



Planning and Regulatory Services Committee

Thursday, 15 February 2024

NOTICE IS HEREBY GIVEN that a Special Meeting of the **Planning and Regulatory Services Committee** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Thursday, 15 February 2024** at **14:00**.

BUSINESS

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

Consider, and if so decide, adopt the following resolution:
"That under Section 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Item 8 of business on the grounds that it involves the likely disclosure of exempt information of the class described in the relevant Paragraphs of Part 1 of Schedule 7A of the Act."

4. **Planning Application 23/01165/APP** **5 - 46**

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

5. **Planning Application 23/02157/APP** **47 - 68**

Report by Appointed Officer
Vary condition 19 of 19/01080/APP to permit construction of footpath prior to occupation of any dwelling unit on Land At St Andrews Terrace Lhanbryde Moray for Springfield Properties PLC

6. **Proposal of Application Notice - 24/00001/PAN** **69 - 74**

Report by Depute Chief Executive (Economy, Environment and Finance)

7. **Proposal of Application Notice - 23/02233/PAN** **75 - 80**

Report by Depute Chief Executive (Economy, Environment and Finance)

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

8. **Breach of Planning Conditions at site in Fochabers**

- 12. Information relating to instructions to counsel any opinion of counsel and any advice received, information obtained or action to be taken in connection with any legal proceedings;

Summary of Planning and Regulatory Services

Committee functions:

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

Watching the Meeting

You can watch the webcast live by going to:

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

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

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

GUIDANCE NOTES

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

MORAY COUNCIL

Planning and Regulatory Services Committee

SEDERUNT

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

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

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

WARD 01_17

23/01165/APP
24th July 2023

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

Comments:

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

Procedure:

- None.

Recommendation

Grant Planning Permission - Subject to the following:

Conditions/Reasons

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

1. Length of planning permission

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

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

2. Expiry of planning permission

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

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

3. Height of Turbines

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

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

4. Turbine details

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

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

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

5. Substation

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

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

6. Battery Storage facility

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

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

7. Transportation

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

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

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

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

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

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

8. Road works

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

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

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

9. Temporary over-run areas

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

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

10. Environmental Clerk of Works

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

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

11. Environmental Clerk of Works (Decommissioning)

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

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

12. Habitat Management Plan

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

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

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

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

13. Drainage

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

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

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

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

14. Access Management Plan

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

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

15. Construction Environmental Management Plan

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

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

16. Construction Hours

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

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

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

17. Wind Farm Noise

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

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

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

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

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

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

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

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

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

Guidance notes for noise condition

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

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

Note 1 – Data collection

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

Note 2 – Data analysis

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

Note 3 – Tonal penalty

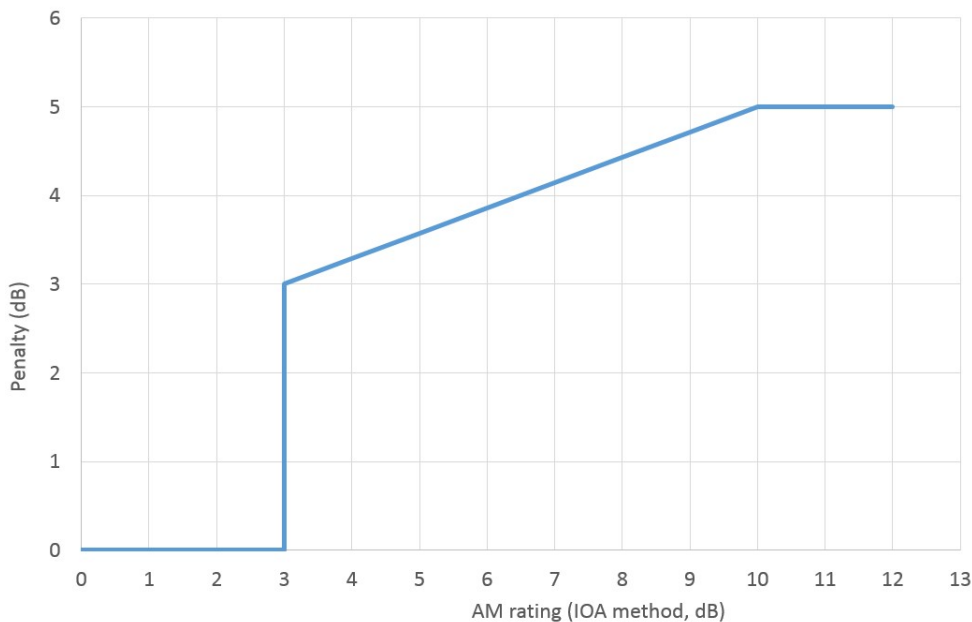
- a) Where, in accordance with the protocol, the noise contains or is likely to contain a tonal component, a tonal audibility shall be calculated for each ten-minute period using the following procedure.
- b) For each 10-minute period for which a tonal assessment is required this shall be performed on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

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

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

Note 4 – AM penalty

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



Note 5 – Calculation of rating level

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

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

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

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

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

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

18. Noise measurements

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

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

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

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

19. Borrow Pit Conditions

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

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

20. Micro-siting

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

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

21. Buffer zones

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

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

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

Reason: to prevent potential unacceptable impacts on groundwater abstractions.

22. Shadow flicker

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

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

23. Restoration of borrow pits

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

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

24. Mitigation

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

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

25. Aviation Lighting

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

This should set out:

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

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

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

Reason: to maintain aviation safety.

26. Aviation Charting and Safety Management

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

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

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

Reason: To maintain aviation safety.

27. Decommissioning, Restoration and Aftercare

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

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

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

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

28. Financial Guarantee

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

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

29. Reduced lighting scheme

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

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

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

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

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

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

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

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

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

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

Schedule 2: Advisory notes 1

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

Schedule 3: Application drawings

Figure 1.1 Planning application boundary dated 20 November 2020.

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

Schedule 4: Opportunities for public participation in decision-making

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

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

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

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

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

Reason(s) for Decision

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

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

List of Informatives:

The TRANSPORTATION MANAGER has made the following comments:-

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

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

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

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

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

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

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

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

Planning consent does not carry with it the right to construct a new road or any part of a road. In accordance with Section 21 of the Roads (Scotland) Act 1984 Construction Consent for new roads (includes passing places, modified junctions and footpaths) that will form part of the public road will be required. Advice on this matter can be obtained by emailing transport.develop@moray.gov.uk 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 56 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.

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

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

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 transport.develop@moray.gov.uk

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



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:

23/01165/APP

Page 27

Site Address:

Garbet Windfarm

Site 5.5km Southeast Of Dufftown

Applicant Name:

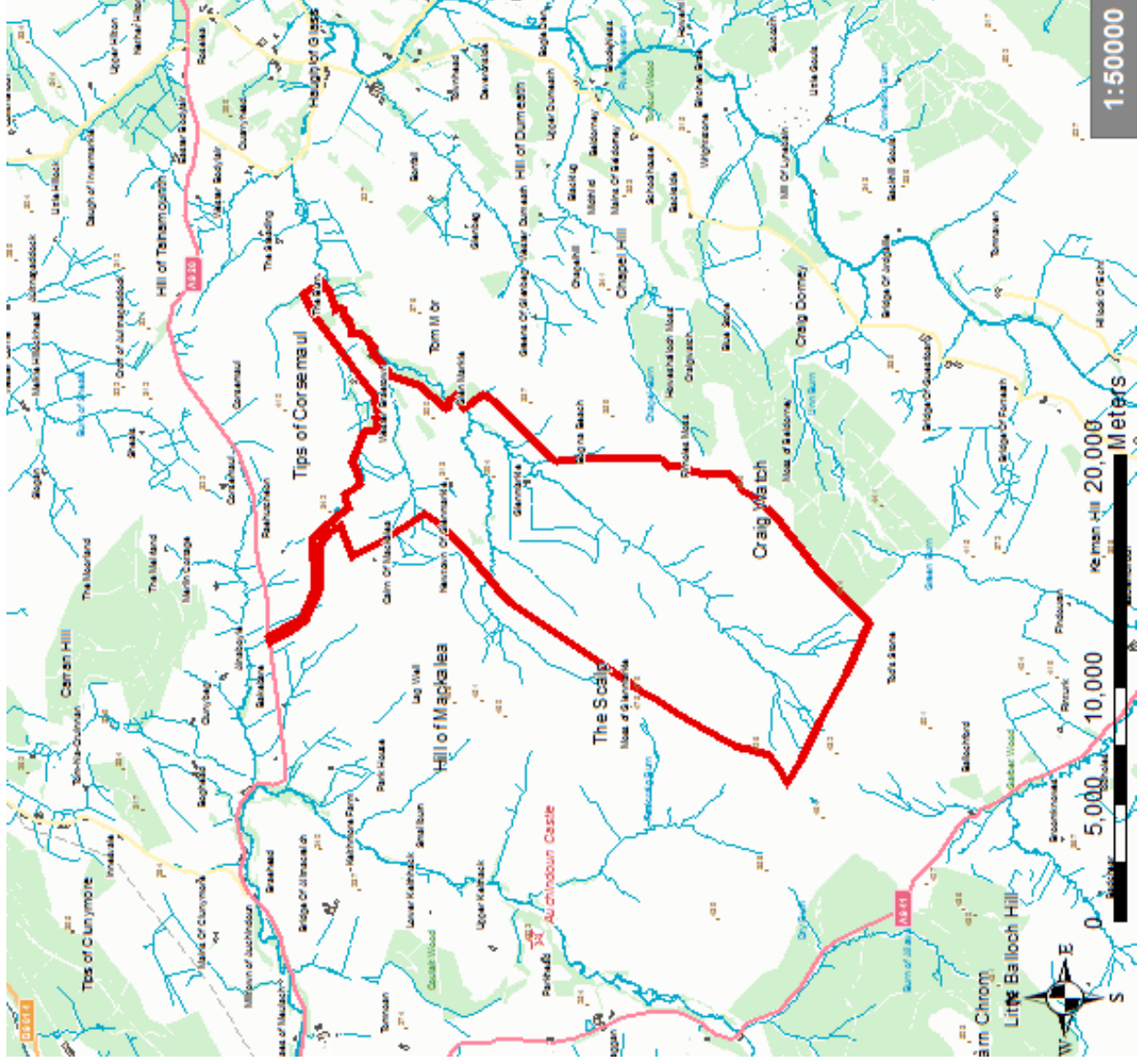
Energiekontor

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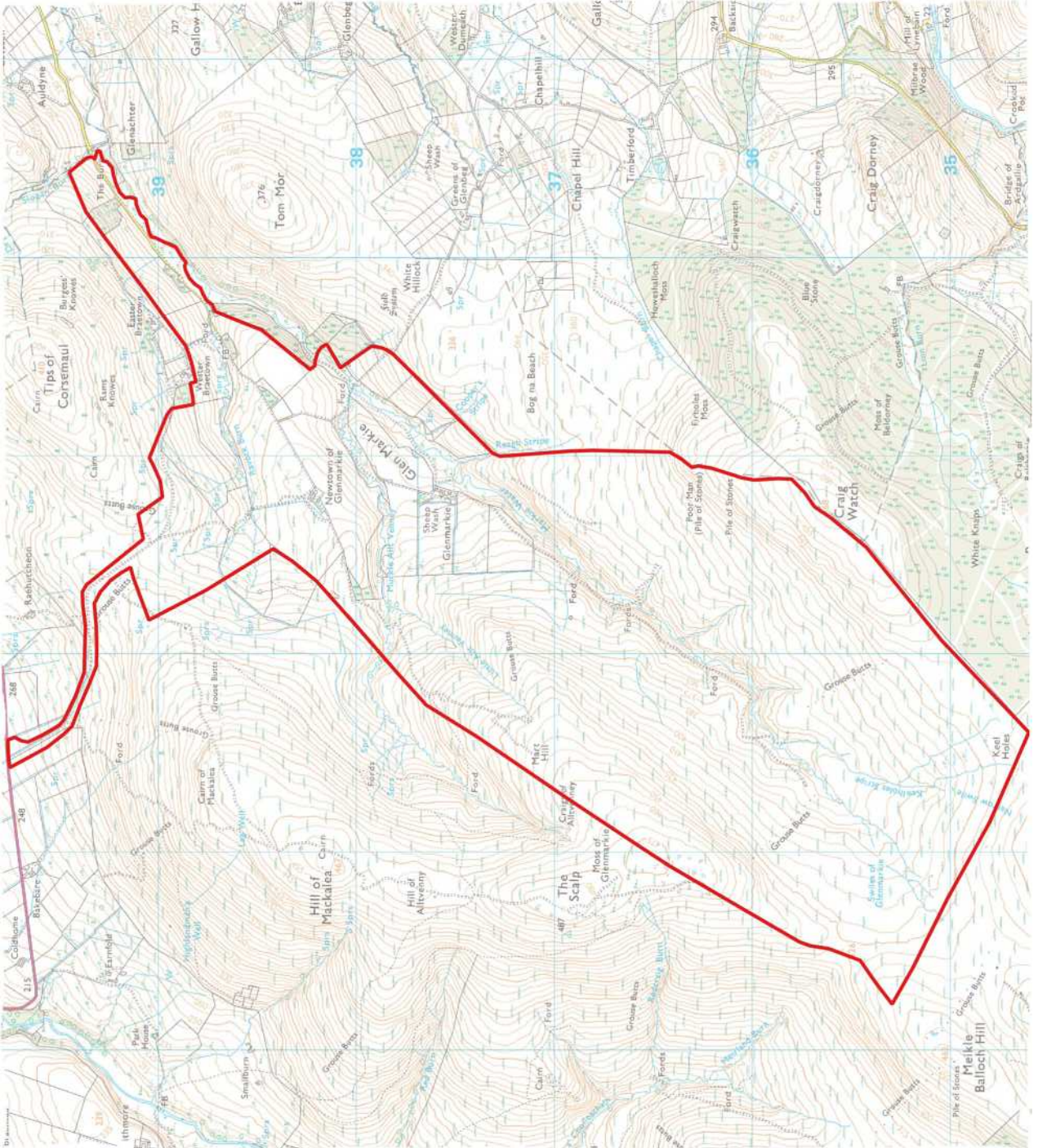
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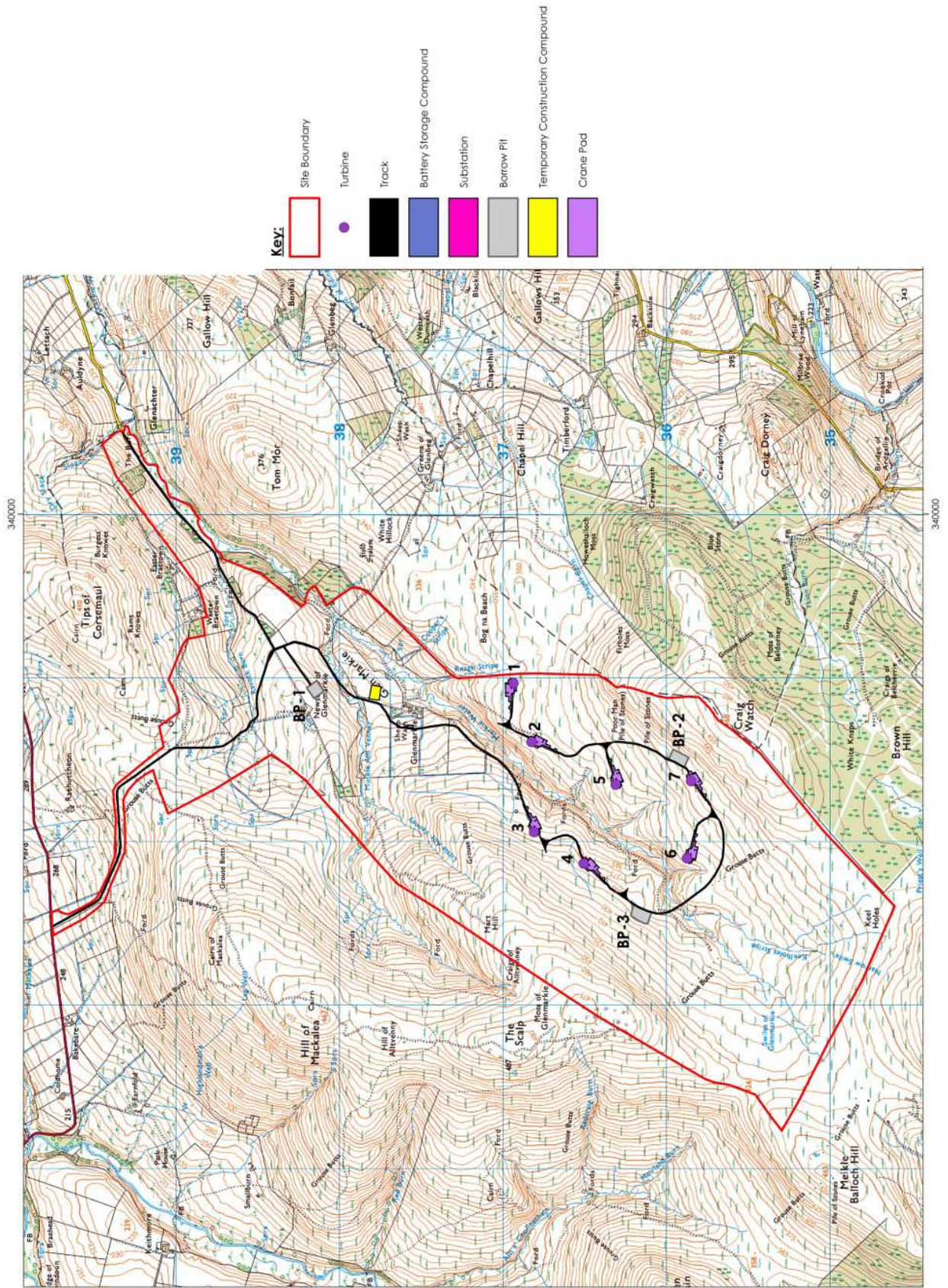
Location Plan



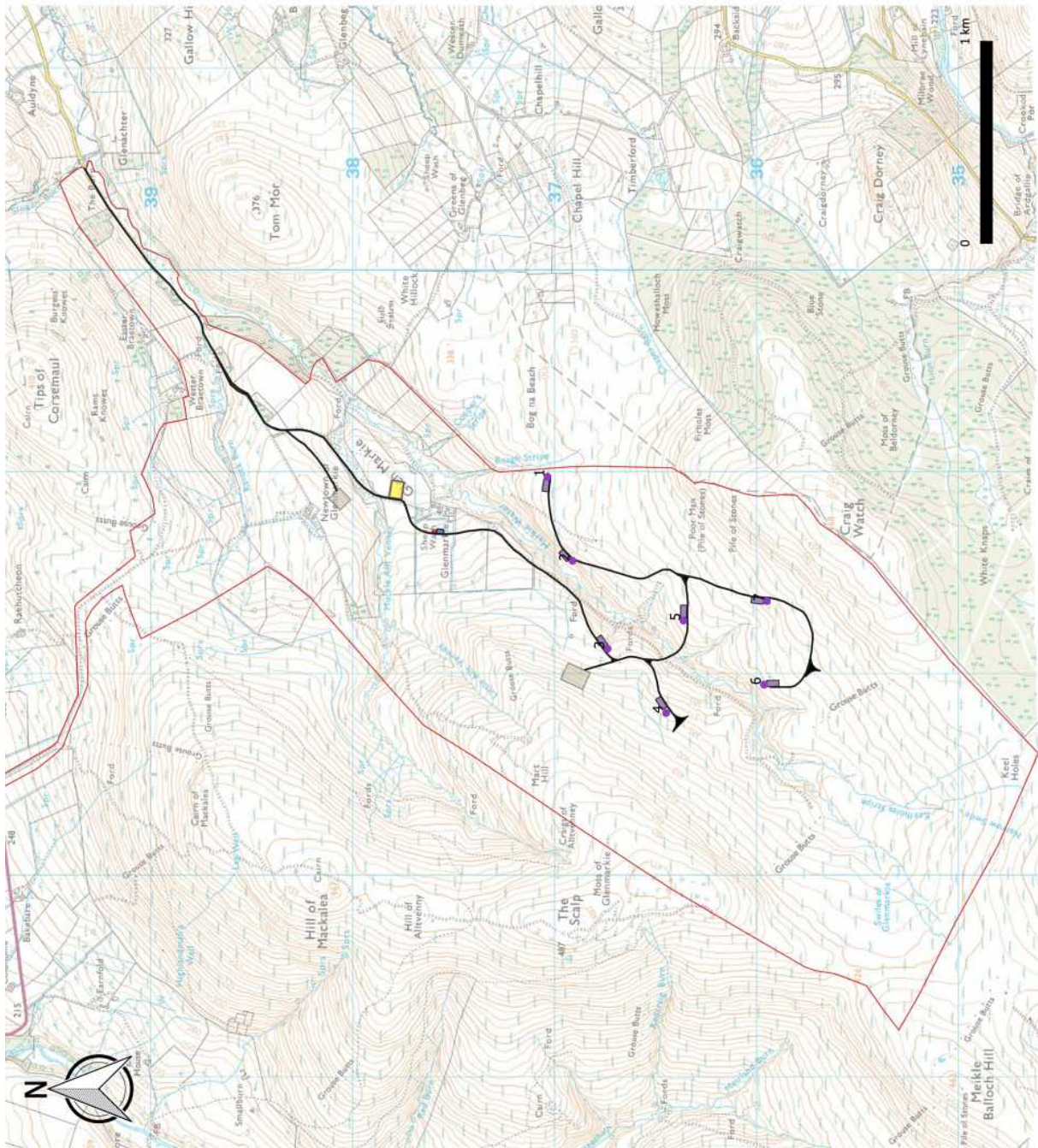
Site Location



Site Layout— Proposed

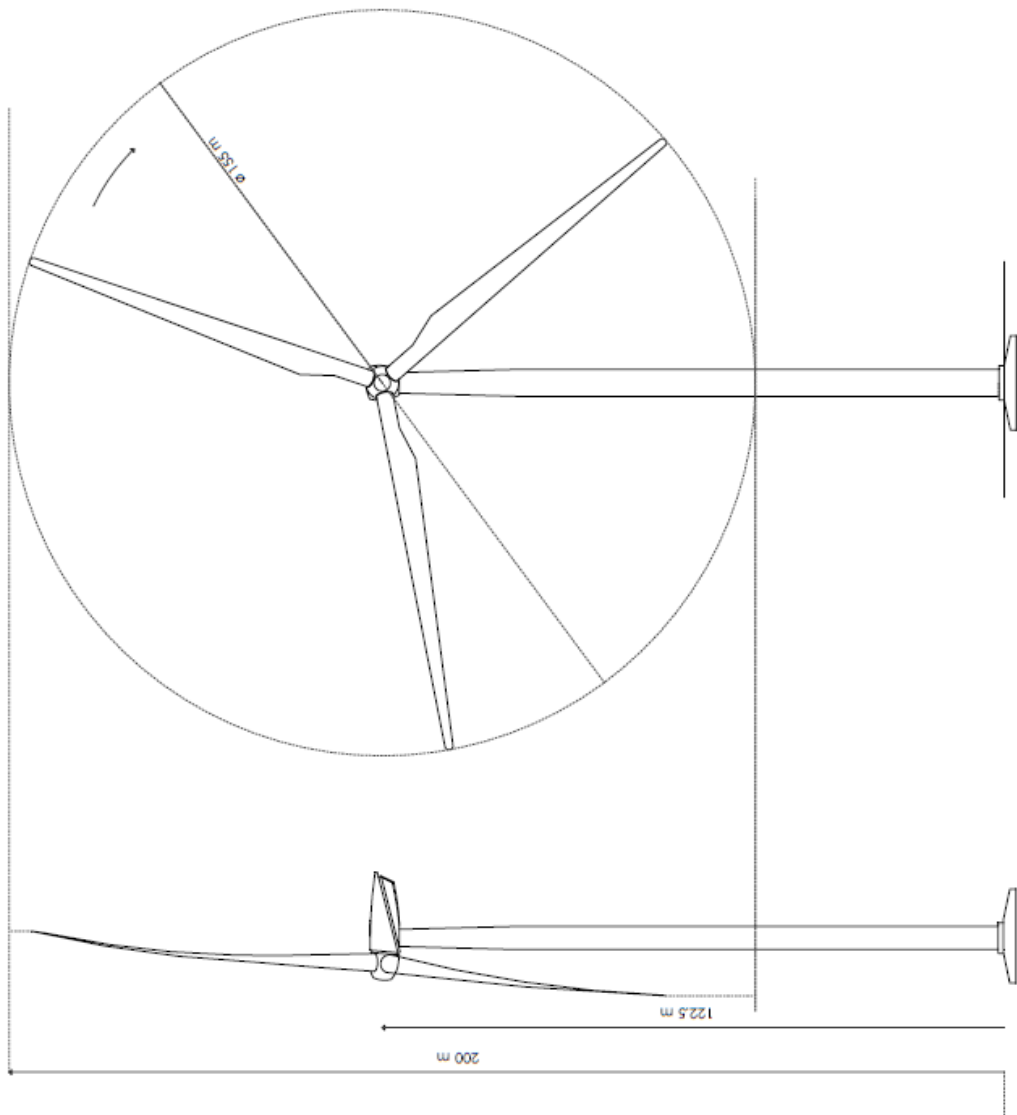


Site layout—Original



- Planning Application Boundary
- Turbine
- Crane Pad
- Track
- Bibbery Storage Compound
- Temporary Construction Compound
- Borrow Pit
- Sub final

Turbine Elevation 200m



PLANNING APPLICATION: 23/01165/APP

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

1. THE PROPOSAL

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

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

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

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

2. THE SITE

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

3. HISTORY

On site:

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

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

Off site:

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

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

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

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

4. **POLICIES**

Relevant Planning Policy

National Planning Framework 4

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

Moray Local Development Plan

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

5. **ADVERTISEMENTS**

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

6. **CONSULTATIONS**

Contaminated Land - No objection.

Private Water Supplies – No objection.

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

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

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

Historic Environment Scotland – No objections, advice offered.

Aberdeenshire Council Archaeology Service – No objection.

Atkins Global - No objection.

JRC – Windfarms - No objection.

National Air Traffic Systems Limited - No objection.

BAA Aerodrome Safeguarding (Aberdeen Airport) - No objection.

Ofcom – No response.

Cairngorm National Parks Authority – No objections.

Moray Flood Risk Management – No objection.

Moray Access Manager – No response.

Strathbogie Community Council – No response.

NatureScot – No objection.

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

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

Dufftown Community Council - Not currently constituted, no response.

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

7. **OBJECTIONS-REPRESENTATIONS**

None received within statutory objection period.

8. **OBSERVATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

REASON(S) FOR DECISION

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

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

EIA Reasoning for decision

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

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

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

**Author/Contact
Officer:**

Neal MacPherson
Principal Planning Officer

Ext: 01343 563266

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

WARD 04_17

23/02157/APP
11th December 2023

Vary condition 19 of 19/01080/APP to permit construction of footpath prior to occupation of any dwelling unit on Land At St Andrews Terrace Lhanbryde Moray for Springfield Properties PLC

Comments:

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

Procedure:

None.

Recommendation

Grant Planning Permission - Subject to the following:

Conditions/Reasons

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. 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 Council, as planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the WSI 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 occupied 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 Council, as 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.

3. No development shall commence until full details (including scaled elevation drawings) of the proposed 'key buildings' identified in the placemaking statement received on 25 November 2020 and drawing LH01_PL_07 have been submitted to and approved in writing by the Council, as Planning Authority. For the avoidance of doubt the key buildings shall reflect the house types approved as part of the application. Thereafter development shall not proceed except in accordance with the approved details.

Reason: To ensure that the proposals harmonise with the character of the development and the wider area and because no such details were included with the application.

4. Notwithstanding the submitted landscaping plans no development shall commence until additional plans have been submitted to and approved in writing by the Council, as planning authority incorporating all the currently proposed details along with all measures identified in the submitted placemaking statement received on 25 November 2020 and the biodiversity plan received on 2 October. For the avoidance of doubt the revised plans shall include:
 - Details of all measures to provide distinctive planting in each character area;
 - Full specification for the proposed woodland paths;
 - A full maintenance schedule including woodland areas;
 - Full details (scaled drawings 1:50) of the proposed entrance walls which shall be constructed in stone;
 - Written details of sizes of trees and shrub planting to be semi-mature plants and not heavy standard as noted on the submitted drawings;
 - Details of the type and location of all proposed bat and bird boxes and timing of provision; and
 - A method statement for the creation of the proposed wetland areas and a maintenance schedule.

Thereafter all landscaping works shall be carried out in accordance with the approved details. Unless otherwise agreed as part of the approved details all planting, seeding or turfing shall be carried out in the first planting season following the first occupation of any of the units hereby approved. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless otherwise approved by the Council, as Planning Authority.

Reason: To ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area and because no such information was included with the application.

5. No development shall commence until details of the landscaping treatment along the trunk road boundary has been submitted to, and approved by, the Council, as Planning Authority, after consultation with Transport Scotland. Thereafter the approved details shall be implemented in full prior to the first occupation of any part of the development.

Reason: To ensure that there will be no distraction to drivers on the trunk road, and that the safety of the traffic on the trunk road will not be diminished.

6. No development shall commence until a Peat Management Plan, demonstrating avoidance of areas of deep peat and details of quantities and appropriate reuse of excavated peat and any mitigation or restoration proposals, has been submitted to and approved in writing by the Council, as Planning Authority in consultation with SEPA, and thereafter shall be implemented in full on site.

Reason: In order to minimise disturbance of peat and ensure the appropriate reuse and management of peat on site.

7. No development shall commence until details of measures to protect and enhance the M9 habitat (as identified in the submitted Lhanbryde Development Site: Badger and GWDTE survey by Highland Ecology and Development Services) have been submitted to and approved in writing by the Council, as Planning Authority in consultation with SEPA. Thereafter development shall not proceed except in accordance with these approved details.

Reason: To protect the water environment.

8. No development shall commence until a Badger Mitigation Plan has been submitted to and approved in writing by the Council, as Planning Authority. For the avoidance of doubt the plan shall allow for the channelling of badgers around the site. The construction of the development shall be implemented in accordance with the approved Badger Mitigation Plan.

Reason: To minimise the potential conflict with badgers during construction.

9. As part of the development hereby approved, the accessible housing units shall be provided in line with the detail in accordance with the Moray Council's DP2 Policy Guidance Note on Accessible Housing. Prior to any development commencing, a compliance statement, along with detailed floor plans at a suitable scale, which demonstrate compliance with the Policy Guidance, shall be submitted to and approved in writing by the Council, as Planning Authority. Thereafter, the accommodation as identified shall, at all times, remain as accessible housing and remain capable for adaptation for accessible housing needs unless otherwise agreed with the Council, as Planning Authority. For the avoidance of doubt 10% of the private housing units hereby approved shall be

accessible units. Furthermore, evidence must be provided that level access to each unit can be achieved from parking to an external door within 15m.

Reason: To ensure an acceptable form of development in terms of the required provision and delivery of accessible housing within the site as required and defined in terms of current planning policy and associated supplementary planning guidance.

10. The 19 units identified as affordable housing on approved plan LH01_PL_01 revision L shall only be used for affordable housing purposes in accordance with the agreement(s) reached between the applicant/developer and Moray Council and/or any registered social landlord (e.g. housing association or similar) to enable the long term delivery of affordable housing on this site; and no development shall commence until details of the agreement(s) to confirm the arrangements for the delivery of the proposed affordable accommodation hereby approved shall be submitted to and approved in writing by the Council, as Planning Authority.

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

Reason: To ensure an acceptable form of development in terms of the required provision and delivery of the affordable housing accommodation proposed for this site wherein the benefits of such provision are passed on to serve the community in future years.

11. No trees other than those identified for removal in the submitted Arboricultural Impact Assessment/Method Statement by Urban-Arb Arboricultural Consultants and Tree Protection Plan rev B sheets 1-3 shall be removed without the prior written approval of the Council, as planning authority.

Reason: In order to ensure tree removal is adequately controlled.

12. No development shall commence until the tree protection measures detailed in the submitted Arboricultural Impact Assessment/Method Statement by Urban-Arb Arboricultural and Tree Protection Plan rev B sheets 1-3 have been implemented in full.

Reason: In order to ensure adequate measures to protect retained trees are in place.

13. Notwithstanding submitted drawing 1706.16352 (ExampleDesign_SpringfieldP) no development shall commence until full details (scaled drawing 1:100 and equipment specification schedule) of an equipped play area as identified on approved plan LH01_PL_01 revision L including the maintenance arrangements have been submitted to and approved in writing by the Council, as Planning Authority. The equipped play area shall make provision for all-abilities access including in relation to the surface finish, play equipment and seating. The equipped play area shall be provided in accordance with the approved details and be available for use prior to the occupation of the 25th unit hereby approved.

Thereafter the play area shall be maintained in accordance with the approved maintenance arrangements.

Reason: To ensure the adequate provision of an equipped play area and its future maintenance.

14. No development shall commence until details confirming the installation of fibre broadband connection for each residential unit (to be provided prior to occupation of each unit) have been submitted to and approved in writing by the Council, as Planning Authority. Thereafter, the development shall be implemented in accordance with these approved details, unless otherwise agreed in writing by the Council, as Planning Authority.

Reason: To ensure the residential units hereby approved are served by appropriate high speed internet connections, in accordance with policy PP3 - Infrastructure and Services of the Moray Local Development Plan 2020.

15. No development shall commence until details (scaled drawings) of a safe and suitable connection from the site to the existing cycle path on the north side of St Andrews Road have been submitted to and approved in writing by the Council, as Planning Authority. The connection shall be provided prior to the completion of any house or flat.

Reason: To ensure adequate connectivity to and through the site.

16. Notwithstanding the details submitted within the Transport Assessment on Drawing No 180980-900 (which is not accepted), no development shall commence until the following details have been submitted and approved in writing by the Council, as Planning Authority in Consultation with the Roads Authority:
- i. Details (Plan 1:500) for two new bus stops (one in each direction) on St Andrews Road (including road markings or laybys as required, shelters and flags); and
 - ii. A Road Safety Audit (Stage 1/2) which has been carried out in accordance with the requirements set out in the Design Manual for Roads and Bridges taking account of the proposed bus stops and site access. The proposals shall be revised to take account of any agreed mitigation and thereafter the bus stops and any other agreed mitigation required shall be provided in accordance with the approved details prior to the completion of any house or flat.

Reason: To ensure adequate provision is made for accessibility to public transport, the provision of details lacking from the submission and in the interests of road safety.

17. No development shall commence until details comprising a Root Protection Plan have been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The root protection measures shall be installed in accordance with the agreed Root Protection Plan. No trees shall be planted within 5.0m of the edge of the public road carriageway unless agreed root protection is provided.

Reason: To prevent root interference that could compromise the public road carriageway (and the utilities contained therein) thereby ensuring acceptable infrastructure at the development access, in the interests of road safety.

18. Notwithstanding the parking details submitted on the Parking Provision EV Charging Drawings LH01_PL_ 8, 9 and 10 (which are not accepted), no development shall commence until the following details have been submitted for approval by the Council, as Planning Authority in consultation with the Roads Authority:
- Details (Plan 1:200) showing the provision of electric vehicle charging infrastructure at a rate of 1 per flat for Plots 3-10 and parking spaces accessible within 5 metres.
 - Statement/specifications to confirm that the EV charging supply and cabling provision for each plot will be suitable for the connection of a 7Kw 'Fast' type charging unit as a minimum.
 - Design/specifications for the proposed mounting/installations to be provided for any future EV charging points which shall not be mounted on a wall/within a garage.

Thereafter the development shall be completed in accordance with the approved details, the parking and EV charging provision associated with each house or flat shall be completed prior to occupation and shall be maintained and available for this purpose unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

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

19. Notwithstanding the parking details shown on plan LH01_PL_01 revision L, no development shall commence until the following details have been submitted for approval by the Council, as Planning Authority in consultation with the Roads Authority:
- i. a plan (1:500) showing the provision of 3 parking spaces for plot 12 (Type F); and
 - ii. a plan showing 2 additional lay-by type parking spaces at a location to be agreed on the north side of the site access road between Plot 22 and the 'Kickabout area' (as shown on Drawing LH01_PL_05).

Thereafter the development shall be completed in accordance with the approved details and parking provision associated with each house or flat shall be completed prior to the occupation of said house or flat and maintained for this purpose unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: Submission of additional information to ensure adequate provision is made for car parking within the development, and to ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

20. Prior to the first occupation of any house or flat the footway on the south of St Andrews Road connecting the site access with the existing footway to the east of the site must be completed and available for use by the public.

Reason: To ensure adequate provision for non-vehicular road users in the interests of road safety.

21. A visibility splay of 4.5m x 160m to the west and 4.5m x 90m to the right (as shown on Drawing No. LH01-ENG-700 Rev) shall be provided in accordance with the approved drawing prior to any works commencing on the access (except for those works associated with the provision of the visibility splay); and
- i. a schedule of maintenance for the visibility splay shall be provided prior to the access becoming operational; and
 - ii. the visibility splay shall be maintained at all times free from any obstruction exceeding 0.26m metres above the level of the carriageway in accordance with the agreed schedule of maintenance, unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

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

22. Driveways over service verges shall be constructed to accommodate vehicles and shall be surfaced with bituminous macadam unless otherwise agreed with the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To ensure acceptable infrastructure is provided at the property accesses.

23. No works shall commence on site until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The CTMP shall include as a minimum the following information:
- Details of any temporary construction access from the public road;
 - Duration of works;
 - Construction programme;
 - Details of construction traffic routes to the site;
 - Measures to be put in place to prevent material being deposited on the public road, monitoring and arrangements to clean the road if necessary;
 - Traffic management measures to be put in place during works including any specific instructions to drivers;
 - Parking provision for site staff;
 - Drop-off and turning provision for delivery vehicles to ensure entry and exit in a forward gear;
 - Hours of operation and restrictions during school arrival and departure times from the existing housing; and
 - Arrangements for providing residents with information on works, points of contact for liaison and emergencies.

Thereafter, the development works shall proceed in accordance with the approved details, unless otherwise approved in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site, road safety and the amenity of the area/adjacent properties.

24. The development shall meet the following requirements:

- a) Except for the formation of a single access route, there should be no built development - including any land-raising - within the area shown as being at risk of flooding in Figure 10 (p28) of the Flood Risk Assessment (1601 - Lhanbryde, Moray, FRA Aug 19) by Kaya Consulting. (Note SEPA advises that while there should be no built development including land raising, this area should be sustainably managed).
- b) No development shall commence until the detailed design of the access route, including provision of compensatory storage and flood relief culverts has been agreed in writing with the Council, as Planning Authority in consultation with SEPA and thereafter the agreed details shall be implemented in full on site.

Reason: To protect people and property from flood risk in line with Scottish Planning Policy.

25. Prior to the first occupation of any unit hereby approved the acoustic barrier shall be installed at the location as described in Figure 4, page 11 of the Noise Impact Assessment supporting document by Charlie Fleming Associates Ltd, 5 Saltpans, Charlestown, Fife KY11 3EB, dated 20 September 2019, and titled "Report on Road Traffic Sound For Springfield Properties At St Andrews Road, Lhanbryde, Elgin, Moray". Thereafter, the approved barrier (or a suitable equivalent approved in writing by the Council, as Planning Authority in consultation with the Environmental Health Authority and the Trunk Roads Authority) shall be retained during the lifetime of the development.

Reason: To prevent noise nuisance.

26. Prior to the first occupation of any units defined as plots 71-77 hereby approved a post and wire fence shall be provided along the eastern boundary of the site.

Reason: In the interests of the amenity of the surrounding area.

27. Notwithstanding the details noted on approved drawings 2016/D/PL/01 (D type), 2016FF_901 (FF type) and 2019AA_901 the feature cladding on each elevation of these houses shall have a vertical orientation rather than a horizontal orientation as detailed on the plans.

Reason: In order to ensure all elements of the development harmonise regardless of tenure.

28. Notwithstanding the details noted in the placemaking statement received on 25 November and the material conditions drawing reference LH01_PL_04 revision F, the render colour for the Coxton View Character Areas identified in the foregoing shall not be white and shall instead be altered to cream or another pale colour to be agreed in writing with the Council, as Planning Authority prior to the commencement of any unit in this character area.

Reason: In order to create a strong sense of place.

29. All surface water drainage proposals shall be in accordance with the submitted report 'Drainage Strategy Report, St Andrews Road, Lhanbryde'. All measures for the management of surface water shall be implemented in full prior to the first occupation of any residential unit hereby approved. Maintenance shall be in accordance with the measures set out in the maintenance document received on 23 November 2020.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.

30. There shall be no drainage connections to the trunk road drainage system.

Reason: To ensure that the efficiency of the existing trunk road drainage network is not affected.

31. No development shall commence until details of the proposed foul pumping station including elevations of all works, means of enclosures and associated plant (including noise levels) have been submitted to, and approved by the Council, as Planning Authority, in consultation with Environmental Health. Thereafter the approved details shall be implemented in full prior to the first occupation of any part of the development.

Reason: To ensure an acceptable form of development as these details are lacking from the application.

Reason(s) for Decision

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

The proposal accords with the provisions of the development plan and there are no material considerations that indicate otherwise.

List of Informatives:

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

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

mail buildingstandards@moray.gov.uk

The development subject to this notice falls within a highlighted proximity of a mains gas pipe which is considered a major hazard. The applicant/ agent/ developer is strongly advised to contact the pipeline operator PRIOR to ANY works being undertaken pursuant to the permission granted/confirmed by this notice.

Address is:

Southern Gas Networks Plc

SGN Plant Location Team

95 Kilbirnie Street

Glasgow

G5 8JD

Tel: 01414 184093 OR 0845 0703497

Search online at:

www.linesearchbeforeyoudig.co.uk

SGN personnel will contact you accordingly.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Electric Vehicle (EV) charging provision must be provided in accordance with the current Moray Local Development Plan (MLDP 2020) policy and supplementary guidance requirements.

Planning consent does not carry with it the right to carry out works within the public road boundary.

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

Before commencing development, the applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new roads. The applicant will be required to provide technical information, including drawings and drainage calculations. Advice on this matter can be obtained from the Moray Council web site at

http://www.moray.gov.uk/moray_standard/page_65638.html

Before starting any work on the existing public road, the applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing

transport.develop@moray.gov.uk

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

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

Street lighting will be required as part of the development proposal.

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

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

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.

THE SCOTTISH ENVIRONMENT PROTECTION AGENCY has commented that:-

See attached consultation response dated 12 September 2019.

Authorisation is required under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) to carry out engineering works in or in the vicinity of inland surface waters (other than groundwater) or wetlands. Inland water means all standing or flowing water on the surface of the land (e.g. rivers, lochs, canals, reservoirs).

As advised above a Controlled Activities Regulations (CAR) construction site licence will be required for management of surface water run-off from this construction site. See SEPA's Sector Specific Guidance: Construction Sites (WAT-SG-75) for details. The applicant should ensure sufficient space is available for construction drainage mitigation measures. Site design may be affected by pollution prevention requirements and hence we strongly encourage the applicant to engage in pre-CAR application discussions with a member of the regulatory services team in your local SEPA office, contact details below.

Please also refer to Guidance for Pollution Prevention (GPPs) Notes and Guidance on the construction of SUDS (CIRIA C768). Please refer to the NetRegs website for guidance on waste management and see specifically their Waste Management Plan template for producing the site waste management plan.

Management of surplus peat or soils may require an exemption under The Waste Management Licensing (Scotland) Regulations 2011. Proposed crushing or screening will require a permit under The Pollution Prevention and Control (Scotland) Regulations 2012.

Details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory services team in your local SEPA office at: 28 Perimeter Road, Pinefield, Elgin, IV30 6AF, Tel: 01343 547663.

SCOTTISH WATER have commented as follows:

See attached consultation response dated 17 September 2019.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	Title/Description
LH01_LP_01	Location plan



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:
23/02157/APP

Site Address:
Land At St Andrews Terrace
Lhanbryde

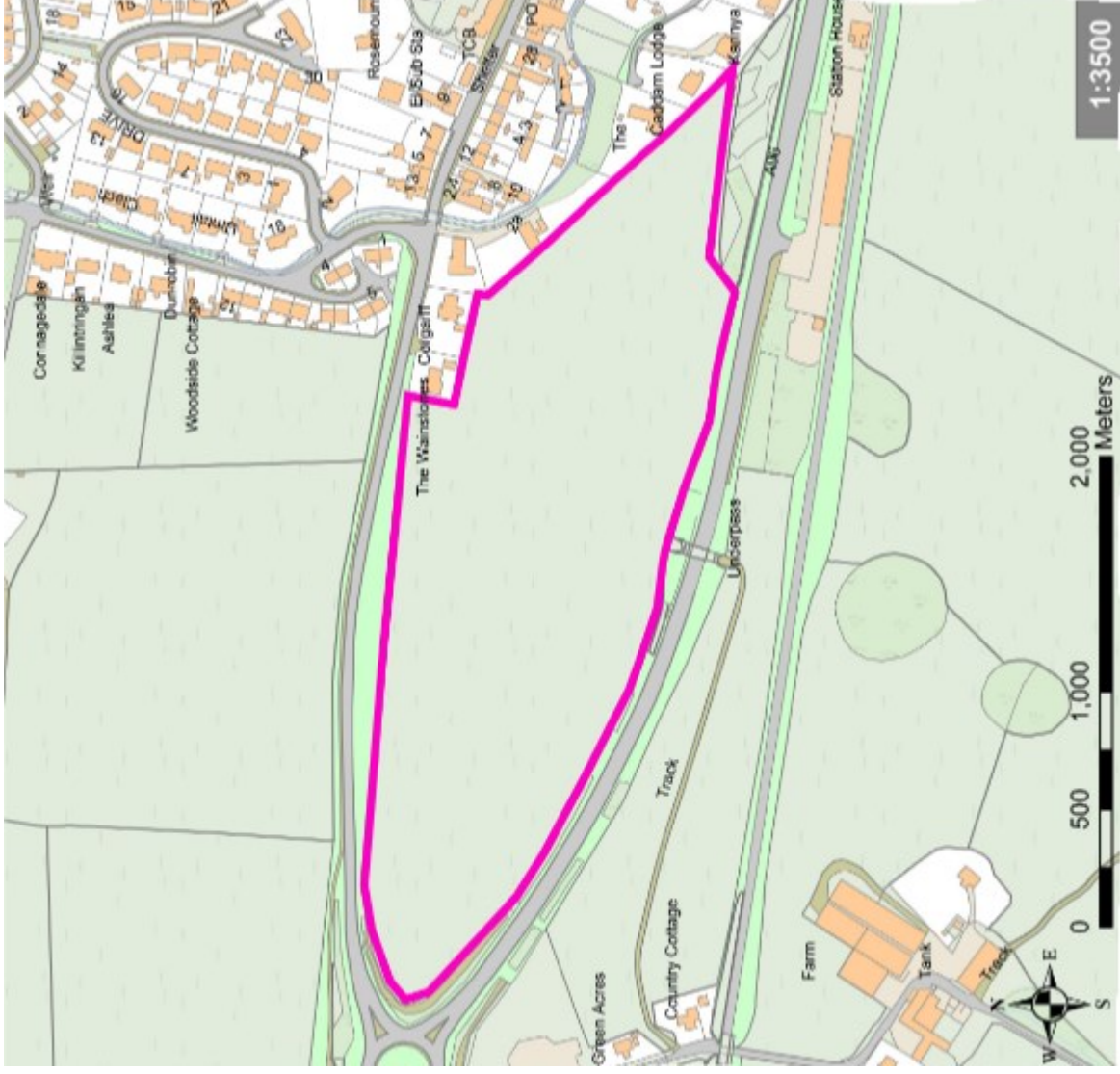
Applicant Name:
Springfield Properties PLC

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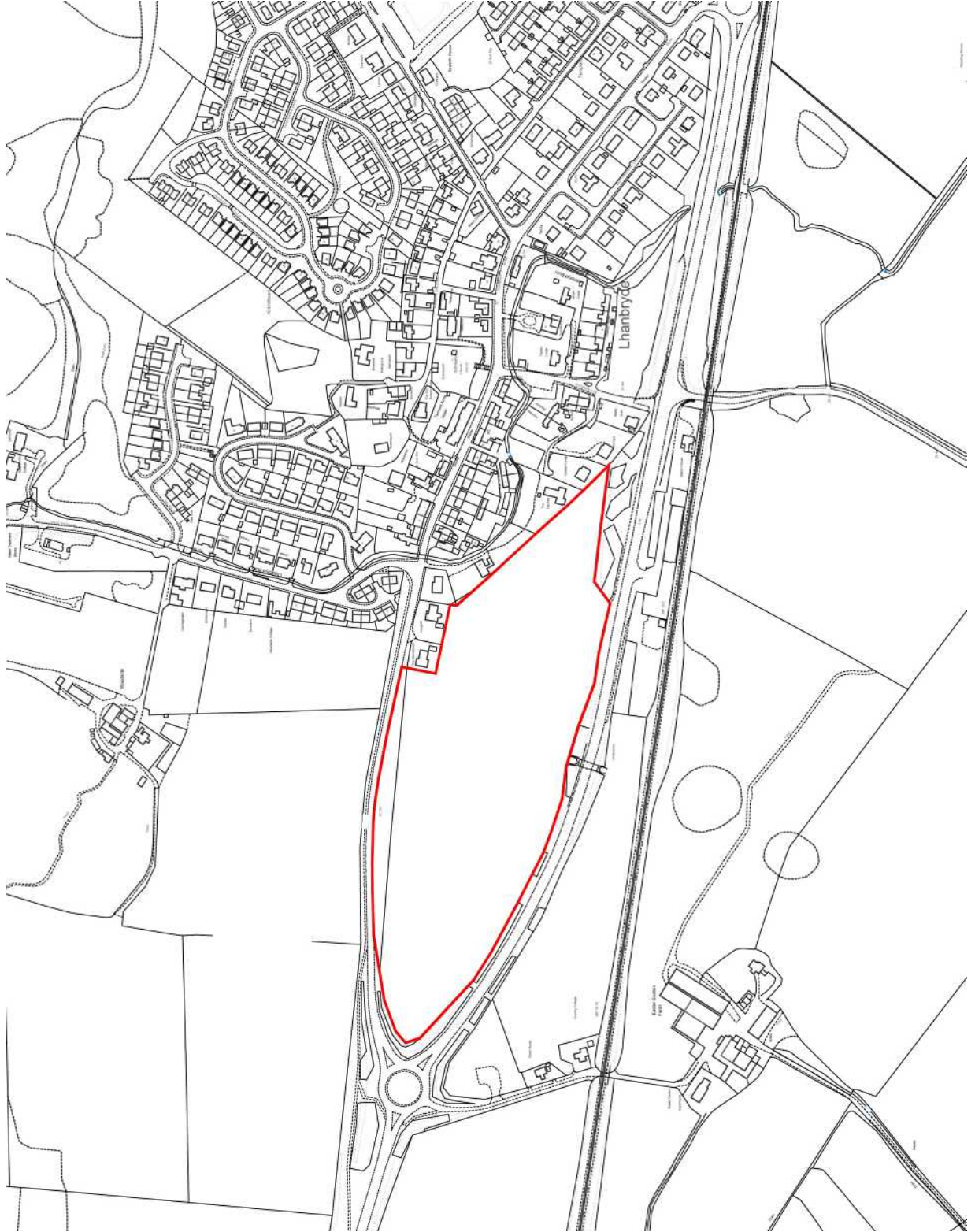
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Location Plan



Site Location



Adoption layout



PLANNING APPLICATION: 23/02157/APP

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

1 THE PROPOSAL

- This is an application under section 42 of the Planning Act, which seeks to vary the terms of the existing planning permission for a housing development to allow a proposed footpath to be provided prior to first occupation of any unit on site rather than prior to completion as currently approved.
- The proposal is to vary condition 19 of the original permission. This condition will become condition 20 of the new planning permission because of the condition relating to the time allowed to start works which is now required to be added as an express condition on all planning permissions which was not the case when the original application was issued.
- The original planning permission (19/01080/APP) was for 77 houses with associated access, parking, surface water drainage, a play park, kickabout pitch, footpaths and Landscaping. No other alterations to the terms of the planning permission are proposed.
- Work has yet to commence on site. The existing planning permission remains live until 14 April 2024.

2. THE SITE

- The site extends to 6.8ha and is on the western edge of Lhanbryde. The site is covered by the Lhanbryde R1 designation in the Moray Local Development Plan 2020.
- The site is bounded to the north by St Andrews Road and to the south by the A96(T).
- The proposed path that is the subject of this application runs along the boundary of the site with St Andrews Road.
- There are existing houses to the east of the site.
- The site is largely open grazing land and there is an existing cattle pass underneath the A96(T) which will be blocked up.
- There are mature trees along the roadside boundaries of the site.
- There is an existing burn running through the site that will be retained.
- There are significant changes in levels across the site. There is central dip and the land rises steeply to the east.
- There is a site (Meikle Coxtton Cottages) of archaeological interest to the south of the site.
- Areas in the north of the site and around the burn are identified on SEPA flood maps as at risk of surface water flooding.

- An area of the site in the north appears on the SEPA flood map as at Low (1 in 1000 years) risk of flooding and the site is adjacent to an area of medium (1 in 200 year) flood risk.
- There is a medium pressure gas pipeline to the north of the site.

3. **HISTORY**

19/01080/APP - Residential development and associated infrastructure at R1 St Andrews Terrace, Lhanbryde – approved by the Planning and Regulatory Services Committee – issued 14 April 2021.

4. **POLICIES**

MLDP

PP1 Placemaking
 PP2 Sustainable Economic Growth
 PP3 Infrastructure and Services
 DP1 Development Principles
 DP2 Housing
 EP1 Natural Heritage Designation
 EP2 Biodiversity
 EP5 Open Space
 EP8 Historic Environment
 EP12 Management and Enhancement Water
 EP13 Foul Drainage
 EP14 Pollution Contamination Hazards

NPF4

NPF1 - Tackling the Climate
 NPF2 - Climate mitigation and adaptation
 NPF3 - Biodiversity
 NPF4 - Natural Places
 NPF5 - Soils
 NPF6 - Forestry, woodland and trees
 NPF7 - Historic assets and places
 NPF13 - Sustainable transport
 NPF14 - Design, quality and place
 NPF16 - Quality homes
 NPF21 - Play, recreation and sport
 NPF18 - Infrastructure first
 NPF22 - Flood risk
 NPF23 - Health and safety

5. **ADVERTISEMENTS**

5.1 Advertised for neighbour notification purposes.

6. **CONSULTATIONS**

Transportation: No objection

Transport Scotland: No response at time of writing.

7. **OBJECTIONS-REPRESENTATIONS**

None.

8. **OBSERVATIONS**

8.1 Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended allows applicants to apply to develop land without compliance with conditions previously attached to a planning consent. In determining such an application, the Council, as Planning Authority can only consider the conditions subject to which planning permission should be granted and may:

- grant permission unconditionally (i.e. remove the conditions attached to the planning consent);
- grant permission conditionally with differing conditions; or
- refuse the application (i.e. keep the conditions attached to the planning consent).

8.2 Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the Development Plan i.e. National Planning Framework 4 (NPF) and the adopted Moral Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.

8.3 The main planning issues are considered below:

8.4 **Section 42 application**

In considering a Section 42 application the planning authority can only consider the conditions that are the subject of the application although this does not preclude consideration of the overall effect of granting a new permission. The effect of granting a Section 42 application is the creation of a new planning permission and therefore all conditions of the previous consent must be reiterated in order to have effect. In this case it is recommended that the condition relating to the provision of a 2m wide footpath along St Andrews Road (condition 19 of the original permission) is varied as requested by the applicant and all the other conditions are reiterated unchanged.

8.5 **Environmental Impact Assessment**

The development was a 'schedule 2' development for the purposes of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 as it is an urban development where the site exceeds 0.5ha. The original application (19/01080/APP) was screened as not being an EIA development. The EIA Regulations do not specifically provide for a proposal to vary conditions of an earlier development. It is recognised that a Section 42 application is an application for planning permission and that the effect of granting it would be to grant a fresh permission for the whole development.

However, the current proposal does not alter the previously approved number of units, the layout or design. The current proposal to change the timeframe for providing the roadside footpath does not in itself introduce new or additional environmental impacts beyond those previously assessed and mitigated against. It is also noted that appropriate mitigation of environmental impacts forms part of the conditions of the existing permission which are to be reiterated.

- 8.6 **Principle of Development (MLDP policies PP3 & DP1 and NPF4 policy 13)**
The proposal is to allow an approved footpath along the frontage of St Andrews Road to be provided on first occupation of any unit within the development rather than on completion as currently approved. The applicant argues that the current wording would necessitate excessive outlay to comply with the conditions without the benefit of sales to cover that cost. The statement highlights a range of factors that have led to higher build costs and altered market conditions resulting in a need to ensure development is carried in the most effective manner possible. The original condition was recommended by the Transportation Manager and was imposed to ensure that there is adequate footpath provision for the development and avoid road safety conflicts on St Andrews Road. The Transportation Manager has no objection to the proposed change. The proposal will ensure that the footpath is in place prior to any residents occupying the development and potentially making use of the footpath. This still achieves the original aims of the condition. It is noted that several other conditions (original conditions 3, 4, 12, 24, 25 & 30) of the existing consent already use 'first occupation' as a trigger. The proposal will ensure that the development still complies with MLDP policies PP3 & DP1 and NPF4 policy 13 in relation to the adequate and timely provision of active travel connections.
- 8.7 **Climate & Nature Crisis and Climate Mitigation (NPF4 policies 1, 2 & 3 & MLDP EP2)**
The original permission (19/01080/APP) was approved under the current LDP but prior to the adoption of NPF4. NPF4 policies 1 and 2 require significant weight to be given to the climate and nature crises in the assessment of all applications and requires climate mitigation from all development. In this case the proposal relates to an approved development. The proposal to change the timescale for the provision of a roadside footpath will not itself alter the impact of the development in relation to the climate or nature crises and will not alter the level of carbon emissions for the already approved development. The proposals are considered to comply with NPF4 policies 1 and 2.
- 8.8 NPF4 policy 3 requires all proposals for major developments to conserve, restore and enhance biodiversity. The original application was considered against MLDP policy EP2 which also requires development to create or enhance biodiversity. The approved plans include the protection of an existing high quality alkaline fen area and native species planting across the site and the provision of bat and bird boxes, gully pot ladders and hedgehog fencing. The current proposal will not impact on the approved biodiversity measures. The proposal is considered to comply with NPF4 policy 3.
- 8.9 **Remaining Conditions**
It is recommended that the remaining conditions of the original planning permission will be reiterated so that they continue to have effect.

Conclusion

The proposed variation of condition to allow for the approved roadside path to be provided on first occupation rather than completion of any unit in the development is considered to be acceptable in this instance. The Transportation Manager has no objection and the proposal accords with policy. No other changes are proposed. For the avoidance of doubt the recommendation reiterates all other conditions of the previous consent. It is recommended that planning permission is granted.

REASON(S) FOR DECISION

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

The proposal accords with the provisions of the development plan and there are no material considerations that indicate otherwise.

**Author/Contact
Officer:**

Lisa Macdonald
Senior Planning Officer

Ext: 01343 563479

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



REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON 15 FEBRUARY 2023

SUBJECT: 24/00001/PAN – PROPOSED CONSTRUCTION AND INSTALLATION OF A BATTERY ENERGY STORAGE SYSTEM (BESS) WITH A GENERATING CAPACITY OF UP TO 50 MEGAWATTS AND ASSOCIATED INFRASTRUCTURE ON LAND TO THE WEST OF KEITH SUBSTATION, WESTERTON ROAD, KEITH

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

1. REASON FOR REPORT

- 1.1 To inform the Committee that a Proposal of Application Notice (PAN) was submitted on 22 December 2023 on behalf of Keith Storage Solutions Ltd.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to exercising the statutory functions of the Council as a Planning Authority.

2. RECOMMENDATION

2.1 It is recommended that:

- (i) in noting the terms of this report, the Committee advise upon any provisional views/relevant issues that Members of this Committee (or any other Member(s) of the Council) wish to raise about the proposed development so that these matters can be recorded and thereafter fed back to the prospective applicant in order to inform the development of their proposed formal application for planning permission; and
- (ii) the matters raised by the Committee also be forwarded to consultees likely to be involved in any formal application for planning permission for the proposal.

3. BACKGROUND

- 3.1 Scottish Government has published guidance which encourages elected members to highlight any issues with a proposed development at the pre-application stage which they would wish to see taken into account within any formal application for planning permission.
- 3.2 Following consideration by this Committee on 11 November 2014 it was agreed that any PAN received after this date would be reported to Committee to give Members of the Committee, and the Council, the opportunity to identify any key issues/provisional views about the proposed development and that these matters be reported back to applicant (paragraph 4 of the Minute refers).
- 3.3 This current report is not about the merits of the proposed development but rather, based on local knowledge of local issues and wider concerns, etc. Members are invited to identify any matters relevant to the proposal. These will be reported back to the prospective applicant for their information and attention, and to inform the development of the proposed application. It is also proposed that, for information, Members' comments be forwarded to consultees likely to be involved in any formal application for planning permission for the proposal.
- 3.4 This PAN relates to the construction and operation of Greener Grid Park (GGP) infrastructure, in the form of a Battery Energy Storage System (BESS), with a generating capacity of up to 50 megawatts (MW) and associated infrastructure. A plan is appended showing the location and extent of the site (**Appendix 1**). The site extends to 3.87 hectares and is situated on land to the south of Westerton Road, adjacent to the Keith Substation. The Proposed Development would share the constructed access for the existing GGP, previously consented under permission references 20/00237/APP and 20/00877/APP, of which the approved Synchronous Condenser has been implemented. Aside from the previously approved GGP site, the remaining land area in the proposal (i.e., southern part of the site) is in agricultural use and allocated within the Moray Local Development Plan (2020) for industrial development, identified as I11 Westerton Road East Expansion. Overhead electricity lines cross this area. The site also lies within a study area covered by the Keith Green Energy and Infrastructure Framework, which was approved by the Council in December 2023 for development management purposes and will be a material consideration in the determination of any prospective planning application (para 16 of the draft minute refers).
- 3.5 Planning permission is required for this proposal. The proposal is for an energy installation with a capacity of up to 50 MW, and therefore under the current hierarchy regulations the proposal would comprise a major development for planning purposes. As such, the proposal will be subject to PAN and pre-application consultation procedures with the local community.
- 3.6 A formal response has been issued to the applicant's agent to confirm that the proposed arrangements for engaging with the local community are sufficient. The applicant proposes to consult with the Keith and Strathisla Community Councils, local councillors, MSPs and the MP. In this case the applicant's

agent has been advised that no additional parties require to be notified with a copy of the PAN.

- 3.8 The PAN advises that two public events will be held with the venue and dates yet to be confirmed. The events require to be advertised locally in advance and allow an opportunity for feedback upon the proposal. For validation purposes for a major application, the applicant is required to submit a pre-application consultation report setting out the steps taken to consult with the local community together with details of comments made on the proposal and how the applicant has responded to all comments made on the proposal in the development of the application.

4. SUMMARY OF IMPLICATIONS

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

Identifying key issues at an early stage to assist with front loading major planning applications is a vital aspect of supporting and facilitating the Council's priority for economic development in Moray.

(b) Policy and Legal

Scottish Government guidance on the role of councillors in pre-application procedures affords elected members the opportunity to offer general provisional views on forthcoming developments which are the subject of a PAN where the details of the development have yet to be finalised.

(c) Financial implications

None.

(d) Risk Implications

None.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities/Socio Economic Impact

None.

(h) Climate Change and Biodiversity Impacts

None.

(i) Consultations

Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Legal Services Manager, the Development Management and Building Standards Manager, the Equal Opportunities Officer, the Strategic Planning & Delivery Manager, and

Lissa Rowan (Committee Services Officer) have been consulted, and comments received have been incorporated into the report.

Members of Moray Council who are not on this Committee have also been consulted and any views received on the proposal will be made known at the meeting.

5. CONCLUSION

- 5.1 The Council has received a PAN intimating that a formal application for planning permission will be submitted for a major development proposal, in this case for permission for the development of a battery energy storage system. The Committee (and any other Member(s) of the Council) are asked to identify any provisional views/relevant issues which they would wish to see taken into account and inform the development of the proposal.**

Author of Report: Richard Smith
Principal Planning Officer

Background Papers:
Ref: 24/00001/PAN



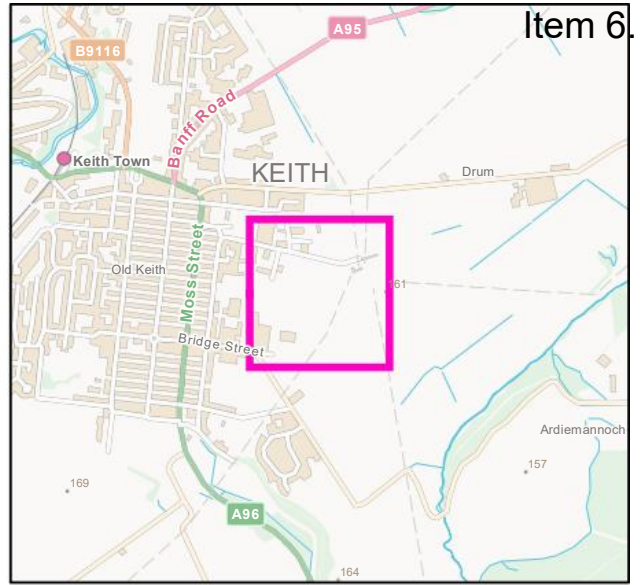
COMMITTEE SITE PLAN

KEITH

Application Reference Number:

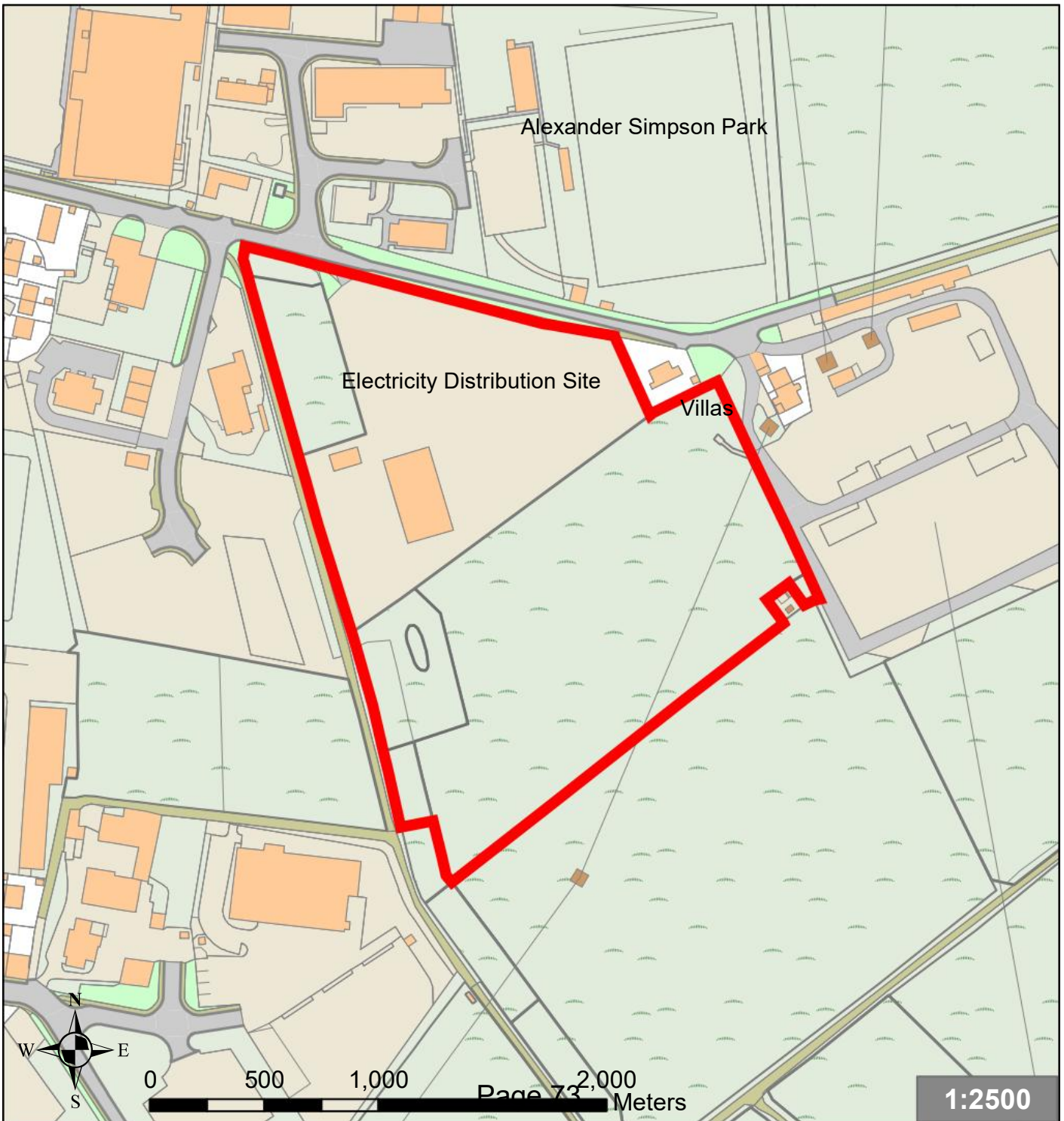
24/00001/PAN

Construction and installation of up to 50mw battery energy storage systems (BESS) and associated infrastructure on Land Southwest Of Electricity Substation Westerton Road Keith



Item 6.

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**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON
15 FEBRUARY 2024**

**SUBJECT: 23/02233/PAN – PART RETROSPECTIVE APPLICATION FOR
CONSTRUCTION OF AGRICULTURAL ROAD INITIAL HARD
ROCK MINERAL EXTRACTION AND MINERAL PROCESSING
AND CONSTRUCTION OF TEMPORARY JUNCTION. PART NEW
APPLICATION FOR HARD ROCK QUARRY PROCESSING AREA
NEW ACCESS JUNCTION AND CREATION OF
ECOLOGICAL/BIO DIVERSITY BUFFER AND ASSOCIATED
ANCILLARY QUARRY INFRASTRUCTURE (INCLUDING BUT
NOT LIMITED TO OFFICE WHEEL WASH PERIMETER BUNDING
WELFARE AND LANDSCAPING) AT ROSARIE QUARRY, KEITH.**

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

1. REASON FOR REPORT

- 1.1 To inform the Committee that a Proposal of Application Notice (PAN) was submitted on 21 December 2023 on Backmuir Trading Limited.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to exercising the statutory functions of the Council as a Planning Authority.

2. RECOMMENDATION

2.1 It is recommended that:

- (i) in noting the terms of this report, the Committee advise upon any provisional views/relevant issues that Members of this Committee (or any other Member(s) of the Council) wish to raise about the proposed development so that these matters can be recorded and thereafter fed back to the prospective applicant in order to inform the development of their proposed formal application for planning permission; and
- (ii) the matters raised by the Committee also be forwarded to consultees likely to be involved in any formal application for planning permission for the proposal.

3. **BACKGROUND**

- 3.1 Scottish Government has published guidance which encourages elected members to highlight any issues with a proposed development at the pre-application stage which they would wish to see taken into account within any formal application for planning permission.
- 3.2 Following consideration by this Committee on 11 November 2014 it was agreed that any PAN received after this date would be reported to Committee to give Members of the Committee, and the Council, the opportunity to identify any key issues/provisional views about the proposed development and that these matters be reported back to applicant (paragraph 4 of the Minute refers).
- 3.3 This current report is not about the merits of the proposed development but rather, based on local knowledge of local issues and wider concerns, etc. Members are invited to identify any matters relevant to the proposal. These will be reported back to the prospective applicant for their information and attention, and to inform the development of the proposed application. It is also proposed that, for information, Members' comments be forwarded to consultees likely to be involved in any formal application for planning permission for the proposal.
- 3.4 As described, this PAN relates to a proposal for the formation of a hard rock quarry processing area, new access junction and creation of ecological/bio diversity buffer and associated ancillary quarry infrastructure including but not limited to office, wheel wash, perimeter bunding, welfare and landscaping and also incorporates part retrospective works, including the construction of agricultural road, initial hard rock mineral extraction and mineral processing and construction of temporary junction, all of which covers an area of 18.34 hectares. A small portion (1.7 hectares) of the proposed site was subject to a previous planning consent for the formation of a hard rock quarry 19/00921/MIN, however, whilst some works were carried out in relation to this previous consent, these did not constitute a lawful commencement and as such this previous consent has now expired.
- 3.5 The site is located to the south of the A95 trunk road, between Keith and Mulben and comprises a disused quarry and surrounding farmland and is not covered by any specific designation within the Moray Local Development Plan 2020. Please see **Appendix 1** which shows the location and extent of the proposal.
- 3.6 Planning permission is required for this proposal. Relative to the current Hierarchy Regulations and the development is in excess of 2 hectares and therefore the proposal would comprise a major development for planning purposes. As such, the proposal will be subject to PAN and pre-application consultation procedures with the local community.
- 3.7 A formal response has been issued to the applicant's agent to confirm that the proposed arrangements for engaging with the local community are sufficient, however, the agent has also been advised to consult with, local councillors, MSPs and MP.

- 3.8 The PAN advises that two public events will be held in Keith Sports and Community Centre and/or Longmore Community Hall, Keith, on w/c 5 February and 26 February 2024. The events require to be advertised locally in advance and allow an opportunity for feedback upon the proposal. For validation purposes for a major application, the applicant is required to submit a pre-application consultation report setting out the steps taken to consult with the local community. The report includes details of comments made on the proposal and how the applicant has responded to the comments to inform the development of the application.

4. **SUMMARY OF IMPLICATIONS**

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

Identifying key issues at an early stage to assist with front loading major planning applications is a vital aspect of supporting and facilitating the Council's priority for economic development in Moray.

(b) Policy and Legal

Scottish Government guidance on the role of councillors in pre-application procedures affords elected members the opportunity to offer general provisional views on forthcoming developments which are the subject of a PAN where the details of the development have yet to be finalised.

(c) Financial implications

None.

(d) Risk Implications

None.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities/Socio Economic Impact

None.

(h) Climate Change and Biodiversity Impacts

None.

(i) Consultations

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

Members of Moray Council who are not on this Committee have also been consulted and any views received on the proposal will be made known at the meeting.

5. CONCLUSION

- 5.1 The Council has received a PAN intimating that a formal application for planning permission will be submitted for a major development proposal, in this case for permission for the formation of a hard rock quarry processing area new access junction and creation of ecological/bio diversity buffer and associated ancillary quarry infrastructure including but not limited to office, wheel wash, perimeter bunding, welfare and landscaping and also incorporates part retrospective works, including the construction of agricultural road, initial hard rock mineral extraction and mineral processing and construction of temporary junction. The Committee (and any other Member(s) of the Council) are asked to identify any provisional views/relevant issues which they would wish to see taken into account and inform the development of the proposal.**

Author of Report: Iain Drummond, Planning Officer
Background Papers:
Ref:



COMMITTEE SITE PLAN

KEITH

Application Reference Number:

23/02233/PAN

Part retrospective application for construction of agricultural road initial hard rock mineral extraction and mineral processing and construction of temporary junction. Part new application for hard rock quarry processing area new access junction and creation of ecological/bio diversity buffer and associated ancillary quarry infrastructure (including but not limited to office wheel wash perimeter bunding welfare and landscaping) at Rosarie Quarry Keith

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