodland lost or damaged by wildfires in April 2019. No information appears to have been provided in respect of the compensatory planting required for the removal of the 52 trees set out in the Tree Survey. Subject to provision of compensatory planting, the proposal complies with Policy EP7.

Conclusion

The MOWE Non-Statutory Guidance 2020 and Landscape Capacity Study 2017 requires that extensions should reflect the operational wind farms in terms of scale and siting and meet the guidance set out for LCT11, notably avoiding impacts on views from the A95 within the *Broad Farmed Valley* (LCT7); avoiding increasing the extent and prominence of turbines seen on containing skylines; the potential cumulative effects on views from the minor road between Dallas and Knockando and the impact of sequential and simultaneous views from the A940, which provides a scenic approach to Moray over the Dava Moor.

The proposed development is likely to incur relatively limited significant adverse landscape and visual effects with these principally being on the character of the development site itself and on views from the B9010 at Tor Castle, the Dallas to Upper Knockando minor road and potentially also from roads and settlements in the Upper Knockando area. If the proposed Clash Gour Wind Farm is consented, significant effects on the aforementioned views would be negated due to the closer, and potentially substantially larger Scenario A turbines, being seen in front of this proposal. The proposal's contribution to the overall significant cumulative landscape and visual effects would be relatively minor due to its more central location within the upland area and the smaller size and limited number of turbines.

The development proposes enhancement measures which will lead to a considerable biodiversity gain through the restoration of woodland, habitat connectivity and improvement of sensitive bog habitats. It has been demonstrated that it is technically unfeasible to retain 52 trees due to safety and logistics of site access for abnormal loads. Details of compensatory planting on a one-for-one basis is required.

Access Manager - The pre planning consultation response from the Moray Access Manager and the Moray Local Outdoor Access Forum was that an Access Management Plan be prepared as part of the planning process; elements to include access management during construction, longer term access proposals and a wider integrated path network vision. The applicant has not enclosed such a plan with this planning application this is acceptable subject to any consent containing a condition that such a Plan is provided prior to commencement of development subject to agreement with the Moray Access Manager and the Moray Local Outdoor Access Forum.

Environmental Health – The proposed development given its proximity to residential properties is unlikely to give rise to any noise nuisance issues. Cumulative noise issues, in conjunction with existing and other wind energy developments may depend upon which other wind energy proposals currently applied for obtain consent. The Environmental Health Section while confident the proposed Berryburn windfarm extension would not meet with an objection, have been involved in ongoing discussion with the applicants about how noise might be monitored and recorded post construction. They would ask to be involved in the formulation of any conditions in the event of approval. *Planning Officers Note – It also noted that mechanisms and baselines for measuring wind turbine noise cumulatively between the various wind energy proposals may be influenced by the outcome of the current Section 36 application for Clash Gour.*

Environmental Health, Private Water – While no response was received with regard to this matter, it is noted from SEPA's consultation response to the Energy Consents Unit that no known private water supplies will be affected by the development.

Environmental Health, Contaminated Land - No objection.

Aberdeenshire Archaeology Service – Agree with the mitigation recommendations outlined in section 8.5 of the Cultural Heritage statement – namely, that the three identified sites (NJ05SW0039, NJ04NW0028 and NJ04NW0019) are fenced off during construction works, and for a programme of watching briefs/ground monitoring to be carried out. A condition to this effect is recommended 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 enabling works would be required to the Half Davoch to achieve delivery of the larger 150m compenents.

No objection to the proposals subject to the provision of a roads bond/security in place to protect or repair the public road leading to the site. Furthermore condition are recommended in the event that approval is granted. These conditions would relate to provision of a Construction Traffic Management Plan, abnormal load delivery and access visibility splays.

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

Moray Flood Risk Management (MFRM) – No objections

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

REPRESENTATIONS

All objections/representations in the relation 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 form part of the Moray Council consideration (as consultee to the Section 36 process).

OBSERVATIONS

The proposed Berryburn 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.

The proposal was scoped previously 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 Statement. Chapter 19 Summary 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 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 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. Whilst a Section 36 consent

application, with a wide scope of consideration in play, the Moray Local Development Plan 2020 is mainly used to determine the majority of development taking place in Moray and remains highly relevant. Its policies are included for reference at the end of this Appendix, 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.

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

The applicants undertook several workshops and events in 2019, but with the advent of the Covid 19 outbreak emergency legislation was brought into play allowing for virtual community engagement in 2020, and the application Pre application report identifies that contact was maintained with various stakeholders in the local community.

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 November 2020 Position Statement on the 4th National Planning Framework indicates that measures to address climate change and reduction of carbon emissions will be accelerated.

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). Beyond the NPF3 there are a number of considerations relevant to the Section 36 process, which are taken into account in arriving at the below recommendation. 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 commitment to the creation of a low carbon place is reiterated in Scottish Planning Policy. 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, 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 2020, 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.

The detailed mapping of constraints and guidance on areas with greatest potential is set out in the Moray Onshore Wind Energy Guidance 2017 (MOWE), with the proposal site located partially within an area identified as having opportunities for

extension and repowering. Of note, as identified in the consultation from Strategic Planning & Development the 2017 MOWE and Landscape Capacity Study are currently non statutory guidance and are under review. They still do however represent the most detailed and up to date guidance on wind energy landscape capacity in Moray.

Principle of Renewable Energy Proposal (DP9)

Policy DP9 Renewable Energy states that all renewable energy proposals will be considered favourably where they meet criteria identified in policy. DP9a)i) states that proposals should be compliant with policies to safeguard and enhance the built and natural environment, while DP9a)iii) gives a list impacts that must be avoided to prevent an overall unacceptable significant adverse impact occurring. This list of possible impacts relates to many of the chapter headings contained in the applicant EIA Report and the observations below. For completeness however, they are as following:-

- 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.

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.

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.

In this case the issue of grid connection can also reasonably be considered where the application has been able to confirm the intent to underground cables northwards to the existing Berryburn windfarm substation.

In general terms, the proposed windfarm extension is proportionate in spatial and layout terms to the existing windfarm. In terms of the siting, the proposal has sought to contain itself to an adequate distance from rural groupings, public roads, and residential receptors. While 50% larger than the existing turbines at Berryburn, the spacing and absence of telling views of the disparity means the proposals do not

suffer significantly as a consequence of the difference. This is discussed in more depth below under Landscape and Visual Impact.

Further to the imbedded mitigation in the proposed design and layout, applicants mitigation chapter (Chapter 19 of the EIA Report) and subsequent discussions with SEPA on peat give comfort that the range of mitigation measures strike an appropriate balance such that the proposal is considered to comply with policy DP9. While the Councils spatial framework see most of the turbines lie further east than was anticipated the layout and design are acceptable under DP9b)i).

There are some significant impact discussed below, but these are considered alongside other matters below.

Landscape and Visual Impact Assessment LVIA (DP1 and DP9)

An important element of assessing wind energy proposals sought under Section 36 of the Electricity Act is the landscape and visual impact. The MLDP 2020 approach within policy DP9 Renewable Energy toward wind energy proposals specifies the landscape is capable of accommodating the development without unacceptable significant adverse impact on landscape character or visual amenity. Similarly policy DP1 Design Principles seeks to ensure that the design of any development is appropriate to the landscape in which it is set.

Landscape and Visual Impact Assessment (LVIA) for onshore energy proposals in Moray is assessed against 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 non statutory Supplementary Guidance forming part of the MLDP and the Landscape Capacity Study is a material consideration, referenced in policy DP9.

The Landscape and Visual Impact Assessment (LVIA) set out in the EIA Report scopes out landscape and visual receptors unlikely to be significantly affected by the proposal, focussing the detailed assessment on key matters. While the LVIA has been undertaken in accordance with the Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA3), the findings under-estimate some of the landscape and visual effects of the proposal. It should also be noted that the photographs in some of the visualisations have been taken in low light conditions and the photomontages, as a consequence, do not present a worst-case scenario in terms of the likely visual effect of the proposal.

Despite having reservations about the findings of the LVIA and the quality of some of the visualisations included in the EIA-R, this has not impeded the appraisal of the effects of the proposal. Further wireline visualisations were produced by the applicant at the request of Moray Council and these have aided the appraisal.

Landscape policy and guidance background

The proposed development is located within the Open Rolling Uplands Landscape Character Type (LCT) identified in the 2017 Moray Wind Energy Landscape Capacity Study (MWELCS). The MWELCS concludes that there is very limited scope for turbines 80-150m high to be accommodated in this LCT. The constraints and guidance for development set out in the MWELCS for this LCT advise that turbines of this size should be set well back into the core of upland areas to reduce effects on smaller scale settled valleys and upland fringes, should avoid being sited on or nearby landmark hills, be sited to minimise effects on Lochindorb and on scenic routes into west Moray, the A95 and the Dallas to Upper Knockando minor road and also should minimise the effects of wind farm development seen on sensitive skylines above the Spey valley.

It is noted that with the turbines being below 150m, no visible night lighting was required, with only infra-red aviation lighting required. This therefore negates the need to assess any night time visual photomontages.

Landscape effects

The applicants LVIA finds that no significant adverse effects would arise on any LCTs or on any designated and other formally valued landscapes within the study area.

Moray Council disagrees that no significant adverse effects would arise on landscape character. The significant adverse effects would be likely to occur on part of the *Open Rolling Uplands* LCT within which the proposal would be located.

The *Open Rolling Uplands* is an extensive and generally large-scale landscape which extends westwards into neighbouring Highland. Wind energy development is a key characteristic of the part of this LCT which lies in Moray and this proposal would consolidate and intensify this aspect of character. The development site comprises an area with a complex knolly landform patterned with lochans lying at the headwaters of the River Lossie. The smaller scale and diverse character of this landscape is recognised to some degree in the description in the introductory section of the EIA-R (paragraph 2.1.5) but is not clearly identified in the LVIA. The detailed LVIA assessment in Technical Appendix 7.4 notes that the north-eastern part of this LCT (but not the development site) contains some '*more complex knolly hills and lochans'*.

The area of the proposed development site is already influenced in places by the nearby operational Berry Burn turbines but this proposal (which would comprise the construction of very large wind turbines and access tracks) would significantly affect the integrity and character of the smaller scale and diverse area of knolly landform and lochans that lies within the site and its immediate surrounds. While significant effects would occur across the site and approximately 1-2km around it, effects on the wider LCT (which is fairly extensive) would not be significant due to the closeness of the proposal to the operational Berry Burn wind farm (which would concentrate wind

farm development) and because of the relatively limited number of turbines (9no) within the proposal.

We agree with the applicants LVIA that significant adverse effects would not arise on other LCTs lying outside the receiving landscape of the *Open Rolling Upland* LCT or on any designated or otherwise valued landscape.

Effects on visual amenity

The applicants LVIA found that no significant effects would occur on any of the 15 representative viewpoints selected for detailed assessment.

The proposal lies close to the operational Berry Burn wind farm. Turbines within this operational wind farm would be seen in front of the proposed turbines in views from the west, as shown, for example, in VPs 2 and 3, and this would reduce the intrusion of the proposal. Intervening landform restricts visibility of the proposal from roads and settlement lying to the south of the proposal in the Spey valley. Views would, however, be more open to the south-east across the Spey valley and also to the east and north of the proposal with adverse effects on views likely to occur within approximately 10-15km of the proposal.

EIA-R Figure 7.4a indicates visibility of up to 9 turbines in a broad swathe of the Spey valley/Upper Knockando and Archiestown area. VP15 is the only representative visualisation in the EIA-R lying in this area but is distant at >16km and the effects of the proposal, while adverse, would not be significant. Moray Council requested additional visualisations from the Spey Valley at Carron, but in a review of the cumulative visualisations within the proposed Clash Gour wind farm EIA 2020 Supplementary Information (SI) it was possible verify the likely effects of this proposal on views from Carron. Moray Council requested a wireline visualisation from Cottage Road near Upper Knockando and this was provided by the applicant.

Further conclusions on the effects of the proposal on views from the Carron and Upper Knockando area (which was not considered in the LVIA) are as follows:

- Visibility of 2-3 turbine blades of the proposal is likely to be possible from **Carron** in the Spey valley, while undesirable to have any visibility from this sensitive location, the adverse effects would probably not be significant in nature given the limited extent of turbines visible and the distance from the proposal.

- Up to 9 turbines will be visible and probably above hub height given the distance of intervening forestry in views from Cottage Road near **Upper Knockando**. On the basis of the wireline visualisation, the effect on views from this road and some nearby residential properties would just tip over into being significant. However, the proposed Berry Burn II turbines would not be as intrusive as the consented Paul's Hill II turbines as the turbine bases are more hidden by landform and they would be more distant. The proposal, in combination with the consented Paul's Hill II development, would extend wind farm development seen on the skyline in views from this area.

Contrary to the findings of the LVIA, Moray Council considers that significant adverse effects would occur on:

- Views from the **B9010 near Tor Castle** where this proposal would form a prominent feature on the skyline seen directly above the small settlement of Dallas and would contribute to significant cumulative effects with operational and consented wind farm development seen from the upper Lossie valley. The proposed turbines would appear much larger than the existing Berry Burn turbines already seen in the view. The LVIA under-estimates the level of sensitivity and magnitude of visual change from VP6.

- 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 I and II wind farms as shown in VP 7. This proposal would increase intrusion on this road with turbines contrasting with the smaller operational Berry Burn turbines.

Effects on residential and settlement groups

The LVIA assesses effects on groups of residential properties lying up to 5km from the proposal. Significant effects are considered to arise on just one group of properties B16 lying to the south of Dallas. There are no supporting visualisations supplied in Technical Appendix 7.6 to illustrate likely visibility from the groups of properties considered in the assessment and it is therefore difficult to verify the nature of effects on visual amenity. LVIA paragraphs 7.3.28-29 describes the process undertaken to assess effects but does not refer to supporting visualisations or explain how judgements were made on significance without using these as an aid. Although the B20 group of properties lie beyond the usual 2-3km threshold where Residential Visual Amenity Assessment is undertaken, on the basis of the additional wireline visualisation supplied from the Upper Knockando area, significant adverse effects on some of the properties in this group may occur.

Cumulative landscape and visual effects

The applicants 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 and it is concluded that no significant adverse cumulative effects would occur on landscape and visual receptors.

It is noted that Scenario A of the application-stage Clash Gour wind farm is considered in the LVIA (EIA-R Technical Appendix 7.3, Table 1) which would comprise turbines 180m high to blade tip in the eastern group.

Cumulative effects with operational and consented wind farms

Moray Council agree with the LVIA that cumulative effects on landscape character and on valued landscapes would not be significant.

This proposal would form a small extension to the operational Berry Burn wind farm and while in some views the differences in turbine size between the two developments would be appreciable (notably from VPs 6 and 7) this type of cumulative effect would not be significant.

The consented Paul's Hill II wind farm seen together with this proposal would be likely to incur cumulative effects on views experienced from roads and settlement in the Upper Knockando area and I have described these in the above text.

This proposal would, in combination with the Rothes I and II and Berry Burn operational wind farms and the consented Meikle Hill wind farm, contribute to adverse cumulative effects on the Dallas to Upper Knockando minor road with the closer proximity and larger turbines of this proposal likely to have a significant cumulative effect but affecting a relatively short section of this route.

Cumulative effects with operational, consented and application-stage wind farms

This proposal would be seen with the application-stage wind farms of Rothes III and Clash Gour. The more central location within the upland area, the smaller size and limited number of turbines in this proposal would result in a relatively minor contribution to overall significant cumulative landscape and visual effects.

If the Clash Gour application-stage wind farm were to be approved, significant adverse effects on views of the proposal seen in the baseline context of operational and consented turbines only would be likely to be reduced to not significant. This is because the substantially greater number (and increased size of turbines in the eastern group within Scenario A) of the Clash Gour wind farm would partially screen and deflect attention from the proposed Berry Burn II turbines as they would commonly be seen in front and closer to views in the Upper Knockando, Carron and upper Lossie valley areas and from the Upper Knockando to Dallas road.

Conclusions on LVIA

The MWELCS found there to be very limited scope to accommodate turbines up to 150m in the *Open Rolling Uplands* LCT. This proposal does, in the main, limit significant adverse landscape and visual effects principally due to the limited number of turbines, the proximity to the operational Berry Burn wind farm and the location of the proposal within the interior of this upland landscape. Significant adverse effects are, however, associated with the majority of large wind turbine developments and this proposal is not an exception, contrary to the findings of the LVIA it has not been robustly assessed.

The proposal is likely to incur significant adverse landscape and visual effects on the character of the development site and its immediate surrounds and on views from the B9010 at Tor Castle, from the Dallas to Upper Knockando minor road and also from roads and settlement in the Upper Knockando area. These significant effects are relatively limited in extent and on this basis it is recommended that an objection to the proposal on landscape and visual grounds is not merited.

If the proposed Clash Gour wind farm is consented, significant effects on the aforementioned views would be negated due to the closer (and potentially substantially larger Scenario A turbines) being seen in front of this proposal.

Impact on residential amenity including noise, shadow flicker (DP1, DP9 and EP14)

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.

Policy EP14 Pollution, Contamination and Hazards states that for all 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. The proposal has been accompanied by both imbedded mitigation in terms of its siting and design, and proposes further mitigation. For residential amenity, the siting of the proposed turbines west of Upper River Lossie forest has meant that the nearest property to the turbines is Ribreck 3.5km to the east, with no properties within proximity to the north, west or south.

These distances give comfort that noise will not be prohibitive of this particular development, but the Council's Environmental Health Section would still take an interest in noise levels, especially for the potential of cumulative noise effects all the proposed wind energy proposals in the area are realised (most notably Clash Gour).

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 residences on the Half Davoch road most likely to be affected. While the construction phase would see the locality becoming much busier, this would only be for the construction and decommissioning periods of the development. It should be acknowledged that the road is already a forestry haul route and is used by the existing windfarm.

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 EP14, such as dust will not be significant for the proposed development.

The amenity impact as such does not depart from these aspects of policies DP1 and DP9 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 19 that the proposed schedule of mitigation should minimise impacts to residents, especially during the construction phase.

Impact on natural environment (EP1, EP2 and EP12)

In EP1 Natural Heritage Designations there are no international, national or local environmental designations are present. The undulating nature of the landscape and several small lochs and lochans do add to its wetland and biodiversity value.

The merit of the location of open countryside and the habitat it provides has however been considered in the EIA Report. The report does consider the ecological, soil, geological and water environment implications upon the site and it is noted that SEPA, Nature Scot and other consultees with specialists in peat land flora and fauna are being consulted independently by the ECU.

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 a variety of species upon or using the site and most notably as moorland these were mainly birds species including raptors observed. Chapter 10 Ecology and Chapter 9 Ornithology refer to the various species surveys that were undertaken, including the water environment. Groundwater Dependent Terrestrial Ecosystems are discussed in Chapter 11: Hydrology and Geology. It is noted that extensive survey work has been undertaken, and SEPA, Nature Scot 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 and agreed with various consultees in the event of approval. Within the Chapter 19 of the EIA Report, the applicant bring together a suite of mitigation

In the event of approval, specific management plans (such as, Peat Slide Risk Plan, Species Protection Plan and Habitat Management 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.

There has been separate discussion on Peat issues directly with SEPA, and following assurances regarding further avoidance of deep and management of extracted peat they have not raised an objection. Mitigation from Chapter 12 of the EIA Report relating to Geology and Peat would will taken further by input from SEPA, which the Energy Consents Unit will bear in mind. Of note some of the wider mitigation measures welcomed involving blocking upland ditches, which will lead to the creation of at least 57ha of improved quality bog and wet heath habitats capable to accumulating peat.

As referred to earlier in the report, national policy 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. It is therefore not considered that the proposals depart from policies EP2 and EP12

Flood Risk and surface water drainage (EP12)

EP12 Management and Enhancement of the Water Environment covers issues of drainage and flooding. The site is identified on SEPA's flood maps as being at risk from localised minor flooding around the small water courses upon the site. It is noted that the applicants have confirmed sufficient capacity within the four water crossing to allow free of flood water. It is noted that SEPA have requested this be a condition of any consent while the Councils Flood Risk Management Team, noting this have raised no objection.

Chapter 10 ‘ Hydrology and Geology 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 four water crossings and tracks within proximity of the small lochans present in the area. 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 EP12 is anticipated where the above approach is followed. It is noted that water crossings would be designed to ensure water flow was not impeded, and that details of the location of crossing is included in technical appendices. It is also suggested that Culverts will be likely means of crossing the watercourses.

The EIA Report 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. 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 19 of the EIA Report specifically seek the appointed Ecological Clerk of Works would monitor watercourses during construction. SEPA have been separately consulted by the ECU who will give the matter more specialised response.

It is likely 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 EP12 has therefore been identified.

Water Supplies (DP1)

Policy DP1 requires adequate protection of water resources and a Private Water Risk Assessment was also undertaken which concludes that no known private supplies should affected. Volume 2, Figure 11.2 shows that no private water abstraction takes place near the proposed new turbines or tracks.

It is further noted that SEPA have commented on this matter also as separate consultee to the ECU.

Impact on cultural heritage (EP8 and EP10)

Policy 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.

Chapter 8 Cultural Heritage acknowledges there are a number of archaeological features within the vicinity of the site. Following consultation with the Aberdeenshire Council Archaeology Service, they have raised no objection, but would seek the imposition of a condition protecting three identified sites and for a programme of watching briefs/ground monitoring to be carried out. This is line with the applicants own proposed mitigation on the matter.

This chapter also assess the impact of the proposals in relation to known schedule monuments within a wider study area surrounding the site. It is agreed that the isolated position of the proposed development in relation to any ancient monuments or listed buildings is sufficient not to cause concern. Beyond the programme of watching briefs/ground monitoring on site, no other mitigation is required

The ECU will also receive separate advice on heritage matters directly from Historic Environment Scotland (HES).

Access and traffic impacts (DP1)

Policy DP1 Development Principles (ii) and its associated appendix in the MLDP identifies the transportation requirement for development in Moray. It is noted that Chapter 13 Access, Traffic and Transport of the EIA report and associated technical appendices/figures consider the transportation matters of the development.

The proposed turbines would be situated near the existing Berry Burn windfarm and the access route for the delivery of both the turbine components and construction

materials and workers would be via the existing Berry Burn windfarm access on the U89E Halfdavoch Road.

The proposed turbines are larger than the existing turbines at Berry Burn. Therefore the works required to facilitate the delivery of the turbine components would extend beyond the areas previously required to the deliver the existing turbines.

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), Halfdavoch Road (U89E) and then via private tracks to site. All construction HGV traffic, including importing of materials, are indicated to be routed via the A940 and Halfdavoch Road (U89E).

Moray Council Transportation advise that the section of the U89E from the A940 at Edinkillie Hall to the site access and the Divieside Road (U88E) 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 ensure that the gate at Tomcork at the end of the U88E is used to control use of this route by development traffic.

The proposed mitigation works are primarily to accommodate the abnormal delivery vehicle movements or to accommodate two-way traffic movements in sections where either vehicles would be 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.

Whilst the U89E is listed as an Agreed Timber Transport route there is a concern that the effect of 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.

The Roads Authority 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. 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.

As part of the improvement works to the U89E and the site access to accommodate the construction traffic, extruded edge lines are to be provided on both sides of the carriageway to aid drivers' perception of the alignment of the road and improve road safety during the construction period.

It should be noted that some passing places on the U89E 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 and the recommended conditions below will address this matter.

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 Halfdavoch Road from its junction to with the A940 to the site access and is required to mitigate the potential risks from damage to the public road occurring during the construction phase of the development.

Subject to the details/action required in conditions, the provision of roads bond and compliance with the Construction Traffic Management Plan, the proposals will accord with policy DP1.

Paths and access (PP3, DP1 and DP9)

Both policies DP1 Developer Requirements and PP3 Infrastructure & Services require new development to 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.

Chapter 13 Access, Traffic and Transport and Chapter 17 Socio-Economics of the EIA Report has provided information relevant to impact on paths on or near the site. The Moray Core Path Plan 2011 (whilst under review) along with other sources in the EIA report, show that while there are no Public Right of Way or core paths within

the body of the proposed site, the existing roads access into the Berryburn windfarm is host to several Rights of Way, a core path and the Dava Way. These routes would need protected or possibly enhanced as part of the development.

The applicants in Chapter 19 Mitigation confirm that Core paths DA03 and DA02 (Dava Way) which cross over U89E Half Davoch Road close to Clashdu will be affected by traffic during the construction and decommissioning phases only. Any potential conflict between construction traffic and crossing pedestrians and cyclists will be mitigated through appropriate traffic management. A condition is recommended in relation to a Construction Traffic Management Plan which will cover this issue also. The Moray Council Access Manager in line with pre-application advice is also seeking submission and consideration of an Access Management Plan. The proposal in conjuction with the existing Berryburn windfarm provide many km of tracks into this locality which will have an appeal to those wishing access to upland areas.

Impact on soil resources/minerals (EP16)

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 2 borrow pits search areas. It is noted that these borrow pits would be positioned across the site and are all located in well positioned inconspicuous locations. A technical assessment of borrow pits is contained in within Chapter 12 Geology and Peat EIA Report inclusive of reference to their restoration following completion. The borrow pit areas have been located to avoid deep peat and more sensitive areas.

It is intended to submit Construction Environmental Management Plan (CEMP), and is supported by a Peat Landslide Hazard and Risk Assessment submitted by the applicant, which 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 EP16 and it is anticipated that the ECU would attach any conditions deemed necessary to ensure compliance with the assessment if permission were granted. It is noted that SEPA will also contribute to these matters in their separate consultation response.

Impact upon Woodland (EP7)

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. The loss of some 50 or so trees along the delivery route for abnormal loads is addressed via the recommended condition to provide compensatory planting for the number of trees felled. This would ensure compliance with policy EP7 (b) in terms of woodland loss.

It is noted that Scottish Forestry will be separately consulted on the Section 36 and will inform the ECU on this matter also. If the windfarm were to be approved, conditions about compensatory planting should be attached.

Social and economic issues (DP9)

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 recent decision 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.

As identified in the landscape and visual assessment above, the proposed windfarm extension will incur relatively limited significant adverse landscape and visual effects. Therefore any negative impacts, if they were to occur, would be limited. The applicants refer to the benefits resulting from the Community Benefit Fund, but this has previously been held by the Scottish Government not to be appropriate as a consideration in the planning assessment stage.

Aviation Issues (DP9)

Policy DP9 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 DP9, 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.

Arrangements for decommissioning and site restoration (DP9)

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 restoration scheme 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 DP9.

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 have referred to contributing to a Community Benefit Fund in their Socio-economic Chapter. 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. This proposal would result in relatively limited significant adverse landscape and visual effects, from a limited number of locations, such that on balance it is not considered to depart from policy DP9 Renewable Energy.

The development will not adversely impact on heritage, public access or noise matters, subject to appropriate measures and conditions being put in place. It is noted that more specific technical responses relating to hydrology, ornithology,

ecology and aviation will be separately addressed by other more specialist consultees to the Section 36 process.

Beyond those consented and operational windfarms in Moray listed in the history section above, elsewhere in Moray, contrary to the Councils position, Dorenell, Edintore, Hill of Towie II, Lurg Hill and other smaller wind energy proposals have been approved by the Scottish Government. Some weight must be attached to the history of approvals in Moray when considering whether to object to the current proposal.

If the Clash Gour wind farm were to be consented the Berryburn windfarm extension, would be little more than a backdrop to closer, larger turbines from any view of the locality. Notwithstanding this, the assessment of Berryburn extension, whilst attaching weight to the pending Clash Gour Section 36 application, has been made on its own merits.

On balance, the proposal whilst resulting in relatively limited significant adverse landscape and visual effects is not considered to depart from the MLDP2020 and other considerations such as support for renewable energy weigh favourably to supporting the proposal.

Recommended decision to Committee

It is recommended that Moray Council responds to the Energy Consents Unit raising no objection to the proposed windfarm extension at Berryburn but would wish the following conditions to be imposed to any consent granted. Furthermore, in the event of approval Moray Council would wish to be involved/consulted in the formulation of the conditions imposed.

Recommended conditions and comments to pass to Energy Consents Unit.

1. Prior to the commencement of any part of the development, the following must be submitted for approval by the Planning Authority:

    a. Detailed proposals for undertaking trial runs and also delivery of abnormal indivisible loads, must be submitted for approval by the Planning Authority in consultation with Roads Authority. Details must include, measures proposed to protect the public road and structures, traffic management (including temporary waiting restrictions), vehicle holding areas and non-vehicular management during deliveries, time restrictions for deliveries i.e. outwit school arrival and departure times
    b. Notwithstanding the details submitted which are not accepted, classified traffic surveys over a 4 week period will be required for a neutral period out-with school/public holidays prior to development

commencing. The counts will be required at locations to be agreed with Moray Council Transportation (Traffic) on the U89E and A940.

c. Evidence that a Construction Traffic Management Plan (CTMP) has been completed and signed by both the developer and the Roads Authority.
d. Evidence that a 'Wear and Tear' agreement between the developer and the Roads Authority has been completed and signed by both parties (Developer and Roads Authority), must be submitted to the Planning Authority.
e. Notwithstanding the details submitted (which are not accepted) detailed plans (1:200 min) of all temporary and permanent works proposed to the public road must be submitted and approved by the Planning Authority in consultation with the Roads Authority.
f. Details (Plan 1:50 min) to show the proposed measures to control/prevent construction and personnel vehicular access onto the U88E at Tomcork.
g. Notwithstanding the details submitted (which are not accepted). Detailed plans (1:200 min) of all works to accommodate the proposed abnormal indivisible deliveries must be submitted and approved by the Planning Authority in consultation with the Roads Authority.
h. Details (Plan 1:200) of a new path 2 metres wide and 20 metres long or thereby, on the north/east side of the U89E northwards from the current Dava Way path crossing, to provide a direct and safe crossing.

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

Reason *- To ensure an acceptable development in road safety terms through the provision of details currently lacking from the submission.*

2. Prior to the commencement of construction and deliveries;
    a. The site access visibility splay of 4.5m by 120m shall be provided and thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 1.0 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.
    b. All suspensive works approved through condition (1 a,b,c,d,e,f,h), must be completed in accordance with the approved plans. Any works undertaken are to be permanent for the duration of the operation of the development unless otherwise agreed in writing with the Roads Authority.

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

Reason – The provision of details currently lacking and in order to ensure that acceptable infrastructure is provided on the route to/from the development in the interests of road safety.

3. Prior to any abnormal indivisible load being delivered to the site,
    a. All suspensive works approved through conditions (1 a,b,c,d,e,f,g,h and 2a), must be completed in accordance with the approved plans. Any works undertaken are to be permanent for the duration of the operation of the development unless otherwise agreed in writing with the Roads Authority.
    b. Abnormal load trial run(s) must be undertaken after all mitigation works have been completed to confirm the works are acceptable and to identify any other restrictions not previously addressed and the frequency and location of abnormal load passing places/oncoming vehicle holding areas required. Representatives from Moray Council Transportation (Traffic), and Police Scotland must be invited to the trial run.

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

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

4. Prior to development commencing, details of compensatory planting commensurate to the 52 proposed to be felled along the abnormal load delivery route, must be submitted to and approved by the Council as Planning Authority. The planting shall be carried out in accordance with the approved details and no later than the first planting season following commissioning and export of energy from the proposed development.

Reason – In order to ensure the proposal provides the necessary compensatory tree planting and that it is timeously provided.

5. Prior to commencement of development an Access Management Plan must be submitted to and approved by the Council as Planning Authority in consultation with the Moray Access Manager and the Moray Local Outdoor Access Forum.

Reason – To ensure that opportunities to maximise and enhance public access are realised.

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

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

7. Prior to development details of the final substation and compound must be submitted and approved in writing by the Council as planning authority. These details shall include all building elevations, floor plans, material means of enclosure, means of foul water disposal and water supply.

Reason – In order than further consideration can be given to matters not specified in submissions

Further information to be passed to applicant

The Transportation Manager has commented that:-

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

- U88E from the A940 under the Divie Viaduct; and
- The southern section of the U89E from the A940 at Edinkillie Hall to the site access.

The Construction Traffic Management Plan must cover the duration of the development, include methods of dealing with large and abnormal delivery vehicles. The plan shall also include, the methods of marshalling and manoeuvring at junctions on the public road network and any temporary traffic waiting restriction requirements and all modifications to the road network and traffic management arrangements. Routes for deliveries to and from the site and routes which must not be used by development traffic (construction or staff) to access the site. A programme of monitoring for all routes identified within the CTMP during construction will be required.

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

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

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

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

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

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

Checklist: http://www.moray.gov.uk/downloads/file68812.pdf
RCC: http://www.moray.gov.uk/moray_standard/page_65638.html
Specification http://www.moray.gov.uk/downloads/file68813.pdf

The applicant is obliged to apply for a road opening permit in accordance with Section 85 of the Roads (Scotland) Act 1984. Advice on this matter can be obtained by emailing roads.permits@moray.gov.uk and reference to the following page on the Council web site
Road Opening: http://www.moray.gov.uk/moray_standard/page_79860.html

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

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

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

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

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

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

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

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

Bridges and Structures - The developer must contact the Senior Engineer for Bridges and Structures to discuss the proposals via structures@moray.gov.uk

Traffic Management Plan - The developer must contact the Senior Engineer Transportation discuss the proposals via traffic@moray.gov.uk

RELEVANT POLICIES OF THE MORAY LOCAL DEVELOPMENT PLAN 2020

PP3 INFRASTRUCTURE & SERVICES

Development must be planned and co-ordinated with infrastructure to ensure that places function properly and proposals are adequately served by infrastructure and services.

a) In relation to infrastructure and services developments will be required to provide the following as may be considered appropriate by the planning authority, unless these requirements are considered not to be necessary:

i) Education, Health, Transport, Sports and Recreation and Access facilities in accord with Supplementary Guidance on Developer Obligations and Open Space.

ii) Green infrastructure and network requirements specified in policy EP5 Open Space, Town and Village Maps and, contained within Supplementary Guidance on the Open Space Strategy, Masterplans and Development Briefs.

iii) Mitigation/modification to the existing transport network (including road and rail) to address the impact of the proposed development in terms of safety and efficiency. This may include but not be limited to passing places, road widening, junction enhancement, bus stop infrastructure, and drainage infrastructure. A number of potential road and transport improvements are identified and shown on the Town and Village Maps as Transport Proposals (TSP's) including the interventions in the Elgin Transport Strategy. These requirements are not exhaustive and do not pre-empt any measures which may result from the Transport Assessment process.

iv) Electric car charging points must be provided at all commercial and community parking facilities. Access to charging points must also be provided for residential properties, where in-curtilage facilities cannot be provided to any individual residential property then access to communal charging facilities should be made available. Access to other nearby charging facilities will be taken into consideration when identifying the need for communal electric charging points.

v) Active Travel and Core Path requirements specified in the Council's Active Travel Strategy and Core Path Plan.

vi) Safe transport and access routes linking to existing networks and mitigating the impacts of development off-site.

vii) Information Communication Technology (ICT) and fibre optic broadband connections for all premises unless justification is provided to substantiate it is technically unfeasible.

viii) Foul and surface water drainage, including Sustainable Urban Drainage Systems (SUDS), including construction phase SUDS.

ix) Measures that implement the waste management hierarchy as defined in the Zero Waste Plan for Scotland including the provision of local waste storage and recycling facilities designed into the development in accord with policy PP1 Placemaking. For major applications a site waste management plan may be required to ensure that waste minimisation is achieved during the construction phase.

x) Infrastructure required to improve or increase capacity at Water Treatment Works and Waste Water Treatment Works will be supported subject to compliance with policy DP1.

xi) A utilities plan setting out how existing and new utility (including gas, water, electricity pipelines and pylons) provision has been incorporated into the layout and design of the proposal. This requirement may be exempted in relation to developments where the council considers it might not be appropriate, such as domestic or very small scale built developments and some changes of use.

b) Development proposals will not be supported where they:

i) Create new accesses onto trunk roads and other main/key routes (A941 & A98) unless significant economic benefits are demonstrated or such access is required to facilitate development that supports the provisions of the development plan.

ii) Adversely impact on active travel routes, core paths, rights of way, long distance and other access routes and cannot be adequately mitigated by an equivalent or better alternative provision in a location convenient for users.

iii) Adversely impact on blue/green infrastructure, including green networks important for wildlife unless an equivalent or better alternative provision will be provided.

iv) Are incompatible with key waste sites at Dallachy, Gollanfield, Moycroft and Waterford and would prejudice their operation.

v) Adversely impact on community and recreational sites, buildings or infrastructure including CF designations and cannot be adequately mitigated.

vi) Adversely impact on flood alleviation and mitigation infrastructure.

vii) Compromise the economic viability of bus or rail facilities.

c) Harbours

Development within and diversification of harbours to support their sustainable operation will be supported subject to compliance with other policies and settlement statements.

d) Developer Obligations

Developer obligations will be sought to mitigate any measurable adverse impact of a development proposal on local infrastructure, including education, healthcare, transport (including rail), sports and recreational facilities and access routes. Obligations will be sought to reduce, eliminate or compensate for this impact. Developer obligations may also be sought to mitigate any adverse impacts of a development, alone or cumulatively with other developments in the area, on the natural environment.

Where necessary obligations that can be secured satisfactorily by means of a planning condition attached to planning permission will be done this way. Where this cannot be achieved, the required obligation will be secured through a planning agreement in accordance with Circular 3/2012 on Planning Obligations.

Developer obligations will be sought in accordance with the Council's Supplementary Guidance on Developer Obligations. This sets out the anticipated infrastructure requirements, including methodology and rates.

Where a developer considers that the application of developer obligations renders a development commercially unviable a viability assessment and 'open-book accounting' must be provided by the developer which Moray Council, via the District Valuer, will verify, at the developer's expense. Should this be deemed accurate then the Council will enter into negotiation with the developer to determine a viable level of developer obligations.

The Council's Developer Obligations Supplementary Guidance provides further detail to support this policy.

DP1 DEVELOPMENT PRINCIPLES

This policy applies to all development, including extensions and conversions and will be applied reasonably taking into account the nature and scale of a proposal and individual circumstances.

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.
Alterations 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.

j) All developments must be designed so as to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use (calculated on the basis of the approved design and plans for the specific development) through the installation and operation of low and zero-carbon generating technologies.

(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. Maximum (50%) 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, rail 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 such as road stubs or hatchets, 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.

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 permanent damage of prime 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.

In addition to the above criteria, detailed assessment of impact will include consideration of the extent to which the proposal contributes to renewable energy generation targets, its effect on greenhouse gas emissions and net economic impact, including socio-economic benefits such as employment.

b) Onshore wind turbines

In addition to the assessment of the impacts outlined in part a) 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 may 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 proposals are likely to be acceptable subject to Detailed Consideration.

ii) Detailed Consideration

The proposal will be determined through site specific consideration of the following on which further guidance will be set out in supplementary guidance and as informed by the landscape capacity study:

Landscape and visual impact:

- the landscape is capable of accommodating the development without unacceptable significant adverse 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

- unacceptable significant adverse impact from two or more wind energy developments and the potential for mitigation is addressed.

Impact on local communities

- the proposal addresses unacceptable significant adverse 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 unacceptable significant adverse 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.

iii) Extensions and Repowering of Existing Wind Farms

The proposal will be determined through assessment of the details of the proposal against Part a) and Parts b) (i) and (ii) above. Detailed assessment of impact will include consideration of the extent to which:

- the proposal, for extensions, impacts on the existing wind farm(s) setting and the ability to sit in the landscape on its own should the existing wind farm be decommissioned before the extension.
- the proposal, for repowering, makes use of existing infrastructure and resources, where possible, and limits the need for additional footprint.

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 all renewable energy proposals (part a) must also be met.

The Council will consult with Scottish Forestry to help predict potential woodfuel supply projections in the area.

d) Heat

Where a heat network exists or is planned, proposals should include infrastructure to allow connection to that network.

Where no heat network is present or planned:

- Proposals should consider the feasibility for the creation of or connection to a heat network.

- Proposals should safeguard piperuns within the development, to its curtilage, for future connection to a heat network.
- Proposals should consider the provision of energy centres, or the reservation of land for an energy centre to facilitate future connection to a heat network.

Proposals for new development will be compared with the Scotland Heat Map to identify if it could make use of an existing heat supply or provide excess heat to heat users. This will be the case until the Council has concluded work on identifying where heat networks, heat storage and energy centres exist or would be appropriate in the plan area, at which point reference to that work should be made. Developments which have a high heat demand are encouraged to co-locate with sources of heat supply.

Where heat networks are not viable, proposals should include the use of microgeneration technologies and heat recovery associated with individual properties, unless demonstrating this is unnecessary or unviable.

The criteria set out in relation to all renewable energy proposals (part a) must also be met.

DP10 MINERALS

a) 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.

b) Mineral Operations

Proposals for mineral extraction will be acceptable in the following circumstances, subject to compliance with other relevant LDP policies;

- Extension to existing operation/sites.
- Re-opening of a dormant quarry.
- A reserve underlying a proposed development where it would be beneficial to extract prior to development.

Proposals for new and extensions to existing mineral sites, which contribute to the maintenance of at least a 10 years supply of permitted reserves of construction aggregates in Moray will be supported, subject to meeting the terms of Policy DP1 and other relevant policies.

Proposals for borrow pits will be supported, subject to compliance with other relevant policies, 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.

All mineral development proposals must avoid or satisfactorily mitigate impacts. In determining proposals, the Council will give consideration to the requirements of Policy DP1. Additional mitigation may be required for renewables at existing quarries.

Proposals must be accompanied by an extractive Waste Management Plan.

c) Restoration and aftercare

Operators must provide details of their proposed programme of restoration (including the necessary financing, phasing and aftercare of the sites). In some circumstances, the Council may require a financial guarantee/ bond.

Restoration programmes must reinstate the site at the earliest opportunity when excavation has ceased. Restoration must be designed and implemented to the highest standard. After uses must result in environmental improvement and add to the cultural, recreational or environmental assets of the area.

EP1 NATURAL HERITAGE DESIGNATIONS

a) European Site designations

Development likely to have a significant effect on a European 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 European 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 European Sites hosting a priority habitat or species (as defined in Article 1 of The Conservation (Natural Habitat & c.) Regulations 1994), 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;

- The need for development is one that is possible for Nature Scot to grant a license for under the Regulations (e.g. to preserve public health or public safety).
- There is no satisfactory alternative to the development.
- 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, where possible, retain, protect and enhance features of biological interest and provide for their appropriate management. Development must safeguard and where physically possible extend or enhance wildlife corridors and 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 where required by Policy PP1 which incorporates a Biodiversity Plan, that they have included biodiversity features in the design of the development. Habitat creation 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 would result in loss of natural habitats of ecological amenity value, compensatory habitat creation will be required where deemed appropriate.

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, minimises adverse impacts 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.

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

b 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) Moray Forestry and Woodland Strategy

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 other relevant Local Development Plan policies. The council will consult Scottish Forestry on proposals which are considered to adversely affect forests and woodland. Development proposals must give consideration to the relationship with existing woodland and trees including shading, leaf/needle cast, branch cast, wind blow, water table impacts and commercial forestry operations.

b) Tree Retention and Survey

Proposals must retain healthy trees and incorporate them within the proposal unless it is technically unfeasible to retain these. Where trees exist on or bordering a development site, a tree survey, tree protection plan and mitigation plan must be provided with the planning application if the trees or trees bordering the site (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. A landscaped buffer may be required where the council considers that this is required to maintain an appropriate long term relationship between proposed development and existing trees and woodland.

Where it is technically unfeasible to retain trees, compensatory planting on a one for one basis must be provided in accordance with (e) below.

c) Control of Woodland Removal

In support of the Scottish Government's Control of Woodland Removal Policy, Woodland removal within native woodlands identified as a feature of sites protected under Policy EP1 or woodland identified as Ancient Woodland will not be supported.

In all other woodlands development which involves permanent woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits (excluding housing) 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 it is proposed to remove woodland, compensatory planting at least equal to the area to be felled must be provided in accordance with e) below.

d) Tree Preservation Orders and Conservation Areas

The council will serve Tree Preservation Orders (TPO's) on potentially vulnerable trees which are of significant amenity value to the community as 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.

e) Compensatory Planting

Where trees or woodland are 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.

GUIDANCE TREES AND DEVELOPMENT

Trees are an important part of Moray's towns and villages and surrounding countryside, adding colour and interest to the townscape and a sense of nature in our built environment. They contribute to the diversity of the countryside, in terms of landscape, wildlife habitat and shelterbelts. Trees also have a key role to play in terms of climate change by helping to absorb carbon dioxide which is one of the main greenhouse gases that cause global warming.

The cumulative loss of woodlands to development can result in significant loss of woodland cover. In compliance with the Scottish Government Control of Woodland Removal policy, woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits. In appropriate cases a proposal for compensatory planting may form part of this balance. Where woodland is to be removed then the Council will require compensatory planting to be provided on site, on another site in Moray within the applicant's control or through a commuted payment to the Council towards woodland and greenspace creation and enhancement. Developers proposing compensatory planting are asked to follow the guidance for site assessment and woodland design as laid out in Scottish Forestry's "Woodland Creation, Application Guidance" and its subsequent updates, when preparing their proposal.

The Council requires a Tree Survey and Tree Protection Plan to be submitted by the applicant with any planning application for detailed permission on designated or windfall sites which have trees on them. The survey should include a schedule of trees and/or groups of trees and a plan showing their location, along with the following details;

- Reference number for each tree or group of trees.
- Scientific and common names.
- Height and canopy spread in metres (including consideration of full height and spread).
- Root protection area.
- Crown clearance in metres.
- Trunk diameters in metres (measures at 1.5m above adjacent ground level for single stem trees or immediately above the root flare for multi stemmed trees).
- Age and life expectancy.
- Condition (physiological and structural).
- Management works required.
- Category rating for all trees within the site (U, A, B or C *). This arboricultural assessment will be used to identify which trees are suitable for retention within the proposed development.

*BS5837 provides a cascading quality assessment process for categorisation of trees which tree surveys must follow. An appropriately scaled tree survey plan needs to accompany the schedule. The plan should be annotated with the details of the tree survey, showing the location, both within and adjacent to the site, of existing trees, shrubs and hedgerows. Each numbered tree or groups of trees should show the root protection area and its category U, A, B, C.

Based on the guidance in BS5837, only category U trees are discounted from the Tree Survey and Tree Protection Plan process. Trees in category A and B must be retained, with category C trees retained as far as practicable and appropriate. Trees proposed for removal should be replaced with appropriate planting in a landscape plan which should accompany the application. Trees to be retained will likely be set out in planning conditions, if not already covered by a Tree Preservation Order.

If a tree with habitat value is removed, then measures for habitat reinstatement must be included in the landscape plan. It is noted that in line with part b) of policy EP7 where woodland is removed compensatory planting must be provided regardless of tree categorisation."

A Tree Protection Plan (TPP) must also be submitted with planning applications, comprising a plan and schedule showing;

- Proposed design/ layout of final development, including accesses and services.
- Trees to be retained- with those requiring remedial work indicated.
- Trees to be removed.
- Location (and specification) of protective fencing around those trees to be retained based on the Root Protection Area.

The TPP should show how the tree survey information has informed the design/ layout explaining the reasoning for any removal of trees.

Landscape Scheme
Where appropriate a landscape scheme must be submitted with planning applications, clearly setting out details of what species of trees, shrubs and grass are proposed, where, what standard and when planting will take place. Landscape schemes must aim to deliver multiple benefits in terms of biodiversity, amenity, drainage and recreation as set out in policy.

The scheme should also set out the maintenance plan. Applicants/ developers will be required to replace any trees, shrubs or hedges on the site which die, or are dying, severely damaged or diseased which will be specified in planning conditions.

Tree species native to Scotland are recommended for planting in new development - Alder, Aspen, Birch, Bird Cherry, Blackthorn, Crab Apple, Elm, Gean, Hawthorn, Hazel, Holly, Juniper, Sessile Oak, Rowan, Scots Pine, Whitebeam, Willow.

EP8 HISTORIC ENVIRONMENT
a) Scheduled Monuments and Unscheduled Archaeological Sites of Potential National Importance.
Where a proposed development potentially has a direct impact on a Scheduled Monument, Scheduled Monument Consent (SMC) is required, in addition to any other necessary consents. Historic Environment Scotland manage these consents.

Development proposals will be refused where they adversely affect the integrity of the setting of Scheduled Monuments and unscheduled archaeological sites of potential national importance unless the developer proves that any significant adverse effects are clearly outweighed by exceptional circumstances, including 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;

- Local public benefits clearly outweigh the archaeological value of the site, and
- Consideration has been given to alternative sites for the development and preservation in situ is not possible.
- Where possible 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.

EP10 LISTED BUILDINGS
Development proposals will be refused where they would have a detrimental effect on the character, integrity or setting of a 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.

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

- The building is not of special interest or
- The building is incapable of repair.
- The demolition of the building is essential to delivering significant benefits to economic growth or the wider community.
- 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 must be of a comparable quality and design to retain and enhance special interest, character and setting of the listed building (s).

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 conversion and re-use.

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 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 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 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 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.

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

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 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 96). 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 Supplementary 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.

EP15 MOD SAFEGUARDING

Development proposals must not adversely impact upon Ministry of Defence safeguarding operations. Details of consultation zones for Kinloss Barracks and RAF Lossiemouth and development types which will be subject to consultation with the Defence Infrastructure Organisation are available from Moray Council. The outer boundaries of the zones are shown on the Proposals Map.

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