



REPORT TO: SPECIAL MEETING OF THE PLANNING AND REGULATORY SERVICES COMMITTEE ON 10 FEBRUARY 2022

SUBJECT: PRE-DETERMINATION HEARING: PLANNING APPLICATION 21/01391/APP – INSTALLATION OF UNDERGROUND ELECTRICITY CABLES AND ASSOCIATED DEVELOPMENT ON LAND BETWEEN GREENHILL AND FACTORS PARK PLANTATION, DESKFORD, CULLEN, MORAY FOR MORAY OFFSHORE WINDFARM (WEST) LTD

BY: HEAD OF GOVERNANCE, STRATEGY AND PERFORMANCE

1. Purpose of Pre-Determination Hearing

- 1.1 The purpose of the Pre-determination Hearing is to afford those submitting representations and the applicant the opportunity to state and explain their cases before the Planning & Regulatory Services Committee prior to the Committee determining the application.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to the functions of the Council as Planning Authority.

2. Background

- 2.1 In terms of the Council's Scheme of Delegation relating to Planning Applications the above noted application has been referred direct to a Pre-determination Hearing to which the applicant and those submitting representations have been invited to attend and afforded the opportunity of being heard.

3. Appointed Officer's Report

- 3.1 A copy of the Appointed Officer's report on the application is attached.

4. Pre-determination Hearing Procedure

- 4.1 The proposed procedure which the Committee will follow in respect of the Hearing is as follows:-

- (i) The Applicant will speak first (maximum of 15 minutes) outlining the application and addressing the stated objections.
 - (ii) Members of the Committee will then be given the opportunity to question the Applicant in order to clarify points raised.
 - (iii) Those submitting representations (Representation Speakers) on the application will then be given the opportunity to address the meeting (maximum of 10* minutes) to speak to their stated objections/representations. It should be noted that the Committee will not be prepared to consider any new ground(s) of objection/representation.
 - (iv) Members of the Committee will be given the opportunity to question each Representation Speakers in turn in order to clarify points raised.
 - (v) The Clerk will read out the names of those who have submitted written statements and advise that these have been circulated to the Committee and uploaded on to the Councils Committee Website.
 - (vi) Both Applicant and Representation Speakers will then be given the opportunity to summarise their respective cases, in light of the submissions, to the Committee (5 minutes each maximum for Representation Speakers and equivalent time for the Applicant).
 - (vii) The Depute Chief Executive (Economy, Environment and Finance), or their representative, will then be afforded the opportunity to make any additional comments and/or points of clarification in light of the submissions.
 - (vii) The Committee will then conclude the Hearing and make a recommendation to a reconvened Committee in respect of the determination of the application.
- * This may be extended at the discretion of the Chair in cases where the speaker is speaking on behalf of a number of representatives or is representing other party/parties who are unable to attend a Hearing.

5. Conclusion

5.1 The Committee is invited to hear the applicant and those submitting representations on the application in regard to application for the installation of underground electricity cables and associated development on land between Greenhill and Factors Park Plantation, Deskford, Cullen, Moray for Moray Offshore Windfarm (West) Ltd

Author of Report:	Lissa Rowan, Committee Services Officer
Background Papers:	Report on application
Ref	



<p>GUIDANCE NOTE PRODUCED FOR PLANNING & REGULATORY SERVICES COMMITTEE</p> <p>MEETING OF 18 JANUARY 2022</p> <p>REPORT ON APPLICATION</p>
--

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

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

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

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

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

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

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

Censure of a Councillor or an Officer

Suspension of a Councillor for up to one year

Disqualification of a Councillor for up to five years

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

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

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

21/01391/APP
13th September
2021

**Installation of underground electricity cables and
associated development on Land Between Greenhill And
Factors Park Plantation Deskford Cullen Moray
for Moray Offshore Windfarm (West) Ltd**

Comments:

- Advertised for neighbour notification purposes.
- Application is a National Development as defined under the Hierarchy Regulations 2009 and National Planning Framework 3 (NPF3) where it is identified within national development 4 - High Voltage Electricity Network (where the proposed new electricity transmission cables would exceed the minimum threshold of 132kV).
- 1 objection/representation received.

Procedure:

- Application to be considered at a meeting of the Planning and Regulatory Services Committee which will include a statutory pre-determination hearing. The hearing will allow for the applicant and those making representations to be given opportunity to speak to the application and the stated representations prior to its determination.
- The Planning and Regulatory Services Committee will then determine the application after the hearing.
- Planning Obligation towards compensatory planting will require to be secured by a legal agreement or upfront payment prior to issuing of any planning consent.

Recommendation: Approve subject to following conditions:

Conditions/Reasons

1. Notwithstanding the submitted details, prior to the commencement of any development, a detailed Phasing Plan, Access Strategy and detailed Construction Programme for the development shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority. The Phasing Plan Access Strategy and Construction Programme shall include the details of the all proposed routes for construction traffic and abnormal load deliveries and the locations of all proposed access points on the public road network, along with the timing of works at each location on the cable route.

Thereafter, all works shall be completed in accordance with the approved Phasing Plan and Construction Programme.

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

2. The planning permission hereby granted for the proposed development shall be carried out only in accordance with the approved Phasing Plan permitted by Condition 1 and the details, including detailed drawings (and other supporting information), shall previously have been submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority in line with the matters specified for that phase of the development. These drawings and details shall show the matters specified in Conditions 3 and 4 below.

Reason: In order that detailed consideration can be given to the matters specified prior to the works commencing on each phase of the development.

3. In pursuance of Condition 2 above, for each phase of the development for which details are to be submitted for approval, the required details shall be:
 - a) Detailed drawing of the proposed temporary access routes for the phase and details of the number and size of construction vehicles using the access routes for that phase of development;
 - b) Detailed drawings of the improvements required to the public roads utilised by construction traffic and any abnormal load deliveries for the phase, which shall include but not be limited to the provision of new passing places, road widening and edge strengthening, all on ground over which the applicant has or can obtain control at location(s) and constructed in accordance with Moray Council specification;
 - c) Detailed drawings of the proposed access locations onto the public road for construction vehicles for the phase, including the required visibility splays, access specification and construction details, details of all earthworks and drainage provision and/or drainage diversion, details of proposed fencing/gates, signage and any required temporary traffic management, along with details of reinstatement works for any temporary access;
 - d) Details of the locations of all cable and haul road crossings within that phase of the development and the proposed works associated with the crossings, including but not limited to, the means of cable crossing e.g. directional drilling or open trench, means of access to works areas, details of the haul road crossings and any required temporary traffic management, and details of required reinstatement works;
 - e) Details of diversion routes for local footpaths during the construction period and associated signage (to be agreed with the Access Manager);
 - f) Detailed drawings of the locations of all cable joint access points, including their proximity to the public road and any public road drainage, and details of any temporary fencing or other measures to protect the users of the public road during the construction period;
 - g) A Construction Traffic Management Plan, the details of which must include, parking provision for staff and loading/unloading, provision for the prevention of material being deposited onto the public road including wheel cleaning and for road sweeping at construction access(es) to the public road, a

- programme for monitoring and provisions for interim maintenance to be undertaken to ensure safe and suitable access is maintained for the construction access routes for the duration of the works will be required;
- h) 'Before' road condition video and joint surveys.

Thereafter, all works shall be completed in accordance with the approved details and with the Construction Traffic Management Plan.

Reason: In order to ensure that the matters specified can be fully considered prior to the commencement and to ensure acceptable infrastructure to enable access to the development and development that does not create any hazard to road users in the interests of road safety.

4. In pursuance of Condition 2 above, for each phase of the development where there is a requirement for Abnormal Load deliveries for which details are to be submitted for approval, the required details shall be:
- a) A detailed survey of the Abnormal Load delivery route shall be carried out to determine the locations of structures (e.g. bridges) and street furniture affected by any construction and/or abnormal indivisible load vehicle movements;
 - b) Road improvements/strengthening (either temporary or permanent) required as a result of the survey prior to any movements of any construction and abnormal load traffic shall be completed;
 - c) Abnormal Load Traffic Management Plan, details of which must include the methods of dealing with large and/or abnormal delivery vehicles, vehicle swept path analysis and the methods of marshalling and manoeuvring at junctions on the public road network;
 - d) Evidence of the completion of an Abnormal load trial run(s) undertaken for the delivery route. Representatives from the Moray Council Transportation (Traffic), the Trunk Road Authority, Police Scotland and any other roads authorities where roads will form part of the route of the delivery must be invited to the trial run.

Thereafter, all works associated with the Abnormal Load Deliveries shall be completed in accordance with the approved details and the Abnormal Loads delivered in accordance with the Traffic Management Plan.

Reason: In order to ensure that the matters specified can be fully considered prior to the commencement and to ensure acceptable infrastructure to enable access to the development and development that does not create any hazard to road users in the interests of road safety.

5. Prior to commencement of development on any phase of the development, the following shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority:
- a. Evidence to confirm that a Section 96 'Wear and Tear' Agreement has been completed and agreed by the developer or their representative and the local Roads Authority, including a commitment to the undertaking of joint 'before' and 'after' road condition surveys, to ensure that the costs of works to repair damage to the public road as a result of construction traffic on the roads

identified in Condition 1 will be met.

Reason: To ensure that any adverse impact on the condition of the public road, including roadside verges, attributable to the development traffic is identified and ameliorated.

6. At the start and end of each phase (as per condition 1) 'before' and 'after' condition video surveys of the proposed delivery and construction traffic routes shall be undertaken jointly with the Roads Authority and a copy of the survey provided to the Planning and Roads Authority.

Reason: To ensure that any adverse impact on the condition of the public road, including roadside verges, attributable to the development traffic is identified and ameliorated.

7. Construction works associated with the development, audible at any point on the boundary of any noise sensitive dwelling, shall be permitted between 0700-1900 hours, Monday to Friday and 0700-1300 hours on Saturdays only, and at no other times out with these permitted hours (including National Holidays). No construction works shall be undertaken during any other times except where previously agreed in writing with the Council, as Planning Authority, and where so demonstrated that operational constraints require limited periods of construction works to be undertaken out with the permitted/stated hours of working.

Reason: In the interests of the amenity of nearby dwellings.

8. The Construction Environmental Management Plan ("CEMP") shall be implemented and maintained throughout the construction phase and in accordance with the details provided in the supporting document, including Appendices, by Moray Offshore Wind Farm (West) Limited and titled "OnTI Cable Route Construction Environmental Management Plan, Document Name : 8460005-DAD-MWW-REP-000006 Revision:02 , Status : Final, Date : 03-09-2021."

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

9. No works in connection with the development hereby approved shall commence unless an Archaeological Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the 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 brought into use unless a Post-Excavation Research Design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

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

10. Prior to development commencing, detailed drawings and cross sections of any above ground watercourse crossings, must be submitted to and approved in writing by Moray Council, as Planning Authority in consultation with SEPA and Moray Flood Risk Management.

Thereafter the approved water course crossings must be developed in accordance with the approved plans unless otherwise agreed in writing with the Council, as Planning Authority.

Reason: In order to ensure the finalised water crossing design can be given further consideration and to ensure no detriment to the water environment or flood risk occurs.

11. The development shall be carried out in accordance with all mitigation measures (including pre-development surveys) as identified in the OnTi Protected Species Baseline Survey Report (doc. name: 8460005-DAD-MWW-REP-000005 rev: 2 dated 3 September 2021) and appendices hereby approved.

Reason: To ensure the ecology and environment of the surrounding areas are protected during construction works.

12. The cable hereby consented shall not be electrified unless the compensatory planting as identified in the Cable Route Tree Felling and Compensatory Planting Summary Report (doc. name: 8460005-DAD-MWW-REP-000022 rev. 2 dated 21 December 2021) and appendices hereby approved has been fully implemented.

Reason: To ensure timeous delivery of the agreed compensatory tree planting.

13. That within a period not less than 6 months prior to the cessation of operations, or an alternative timeframe as agreed in writing by Moray Council, as Planning Authority, a decommissioning plan is to be prepared in line with best practice at the time of preparation and submitted for the written approval of Moray Council, as Planning Authority in consultation with SEPA and Aberdeenshire Council. The decommissioning of the development must thereafter be undertaken in accordance with the approved decommissioning plan.

Reason: To ensure provision is in place to facilitate a move towards a "Circular Economy" and future proof the development against future environmental requirements or considerations in the interests of the protection of the natural environment.

Reason(s) for Decision

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

The proposal complies with the provisions of the Moray Local Development Plan 2020 and supports the aims of National Planning Framework 3 on the basis it enables transmission of low carbon electricity produced offshore to the national

grid, whilst ensuring it has limited landscape impact and provides suitable mitigation against impacts on the environment and infrastructure.

List of Informatives:

SCOTTISH WATER have commented as follows:

Comments from SCOTTISH WATER are attached for your attention.

THE ENVIRONMENTAL HEALTH MANAGER, DEVELOPMENT SERVICES, has commented that:-

The Council has no record of private water supplies on the route of the proposed development. However, it is possible that unregistered supplies are present. It is recommended that a full assessment is made into the sources of water supply of properties on and in the vicinity of the route of the proposed development, the potential impact on these supplies and the need for mitigation. If private water supplies are present, you should contact the Council's Environmental Health section prior to starting works (tel 0300 1234561, email environmentalhealth@moray.gov.uk).

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Prior to the commencement of deliveries or construction activity, a Section 96 Agreement under the Roads (Scotland) Act 1984 will be required to be approved between the developer and the Roads Authority. This is to ensure that the costs to repair any damage to the public roads as a result of the construction work traffic are met by the applicant.

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 and Specification:

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

Before commencing development, the applicant is obliged to apply for permission to modify the existing public road, in accordance with Section 56 of the Roads (Scotland) Act. The applicant will be required to provide technical information, including drawings and drainage calculations, a programme for the proposed works. Advice on the application process can be obtained by emailing transport.develop@moray.gov.uk

The applicant is obliged to apply for road opening permit(s) in accordance with Section 85 of the Roads (Scotland) Act 1984. Advice on this matter can be

obtained by emailing roads.permits@moray.gov.uk and reference to the following page on the Council web site

Road Opening: http://www.moray.gov.uk/moray_standard/page_79860.html

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

Any street furniture, which will need to be repositioned to enable the development, including deliveries to the development, shall be at the expense of the developer. Furthermore, any existing roadside ditch, which requires relocating, a pipe or culvert shall be agreed in advance of any works commencing at that location. Advice on these matters can be obtained by emailing road.maint@moray.gov.uk

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

The developer shall meet all costs of improvements to the road infrastructure, which are required as a result of the development, including any measures to enable the use of structures on the public road for construction traffic and abnormal load deliveries.

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

The developer shall be responsible for ensuring that surface/ground water does not run from the public road into the site

The developer 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. Advice on the retaining structures/embankments can be obtained by emailing structures@moray.gov.uk

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.

The SCOTTISH ENVIRONMENT PROTECTION AGENCY has made the following comments

Any watercourse crossings should be designed in accordance with SEPA's Engineering in the water environment: good practice guide River crossings <https://www.sepa.org.uk/media/151036/wat-sg-25.pdf> and following SEPA

Engineering advice webpage
<http://www.sepa.org.uk/regulations/water/engineering/>

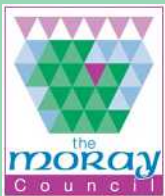
THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

A developer obligation has been paid against this consent relating to compensatory tree planting.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	Title/Description
8460005-DAA-ITP-MAP-000004	Location plan
8460005-DAD-MWW-REP-001	Cable route crossing points 3 of 12 (Greenhill)
8460005-DAD-MWW-REP-001	Cable route crossing points 4 of 12 (Lurghill)

List of Documents

- Construction Environment Management Plan
- Construction Traffic Management Plan
- Cable Route Report
- Landscape Plan
- Pre-application Consultation Report
- Phase 1 Protected Species Report
- Archaeological Written Scheme of Investigation



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:

21/01391/APP

Site Address:

**Land Between Greenhill And Factors Park
Deskford Cullen**

Applicant Name:

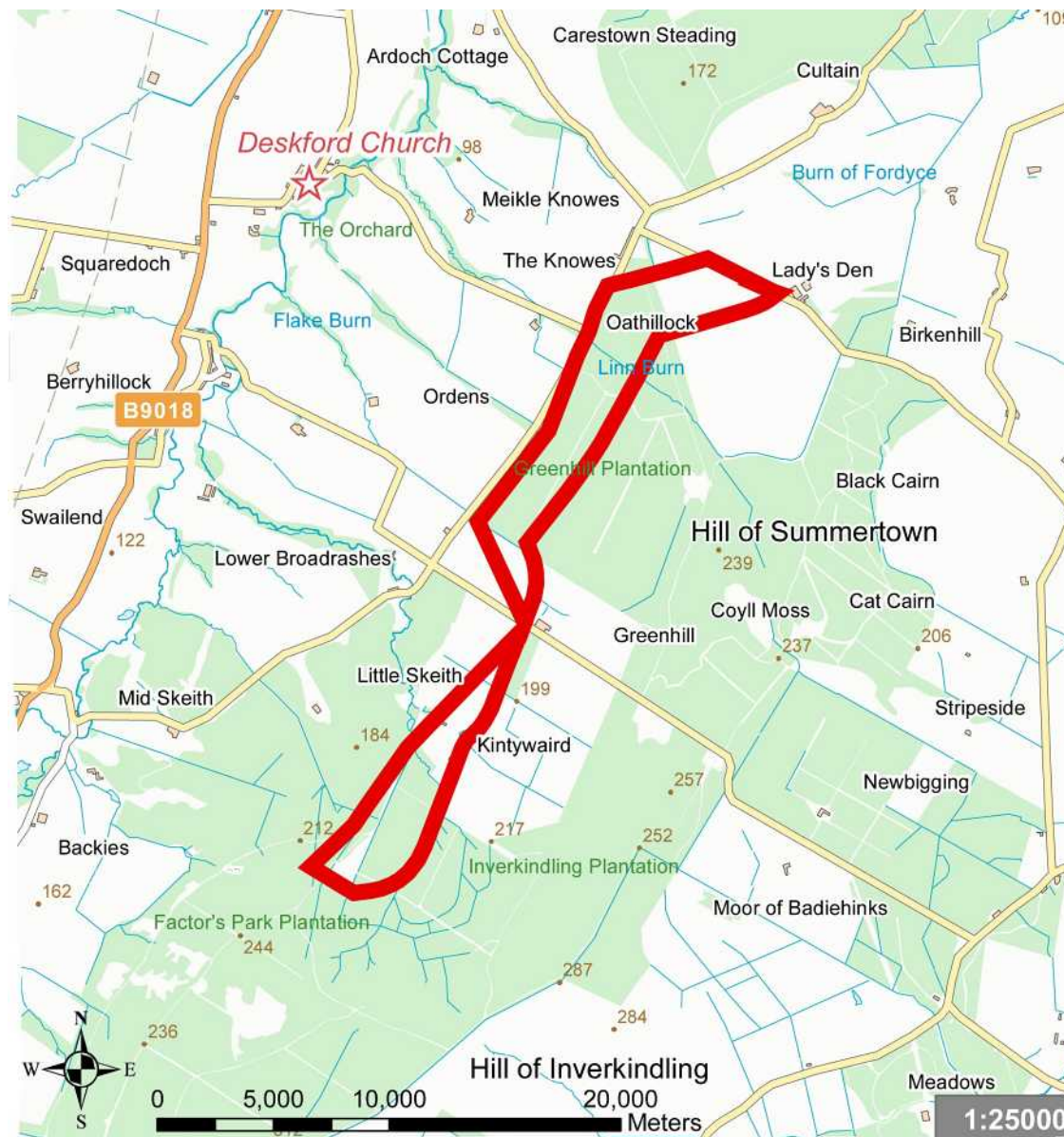
Moray Offshore Windfarm (West) Ltd

Plans, drawings and other material submitted to the local authority are protected by the Copyright, Designs and Patents Act 1988 (section 47). You may only use material which is downloaded and/or printed for consultation purposes, to compare current applications with previous schemes and to check whether developments have been completed in accordance with approved plans.

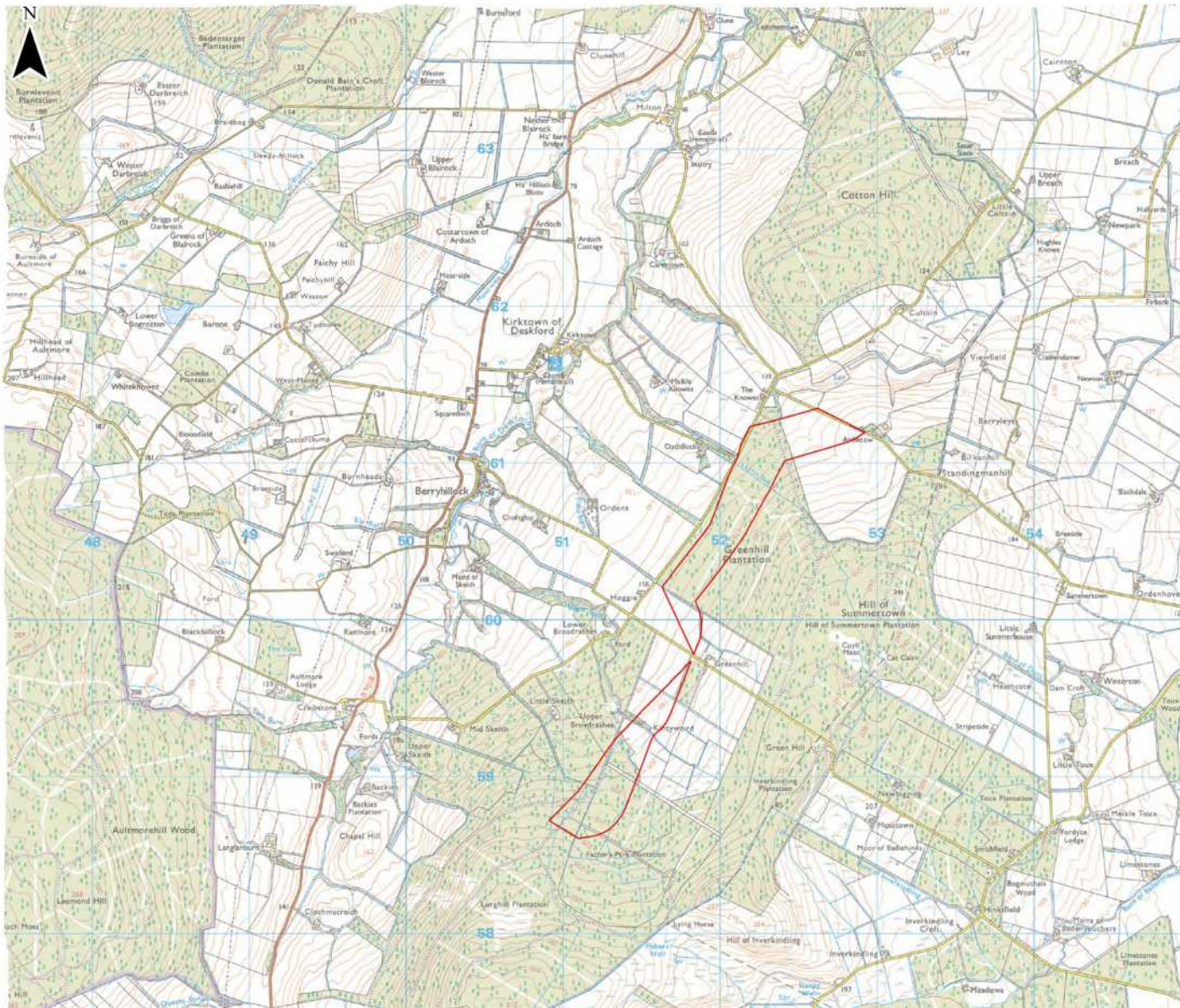
Further copies must not be made without the prior permission of the copyright owner.

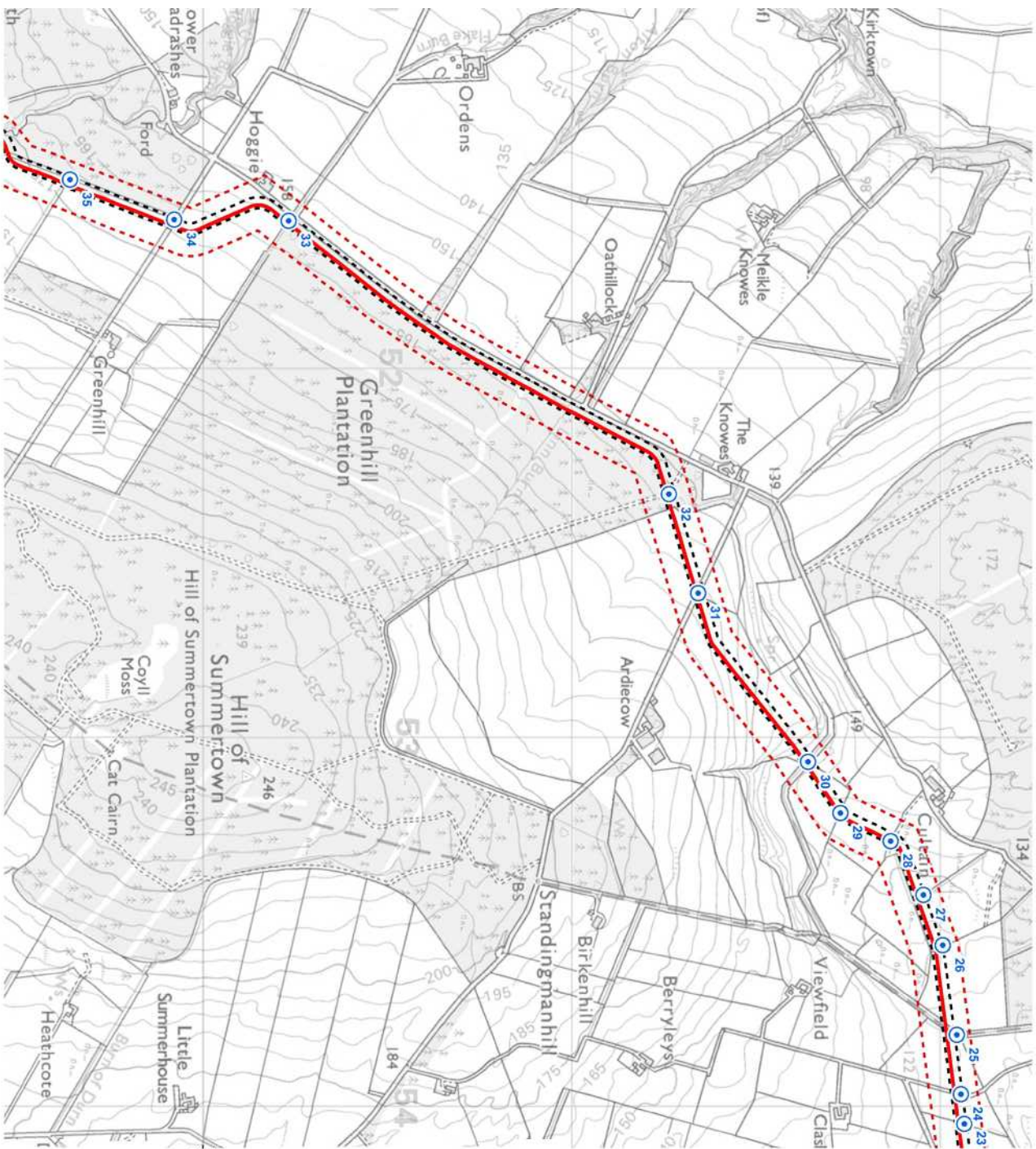
Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Moray Council and other Copyright holders. This permission must be granted in advance.

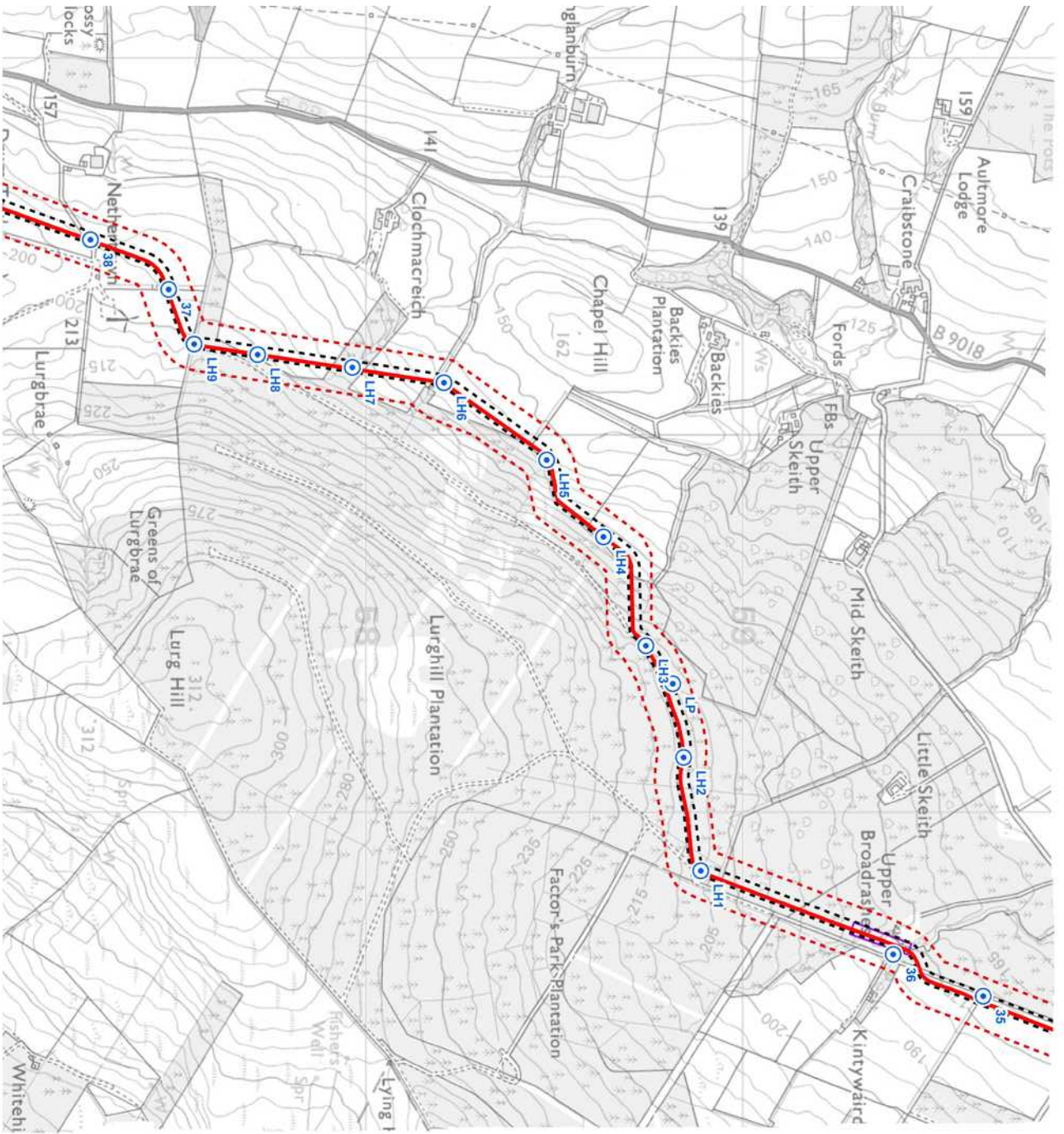
Location Plan



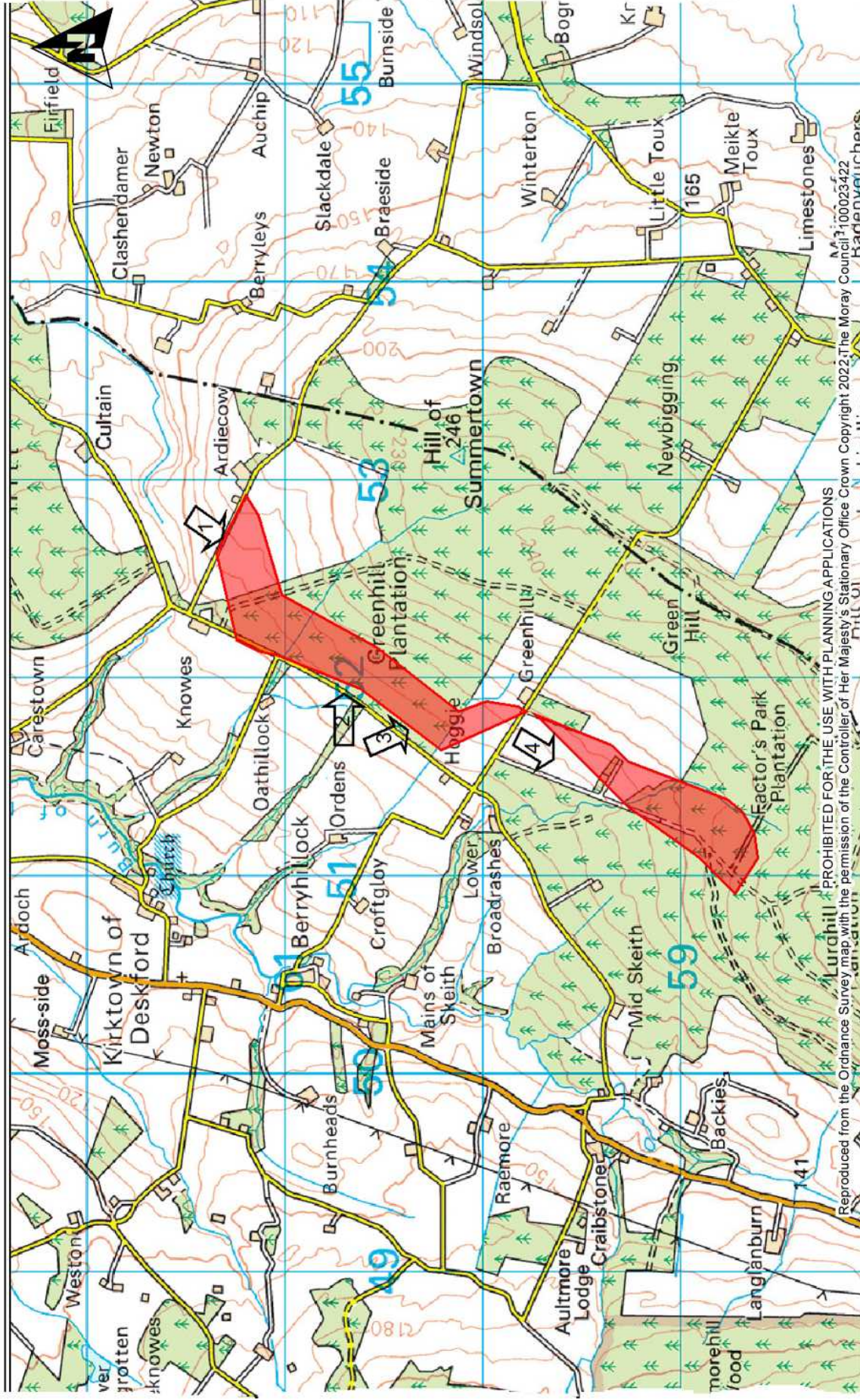
Site Location







21/01391/APP - Photograph Positions



Map Description: Arrows point in direction photograph was taken.

Scale: 1:25,000 @ A4



Photo 1 - South West from Ardiecow



Photo 2 - West towards Greenhill



Photo 3 - South East towards Greenhill



Photo 4 - South towards Kintyward and Factors Park



PLANNING APPLICATION: 21/01391/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

THE PROPOSAL

- Full planning permission for the installation of a section of high voltage electricity cables, associated with that already granted Planning Permission in Principle under planning consent 18/01046/EIA.
- The cables form part of a wider development of an offshore wind farm in the Moray Firth (Moray West Offshore Wind Farm), with onshore infrastructure in Moray as well as Aberdeenshire.
- The consented cabling route makes landfall near Sandend in Aberdeenshire, entering Moray at Cotton Hill, east of Deskford. From there the cables would run to the south west towards Whitehillock which is to the south of the A96 near the Aberdeenshire border.
- This application seeks to provide a section of cables outwith the route corridor and site boundary of that already permitted under 18/01046/EIA. This covers an area between Ardiecow/Greenhill and Factor's Park, to the south/south east of Deskford. This section of cable would tie back into the approved cable corridor route at each end.
- The extent of this application site would enable a section of cables approximately 3.1 km in length to be installed at a depth of approximately 1.2 metres (to top of ducting).
- The cabling would be 220-400kv and would comprise two separate cable circuits with 5 metres separation between them. Each cable would be made up of three separate cables and a separate fibre optic cable.
- The majority of the cables would be installed via open cut trenching, with horizontal directional drilling used at Kintyward under the pond.
- The cables would be installed within ducting which would be laid into the ground. The cables would then be pulled through once the ground above had been restored. The entire length of cabling is split into smaller sections (roughly 1km long) between joint bays. These will be points where cables are installed through the ducting. The cables would be pulled through these into position and would also allow access for maintenance once operational.
- The proposal is a "national" planning application as it is a development type identified in the National Planning Framework 3.

THE SITE

- The site covers two areas, the northern section runs between Ardiecow and Greenhill farms, through areas of agricultural land and the commercial forestry Greenhill Plantation. The southern section runs from Greenhill farm through agricultural land past Kintyward and into Factor's Park Plantation.
- The site is not covered by any designations in the Moray Local Development Plan 2020 nor is it covered by any environmental designations. The site contains two sites

that are on the local sites and monuments record (Kintyward farmstead and Factor's Park Plantation).

HISTORY

21/00653/PAN – Proposal of Application Notice for installation of underground cables submitted in advance of this application. Moray Council responded on 14 May 2021 stating that the consultation measures proposed were considered suitable and no further consultation or notification was necessary.

21/01080/S36SCN – EIA Screening Opinion for installation of underground cables adopted by Moray Council on 14 October 2021 determined that Environmental Impact Assessment was not required.

18/01046/EIA – Planning Permission in Principle to construct onshore electrical transmission infrastructure comprising of a cable transition jointing bay underground cable circuits construction of substation to south of Keith with further connecting cabling to allow connection with existing transmission network at Blackhillock including temporary construction compounds access track laydown areas and other associated works. This consent was granted by Moray Council on 3 December 2018 following a Pre-determination Hearing.

18/00954/S36 – Construct and operate an offshore windfarm, inclusive of two offshore electric substation platforms in the Moray Firth. This proposed offshore windfarm would comprise of 62-85 offshore turbines, to a height between 199m-285m (the taller turbines being at the lower density of 62 total) and would be located over 30km off the Moray Coast. The Moray Council was a consultee on the application, which was approved by Marine Scotland. Of note the Marine Scotland application identified the lifetime of the project as being circa 50 years, so it is clearly the intent that the onshore infrastructure and substation would be required for at least the same period.

17/01380/PAN – Proposal of Application Notice for proposed onshore substation and to onshore cable circuits. Moray Council responded on 25 September 2017 stating that the consultation measures proposed were considered suitable and no further consultation or notification was necessary.

17/00940/SCO – Scoping opinion for onshore transmission infrastructure landward of Mean Low Water Springs for Moray Offshore Windfarm (West). The scoping opinion was issued in August 2017 and included input from other consultees. This scoping opinion related to the development subject to application 18/01046/EIA.

POLICY - SEE APPENDIX

ADVERTISEMENTS

- Advertised for Neighbour Notification purposes.

CONSULTATIONS

Environmental Health – No objections, conditions recommended on working hours and ensuring development is implemented in accordance with measures contained in the Construction Environment Management Plan.

Contaminated Land – No objections.

Private Water Supplies – No objections, informative note provided.

Transportation Manager – No objection subject to conditions requiring finalised detail on access and roads improvement for construction traffic. Informatives recommended also.

Moray Flood Risk Management – Request to be part of discussions with SEPA on watercrossing details. To be incorporated within condition requested by SEPA.

Moray Access Manager – No objections.

Cullen and Deskford Community Council – Concerns previously raised that the crossing on the Fordyce Burn will be done by dig through method rather than directional drilling due to impact on environment. Otherwise no further comments.

Keith Community Council – No response received.

Aberdeenshire Council Archaeology – No objections, subject to condition requiring the works detailed in the submitted Written Scheme of Investigation to be undertaken.

Scottish Water – No objections, informative note provided on Asset Impact.

Scottish Government – Noted in records, no comments made.

Scotland Gas Networks – No response received (noted there is no Scottish Gas Networks infrastructure in the area subject to this application).

SEPA – No objections subject to condition requiring watercourse crossings to be designed to SEPA standards.

NatureScot – No comments to make.

Scottish Forestry – Following provision of Tree Felling and Compensatory Planting Summary Report no objections on basis there is no net loss of woodland.

Developer Obligations – No obligations sought.

Strategic Planning and Delivery – Refer to Scottish Forestry comments on loss of woodland and provide figure for level of obligations necessary towards compensatory planting scheme (£39425.60). *Officers Note: the applicant in addition to providing compensatory planting elsewhere in Moray has agreed to pay the above sum.*

OBJECTIONS-REPRESENTATIONS

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

John and Kathryn Canning - Kintyward Deskford Buckie Moray AB56 5UT - O

The points raised can be summarised as follows:

Issue: Given that the property of the objector is bounded on all sides by open agricultural land, it is hard to believe that it is necessary for the cable to pass through their land or under the house.

Comments (PO): The site proposed covers a wider area to allow for a degree of micro-siting when laying the cable. The applicant has confirmed that the cable will not be installed under any property.

OBSERVATIONS

Legislative Requirements

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the Development Plan i.e. the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.

The application is a national development under the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, and as identified in the National Planning Framework 3. NPF3 advises that the development of any new onshore electricity transmission cabling of 132 kilovolts or higher forms part of the high voltage electricity transmission network upgrade and is therefore a national development.

Section 38A of the 1997 Act makes provision for regulations or development orders to require a planning authority to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a committee of the authority. Section 27 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 states that national developments must be subject to a pre-determination hearing under Section 38A of the 1997 Act. Therefore this application will be subject to a pre-determination hearing before the Planning and Regulatory Service Committee.

The main issues are considered below.

Background

The 18/01046/EIA consent in place for Planning Permission in Principle for the onshore transmission infrastructure provided high level details for the cable route, with the specific route for the cable unknown hence the large and wide site boundary granted.

18/01406/EIA was subject to a number of conditions requiring detail to be submitted (which now forms part of application 21/01402/AMC). Relevant to this also is the application for 'Approval of Matters Conditioned' for an electricity substation currently under consideration too, near Blackhillock to the south under planning application reference 21/01561/AMC.

In finalising the route of the cable, the applicant has identified various constraints within the permitted development cable corridor that now require deviation outwith the site boundary and previous corridor. This has resulted in this application being submitted.

Pre-application Consultation Report

The application is accompanied by a Pre-Application Consultation (PAC) Report, as prescribed under section 35C of the 1997 Act. This outlines the statutory consultation that the applicant undertook with the local community in relation to this application.

The form and scope of the pre-application consultation was considered to be suitable, and agreed by the Council in response to Proposal of Application Notice 21/00653/PAN, and takes account of temporary legislative changes as a result of the ongoing COVID-19 pandemic (allowing for online/virtual consultation in lieu of in person events).

The PAC Report states that general feedback was given on the wider project including elements of the Aberdeenshire application, but no feedback was offered on the proposal subject to this application in Moray. It is therefore considered that the applicant has addressed all the relevant matters raised (none in this instance) at the PAC stage of the application process, as demonstrated in the submitted PAC Report.

Environmental Impact Assessment

Whilst the consented cable route under 18/01406/EIA was subject to Environmental Impact Assessment (EIA), this separate proposal is not covered by this. Therefore the applicant requested a screening opinion from the Council (as competent authority under The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017) to determine whether this proposal would be subject to EIA (ref: 21/01080/S36SCN). The Council issued a screening opinion on 14 October 2021 confirming that EIA was not required.

Principle of Development

NPF3 is the spatial expression of the Scottish Government's Economic Strategy, identifying plans for development and investment in infrastructure. Those projects that are identified in NPF3 are subject to the same due consideration as other planning applications, however material weight should be attached to the national significance of such development.

The principle of onshore transmission infrastructure associated with the offshore windfarm has been established by the Planning Permission in Principle in place. This proposal seeks a slight diversion to its route. Whilst there has been a change in development plan policy since the original decision following the adoption of the MLDP in summer 2020, the site area subject to this proposal does not fall within any land use designation in the MLDP that would presume against any development.

Under policy DP9 – Renewable Energy, the MLDP is generally supportive of renewable energy developments where they: are compliant with policies to safeguard and enhance the built and natural environment; do not result in the loss or damage of prime agricultural land; and avoid significant adverse impacts in respect of landscape, pollution, environment, traffic and tourism and recreational interests. Evaluation will be given to these matters as follows.

Subject to due consideration in relation to other matters (specified below), the proposal is considered acceptable in principle.

Landscape and Visual Impact (DP1, DP9)

Policy DP1 Development Principles requires all development to be designed and sited at a suitable level, integrated into the surrounding landscape whilst also ensuring existing trees are safeguarded, with suitable replacement planting provided where required. This proposal relates to transmission cables that would be contained underground, therefore there would be little visual or landscape impact from these. The main impact will be from above ground changes to accommodate the proposed sections of the cable route. The proposed cable route would result in a degree of woodland loss which will be the main visual impact of this proposal. Further evaluation is given to woodland loss below, however it should be noted that the areas of woodland covered under this application are plantation forestry that would be subject to continuous cycles of growing and felling over time. Nonetheless the proposal would require the creation of a 30 metre wide strip along the cable route being kept clear of any tree planting to ensure the cable infrastructure is not adversely impacted on by machinery associated with commercial forestry operations. Overall the proposed landscape and visual impact of the proposed section of cable is considered to be minimal, and therefore the proposal is not considered to conflict with policies DP1 and DP9 with regard to landscape and visual impact.

Construction Impacts

Impacts on the amenity of the area are likely to be limited to the construction phase of the development. Given the nature of the works, cable laying and back filling is a transient process, as the cable is laid along the route. The construction compounds, and temporary access routes will remain for a longer duration though during the cable laying operation.

In support of this application (and the wider cable route) a Construction Environment Management Plan (CEMP) has been prepared which identifies the potential impacts of the proposed construction operations on the environment, and construction methods/practices to ensure these impacts are either avoided or appropriately mitigated. The Council's Environmental Health Service raised no objections to this application, subject to conditions ensuring the measures specified in the CEMP as well as limits to working hours are applied.

Woodland and Trees (EP7)

As noted above, the proposal would see sections of the cable subject to this application pass through forested land comprising plantation forestry. Although parts of the route would be on what is currently felled woodland, it still comprises forestry land in the national forestry inventory. A 30 metre corridor would be applied through the forested land to ensure that there is sufficient clearance either side of the cable. This is to ensure the cable is not damaged by commercial forestry operations (e.g. felling and land clearing).

At a national level, the Scottish Government's Control of Woodland Removal Policy creates a strong presumption in favour of protecting of Scotland's woodland resource, and states that "woodland removal should be allowed only where it would achieve significant and clearly defined additional public benefits. In appropriate cases a proposal for compensatory planting may form part of this balance." At a local level, MLDP policy EP7 Forestry, Woodlands and Trees reflects this requirement.

In light of the necessary corridor/buffer, a total of 8.68 ha of woodland would be lost/sterilised as a result of this application (and the other areas of woodland subject to the

original cable route). Compensatory planting is proposed at the Substation site at Whitehilllock, though this does not include planting necessary to screen the substation. This compensatory planting would cover an area of 5.4 ha.

With regard to the remaining 3.28 ha the applicant has expressed a willingness to pay towards the Council's compensatory planting scheme as there is no land within the applicant's control in Moray that can accommodate compensatory planting.

The benefit of this project to transmit low carbon electricity from the offshore windfarm to the national grid is recognised, particularly through its promotion as a project of national significance under NPF3. The plantation forestry that would be lost as a result of this proposal holds low ecological value. The compensatory planting proposed would comprise native species and is considered to suitably mitigate the loss of plantation forestry.

Subject to condition ensuring the compensatory planting is undertaken, and ensuring the developer obligation is paid, the proposal is considered to be in compliance with the aims of the Control of Woodland Removal Policy and policy EP7 of the MLDP.

Ecology (EP1, EP2, DP9)

Within the application site subject to this application, the use of the land is limited to plantation forestry and agricultural land. The ecological survey (Phase 1 Habitat and Protected Species Baseline Survey) provided with the application notes that such land generally has low ecological value, but it found one potential Groundwater Dependent Terrestrial Ecosystem - an area of marsh grassland was found to the West of Kintyward. A monkeyflower (an invasive non-native species) was found in a road-side ditch close to Greenhill Farm.

The survey has also considered impacts on badgers, otters, water vole, pine marten, red squirrel, and bats (preliminary roost assessment). Badger setts were identified in proximity to the cable route, and conditions are recommended to ensure that safeguarding and mitigation proposed by the applicant's assessments is followed. No otter or water vole were identified in the area. A pine marten was sighted at Greenhill Plantation, with scat located on the track surface within Factors Park Plantation though no den was identified.

The nature of the plantation (density and age) means it is unlikely to be suitable for use by red squirrels for foraging, but the overall extent of forestry means it could provide a suitable resource for red squirrels. The survey found one old and degraded drey, but overall the survey considers the impact on red squirrels is low.

With regard to bats the plantation edge along with nearby buildings have the potential to provide habitat for bats, but the majority of the site considered to provide low or negligible potential for bat roosting. A traditional stone building at Greenhill Farm and two beech trees nearby offer a moderate potential for habitat.

Overall the application site has a low ecological value, but mitigation measures have been recommended in light of the above findings to avoid impacts on the identified species. This includes the use of horizontal directional drilling for approximately 200 metres to avoid adverse impacts to the pond to the west of Kintyward. The mitigation measures are therefore considered suitable and it is noted that NatureScot raised no objections to this proposal.

Transportation and Access (DP1, PP3, DP9)

A Construction Traffic Management Plan along with associated plans for proposed construction accesses have accompanied this application. The Transportation Manager notes the information provided does not contain sufficient detail at this stage, but has recommended conditions to cover the information necessary to ensure that safe and suitable accesses are provided for construction traffic, as well as any necessary improvements to the public road. Subject to these conditions, the proposal is considered to comply with policies DP1, PP3 and DP9.

The proposal does not impact on any core paths, nor does it result in a loss of any rights of way. The Moray Access Manager raised no objections to the proposal.

Water Environment (EP12, DP9)

The installation of a cable underground may impact private water supplies. In this case, the Council holds no records of any Private Water Supplies in the area subject to this application. However there may be unregistered supplies. Environmental Health/Private Water Supplies have not objected to this proposal but have recommended an informative note drawing attention to this matter.

Scottish Water have not objected but draw attention to the potential for the proposal to impact on their assets.

SEPA has raised no objections to the application but has recommended a condition requiring detail of watercourse crossings to be submitted and agreed with the Council in consultation with SEPA. Moray Flood Risk Management have also not objected subject to being included in the condition requested by SEPA. A condition is to be placed in line with this, and subject to this the proposal is considered to satisfy the requirements of policy EP12.

Archaeology

The application site does not pass through any heritage designations, though it does have two small areas that are in the local sites and monuments record (Kintyward and Factors Park Plantation). A Written Scheme of Investigation (WSI) for Archaeology has been submitted as part of this application. Aberdeenshire Council Archaeology have raised no objections to this application, but have requested that a condition be applied ensuring the works outlined in the WSI are carried out. Should this reveal the need for post excavation analysis, then there will be a requirement to submit a post excavation research design for the analysis, publication and dissemination of results and archive deposition.

Conclusion

Taking account of the foregoing evaluation the proposal is not anticipated to give rise to any concerns or significant adverse environmental impacts. Any impacts that have been identified have been either avoided or suitability mitigated, and as such the proposal is considered to be suitable in terms of national and local planning policy and guidance. Approval is therefore recommended.

REASON(S) FOR DECISION

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

The proposal complies with the provisions of the Moray Local Development Plan 2020 and supports the aims of National Planning Framework 3 on the basis it enables transmission of low carbon electricity produced offshore to the national grid, whilst ensuring it has

limited landscape impact and provides suitable mitigation against impacts on the environment and infrastructure.

**Author/Contact
Officer:**

Andrew Miller
Senior Planning Officer

Ext: 01343 563274

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

APPENDIX

POLICY

Moray Local Development Plan 2020

PP2 SUSTAINABLE ECONOMIC GROWTH

Development proposals which support the Moray Economic Strategy to deliver sustainable economic growth will be supported where the quality of the natural and built environment is safeguarded, there is a clear locational need and all potential impacts can be satisfactorily mitigated.

PP3 INFRASTRUCTURE & SERVICES

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

- a) In relation to infrastructure and services developments will be required to provide the following as may be considered appropriate by the planning authority, unless these requirements are considered not to be necessary:
 - i) Education, Health, Transport, Sports and Recreation and Access facilities in accord with Supplementary Guidance on Developer Obligations and Open Space.
 - ii) Green infrastructure and network requirements specified in policy EP5 Open Space, Town and Village Maps and, contained within Supplementary Guidance on the Open Space Strategy, Masterplans and Development Briefs.
 - iii) Mitigation/modification to the existing transport network (including road and rail) to address the impact of the proposed development in terms of safety and efficiency. This may include but not be limited to passing places, road widening, junction enhancement, bus stop infrastructure, and drainage infrastructure. A number of potential road and transport improvements are identified and shown on the Town and Village Maps as Transport Proposals (TSP's) including the interventions in the Elgin Transport Strategy. These requirements are not exhaustive and do not pre-empt any measures which may result from the Transport Assessment process.
 - iv) Electric car charging points must be provided at all commercial and community parking facilities. Access to charging points must also be provided for residential properties, where in-curtilage facilities cannot be provided to any individual residential property then access to communal charging facilities should be made available. Access to other nearby charging facilities will be taken into consideration when identifying the need for communal electric charging points.
 - v) Active Travel and Core Path requirements specified in the Council's Active Travel Strategy and Core Path Plan.
 - vi) Safe transport and access routes linking to existing networks and mitigating the impacts of development off-site.

- vii) Information Communication Technology (ICT) and fibre optic broadband connections for all premises unless justification is provided to substantiate it is technically unfeasible.
- viii) Foul and surface water drainage, including Sustainable Urban Drainage Systems (SUDS), including construction phase SUDS.
- ix) Measures that implement the waste management hierarchy as defined in the Zero Waste Plan for Scotland including the provision of local waste storage and recycling facilities designed into the development in accord with policy PP1 Placemaking. For major applications a site waste management plan may be required to ensure that waste minimisation is achieved during the construction phase.
- x) Infrastructure required to improve or increase capacity at Water Treatment Works and Waste Water Treatment Works will be supported subject to compliance with policy DP1.
- xi) A utilities plan setting out how existing and new utility (including gas, water, electricity pipelines and pylons) provision has been incorporated into the layout and design of the proposal. This requirement may be exempted in relation to developments where the council considers it might not be appropriate, such as domestic or very small scale built developments and some changes of use.

b) Development proposals will not be supported where they:

- i) Create new accesses onto trunk roads and other main/key routes (A941 & A98) unless significant economic benefits are demonstrated or such access is required to facilitate development that supports the provisions of the development plan.
- ii) Adversely impact on active travel routes, core paths, rights of way, long distance and other access routes and cannot be adequately mitigated by an equivalent or better alternative provision in a location convenient for users.
- iii) Adversely impact on blue/green infrastructure, including green networks important for wildlife unless an equivalent or better alternative provision will be provided.
- iv) Are incompatible with key waste sites at Dallachy, Gollanfield, Moycroft and Waterford and would prejudice their operation.
- v) Adversely impact on community and recreational sites, buildings or infrastructure including CF designations and cannot be adequately mitigated.
- vi) Adversely impact on flood alleviation and mitigation infrastructure.
- vii) Compromise the economic viability of bus or rail facilities.

c) Harbours

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

d) Developer Obligations

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

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

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

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

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

DP1 DEVELOPMENT PRINCIPLES

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

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

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

(i) Design

- a) The scale, density and character must be appropriate to the surrounding area and create a sense of place (see Policy PP1) and support the principles of a walkable neighbourhood.
- b) The development must be integrated into the surrounding landscape which will include safeguarding existing trees and undertaking replacement planting to

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

- c) Make provision for new open space and connect to existing open space under the requirements of Policy EP5 and provide details of the future maintenance of these spaces. A detailed landscape plan must be submitted with planning applications and include information about green/blue infrastructure, tree species, planting, ground/soil conditions, and natural and man-made features (e.g. grass areas, wildflower verges, fencing, walls, paths, etc.).
- d) Demonstrate how the development will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape.
- e) Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity.
- f) Proposals do not result in backland development or plots that are subdivided by more than 50% of the original plot. Sub-divided plots must be a minimum of 400m², excluding access and the built-up area of the application site will not exceed one-third of the total area of the plot and the resultant plot density and layout reflects the character of the surrounding area.
- g) Pitched roofs will be preferred to flat roofs and box dormers are not acceptable.
- h) Existing stone walls on buildings and boundaries must be retained. Alterations and extensions must be compatible with the character of the existing building in terms of design, form, choice of materials and positioning and meet all other relevant criteria of this policy.
- i) Proposals must orientate and design buildings to maximise opportunities for solar gain.
- j) All developments must be designed so as to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use (calculated on the basis of the approved design and plans for the specific development) through the installation and operation of low and zero-carbon generating technologies.

(ii) Transportation

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

and connect people to education, employment, recreation, health, community and retail facilities.

- b) Car parking must not dominate the street scene and must be provided to the side or rear – and behind the building line. Maximum (50%) parking to the front of buildings and on street may be permitted provided that the visual impact of the parked cars is mitigated by hedging or low stone boundary walls. Roadways with a single carriageway must provide sufficient off road parking to avoid access routes being blocked to larger service vehicles and prevent parking on pavements.
- c) Provide safe access to and from the road network, address any impacts on road safety and the local road, rail and public transport network. Any impacts identified through Transport Assessments/ Statements must be identified and mitigated. This may include but would not be limited to, passing places, road widening, junction improvements, bus stop infrastructure and drainage infrastructure. A number of potential mitigation measures have been identified in association with the development of sites and the most significant are shown on the Proposals Map as TSP's.
- d) Provide covered and secure facilities for cycle parking at all flats/apartments, retail, community, education, health and employment centres.
- e) Garages and parking provision must be designed to comply with Moray Council parking specifications see Appendix 2.
- f) The road layout must be designed to allow for the efficient mechanical sweeping of all roadways and channels, pavements, turning areas and junctions. The road layout must also be designed to enable safe working practices, minimising reversing of service vehicles, with hammerheads minimised in preference to turning areas such as road stubs or hatchets, and to provide adequate space for the collection of waste and movement of waste collection vehicles.
- g) The road and house layout in urban development should allow for communal refuse collection points where the design does not allow for individual storage within the curtilage and / or collections at kerbside. Communal collection points may either be for the temporary storage of containers taken by the individual householder or for the permanent storage of larger containers. The requirements for a communal storage area are stated within the Council's Kerbside Collection Policy, which will be a material consideration.
- h) Road signs should be minimised designed and placed at the back of footpaths to reduce street clutter, avoid obstructing pedestrian movements and safeguarding sightlines;
- i) Within communal parking areas there will be a requirement for electric car charging points. Parking spaces for car sharing must be provided where a need is identified by the Transportation Manager.

(iii) Water environment, pollution, contamination

- a) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water including temporary/ construction phase SUDS (see Policy EP12).
- b) New development should not be located in areas at flood risk or increase vulnerability to flooding (see Policy EP12). Exceptions to this would only be considered in specific circumstances, e.g. extension to an existing building or change of use to an equal or less vulnerable use. Where this exception is applied the proposed development must include resilience measures such as raised floor levels and electrical sockets.
- c) Proposals must avoid major hazard sites and address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.
- d) Proposals must protect and wherever practicable enhance water features through for example naturalisation of watercourses by introducing a more natural planform and removing redundant or unnecessary structures.
- e) Proposals must address and sufficiently mitigate any contaminated land issues.
- f) Make acceptable arrangements for waste collection and management and encourage recycling.
- g) Avoid sterilising significant workable reserves of minerals, prime agricultural land or productive forestry.
- h) Proposals must avoid areas at risk of coastal erosion and coastal change.

DP5 BUSINESS & INDUSTRY

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

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

Efficient energy and waste innovations should be considered and integrated within developments wherever possible.

b) Business Parks

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

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

c) Industrial Estates

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

d) Existing Business Areas

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

e) Other Uses

Class 2 (business and financial), 3 (food and drink), 11 (assembly and leisure) and activities which do not fall within a specific use class (sui generis), including waste management facilities will be considered in relation to their suitability to the business or industrial area concerned, their compatibility with neighbouring uses and the supply of serviced employment land. Retail uses will not be permitted unless they are considered ancillary to the principal use (e.g. manufacture, wholesale). For this purpose, 'ancillary' is taken as being linked directly to the existing use of the unit and comprising no more than 10% of the total floor area up to a total of 1,000 sq metres (gross) or where a sequential approach in accordance with town centre first principles has identified no other suitable sites and the proposal is in accordance with all other relevant policies and site requirements are met.

f) Areas of Mixed Use

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

g) Rural Businesses and Farm Diversification

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

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

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

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

h) Inward Investment Sites

The proposals map identifies a proposed inward investment site at Dallachy which is safeguarded for a single user business proposal seeking a large (up to 40ha), rural site. Additional inward investment sites may be identified during the lifetime of the Plan.

Proposals must comply with Policy DP1 and other relevant policies.

DP9 RENEWABLE ENERGY

a) All Renewable Energy Proposals

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

- i) They are compliant with policies to safeguard and enhance the built and natural environment;
- ii) They do not result in the permanent loss or permanent damage of prime agricultural land;
- iii) They avoid or address any unacceptable significant adverse impacts including:
 - Landscape and visual impacts.
 - Noise impacts.
 - Air quality impacts.
 - Electromagnetic disturbance.
 - Impact on water environment.
 - Impact on carbon rich soils and peat land hydrology.
 - Impact on woodland and forestry interests.
 - Traffic impact -mitigation during both construction and operation.
 - Ecological Impact.
 - Impact on tourism and recreational interests.

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

b) Onshore wind turbines

In addition to the assessment of the impacts outlined in part a) above, the following considerations will apply:

i) The Spatial Framework

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

Areas with Potential (Map 1): where proposals are likely to be acceptable subject to Detailed Consideration.

ii) **Detailed Consideration**

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

Landscape and visual impact:

- the landscape is capable of accommodating the development without unacceptable significant adverse impact on landscape character or visual amenity.
- the proposal is appropriate to the scale and character of its setting, respects the main features of the site and the wider environment and addresses the potential for mitigation.

Cumulative impact

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

Impact on local communities

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

Other

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

iii) **Extensions and Repowering of Existing Wind Farms**

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

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

c) **Biomass**

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

- Applicants must confirm which form of biomass will fuel the plant and if a mixture of biomass is proposed then what percentage split will be attributed to each fuel source.
- Proposals must demonstrate that they have taken account of the amount of supply fuel over the life of the project.
- When considering wood biomass proposals, the scale and location of new development is appropriate to the volume of local woodfuel available. Sources of fuel must be identified and must be sustainable.
- The location must have suitable safe access arrangements and be capable of accommodating the potential transport impacts within the surrounding roads network.
- A design statement must be submitted, which should include photomontages from viewpoints agreed by the Council.
- There must be a locational justification for proposals outwith general employment land designations. The proposed energy use, local heat users and connectivity of both heat users and electricity networks must be detailed. Proposals which involve potential or future heat users will not be supported unless these users can be brought online in conjunction with the operation of the plant.
- Details of the predicted energy input and output from the plant demonstrating the plant efficiency and utilisation of heat must be provided.
- Where necessary, appropriate structural landscaping must be provided to assist the development to integrate sensitively.

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

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

d) Heat

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

Where no heat network is present or planned:

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

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

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

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

EP2 BIODIVERSITY

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

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

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

Developers must demonstrate, through a Placemaking Statement where required by Policy PP1 which incorporates a Biodiversity Plan, that they have included biodiversity features in the design of the development. Habitat creation can be achieved by providing links into existing green and blue networks, wildlife friendly features such as wildflower verges and meadows, bird and bat boxes, amphibian friendly kerbing, wildlife crossing points such as hedgehog highways and planting to encourage pollination, wildlife friendly climbing plants, use of hedges rather than fences, incorporating biodiversity measures into SUDS and retaining some standing or lying dead wood, allotments, orchards and woodlands.

Where development would result in loss of natural habitats of ecological amenity value, compensatory habitat creation will be required where deemed appropriate.

EP7 FORESTRY, WOODLANDS AND TREES

a) Moray Forestry and Woodland Strategy

Proposals which support the economic, social and environmental objectives and projects identified in the Moray Forestry and Woodlands Strategy will be supported where they meet the requirements of other relevant Local Development Plan policies. The council will consult Scottish Forestry on proposals which are considered to adversely affect forests and woodland. Development proposals must give consideration to the relationship with existing woodland and trees including shading, leaf/needle cast, branch cast, wind blow, water table impacts and commercial forestry operations.

b) Tree Retention and Survey

Proposals must retain healthy trees and incorporate them within the proposal unless it is technically unfeasible to retain these. Where trees exist on or bordering a development site, a tree survey, tree protection plan and mitigation plan must be provided with the planning application if the trees or trees bordering the site (or their roots) have the potential to be affected by development and construction activity. Proposals must identify a safeguarding distance to ensure construction works, including access and drainage arrangements, will not damage or interfere with the

root systems in the short or longer term. A landscaped buffer may be required where the council considers that this is required to maintain an appropriate long term relationship between proposed development and existing trees and woodland.

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

c) Control of Woodland Removal

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

In all other woodlands development which involves permanent woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits (excluding housing) and where removal will not result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the woodland.

Where it is proposed to remove woodland, compensatory planting at least equal to the area to be felled must be provided in accordance with e) below.

d) Tree Preservation Orders and Conservation Areas

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

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

e) Compensatory Planting

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

GUIDANCE TREES AND DEVELOPMENT

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

The cumulative loss of woodlands to development can result in significant loss of woodland cover. In compliance with the Scottish Government Control of Woodland Removal policy, woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits. In appropriate cases a proposal for compensatory planting may form part of this balance. Where woodland is to be removed then the Council will require compensatory planting to be provided on site, on another site in Moray within the applicant's control or through a commuted payment to the

Council towards woodland and greenspace creation and enhancement. Developers proposing compensatory planting are asked to follow the guidance for site assessment and woodland design as laid out in Scottish Forestry's "Woodland Creation, Application Guidance" and its subsequent updates, when preparing their proposal.

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

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

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

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

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

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

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

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

Landscape Scheme

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

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

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

EP8 HISTORIC ENVIRONMENT

a) Scheduled Monuments and Unscheduled Archaeological Sites of Potential National Importance.

Where a proposed development potentially has a direct impact on a Scheduled Monument, Scheduled Monument Consent (SMC) is required, in addition to any other necessary consents. Historic Environment Scotland manage these consents.

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

b) Local Designations

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

- Local public benefits clearly outweigh the archaeological value of the site, and
- Consideration has been given to alternative sites for the development and preservation in situ is not possible.
- Where possible any adverse effects can be satisfactorily mitigated at the developer's expense.

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

EP12 MANAGEMENT AND ENHANCEMENT OF THE WATER ENVIRONMENT

a) Flooding

New development will not be supported if it would be at significant risk of flooding from any source or would materially increase the possibility of flooding elsewhere. For development at or near coastal locations, this includes consideration of future

flooding that may be caused by sea level rise and/or coastal change eroding existing natural defences in the medium and long term.

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

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

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

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

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

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

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

- a) In areas of little to no risk (less than 0.1%), there will be no general constraint to development.
- b) Areas of low to medium risk (0.1% to 0.5%) will be considered suitable for most development. A flood risk assessment may be required at the upper end of the probability range i.e. (close to 0.5%) and for essential civil infrastructure and the most vulnerable uses. Water resistant materials and construction may be required. Areas within this risk category will generally not be suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during flooding events.
- c) Areas of medium to high risk (0.5% or above) may be suitable for:
 - Residential, institutional, commercial and industrial development within built up areas provided that flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood management plan.
 - Essential infrastructure within built up areas, designed and constructed to remain operational during floods and not impede water flow.
 - Some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place, and
 - Employment related accommodation e.g. caretakers or operational staff.

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

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

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

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

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

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

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

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

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

c) Water Environment

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

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

A buffer strip of at least 6 metres between any new development and all water features is required and should be proportional to the bank width and functional river corridor (see table on page 96). This must achieve the minimum width within the specified range as a standard, however, the actual required width within the range should be calculated on a case by case basis by an appropriately qualified individual. These must be designed to link with blue and green networks, including appropriate native riparian vegetation and can contribute to open space requirements.

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

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

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