

MORAY COUNCIL
Response to further Consultation issued by Scottish Government on
APPLICATION FOR S.36 CONSENT
ALTERNATIVE PROPOSED DEVELOPMENT TO ERECT 23 WIND TURBINES
WITH BLADE TIP HEIGHT BETWEEN 149.9 AND 175M METRES WITH
INSTALLED CAPACITY IN EXCESS OF 50MW AT ROTHES III WIND FARM,
MORAY

(MORAY COUNCIL REFERENCE 19/00156/S36)

INTRODUCTION

The applicant, Rothes III Limited has applied for consent under Section 36 of the Electricity Act 1989 for the proposed windfarm near the existing Rothes I & II windfarms, approximately 2.5km north of Archiestown, Moray.

The application will be determined by the Scottish Government Directorate for Planning and Environmental Appeals (DPEA) and not by Moray Council, as local planning authority.

In determining the Section 36 application, the views of Moray Council, as local planning authority are being sought by the Scottish Government: the Council's role in the process is therefore as a statutory consultee. As Moray Council has already objected to the submitted proposed development in June 2019 a Public Local Inquiry (PLI) has already been convened. The applicant has submitted to the Directorate for Planning and Environmental Appeals (DPEA) 'Additional Information' (EIAR AI) to the original Environmental Impact Assessment Report which contains various amendments, updates and information. The changes are listed below and these have triggered a further consultation period.

As the windfarm is already going to PLI the DPEA rather than the Scottish Government Energy Consents Unit (ECU) the DPEA is responsible for determining the proposal and taking account of all representations received, whether from the general public or interested parties, and for consulting with agencies and organisations (consultees). Internal consultation with relevant Services/Sections of the Council has been undertaken in order to provide a comprehensive response in responding to the consultation. The focus of this report is upon the considering the Additional Information as presented by the applicant in the Additional Information Report and other submissions.

The views of Moray Council submitted in June 2019 for the submitted proposal remain in place, with the below report clarifying any changes to that for the Additional Information and proposed alternative development where stated.

THE PROPOSED CHANGES WITHIN THE EIA ADDITIONAL INFORMATION

- Omission of 6 turbines (T17, 21, 24, 27, 28 & 29) reducing the overall number 23 wind turbines, 15 of a maximum height base to tip not exceeding 149.9m, 8 of a maximum height base to tip not exceeding 175m. This would see the omission of all originally proposed 200m and 225m turbines.
- The blade lengths may still be up 75m for the larger turbines.
- 8 of the 23 turbines will have mandatory aviation lighting (all turbines above 150m in height). The lighting is proposed to be radar activated and will become visible only when aircraft are in the vicinity.
- T15 has been moved to avoid an area of deep peat;
- Substation 2 has been moved to meet SSE requirements.
- The revised lay out and repositioning of turbine 15 will see the reduction in the amount of hill tracks and tree felling required. The alternative proposal would require 3.1km less new tracks to be formed compared to the submitted scheme.

THE SITE

- The site edged red remains as submitted, but the proposed alternative scheme through the omission of 6 turbines would now lie approximately 3km north of Archiestown (the submitted scheme is still 2.5km from Archiestown) and adjacent to the existing operational windfarms known as Rothes I and Rothes II.
- The development area remains at is approximately 1,779 hectares.
- Once operational the windfarm will be accessed via the existing Rothes I and Rothes II windfarm entrance onto the minor public road C13E where the existing windfarm site offices are. Construction deliveries would be concentrated upon the existing access onto the A941 at Gedloch and the anticipated delivery route of components is via Inverness-Elgin-Gedloch.
- The windfarm area site is not subject to any international, national, regional or local landscape, built environment or nature conservation designations, but there are several archaeological assets within the site. "Gull Nest" which is a biological Site of Scientific Special Interest (SSSI) lies immediately to the north east of the site. Groundwater dependent Terrestrial Ecosystems (GWDTE's) are present on site.
- No part of the site would lie within the Area of Great Landscape Value (AGLV) designation which lies 5.5km to the south and south east and also lies approximately 16km north east of the Cairngorms National Park.
- The Burn of Rothes/Mannoch Road Core Path sits partly within the north eastern boundary of the windfarm site. A Right of Way from Upper Knockando towards Burnie also runs north-south through the site (known as the Lower Mannoch Road).
- Carn na Cailliche is a designated landmark hill within the adopted Moray Onshore Wind Energy 2017 Policy Guidance (MOWE). The site sits entirely within Landscape Character Type (LCT) 10 Upland Moorland and Forestry

identified within the Moray Wind Energy Landscape Capacity Study 2017 (MWELCS). Several of the turbines still lie outwith the area for potential for larger turbines as designated within the LCT.

- It is noted that the site boundary extends to cover the two possible access routes into the site, both leading to the public road network (A941 to the east and the C13E to the west).
- There are a number of windfarms (operational and consented) close to the proposed windfarm site. Most notably Rothes I and Rothes II are located immediately north of the proposed site and will be served by roads leading from Rothes II.

HISTORY

For the site.

17/01706/S36SCO - Environmental Impact Assessment (EIA) Scoping for Rothes III undertaken for Electricity EIA Regulations to establish the 'scope' and content of the EIA Report. Scoping Opinion issued by the ECU in November 2017. In this response the need to thoroughly demonstrate how very large turbine components could be delivered within any EIA Report was highlighted. The Scoping response also highlighted the limitations of this Landscape Character Type and asked the EIA Report to address/rationalise any deviation from this if higher taller turbines were proposed.

Relevant wind energy developments in the wider area.

01/02055/S36 - Construct and operate wind powered electricity generating station (28 turbines and ancillary equipment and works) at Paul's Hill, Ballindalloch, Banffshire. Approved by the Scottish Government in spring 2003. Moray Council did not object to the proposed windfarm. Rothes III would be located approximately 9km north east and east of this site.

02/02099/EIA - Construct 21 x 110m turbines at Hill of Towie, Knockan and McHattie's Cairn Drummur. This development was approved in 2005 at appeal and is located 12km east of Rothes III.

03/01426/S36 – Section 36 application to an extension to already consented windfarm (increase individual turbine capacity from 2mW to 2.3mW) at Paul's Hill windfarm comprises of 28 turbines, each 100m to blade tip. Pauls Hill has been operational for approximately 13 years.

04/02473/S36 - Section 36 application for a wind farm at Berry Burn, Altyre Estate, Forres, Moray. 29 turbines at 104m in height. Operational since 2014 and producing approximately 66mW. This windfarm is located approximately 9km to the west of the proposed site, with the proposed Clash Gour windfarm in the similar vicinity.

07/02800/S36 - Extension of wind farm at Rothes Wind Farm - consent granted under S.36 of the Electricity Act 1989 by Scottish Ministers for 18 turbines, 125m high to blade tip, 80m rotor diameter (Rothes II). Now operational located immediately north of the proposed windfarm. The proposed storage shed will be located within this windfarm, close to the existing welfare building/substation.

13/00053/EIA - Erect 12no wind turbines (rotor diameter 71m) at Hill of Glaschyle, Dunphail, Forres, Moray. Application allowed at Appeal by Ministers in April 2014 (see 15/01148/APP below). Located 14km west of the proposed windfarm.

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

13/02057/S36 - Erect 16 wind turbines (125m to blade tip) at Hill of Towie Windfarm, known as Hill of Towie II. Located immediately south of the existing Hill of Towie windfarm, these turbines were approved in 2017 but have yet to be constructed. They are located 11km east of Rothes III.

14/01087/EIA - Erection of wind farm comprising 6 wind turbines 126.5m high to tip and associated access track and ancillary infrastructure erection of 1no permanent anemometer mast temporary formation of construction compound and erection of 2 no temporary anemometer masts at Meikle Hill, Dallas (see 17/01003/APP below). This located 4km north west of Rothes III.

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

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

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

Pending applications

18/00523/S36 - Proposed wind farm comprising of 7 wind turbines 6 of a maximum height base to tip not exceeding 149.9m and 1 of maximum height not exceeding 134m external transformer housing site tracks crane pad foundations underground electricity cable control building temporary construction and compound 2 borrow pits

associated works/infrastructure and health and safety signage at Paul's Hill II Wind Farm, Ballindalloch. Located 8km south west of Rothes this proposed wind farm extension was considered at a Local Public Inquiry in September 2019 and the outcome is awaited.

18/01591/S36 - Erect 48 wind turbines with blade tip height between 130 and 176 metres with installed capacity in excess of 50MW at Clash Gour Wind Farm. This proposed windfarm located 7km west of Rothes III is currently with the Energy Consents Unit. Moray Council objected to this proposed windfarm in 2019. It too is now subject of a PLI.

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

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

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

Within Highland

Cairn Duhie – Permission was issued by Scottish Ministers in October 2017 for 20 wind turbines at a height of 110m. This site lies 18km west of Rothes III within Highland. This site has recently been constructed.

Ourack – Up to 50 turbines, but no height specified at present. This site sits 10km south west of Rothes III and a scoping opinion was issued by the Energy Consents Unit in February 2016. No application has come forward to date but it is understood this proposal may yet come forward. A Scoping request has been submitted to the Scottish Government.

ADVERTISEMENTS

Advertisements will have been carried out originally by the ECU and subsequent advertisement was carried out circa December 2019 following submission of the EIA Additional Information by the applicant.

CONSULTATIONS (Response to AI only)

Strategic Planning and Development;–

Scottish Planning Policy (SPP)

SPP sets out a series of “Policy Principles” including:-

- A presumption in favour of development that contributes to sustainable development;

- and
- Planning should direct the right development to the right place.

In terms of onshore wind energy developments, Paragraph 161 of SPP requires that planning authorities should set out a spatial framework in the development plan which identifies those areas that are likely to be the most appropriate for onshore wind farms as a guide for developers and communities, following the approach set out in Table 1 of SPP. Table 1 is a form of sieve / constraints mapping identifying:-

- Group 1: Areas where wind farms will not be acceptable.
- Group 2: Areas of significant protection – Recognising the need for significant protection, in these areas wind farms may be appropriate in some circumstances. Further consideration will be required to demonstrate that any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation. Includes national and international designations, other nationally important mapped environmental interests and community separation for consideration of visual impact.
- Group 3: Areas with potential for wind farm development – Beyond Groups 1 and 2, wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.

The Wind Farm Spatial Framework within the Moray Local Development Plan (MLDP) 2015 complies with Paragraph 161 of the SPP and identifies areas with potential for wind farm development. This is a broad-brush approach, offering the same approach for all scales of turbines above 35m to blade tip height and covers a significant land area of Moray, approximately 40% of the MLDP area. The proposed turbine locations overlaid on top of the Spatial Framework highlight that 23 of the turbines are consistent with the framework, but 6 turbines to the north-west are not. The overlay of the alternative proposed turbine locations highlight that 17 are consistent with the framework whilst 6 turbines to the north-west are not.

However, the limitations of the very strategic Spatial Framework are recognised and

Paragraph 162 of SPP further requires that local development planning authorities “should identify where there is strategic capacity for wind farms, and areas with the greatest potential for wind development”. To address the requirements of Paragraph 162 and in accordance with Policy ER1 (with wording inserted by the Reporter into the LDP2015 Examination), the Council has more refined Policy Guidance Maps within the approved Supplementary Guidance (Map 1), which highlight that 18 of the turbines are consistent with potential development areas for extension and repowering, but 11 turbines to the south are not. The overlay of the alternative proposed turbine locations highlight that 18 are consistent with potential development areas for extension and repowering whilst 5 turbines to the south are not.

The proposal is not considered to support the principles of SPP highlighted above, constituting an unsustainable approach and the wrong scale and extent of development, as detailed below.

Renewable Energy (ER1)

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

Proposals must be compatible with policies to safeguard and enhance the built and natural environment. They must also avoid or address any unacceptable significant adverse impacts including landscape and visual impacts, impact on peat land hydrology and watercourse engineering.

Policy ER1 is considered to be consistent with SPP having been subject to Examination and a hearing procedure as part of the preparation of the MLDP 2015. This was reflected in the Reporter's findings in the MLDP 2015 Examination Report which added wording to Policy ER1 stating:-

"Further detail on the above assessment process will be addressed through supplementary guidance to include:-

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

The policy requires that the "proposal addresses the [Moray Onshore Wind Energy Policy] Guidance set out in the Moray Windfarm Landscape Capacity Study". The proposed development is considered to fail the test that "the landscape is capable of accommodating the development without significant detrimental impact on the landscape character or visual amenity", for the reasons outlined below.

The proposal is also considered to be contrary to the requirement that "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". The proposal is therefore contrary to Policy ER1.

Sustainable Economic Development (Policy PP1)

Policy PP1 Sustainable Economic Growth states that proposals will be "supported where the quality of the natural and built environment is safeguarded." While the proposal would provide a sustainable renewable energy source, the sustainability of the proposal has to be considered in its wider context and in this case, the scale, extent and resultant landscape and visual impact is considered to be an unsustainable proposal in terms of Moray's natural heritage. The proposal is therefore contrary to Policy PP1.

Woodland (Policies E4 and ER2)

Bar the western section (containing 7 turbines on the open hill ground of Carn na Cailliche), the site is covered predominately in commercial conifer plantation.

The proposed development will require the total removal of approximately 252.8ha of woodland (infrastructure, windfarm edges and peat land). Of the woodland to be felled, 65.75ha will not be replanted, therefore constituting woodland removal requiring

compensatory planting. The alternative proposal reduces felling by 5.85ha. This decreases the compensatory planting requirement by 2.58ha to 63.17ha.

The Scottish Government's Control of Woodland Removal Policy (CWRP) states that development which involves the permanent woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits and where removal will not result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the woodland. The Applicant has not provided a statement to demonstrate such a justification to support woodland removal.

The Applicant proposes 65.75ha (63.17ha for the alternative proposal) of compensatory planting. A Compensatory Planting Plan, including details of the proposed planting and its maintenance over the entire lifespan of the development, must be submitted to the approval of Scottish Forestry and Moray Council.

The Applicant states that areas of Sitka spruce and Lodgepole pine crops planted on wet deep infertile peat were to be removed. The size of this area is contradictory referred to within Chapter 11: Forestry of the Environmental Impact Assessment Report (EIAR) Volume 2 as being 80.6ha (para. 11.3.8) and then 100ha (para. 11.10.2). Subsequently, this area is identified as 80.38ha within the Additional Information (Chapter 11, para 11.3.11). In accordance with the CWRP, this woodland removal is acceptable without a requirement for compensatory planting as it will allow for peatland restoration work which will benefit carbon sequestration and improve habitats for capercaillie and black grouse.

Until such time as adequate justification has been provided for the proposed woodland removal, the proposal is contrary with Policies E4 Trees and Development (and associated Supplementary Guidance) and ER2 Development in Woodlands.

Officer note – see Observations section re compensatory planting

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

The proposal will have a significant adverse effect on part of the Spey Valley AGLV and on the wider landscape and the proposal is therefore considered to be contrary to Policy E7 (see below).

Policy E7 also requires proposals which involve the creation of new hill tracks to ensure that their alignment minimises visual impact, avoids sensitive natural heritage features, avoids adverse impacts upon the local hydrology and takes account of the likely type of recreational use of the track and wider network.

As part of the MLDP 2020 Proposed Plan, the current AGLVs are being replaced with a suite of Special Landscape Areas (SLA's). The Council's appointed Landscape Advisor considers that the Spey Valley SLA would be significantly and adversely affected by the proposal (see below).

Waterbodies (Policy EP6)

There are a number of waterbodies on, and in the immediate vicinity, of the site. Further information has been requested in relation to watercourse crossings and run-off. As it has not been demonstrated that there will be no adverse impacts upon the water environment throughout construction, operation and decommissioning, the proposed development is contrary to Policy EP6 Waterbodies.

Built Heritage (Policy BE1, BE2 and BE5)

The proposal must ensure that any development does not take place in a location likely to have a negative impact on a scheduled building or monument, a national or local designation, a listed building or any sites of archaeological importance. There are a number of archaeology sites and listed buildings within a 10km radius of the proposed site.

The Aberdeenshire Council Archaeology Service has been consulted and has confirmed that the mitigation is appropriate for the proposed development work. They have requested that conditions be applied for the provision of an Archaeological Written Scheme of Investigation (WSI), a programme of archaeological works and, if required, a Post-Evacuation Research Design (PERD). On the basis that these conditions are applied to any consent, the proposal complies with Policies BE1 Scheduled Monuments and National Designations, BE2 Listed Buildings and BE5 Battlefields, Gardens and Designed Landscapes.

Moray Onshore Wind Energy Policy Guidance and Landscape Capacity Study (2017)

Moray Council's overall strategy for considering wind turbine developments is set out on page 7 of the Supplementary Guidance approved by the Scottish Government. The strategy sets out a balanced approach between promoting wind energy development and safeguarding Moray's natural and built heritage, with bullet points 3 and 5 stating:-

- There is very limited scope to accommodate further large scale wind turbine developments in Moray in landscape and visual terms.
- There are limited opportunities for the expansion and or/ repowering of existing wind turbine developments within certain landscapes in Moray.

The proposed turbines are located within the Upland Moorland Forestry (10) landscape character type (LCT) identified within the Landscape Capacity Study (LCS) which was approved as a technical appendix to the Policy Guidance which was approved in 2017, following minor modifications from the Scottish Government, as Supplementary Guidance forming part of the statutory MLDP 2015.

As referred to above, Policy Guidance Map 1 for Large Typologies identifies areas of greatest potential within LCT10 for Very Large Typologies, with the guidance stating:-

“Very Large Typologies to 150m - Some limited scope has been identified for very large turbines up to 150m high to be accommodated in this more extensive upland landscape.” However, this is stressed as being limited and should comply with the siting requirements for the Large Typology (80-130m), which are:-

“Turbines should be set well back into the core of upland areas, avoiding ridges and hills which form immediate skylines to the adjacent smaller scale settled Rolling Farmland and Forest and Forest with Valleys, Narrow Farmed Valleys and the Broad Farmed Valley.....Adverse effects on views from the minor road between Dallas and

Knockando should be minimised by siting turbines well back from the diverse moorland and regenerating native woodland which provides an attractive feature particularly seen to the west of this route. Significant cumulative effects on the Dava Way and on the A95, which is well used by tourists, should be avoided. Turbines of this size should be sited to minimise cumulative effects.....”

The Wind Energy Policy Guidance recognises that the LCS has identified a limited number of areas where there is scope for extensions to and clustering of, wind farms. As identified above, 18 of the proposed turbines are within such an area. The Guidance states that proposed extensions should incorporate the same design principles as the adjacent wind farms(s) with turbines the same scale, size and colour, which the proposal does not comply with. The proposed wind farm should not impact upon the existing windfarm setting and the extension should respect the focal points of the landscape. While some of the proposed turbines are located within an area identified as having potential for extension and repowering, it is clearly stated that there is “limited scope to accommodate the large or very large scale development typologies” in this landscape.

The LCS and Supplementary Guidance have identified some scope for turbines up to 150m in height in LCT10 and LCT11 (Open Rolling Uplands). The Guidance and LCS do not identify any scope for turbines of more than 150m to blade tip within Moray landscapes, stating that if turbines which exceed the heights identified in the LCS are proposed, the onus would be on the applicant to demonstrate how the impacts of the proposal on the key constraints and any significant adverse effects can be mitigated in an effort to show a proposal can be supported.

A number of turbines are located on the open hill ground of Carn na Cailliche, a landmark hill. Landmark hills are described in the LCS as being both highly visible and easily recognisable landmarks with many forming the immediate backdrop to settlements, small scale valleys and the coast. Some of these hills form visual buffers to less prominent upland areas and are important in visually containing operational wind farm development from more settled valleys. The landmark hills are highly sensitive to wind turbine development sited on or near them as this would be visually prominent in views from roads and settlement within adjacent well settled landscapes and would detract from their distinctive form and character. Although less well-defined, Carn na Cailliche is important in the containment it provides to operational wind farm developments sited within the lower-lying upland core. With additional development of significantly larger turbines to the north, there is potential for significant adverse cumulative landscape and visual impacts.

To interpret the strategic level guidance and mapping within the Supplementary Guidance and LCS, the Council’s appointed Landscape Adviser has undertaken a detailed review of the proposal and alternative proposal and concluded:-

Proposed Development

- The LCS identifies some scope to accommodate turbines up to 150m high in this LCT, although it also advised that turbines should be set well back into the interior of these uplands to minimise landscape and visual effects on more settled, smaller scale upland fringes and adjacent valleys.
- LCT10 has a simple and expansive character which reduces sensitivity to larger wind turbines, it cannot be considered in isolation and it is not huge in extent and lies

adjacent to smaller settled areas which have an increased sensitivity to larger wind turbines.

- The very large scale turbines of this proposal are sited too close to the more sensitive settled fringes of the LCT10 in the Upper Knockando area and to the Spey Valley. As a consequence the proposal would have significant adverse effects on the appreciation of the character of these landscapes, including part of the Speyside AGLV and the candidate Spey Valley SLA. This proposal would diminish the special landscape of the Spey Valley. Significantly affecting local people and tourists, many of whom are attracted to the area because of its associations with whisky production.
- This proposal would also make a major contribution to significant adverse cumulative effects in a scenario which includes the proposed Clash Gour and Paul's Hill wind farms.

Alternative Proposed Development

- The alternative proposed development would reduce effects from the north across the Moray coastal plain as the full extent of turbines would often not be seen and there would be greater compatibility in size with the adjacent Rothes I and II turbines.
- The Landscape Adviser considers the effects of the alternative proposed development on Viewpoint 13 would not be significant from this viewpoint.
- The reduced spread and size of turbines of the alternative proposed development seen in Viewpoint 5 would also result in effects not being significant. Although there would still be adverse effects from this viewpoint, which could have been further minimised by further lowering the heights of turbines 19, 23 and 20, this view is relatively fleeting and already features some detractive elements which reduces sensitivity to some degree. The consented Hunt Hill wind farm, if built, would also result in a significant cumulative effect when seen together with this proposal.
- Close views from the Upper Knockando area would be improved due to the removal of 6 southerly turbines together with turbine height reductions limits the extent of turbines visible. This is demonstrated in Viewpoint 11; however a greater degree of visibility of the wind farm is likely to occur further west on this road and forest felling could also reveal much more of the wind farm in future.
- From elevated views such as Ben Rinnes and Ben Aigan, the smaller turbines of the alternative proposed development will appear more compatible with the size of the existing Rothes I and II wind farms (and other wind farms in the vicinity) and this would be likely to reduce the magnitude of change to some degree although effects would remain significant.

Notwithstanding the improvements made in reducing landscape and visual effects in some areas, the alternative proposed development will still result in significant adverse effects on:-

- LCT10 - The proposal would substantially extend wind farm development and introduce larger turbines to this landscape. The alternative proposal would have a less dominant effect than the original proposal on the smaller scale lower settled hill fringes in the Upper Knockando area although up to 23 turbines may still be visible from the south-western part of this LCT.
- The *Broad Farmed Valley* LCT (the Spey Valley) - Within approximately 8km of the proposal, operational wind farms are already visible on containing skylines; however this proposal would be more prominent than those developments.
- On part of the Spey Valley AGLV and the Spey Valley SLA.
- On views from the A95, east of Aberlour and from the settled south-eastern slopes of

the Spey Valley – Although the overwhelming dominance of the original proposed development would be reduced, the proximity and size of the turbines to these views would result in major and significant adverse impacts from settlement and roads in this area. The perception of the Spey Valley landscape would be likely to be adversely affected for both local people and the many tourists who use the A95 route to Moray and when undertaking whisky distillery tours.

- Views from part of the intimately scaled inner Spey Valley, as represented by Viewpoint 18 at Blacksboat Bridge crossing the Spey.
- Views of the proposal from the B9102 road between the junction near Blacksboat Bridge and north-east Cardhu and from the southern section of the minor road between Upper Knockando and Dallas – Although the alternative proposed development would result in a reduction in the number and extent of turbines visible from this route, effects would still be significant and adverse and forest felling may also increase visibility. An additional visualisation from the B9102 (close to the entrance to Paul’s Hill Wind Farm) is requested to allow for a better appreciation of likely visibility in this area.
- Views from Ben Rinnes (which is very popular with walkers) and Ben Aigan – Seen together with the operational wind farms of Dorenell, Hill of Towie, Rothes I and II, Paul’s Hill and Berry Burn, the proposal would result in significant adverse impacts on the appreciation of the Moray landscape.

MLDP 2020 Proposed Plan

At its special meeting on 18 December 2018, the Planning & Regulatory Services Committee approved the MLDP 2020 – Proposed Plan and agreed that it be treated as a material consideration, with limited weight at this time, for development management purposes as of 1 February 2019. Subsequently, at its special meeting on 25 June 2019, the Committee approved the submission of the Proposed Plan for examination by Scottish Ministers and agreed to give greater weight to sites within the Proposed Plan which are not subject to the Examination process for development management purposes as of 1 August 2019.

The Proposed Plan can be viewed at www.moray.gov.uk/proposedplan2019.

The Examination Report is anticipated to be published at the end of March 2020. Greater weight will be given to policies and site designations leading up to adoption, which is projected for June 2020.

Policy ER1 has largely been carried forward as Policy DP9 Renewable Energy in the Proposed Plan with some minor wording changes.

As stated above, the current suite of AGLVs will be replaced with a suite of SLAs, which have been identified in the Proposed Plan with a new policy to support them. In terms of the Spey Valley SLA, the Moray Local Landscape Designation Review identifies sensitivities to change including “wind energy development sited in adjacent upland areas and visible on prominent skylines which would affect the character and views from this well settled and visited valley”. Development proposed in the surrounding upland areas should minimise the landscape and visual impacts on the SLA.

Conclusion from Development Plans

The proposal and alternative proposal are not considered to support the principles of SPP highlighted above, constituting an unsustainable approach and the wrong scale and extent

of proposal, contrary to the guiding principle of promoting the right development in the right place.

The proposal and alternative proposal is considered to be contrary to a number of policies in the MLDP 2015 (see above table) as they would result in unacceptable significant landscape, visual and cumulative effects. The Council's strategy recognises that Moray has limited further scope to accommodate large scale turbines as a result of the significant contribution the current operational and consented wind farms will make towards national targets for renewable energy generation.

Whilst the alternative proposal is a significant improvement, the proposal would still diminish the special landscape of the Spey Valley and, would introduce very large turbines in relatively close proximity to the Spey Valley. The proposal and alternative proposal is considered to be unsustainable, resulting in unacceptable negative impacts upon Moray's landscape. No opportunities for wind turbines greater than 150 metres to blade tip were identified in the Guidance or LCS, as it was considered that Moray's landscape had no capacity for such a scale of development.

Access Manager - No change to previous comments, although the possible enhancements to the proposed link and loop using windfarm tracks linking SP20 and SP21 near Archiestown no longer appears to be promoted for the alternative proposed development. A Public Access Management Plan and Construction Method Statement would be required for either option.

Environmental Health – Further to the original consultation response, consideration was given to the implications for noise of the alternative proposed development. The conditions imposed can be adjusted to account for the proposed alternative in the event it progresses, where noise levels would be anticipated to reduce from the nearest noise sensitive properties. Slight changes to the conditions (or tables therein) would need to be provided in the event of approval or either scheme.

In the event of approval other Environmental Health conditions would need to be imposed such as confirmation of the hours of operation, vibration and blasting (if proposed).

Environmental Health, Private Water – No change to previous comments.

Environmental Health, Contaminated Land - No change to previous comments.

Aberdeenshire Archaeology Service - No change to previous comments.

Transportation Manager – Transportation note the revised Abnormal Load Assessment (AIL Assessment) provide the following additional comments

1. The assessment is based on a maximum turbine blade length of 63.45m therefore any part of the development with a turbine blade length in excess of 63.45m would be unacceptable to Moray Council Transportation.

2. Reference is made in Chapter 4 refers to split blade technology, however no detail of this in the Abnormal Loads Assessment. Para 4.3.3 of Chapter 4 of Volume 2 Additional Information Report states that “There is continuing development in turbine blade technology and it is expected that there will be split blade options for 150m rotor diameter turbines at the time of procurement, if the development is consented.” This suggests turbine blades in excess of 63.45m are being considered, however this has not been assessed and as stated above, any proposals above 63.45m would be unacceptable without further assessment to demonstrate its acceptability
3. The revised assessment no routes component delivery vehicles via Reiket Lane in Elgin which passes over the Reiket Lane railway bridge. No assessment has been undertaken to demonstrate that the vertical profile for abnormal load swept paths can be accommodated on this route. There is a potential risk that loads with large axle spacing and low slung loads may ground out. Transportation would require further information to consider the suitability of the proposed route and until the details confirm it is acceptable, would need to object to the proposals. The additional information required would also include assessment of other components e.g. tower sections which could be affected by the vertical alignment.
4. Para A12.1.65 of the Abnormal Load assessment states that height and weight restrictions along the route will be confirmed as part of the post consent work. This is not acceptable to Transportation. Whilst a structural assessment may not be necessary at this stage we would require a desk based assessment of the current restrictions in order to consider the principles.
5. The assessment does not take into account the new signalise pedestrian crossing currently under construction on the A96 at Dr Grays hospital in Elgin. This would be a matter for Transport Scotland to comment on, but it is important to acknowledge this significant change on the delivery route which vehicles will have an impact on.

Transportation considers that the additional information submitted remains inadequate to comply with policies T2 and IMP2 of the Moray Local Development Plan 2015. The information is insufficient to enable officers to consider the feasibility of the proposed development in terms of the ability to deliver turbine components, the impact on the public road and the identification of appropriate mitigation/modification or improvements necessary for the proposed development.

Developer Obligations - No change to previous comments. None sought for wind energy proposals. Community Benefit considered separately to the planning system.

Moray Flood Risk Management (MFRM) – No change to previous comments. The site is not susceptible to any significant flooding and following consideration of the

information provided the MFRM team raise no objection. A condition would be required for the final, definitive designs and calculations of all watercourse crossings to MFRM team to confirm that post development run-off rates do not exceed pre-development run-off rates, or increase the risk of flooding to surrounding watercourses, or downstream. Evidence required showing that any development on the site does not affect the flow of the watercourses changing the catchment of the watercourse.

Building Standards – No change to previous comments. A Building Warrant will be required for the control building and the foul water treatment.

REPRESENTATIONS

All objections/representations have been submitted directly to Scottish Government Energy Consents Unit, and subsequently to the DPEA who are now the determining Authority. It is understood that 384 representations (and 1 supporting comment) from the public have been received in relation to the proposals. These and any subsequent public comments in relation to the EIAR AI will be considered by the DPEA and do form part of the Moray Council consideration (as consultee to the Section 36 process).

OBSERVATIONS

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

This report focuses upon the changes/further options brought about by the Additional Information beyond the original EIA Report. The previous response to the submitted proposal from Moray Council is sustained (given the submitted proposal is still sought).

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

Legislative Context

For consent under Section 36 of the Electricity Act 1989, the decision-making process specified under Section 25 and 37 (2) of The Town & Country Planning (Scotland) Act 1997, as amended is not a statutory requirement. However, the local development plan would remain a significant material consideration, but does not take primacy as would be in the case of a planning application. It and all other material considerations are given the appropriate weighting in the consideration of the Section 36 consultation requests from the ECU/DPEA. This is inclusive of attaching weight to the more recent guidance and legislation on climate change.

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

Relationship of proposal to national renewable energy policy/guidance

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

The Climate Change (Scotland) Act 2009 places a duty on public bodies to act sustainability and meet emissions targets including a requirement to achieve at least an 80% reduction in greenhouse gas emissions by 2050 (over 1990 levels). Subsequent legislation on climate change, inclusive of actions identified within Protecting Scotland's Future: the Government's Programme for Scotland 2019-2020 are considered when arriving at view on the proposed additional information and alternative proposed scheme for Rothes III.

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

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

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

(SPP) requires planning authorities to set out in the development plan a spatial framework identifying those areas that are likely to be most appropriate for onshore wind farms as a guide for developers and communities, following a set methodology (para 161). This has been done through the spatial framework included within the Moray Local Development Plan 2015, with the proposal site partially located within an area with potential for wind farm development of turbines over 35m to tip height, with no upper height limit identified. This is a broad-brush approach required to comply with Scottish Planning Policy and covers approximately 40% of the Moray Local Development Plan Area.

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

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

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

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

Renewable Energy Proposals (ER1)

Policy ER1 Renewable Energy Proposals sets out a comprehensive set of criteria to assess the details of the proposal against, with assessment of some criteria determined by consultee responses. The policy in recognising the contribution of renewable energy to wider national carbon reduction targets and benefits to the local economy view favourably wind energy proposals subject to criteria discussed below.

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

The applicant has advised that the grid connection point and precise route of cabling has not yet been determined, although this has influenced the re-positioning of one of the substation buildings within the EIAR AI currently under consideration. As stated in the supplementary guidance, grid connections should be considered when the project is at an early stage so that the environmental effects can be considered fully. The Council's preference is for connections to be underground. Where undergrounding is deemed unviable, the alternative options must be supported fully by evidence that clearly shows that the alternative option chosen is the best method of connection. As no details have been provided in respect of connection to the grid, the environmental effects cannot be assessed, although given the size of the proposed windfarm this may likely be subject of a separate Electricity Act Section 37 application. If this were the case, Moray Council would be consulted.

Landscape and Visual Impact Assessment for EIAR AI (PP1, ER1 and IMP1)

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

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

Landscape and Visual Impact Assessment (LVIA) for onshore energy proposals in Moray is assessed by the Moray Onshore Wind Energy 2017 Policy Guidance

(MOWE) and The Moray Wind Energy Landscape Capacity Study 2017 (MWELCS) which is a technical appendix to the MOWE.

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

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

Moray Council have been involved in the consultation process, commenting on design iterations at pre-scoping to application stage. Comments made by the Council on the developing proposal are summarised in Table 3-1 of the EIA Report. The key concerns of the Council were the size of the turbines and their location towards the edges of more extensive upland areas where they would significantly and adversely affect recreational routes, roads and settlement. It is noted that subsequently modifications to the design and layout were made, prior to application to improve aspects of the matters raised. The extent to which the current design is acceptable is discussed below. The Scottish Onshore Wind Energy Statement 2017 (SOWE) states that the Scottish Government expects developers of such projects to make every effort to find opportunities to collaborate, and to reduce potential local landscape impacts. At the pre application stage and scoping stage the applicants were told that turbines as high as 225 metres would likely be of an excessive height and would impact upon the local landscape.

Design of the alternative proposed development

The AI report describes the design of the alternative proposed development in Section 3. Paragraph 3.3.1 sets out the design strategy adopted although it is noted that the text does not address Moray Council's reasons for objection on specific landscape and visual impacts in listing very general design strategy principles which are applicable for all wind farm developments. Paragraph 3.3.2 does, however, state that consultees responses were considered when identifying possible alternatives and the Landscape and Visual Impact Assessment set out in Section 8 also lists key objections in Table 8.1. Figure 3.1 illustrates constraints on the site only and does not also include wider landscape and visual constraints in the area surrounding the development, for example, minimising intrusion on views from the Spey Valley or Upper Knockando area. The removal of turbines 17, 21, 24 and 27 is justified as being due to capercaillie activity although reductions in the height of turbines are not similarly attributed to the need to reduce landscape, visual and cumulative effects.

Despite the lack of acknowledgement by the applicant of the severity of the landscape and visual effects of the original proposed development, there is much written about the reduction in landscape and visual effects that would be associated

with the alternative proposed development in the Non-Technical Summary and main AI report.

Key differences between the proposals

The alternative proposed development would reduce effects from the north across the Moray coastal plain as is evident in representative A1 Viewpoints 2 and 13. This is because the full extent of turbines would often not be seen and there would be greater compatibility in size with the adjacent Rothes I and II turbines. Moray Council's landscape consultant considered the effects of the original proposed development to be significant and adverse from Viewpoint 13, Duke of Gordon Monument in Elgin, but concludes that the effects of the alternative proposed development would not be significant from this viewpoint.

The reduced spread and size of turbines of the alternative proposed development seen in Viewpoint 5 A95 east of Craigellachie would also result in effects not being significant. Although there would still be adverse effects from this viewpoint, which could have been further minimised by further lowering the heights of turbines 19, 23 and 20, this view is relatively fleeting and already features some detractive elements which reduces sensitivity to some degree. The consented Hunt Hill wind farm, if built, would also result in a significant cumulative effect when seen together with this proposal.

There would also be improvement in close views from the Upper Knockando area where removal of 6 southerly turbines together with turbine height reductions limits the extent of turbines visible. This is shown in Viewpoint 11 on the B9102 west of Archiestown although it should be stressed that a greater degree of visibility of the wind farm is likely to occur further west on this road and forest felling could also reveal much more of the wind farm in future.

From elevated views such as Ben Rinnes and Ben Aigan, the smaller turbines of the alternative proposed development will appear more compatible with the size of the existing Rothes I and II wind farms (and other wind farms in the vicinity) and this would be likely to reduce the magnitude of change to some degree although effects would remain significant.

Remaining significant landscape and visual effects

Notwithstanding the improvements made to the scheme in terms of reducing landscape and visual effects in some areas, the alternative proposed development would still incur significant adverse effects on:

- The *Upland Moorland and Forestry* LCT within which the proposal is located. While the operational Rothes I and II wind farms are located in this LCT, this proposal would substantially extend wind farm development and also introduce larger turbines to this landscape. The alternative proposal would have a less dominant effect than the original proposal on the smaller scale lower settled hill fringes in the Upper Knockando area although up to 23 turbines may still be visible from the south-western part of this LCT.
- The *Broad Farmed Valley* LCT (the Spey Valley) within approximately 8km of the proposal. While operational wind farms are already visible on containing

skylines in views from parts of the *Broad Farmed Valley* LCT, this proposal would be more prominent than those developments.

- On part of the Spey Valley Area of Great Landscape Value (AGLV) and the Spey Valley candidate Special Landscape Area which will replace the Spey Valley AGLV.
- On views from the A95, east of Aberlour and from the settled south-eastern slopes of the Spey Valley, where although the overwhelming dominance of the original proposed development would be reduced, the proximity and size of the turbines to these views would result in major and significant adverse impacts from settlement and roads in this area. The perception of the Spey Valley landscape would be likely to be adversely affected for both local people and the many tourists who use the A95 route to Moray and when undertaking whisky distillery tours.
- Views from part of the intimately scaled inner Spey Valley, as represented by Viewpoint 18 at Blacksboat Bridge crossing the Spey. The comments made by Moray's landscape consultant on the original proposed development provides further detail on the nature of impact at this location.
- Views of the proposal from the B9102 road between the junction near Blacksboat Bridge and north-east Cardhu and from the southern section of the minor road between Upper Knockando and Dallas. Although the alternative proposed development would result in a reduction in the number and extent of turbines visible from this route, effects would still be significant and adverse and forest felling may also increase visibility. The ZTV map still shows for this section of the B9102 19 or more turbines visible to varying degrees.
- Views from Ben Rinnes (which is very popular with walkers) and Ben Aigan where this proposal, seen together with the operational wind farms of Dorenell, Hill of Towie, Rothes I and II, Paul's Hill and Berry Burn, would result in significant adverse impacts on the appreciation of the Moray landscape.

Lighting of turbines

8 of the alternative proposed turbines would have aviation lighting. The proposed installation of radar activated lighting would significantly reduce the duration of lighting visible. Lighting, when visible, will be likely to contribute to significant adverse effects experienced particularly from close views. In general, the effects of lighting will be more marked when seen in a context where existing lighting levels are low, for example in the sparsely settled Upper Knockando area.

Effects on residential properties

The revised Residential Visual Amenity Assessment (RVAA) considers effects on residential properties lying up to 3km from the proposed wind farm. It is noted that with the omission of turbines and reduction in height there have been substantive reductions in significant visual effects to the closest properties.

Although reduced there remains other properties lying up to around 7km within the Spey Valley where significant adverse effects on visual amenity may occur. These properties lie on north-west facing slopes above Aberlour and in the Upper Knockando area.

Cumulative landscape and visual effects

The above conclusions on the key landscape and visual effects of the alternative proposed development consider a baseline which includes all existing wind farms. Consented and proposed wind farms are considered in this section of the report.

Effects of this proposal with existing and consented wind farms

There would be significant adverse effects on the *Broad Farmed Valley* and *Upland Moorland and Forest* LCTs if the consented Hunt Hill wind farm and the alternative proposed development were to be constructed. Significant cumulative effects would also occur from views to the south-east across the Spey Valley.

Effects of this proposal with existing, consented and other proposed wind farms

The consented Hunt's Hill and proposed Paul's Hill II and Clash Gour wind farms have the greatest potential to incur significant adverse cumulative effects with the Rothes III proposal. The combined cumulative effect of all these developments would be significant on:

- The character of part of the *Broad Farmed Valley* and the *Upland Moorland and Forest* and on part of the Speyside AGLV/Spey Valley SLA
- Sequential views from minor roads in the Upper Knockando area affecting visual amenity from the B9102 and from minor roads (which are often used by local walkers and cyclists) and from dispersed properties. The ZTV shows views of turbines would still remain for the alternative proposed development.
- Views from the A95 between Aberlour and Ballindalloch where this proposal would be seen sequentially and simultaneously with baseline wind farms and the proposed Clash Gour and Paul's Hill II wind farms on the uplands back-dropping the Spey Valley to the north and north-west – this proposal would make the greatest contribution to significant adverse cumulative effects in this scenario.
- Views from elevated viewpoints such as Ben Aigan and Ben Rinnes where the combined extent of operational, consented and application-stage wind farm developments seen in almost 270-degree views from both hills would result in a perception of Moray's uplands being largely occupied by wind farms.
- Views and the appreciation of the character of the River Spey, which weaves through a narrow floodplain and is tightly contained by steep wooded slopes, where this proposal would be seen sequentially from minor roads with the proposed Clash Gour wind farm (Clash Gour ES Viewpoint 10 at Carron) and also the Paul's Hill II proposal, from more open sections of the valley floor.

LVIA Conclusions

The proposed development would be located in the *Upland Moorland and Forestry* LCT. The MWELCS found some scope to accommodate turbines up to 150m high in this LCT although it also advised that turbines should be set well back into the interior of these uplands to minimise landscape and visual effects on more settled, smaller scale upland fringes and adjacent valleys.

The omission of six of the most southerly turbines and lowering of turbine heights would result in a reduced magnitude of change when compared with the original proposal. The alternative proposed development would be more compatible with the smaller turbines within the adjacent Rothes I and II wind farms, reducing effects from the coastal plain of Moray in the north of the LVIA study area and from elevated views such as from Ben Rinnes and Ben Aigan.

While there is a significant improvement from Viewpoint 11 west of Archiestown, the ZTV indicates that there could still be visibility of up to 23 turbines in the Upper Knockando area. Additional visualisations (photomontage) from the B9102 would have proved useful to gauge the extent of view of the alternative scheme.

Significant adverse effects are likely to be associated with most wind energy developments and while the alternative proposed development is a significant improvement on the original development, it would still diminish the special landscape of the Spey Valley, significantly and adversely affecting both local people who live and work in the area and tourists, many of whom are attracted to the area because of its associations with whisky production. Existing wind farms can be seen from the Spey Valley but these are either distant and located on less distinctive skylines (such as the Hill of Towie wind farm) or have been successfully sited to minimise effects (for example Paul's Hill wind farm which benefits by being partially screened by Roy's Hill). The existing Rothes I and II wind farms are both barely visible from the Spey Valley. This proposal, despite being less dominant than the original proposal, would introduce very large turbines in relatively close proximity to the Spey Valley.

This proposal would also make a major contribution to significant adverse cumulative effects, principally experienced from the A95 – and likely also the B9102 - in a scenario which includes the proposed Clash Gour and Paul's Hill II wind farms.

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

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

It is noted that with the omission of turbines have added 500m or so to the distance from the nearest properties to the south, including the settlement of Archiestown. The size of the alternative proposed development and its elevation may still affect

their visual amenity in what is currently a location distant from or obscured from wind energy development. Generally however properties south of the windfarm are orientated southward, away from the windfarm location. The scale of the alternative proposed closest turbines will likely affect the external amenity of these properties had it not been that the properties are surrounded by woodland and are most cases orientated away from the windfarm location. These impacts may be further informed by any representations submitted directly from occupants of relevant properties to the ECU/DPEA.

Whilst Additional Information submission show night views of less aviation lighting, the intent to use radar activated lighting, which only comes on when aircraft are within proximity to the windfarm means they will be less often illuminated at night. When illuminated the impact will still be significant as referred to above.

In the event of approval, the Environmental Health Manager (informed by additional input from an independent noise consultant) would seek various conditions to be attached relating to noise, hours of construction, amplitude modulation effect, hours of any blasting required at borrow pits, vibration from the borrow pit operating. The parameters in terms of noise limits identified within the EIAR AI note that for the alternative proposed scheme would take turbines further from residences and similarly bespoke conditions could ensure no nuisance was caused.

The proposed turbines being lowered and reduced in number would not give rise to concerns over shadow flicker

In the event of approval being granted it is recommended construction working hours between 0700 – 1900 hours, Monday to Friday and 0700 – 1600 hours on Saturdays only. Allowances for working outwith those hours would only be permitted with prior agreement with the council on the grounds of operational constraints and necessity.

While construction traffic using the existing site access would use the same public road as some neighbours to the site, the construction traffic would only be for a temporary period, with the residences near Gedloch Quarry most likely to be affected. While the construction phase would see the locality becoming much busier, this would only be for the construction and decommissioning periods of the development. Any extended passing places and widening on the Gedloch road to the site are likely to occur further into the forestry plantation. It should be acknowledged that the road is already a forestry haul route.

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

The amenity impact as such does not depart from these aspects of policies ER1 and IMP1 but effects such a noise could be sufficiently controlled so as not to impact

upon residential properties. This does not detract from other assessments on wider visual amenity and recreation discussed elsewhere in this report. It is noted in Chapter 17 of the original EIA Report that the proposed schedule of mitigation should minimise impacts to residents, especially during the construction phase. It is presumed that similar steps would be taken for the alternative proposed development if developed.

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

In relation to policy E1 Natura 2000 Sites and National Nature Conservation Sites and E2 Local Nature Conservation Sites and Biodiversity there are no international, national or local environmental designations are present. The alternative proposed development site would still sit close to the 'Gull Nest' biological SSSI immediately north of the site which is a blanket bog.

As noted in the proposals section above in the upland windfarm area of the application site, there are no national, regional or local environmental designations. The merit of the location of open countryside and the habitat it provides has however been considered in the original EIA Report and the implications of reduced scheme addressed in the EIAR Additional Information Report. The report does consider the ecological, soil, geological and water environment implications upon the site and it is noted that SEPA, SNH and other consultees with specialists in peat land flora and fauna are being consulted independently by the ECU/DPEA. The removal of 6 turbines and associated tracks (and repositioning of T15 to avoid peat) will lessen the impact of the development on the environment of the alternative proposed development proceeds.

Policy E3 Protected Species seeks to ensure proposals do not have an adverse effect on protected species. The EIA Report identifies a variety of species upon or using the site and most notably as moorland these were mainly birds species including raptors observed. Chapter 6 Ecology and Chapter 7 Ornithology Assessment refer to the various species surveys that were undertaken, including the water environment. Groundwater Dependent Terrestrial Ecosystems are discussed in Chapter 10: Hydrology, Geology and Hydrogeological.

It is noted that extensive survey work has been undertaken, and SEPA, SNH and the RSPB are best placed to comment if necessary on the alternative proposed development. The proposed mitigation measures including a Habitat Management Plan (HMP) that would be prepared and agreed with various consultees in the event of approval of either development outcome. Within the Chapter 17 of the EIA Report, the applicant bring together a suite of mitigation which is presumed would apply to the alternative proposed development if approved.

As referred to earlier in the report, national guidance encourages the development of renewable energy for a variety of reasons. Reduction of the reliance upon fossil fuel power generation is clearly to the benefit of the wider environment, including that of

the natural environment within Moray. Notwithstanding the physical impact of the new sections of track, borrow pits, cable laying and turbines foundations, the wider benefits of increased electricity generation conform to national policies and guidance on climate change. Weight is attached to this consideration for the alternative proposed development also.

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

The site is not identified on SEPA's flood maps as being at risk from flooding, other than localised breaches of banks at the head waters of the Burn of Rothes and the Leanoch Burn (leading to Glenlatterach). The focus of consideration may be as to how the development affects drainage and water courses downstream. In terms of the requirements of policy EP5 Surface Water Drainage Sustainable Urban Drainage Systems (SUDS) no definitive designs have been submitted for each crossing. It is noted that the applicants have submitted pre-development peak flow rates for the main water courses within and relevant to the site.

Chapter 10 of the original EIA Report 'Hydrology, Geology and Hydrogeology' considers the impact on surface water and the windfarm has been laid out to keep all turbines at least 50m from any watercourses although there will be a reduction for six to four water crossings under the alternative proposed development. These water crossings are illustrated in the technical appendix and are designed to ensure the crossing account for any 1:200 flood event plus climate change. No departure from Policy EP6 Waterbodies is anticipated where the above approach is followed. The Moray Flood Risk Management Team would seek a condition to consider the definitive designs and calculations for the water crossings to ensure that the proposals do not alter watercourse run-off rates. It is noted that water crossings would be designed to ensure water flow was not impeded, and that details of the location of crossing is included in original EIA Report Appendix 10.6 Water Crossing Assessment. It is also suggested that Culverts will be likely means of crossing the watercourses.

The EIA Report chapter refers to various imbedded and proposed mitigation measures that would be identified in any detailed Construction Environmental Management Plan. This would cover matters such as pollution prevention, runoff and sediment management, site drainage and management of concrete works. While the approach is detailed in the EIA Report, the definitive detail for each turbine base would need to be shown once any micro-siting had been determined. A condition to this effect would be required if the development were to be approved. The principals and approach contained within the EIA Report and appendices, the imbedded mitigation in layout design, in addition to the condition referred to would ensure compliance with policy EP5 Surface Water Drainage Sustainable Urban Drainage Systems (SUDS).

The mitigation measures proposed and best practice adopted would also seek to protect Groundwater Dependent Terrestrial Ecosystems (GWDTE) interests are protected. MFRM would require a condition confirming that post development run-off rates do not exceed pre-development run-off rates, or increase the risk of flooding to surrounding watercourses, or downstream (which would aid control of impacts on the water environment). The mitigation measures identified in Chapter 17 of the EIA Report specifically seek to protect GWDTE and the appointed Ecological Clerk of Works would monitor these areas during construction. It is noted that in terms of GWDTE that SEPA have been separately consulted by the ECU who will give the matter more specialised response.

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

Water Supplies (EP4)

Policy EP4 Private Water Supplies seeks to ensure that development provides evidence of wholesome and adequate supply to be provided. The applicant has assessed the likely impact on any private water supplies within a 3km radius of the proposed development, and this is shown in chapter 10 Hydrology, Geology, Hydrogeological Assessment. A Private Water Risk Assessment was also undertaken and this is included in the original EIA technical appendix 10.7. It is noted that several private water supplies could be affected, but mitigation relating to this possible impact is provided in the proposed mitigation measures in the EIA Report Chapter 17 including if temporary supply interruption occurred. Looking at the source and type of water supplies the predictions of any risk to these private supplies being low or negligible is a fair assessment.

The councils Environmental Health Manager have not objected to the proposals, subject to a precautionary condition in the event of approval that would seek appropriate remedial action in the event that a private water supply is affected or disturbed (this would be applicable to the alternative proposed development also). The EIA Report proposes inclusion of this matter within the Construction Environmental Management Plan and commitment to emergency supply if significant effects on water supplies are found to occur. A condition to this effect is recommended by the Environmental Health Private Water Supplies team. The applicant has not been clear as to the source of water to be used in the proposed two substation/welfare buildings and these indicative layout do show a supply being required.

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

Notwithstanding clarity on water supplies to the development, the EIA Report recommended mitigation, or as supplemented by the EIAR AI submissions would allow for compliance with the requirements of the relevant policy EP4.

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

It is acknowledged from the EIAR AI that the alternative proposed development would be less intrusive on the site in terms of archaeology. Upon the site the archaeology is confined at present to the historic Mannocho Road, boundary cairns and the location of historic farmsteads/enclosure. Many of these features have been obscured by intervening forestry planting. The Council's Archaeologist has not objected but has recommended a condition (in the event of approval of either the proposed or alternative developments) that would ensure that any archaeology uncovered is properly assessed and recorded. This would be particularly where the proposed development seeks to excavate along, across or adjacent to the Lower Mannocho Road which is old road more liable to be host to finds. There are no Scheduled Monuments within the application site. The proposals are considered to accord with Policy BE1 Scheduled Monuments and National Designations and other related policies subject to the appropriate archaeological conditions.

In terms of Policy BE2 Listed Buildings the potential impact on the setting of Listed Buildings or their curtilage visible potentially visible from the proposed development as further assess under Chapter 9 Cultural Heritage Assessment or the EIAR AI Report which identifies that through a reduced number of turbines and turbine heights minimal visual impact upon the listed building would occur. The alternative proposal are therefore considered to comply with policy BE2. The ECU/DPEA will also receive separate advice on heritage matters directly from Historic Environment Scotland (HES). There are no battlefields within the immediate or wider locality of the proposed windfarm that would be affected, and therefore the proposal complies with policy BE5 which addresses the protection of such heritage features.

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

The change to delivery route is noted, as are the changes to the Abnormal Loads Assessment, which supersedes the submitted version and now relates to both the submitted proposal and alternative proposed development. Chapter 12 and related appendices of the Additional Information Report, like Chapter 12 of the original EIA Report still do not provide sufficient information for Moray Council as Roads Authority to conclude the development would be capable of delivery on the public road network, or whether road network assets to be temporarily moved or over-run would not be unacceptably affected. Within the consultation response detailed above from the Transportation Manager, there are queries or missing information within the revised Abnormal Loads Assessment.

The proposed Additional Information is considered at present to depart from policies T2 Access and traffic related aspects of policies ER1 Renewable Energy Proposals and IMP1 Developer Requirements.

Of note if the windfarm were approved a number of conditions would be required from the Transportation Manager regarding road improvements, abnormal loads movements and routes, a Construction Traffic Management Plan, a Wear and Tear Agreement and provision of passing places and road widening. If approved a Road Bond/Security prior to the commencement of any part of the development, evidence shall be provided to confirm that a Bond or other financial security has been agreed by both parties.

Paths and access T7, ER1 and IMP1)

Both ER1 and IMP1 require new development to public access through new developments to be enhanced or protected. Within policy ER1 particularly wind energy proposals have the potential to enhance and improved public access to upland areas.

In relation to policy T7: Safeguarding & Promotion of Walking, Cycling, & Equestrian Networks it considers the impacts of movement through and past the site. It is acknowledged that the proposed access track network, and that of the adjoining Rothes I and II windfarm has/would improve access into the upland area around Cairn Uish.

Chapter 16 of the AI Report refers to few matters having changed around the issue of non-motorised access across the site although notably the AI no longer refers to the previous measures to provide parking, signage, new and resurfaced paths and to provide a new circular path linking the southern core paths which will connect core path (SP21 with SP20 as defined in the Core Paths Plan). This is unfortunate but may be due to the removal of some of the southern turbines (and associated tracks) from the alternative proposed development.

Impacts on Right of Way will be reduced by the reduction in the number of turbines and path crossings, and the reduction in the heights of turbines would be a perceived improvement for some using the site in comparison to the submitted scheme.

Subject to final approval of any Public Access Management Plan and Construction Method Statement, the proposal would therefore comply with policy T7.

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

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

Policy ER4 acknowledges that there are benefits to borrow pits where the winning of materials on site can significantly reduce the need to import materials from beyond the site. The operational, community and environmental benefits of allowing borrow pits to be located on site must be demonstrated. The formation of many new tracks, proposed formation of the turbine and crane pads, and upgrading of existing tracks have led to permission being sought for up to 6 borrow pits on site. It is noted that these borrow pits would be positioned across the site and are all located in well positioned inconspicuous locations. The technical assessment of borrow pits is contained and updated in technical appendix 10.4 Borrow Pit Report of the EIAR AI inclusive of reference to their restoration following completion. It is acknowledged that the reduced alternative proposed development, would witness less minerals being excavated or imported to site. A condition requiring their restoration would be required in the event of approval.

The land subject of the proposal is host to heathland and forestry and is of no agricultural merit, so no departure from policy ER5 will arise where no prime agricultural land will be lost. This conclusion would not change with the alternative proposed development.

This alternative proposed development, albeit reduced, would still see the introduction of turbines foundations, crane pads etc. into areas up upland peat, and it is noted that turbine 15 would be relocated to avoid deeper peat. Merit has been attached to the intended restoration of an area of 80-100 hectares of peatland that is currently unproductive forestry.

It is intended to submit Construction Environmental Management Plan (CEMP), and modifications to the Peat Stability Risk Assessment have been submitted by the applicant, which propose monitoring of peat stability and compliance with best practice and mitigation proposed being adhered too. It is noted that other consultees such as SEPA with greater expertise in hydrology and peat are already involved in commenting upon proposals for Rothes III and are in communication with the DPEA. Therefore in relation to soil resources the proposal would not conflict with the requirements of policy ER6 Soil Resources and it is anticipated that the DPEA would attach any conditions deemed necessary to ensure compliance with the assessment if permission were granted.

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

Policy ER2 Woodlands (in line with the Scottish Government policy) permits removal of woodland where it can be demonstrated that its loss is clearly outweighed by social or economic benefits at national/regional/local level, and if compensatory planting has been agreed. Policy E4 Trees and Development protects trees/woodland and where this is removed in association with development, the provision of compensatory planting (also supported by the MOWE). The Council's Supplementary Guidance 'Trees and Development' (2015) confirms that

compensatory planting should be provided on a like for like basis and will be required for development proposals resulting in the loss of woodland exceeding 0.1ha.

Adopted supplementary guidance 'Moray Woodland and Forestry Strategy (2017)' contains further advice in this regard and seeks to protect and enhance the woodlands in Moray.

Chapter 11 Forestry of the EIAR AI has been considered in association with the original the original EIA Report chapters and appendices. This chapter summarises the changes to Forestry that would result from an alternative proposed development layout, which ultimately see a need for less windfarm related felling with the reduction in turbines and associated infrastructure corridors. This would account for just over 10 hectares of woodland not requiring to be felled for the windfarm.

The applicants whilst not providing a specific compensatory planting plan, have identified an area within the site to host the 63.17ha of compensatory tree planting required for those areas of productive forestry are being removed for turbines and infrastructure corridors.

The Moray Council previously objected to a wind energy proposal on grounds of lack of detail to the Hill of Towie II windfarm where the compensatory planting details were omitted from the EIA submission and departed from the Forestry Commission guidance associated with the Scottish Government's Control of Woodland Removal Policy and its associated guidance stating that complex compensatory planting proposals should be dealt with at the application stage and not addressed afterward by condition. Following later submissions to the Public Inquiry the Reporter decided not to uphold this objection by the Council, and ultimately approved compensatory planting information submitted to the Inquiry. It is noted for Rothes III that the applicant has stated the compensatory planting would be within the designated compensatory planting area, or within the wider site, so would at least remain within the locality of the windfarm.

Given that the Reporter for Hill of Towie II Inquiry ultimately allowed the matter of compensatory planting to be addressed at a later stage, during the Inquiry, it is not recommended that for Rothes III this matter is again raised as grounds for objection. Full compliance with policies E4 Trees and Development (and associated Supplementary Guidance) and ER2 Development in Woodlands where all definitive details of compensatory planting, areas deforested for peat restoration and windblow replanting is not however possible.

It is noted that Scottish Forestry (formerly the Forestry Commission) will be separately consulted on the Section 36 and will inform the DPEA on this matter also. If the windfarm were to be approved for either the submitted or alternative proposals, conditions about compensatory planting, and all felling, restoration and replanting could be discussed.

Social and economic issues (ED7, IMP1)

Policy ED7 Rural Business Proposals is supportive of rural business developments where there is a locational justification, sufficient infrastructure capacity, no adverse

impact on natural and built heritage, and appropriate controls over siting, design, landscape and visual impact and emissions. In terms of a locational justification as the proposed windfarm would share some of its existing infrastructure with Rothes I and Rothes II in terms of the site access, and in a location where wind energy development is already present this matter requires little further consideration. The site does also lie partially in an area with acknowledged potential for windfarm development.

The alternative proposal development does meet other criteria within this policy where the development would generate construction and business activity in the area as described in the updated socio economic assessment within the EIAR AI Report Chapter 15 Socio-economic context. The merit of which would be most notable during the construction period where more personnel would be present on site and the applicant states that the development would create employment and opportunities for the duration of the operation of the windfarm. The applicant makes reference to the benefits the proposed shared ownership scheme community fund payments. These matters will be discussed below, but weight must be attached to the economic benefit of a development of this scale.

The matter of socio economic implications for tourism and recreation was discussed within the original consultation response, and whilst the alternative proposed development would see a reduction in visual and cumulative impact it is clear however that not all reaction users/tourists would view such development negatively, but where an accumulation of wind energy development arises, this does impact upon the sense of natural landscape that visitors do cite as one of the reasons for coming to Moray.

Policy ED7 d) does require consideration to be given to siting, design, landscape and visual impact of proposed rural development. The applicant makes the case the development would improve tourism in terms of enhanced access to the countryside, and the implementation (via community benefit) of enhanced facilities for recreation and tourist purposes. These points are valid, although community benefit itself is not a material consideration, and there will be members of the public who enjoy visiting windfarms and utilising the improved access they create.

Consideration must also be given however to what impact upon tourism will occur from an accumulation of wind energy development upon the landscape. The section above on Landscape and Visual Impact Assessment details the implications upon landscape and does acknowledge the reduced effects of the alternative proposed development so do not require to be re-iterated. Fundamentally, where upland in central and north Moray would increasingly become a windfarm landscape this would detract from the experience and enjoyment of the countryside that would be the appeal to many visitors and to those using the countryside for recreation. Successive views from locations such as that from the A95 south of Aberlour, clearly illustrate that the dominance of wind energy developments has reached a critical stage where

their prevalence would detract the natural landscape in which they are set. The Moray landscape is approaching saturation, where visitors or those pursuing outdoor recreation have little choice in locations not influenced by the presence of wind energy developments. This conclusion would remain even for the alternative proposed development.

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

Aviation Issues (ER1, EP13 and IMP1)

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

The EIAR AI Report still acknowledges potential effects of the wind farm upon aircraft activity including radar systems and there has been a history in Moray of radar conflict. It is noted that the MoD have suggested a condition in their latest response to the DPEA and it is noted such conditions in relation to the proposals at Rothes III. Aviation conflict would be reduced with a reduction in heights and numbers of turbines, and the resultant reduction in aviation lighting would be welcomed. While aviation conflict is a specific issue within policy ER1, the Council ordinarily relies upon the expertise of the MoD and other aviation bodies to form a view on the matter. As the Ministry of Defence, National Air Traffic (NATS) and Inverness Airport have been directly consulted by the ECU this element of compliance will be left for DPEA to determine upon.

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

Development of this nature has a limited lifespan and permission is sought for a 35 year period and if permitted it would fall to the DPEA to determine the period of energy production commencement. The EIAR AI also seeks a 35 year consent and refers to Chapter 4 of the original EIA Report which addresses decommissioning and site reinstatement, which would see the preparation of a restoration scheme prior to decommissioning. The DPEA would condition appropriate decommissioning requirement or provision of a bond to ensure that the development is in place only for the operational lifetime of the equipment and the site is appropriately restored at the end of that period, the proposal is considered to comply with the restoration requirements of Policy ER1.

Planning Obligations and community investment opportunities (IMP3)

No planning obligations contribution are due as such development would not have any impact on community facilities, schools etc. Separate to this it was decided by the Planning and Regulatory Services Committee on the 18th October 2012 to

remove the pursuit or contribution of funds to "Community Benefit Funds" from the development management system.

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

The applicants are separately offering community groups the opportunity to invest a 'Shared Ownership Opportunity' scheme that would see communities investing in and sharing the profit from the development. This matter being an opportunity for individual communities may have positive outcomes, but it is difficult to attach any material weight too at this stage. It is therefore being treated as a separate matter to the consideration of the Section 36 consultation. This is consistent with the decision by Scottish Ministers in relation to Section 36 Pencloe Wind Energy Ltd decision in East Ayrshire in December 2018 where community shared ownership was not taken into account.

Conclusion

The alternative proposed development, although smaller than the submitted Rothes III scheme, would still represent a significant renewable energy development for Moray. The scheme is in line with aspects of local and national policy on the expansion of renewable energy including its contribution to renewable energy targets and the furtherance of a sustainable rural economy within Moray. The applicants Additional Information Report shares conclusions with the submitted EIA Report, that conclude the objectives of the Scottish Energy Strategy 2017 (SES) need to be considered against (and outweigh) the acknowledged significant landscape and visual impacts of the proposal. The SES does state that achieving renewables targets "can be done in a way which is compatible with Scotland's magnificent landscapes, including our areas of wild land. This means that the relevant planning and consenting processes will remain vitally important." This therefore clearly attributes weight to the need to achieve compatibility with landscape interests. The alternative proposed development whilst a substantive improvement in terms adverse impacts still fails to achieve the balance and compatibility with landscape interests sought in the SES.

Similarly the Scottish Onshore Wind Energy Policy Statement 2017 (SOWE) states that "the Scottish Government acknowledges the way in which wind turbine technology and design is evolving, and fully supports the delivery of large wind turbines in landscapes judged to be capable of accommodating them without significant adverse impacts." Even by the assessment of the applicants own Landscape and Visual Impact Assessment significant effects will occur using the

height of turbines proposed. The Moray Councils own review of this LVIA is that effects are greater than the applicants has suggested (see LVIA assessment above).

The SOWE also acknowledges “the technology shift towards larger turbines may present challenges when identifying landscapes with the capacity to accommodate larger scale development, as not all will be suitable.” The alternative proposals location, sat above rural Speyside in an area visited for its rural whisky industry and natural landscape one such unsuitable location.

At height of up to 175m it would be wrong to understate the weight that should be attached to issues beyond the clear benefits of onshore wind energy production. The socio economic factors benefits including employment generation having been specifically born in mind in arriving at the recommendation below.

This is not simply a case of the local authorities’ local wind energy guidance and capacity assessment verses national agreed targets for renewables. This recommendation has considered a broad range of issues including the national position of needing to move away from fossil fuel energy production. The alternative proposed development would remedy some of the original design flaws, and reduce the impact of others, but does not unfortunately go far enough.

The development will not adversely impact on heritage, public access or noise matters, subject to appropriate measures and conditions being put in place. It is noted that more specific technical responses relating to hydrology, ornithology, ecology and aviation will be separately addressed by other more specialist consultees to the Section 36/PLI process. For clarity, whilst objecting to the alternative proposed development, Moray Council does not have an objection solely to the proposed repositioned substation building submitted as part of the AI.

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

On balance, the benefits of the alternative proposed development would not outweigh the detrimental landscape and visual impact in addition to the Transportation concerns. Officers consider that the potential for larger turbines identified within the 2017 Moray Wind Energy Landscape Capacity Study (MWELCS) should be re-visited by the applicant. This results in a departure from T2, ED7, E7, ER1, IMP1 and IMP2 where the alternative proposed development would not be sensitively sited, designed and serviced, and integrated into the surrounding landscape, preventing a negative landscape and visual impact.

Recommended decision to Committee

The alternative proposed development is contrary to Moray Local Development Plan 2015 policies PP1 Sustainable Economic Growth, T2 Provision of Access, ED7 Rural Business Proposals, ER1 Renewable Energy Proposals, E7 Areas of Great Landscape Value and Impacts Upon the Wider Landscape, IMP1 Developer Requirements, IMP2 Development Impact Assessments and Moray Onshore Wind Energy 2017 Policy Guidance and The Moray Wind Energy Landscape Capacity Study 2017 for the following reasons:-

I. The turbines would be located close to the edges of the areas of potential for larger turbines within Landscape Character Type (LCT) 10. The proposed turbines would by virtue of their size and positions have significant adverse effects and dominate the sensitive settled landscapes lying on the upland fringes in the Upper Knockando area and effect views from and character of the Spey Valley.

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

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

IV. The proposed windfarm would result in complex and unacceptable cumulative views of wind energy development. These cumulative views are illustrated in the various Cumulative Zones of Theoretical Visibility figures. The proposed windfarm from varied locations within Moray would bring into view an agglomeration of windfarms, constructed or consented. This would result in significant adverse cumulative effects upon the landscape and upon visual amenity resulting in the creation of a windfarm landscape.

V. The submitted information is inadequate to satisfy policies T2 and IMP2 as it is insufficient to enable Moray Council to consider; the feasibility of the proposed development in terms of the ability to deliver turbine components, the impact on the public road and the identification of appropriate mitigation/modification or improvements necessary for the proposed development. Furthermore additional information would be required in relation to how the volumes of construction stone beyond that gleaned from on-site borrow pits has been calculated.

RELEVANT POLICIES OF THE MORAY LOCAL DEVELOPMENT PLAN 2015

Primary Policy PP1: Sustainable Economic Growth

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

Primary Policy PP2: Climate Change

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

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

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

Policy ED7: Rural Business Proposals

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

- a) There is a locational justification for the site concerned, particularly if there is serviced industrial land available in a nearby settlement.
- b) There is capacity in the local infrastructure to accommodate the proposals, particularly road access, or that mitigation measures can be achieved.
- c) Account is taken of environmental considerations, including the impact on natural and built heritage designations, with appropriate protection for the natural environment; the use of enhanced opportunities for natural heritage integration into adjoining land.
- d) There is careful control over siting, design, landscape and visual impact, and emissions. In view of the rural location, standard industrial estate/urban designs may not be appropriate.

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

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

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

Policy E1: Natura 2000 Sites and National Nature Conservation Sites

Natura 2000 designations

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

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

- a) there are no alternative solutions; and

- b) there are imperative reasons of over-riding public interest including those of a social or economic nature, and
- c) if compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.

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

National designations

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

- a) the objectives of designation and the overall integrity of the area will not be compromised; or
- b) any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

Policy E2: Local Nature Conservation Sites and Biodiversity

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

- a) local public benefits clearly outweigh the nature conservation value of the site, and
- b) there is a specific locational requirement for the development

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

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

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

Policy E3: Protected Species

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

- there is no satisfactory alternative; and
- the development is required to preserve public health or public safety, or for other reasons of overriding public interest, including those of a social or economic nature, and beneficial consequences of primary importance for the environment; and the development will not be detrimental to the maintenance of the population of species concerned at a favourable conservation status of the species concerned.

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

- There is no other satisfactory solution
- The development is necessary to preserve public health or public safety
- The development will not be detrimental to the conservation status of the species concerned.

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

Policy E4: Trees and Development

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

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

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

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

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

Proposals affecting woodland will be considered against Policy ER2.

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

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

- the objectives of designation and the overall integrity of the area will not be compromised; or
- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

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

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

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

- b) They will not have a significant adverse effect on the landscape character of the area, in the case of wind energy proposals the assessment of landscape impact will be made with reference to the terms of the Moray Wind Energy Landscape Capacity Study.
- c) They are in general accordance with the guidance in the Moray and Nairn Landscape Character Assessment.

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

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

Policy BE1: Scheduled Monuments and National Designations

National Designations

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

Local Designations

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

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

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

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

Policy BE2: Listed Buildings

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

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

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

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

- a) The building is not of special interest; or
- b) The building is incapable of repair; or
- c) The demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or
- d) The repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable price.

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

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

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

EP4: Private Water Supplies

All proposals to use a private water supply must demonstrate that a wholesome and adequate supply can be provided. Applicants will be required to provide a National Grid Reference for each supply source and mark the supply (and all works associated) e.g. the source, holding tank and supply pipe, accurately on the application plan. The applicant will also be required to provide information on the source type (e.g. well, borehole, spring). This information is necessary to enable the appropriate authorities to advise on the environmental impact, adequacy, wholesomeness, capacity of supply for existing and proposed users and pollution risks.

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

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

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

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

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

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

Policy EP6: Waterbodies

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

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

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

Policy EP7: Control of Development in Flood Risk Areas

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

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

- a) In areas of little to no risk (less than 0.1%) there will be no general constraint to development.
- b) Areas of low to medium risk (0.1% to 0.5%) will be considered suitable for most development. A flood risk assessment may be required at the upper end of the probability range (i.e. close to 0.5%), and for essential civil infrastructure and most vulnerable uses. Water resistant materials and construction may be required. Areas within this risk category will generally not be suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is

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

- c) Areas of medium to high risk (0.5% or above) may be suitable for:
- Residential, institutional, commercial and industrial development within built up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood management plan;
 - Essential infrastructure within built up areas, designed and constructed to remain operational during floods and not impede water flow;
 - Some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place and
 - Job related accommodation e.g. for caretakers or operational staff.

Areas within these risk categories will generally not be suitable:

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

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

Policy EP8: Pollution

Planning applications for developments that may cause significant pollution in terms of noise (including RAF aircraft noise), air, water and light emissions will only be approved where a detailed assessment report on the levels, character and transmission of the potential pollution is provided by the applicant. The assessment should also demonstrate how the pollution can be appropriately mitigated. Where the

Council applies conditions to the consent to deal with pollution matters these may include subsequent independent monitoring of pollution levels.

Policy EP9: Contaminated Land

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

- a) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment; and
- b) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/or treatment of any hazardous material.

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

Policy EP10: Foul Drainage

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

- Systems shall not have an adverse impact on the water environment;
- Systems must be designed and built to a standard which will allow adoption by Scottish Water.
- Systems must be designed such that they can be easily connected to a public sewer in the future. Typically this will mean providing a drainage line up to a likely point of connection.

All development within or close to settlements (as identified in the Local Development Plan) of less than 2000 population equivalent will require to connect to public sewerage system except where a compelling case is made otherwise. Factors to be considered in such a case will include size of the proposed development, whether the development would jeopardise delivery of public sewerage infrastructure and existing drainage problems within the area. Where a

compelling case is made, a private system may be acceptable provided it does not pose or add risk of detrimental effect, including cumulative, to the natural and built environment, surrounding uses or amenity of the general area. Consultation with Scottish Environment Protection Agency will be undertaken in these cases.

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

Policy EP12: Air Quality

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

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

Policy ER1: Renewable Energy Proposals

All Renewable Energy Proposals

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

- i) They are compatible with policies to safeguard and enhance the built and natural environment
- ii) They do not result in the permanent loss or damage of agricultural land
- iii) They avoid or address any unacceptable significant adverse impacts including:
 - Landscape and visual impacts
 - Noise impacts
 - Electromagnetic disturbance
 - Impact on watercourse engineering

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

Onshore wind turbines

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

a) The Spatial Framework

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

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

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

b) Detailed Consideration

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

Landscape and visual impact:

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

Cumulative Impact

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

Impact on local communities

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

Other

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

** Further detail on the above assessment process will be addressed through supplementary guidance to include:

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

Biomass

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

- Proposals should confirm which form of biomass will fuel the plant and if a mixture of biomass is proposed then what percentage split will be attributed to each fuel source.
- Proposals can demonstrate that they have taken account of the amount of supply fuel over the life of the project.
- When considering woody biomass proposals the scale and location of new development is appropriate to the volume of local woodfuel available.

- The location must have suitable safe access arrangements and be capable of accommodating the potential transport impacts within the surrounding roads network.
- A design statement should be submitted, which should include photomontages from viewpoints agreed by the Council.
- There should be a locational justification for proposals outwith general employment land designations. The proposed energy use, local heat users and connectivity of both heat users and electricity networks should be detailed. Proposals which involve potential or future heat users will not be supported unless these users can be brought online in conjunction with the operation of the plant.
- Details of the predicted energy input and output from the plant demonstrating the plant efficiency and utilisation of heat should be provided.
- Where necessary appropriate structural landscaping must be provided to assist the development to integrate sensitively.
- The criteria set out in relation to other renewables should also be met.

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

Policy ER2: Development in Woodlands

All woodlands

Development which involves the loss of woodlands will be refused where the development would result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the forest. Woodland removal will only be supported where it can be demonstrated that the impact on the woodland is clearly outweighed by social or economic benefits of national, regional and local importance, and if a programme of proportionate compensatory planting has been agreed with the Planning Authority.

Protected Woodlands

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

Tree surveys and new planting

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

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

Policy ER3: Safeguarding Mineral Reserves

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

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

Policy ER4: Minerals

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

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

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

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

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

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

- Impact on natural heritage and historic environment including landscape and visual impact,
- Disturbance and disruption from noise, blasting vibration, and potential pollution of land, air and water,
- Effect on communities,
- Cumulative impact,
- Transport impacts,
- Restoration and aftercare proposals.

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

Proposals should be accompanied by an Extractive Waste Management plan.

Policy ER5: Agriculture

The Council will support the agricultural sector by:

- a) Presuming against irreversible development on prime agricultural land (classes 1,2 and 3.1) unless the site is required for settlement expansion and there is no other suitable alternative.
- b) Supporting farm diversification proposals in principle and supporting business proposals which are intended to provide additional income/ employment on farms.

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

Policy ER6: Soil Resources

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

For major developments, minerals and large scale (over 20MW) renewable energy proposals, development will only be permitted where it has been demonstrated that unnecessary disturbance of soils, peat and any associated vegetation is avoided. Evidence of the adoption of best practice in the movement, storage, management and reinstatement of soils must be submitted along with any relevant planning application, including if necessary measures to prevent the spread of invasive non-native species.

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

- a) the economic, social and/or environmental benefits of the proposal outweigh any potential detrimental effect on the environment (in particular with regard to the release of carbon dioxide into the atmosphere); and
- b) it has been clearly demonstrated that there is no viable alternative.

Where development on undisturbed peat is deemed acceptable, a peat depth survey must be submitted which demonstrates that the areas of deepest peat have been avoided. Where required, a peat management plan must also be submitted which demonstrates that unnecessary disturbance, degradation or erosion of peat is avoided.

Large scale commercial peat extraction will not be permitted.

Policy T2: Provision of Access

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

- Proposals must maximise connections and routes for pedestrian and cyclists, including links to active travel and core path routes, to reduce travel demands and provide a safe and realistic choice of access.
- Provide access to public transport services and bus stop infrastructure where appropriate.
- Provide appropriate vehicle connections to the development, including appropriate number and type of junctions.
- Provide safe entry and exit from the development for all road users including ensuring appropriate visibility for vehicles at junctions and bends.
- Provide appropriate mitigation/modification to existing transport networks where required to address the impacts of new development on the safety and efficiency of the transport network. This may include but would not be limited to, the following measures, passing places, road widening, junction enhancement, bus stop infrastructure and drainage infrastructure. A number of potential road improvements have been identified in association with the development of sites the most significant of these have been shown on the Settlement Map as TSPs.
- Proposals must avoid or mitigate against any unacceptable adverse landscape or environmental impacts.

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

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

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

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

Significant travel generating proposals will only be supported where:

- Direct links to walking and cycling networks are available;
- Access to public transport networks would involve walking no more than 400m;

- It would not have a detrimental effect on the capacity of the strategic road and/or rail network; and
- A Transport Assessment identifies satisfactory mechanisms for meeting sustainable transport requirements and no detrimental impact to the performance of the overall network.

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

Policy T5: Parking Standards

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

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

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

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

- incorporate the route within the site layout and the routes amenity value must be maintained or enhanced; or
- provide alternative access that is no less attractive and is safe and convenient for the public to use.

Policy IMP1: Developer Requirements

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

- a) The scale, density and character must be appropriate to the surrounding area.
- b) The development must be integrated into the surrounding landscape

- c) Road, cycling, footpath and public transport must be provided at a level appropriate to the development. Core paths; long distance footpaths; national cycle routes must not be adversely affected.
- d) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water.
- e) Where of an appropriate scale, developments should demonstrate how they will incorporate renewable energy systems, and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria.
- f) Make provision for additional areas of open space within developments.
- g) Details of arrangements for the long term maintenance of landscape areas and amenity open spaces must be provided along with Planning applications.
- h) Conservation and where possible enhancement of natural and built environmental resources must be achieved, including details of any impacts arising from the disturbance of carbon rich soil.
- i) Avoid areas at risk of flooding, and where necessary carry out flood management measures.
- j) Address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.
- k) Address and sufficiently mitigate any contaminated land issues
- l) Does not sterilise significant workable reserves of minerals or prime quality agricultural land.
- m) Make acceptable arrangements for waste management.

Policy IMP2: Development Impact Assessments

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

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

- b) A Transport Assessment (TA) will be sought where a change of use or new development is likely to generate a significant increase in the number of trips being made. TAs should identify any potential cumulative effects which would need to be addressed. Transport Assessments should assess the effects the development will have on roads and railway infrastructure including stations and any crossings. Transport Scotland (Trunk Roads) and Network Rail (Railway) should be consulted on the scoping of Transport Assessments. Moray Council's Transportation Service can assist in providing a screening opinion on whether a TA will be sought.
- c) In order to demonstrate that an out of centre retail proposal will have no unacceptable individual or cumulative impact on the vitality and viability of the identified network of town centres, a Retail Impact Assessment will be sought where appropriate. This may also apply to neighbourhood shops, ancillary retailing and recreation/tourism retailing.
- d) Where appropriate, applicants may be asked to carry out other assessments (e.g. noise; air quality; flood risk; drainage; bat; badger; other species and habitats) in order to confirm the compatibility of the proposal.

Policy IMP3: Developer Obligations

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

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

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

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

PROPOSED MORAY LOCAL DEVELOPMENT PLAN 2020 (LIKELY RELEVANT POLICIES)

PP2 SUSTAINABLE ECONOMIC GROWTH.

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

DP1 DEVELOPMENT PRINCIPLES.

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

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

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

(i) Design

- a) The scale, density and character must be appropriate to the surrounding area and create a sense of place (see Policy PP1) and support the principles of a walkable neighbourhood.
- b) The development must be integrated into the surrounding landscape which will include safeguarding existing trees and undertaking replacement planting to include native trees for any existing trees that are felled, and safeguarding any notable topographical features (e.g. distinctive knolls), stone walls and existing water features by avoiding channel modifications and culverting. A tree survey and tree protection plan must be provided with planning applications for all proposals where mature trees are present on site or that may impact on trees outwith the site. The strategy for new tree provision should follow the principles of the "Right Tree in the Right Place".
- c) Make provision for new open space and connect to existing open space under the requirements of Policy EP5 and provide details of the future maintenance of these spaces. A detailed landscape plan must be submitted with planning applications and include information about green/blue infrastructure, tree species, planting, ground/soil conditions, and natural and man-made features (e.g. grass areas, wildflower verges, fencing, walls, paths, etc.).

- d) Demonstrate how the development will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape.
- e) Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity.
- f) Proposals do not result in backland development or plots that are subdivided by more than 50% of the original plot. Sub-divided plots must be a minimum of 400m², excluding access and the built-up area of the application site will not exceed one-third of the total area of the plot and the resultant plot density and layout reflects the character of the surrounding area.
- g) Pitched roofs will be preferred to flat roofs and box dormers are not acceptable.
- h) Existing stone walls on buildings and boundaries must be retained. 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

(ii) Transportation

- a) Proposals must provide safe entry and exit from the development, including the appropriate number and type of junctions, maximise connections and routes for pedestrians and cyclists, including links to active travel and core path routes, reduce travel demands and ensure appropriate visibility for all road users at junctions and bends. Road, cycling, footpath and public transport connections and infrastructure must be provided at a level appropriate to the development and connect people to education, employment, recreation, health, community and retail facilities.
- b) Car parking must not dominate the street scene and must be provided to the side or rear and behind the building line. Minimal (25%) parking to the front of buildings and on street may be permitted provided that the visual impact of the parked cars is mitigated by hedging or low stone boundary walls. Roadways with a single carriageway must provide sufficient off road parking to avoid access routes being blocked to larger service vehicles and prevent parking on pavements.

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

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

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.

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.

DP8 TOURISM FACILITIES & ACCOMMODATION.

Proposals which contribute to Moray's tourism industry will be supported where they comply with relevant policies. All proposals must demonstrate a locational need for a specific site.

Development built as tourism/holiday accommodation shall be retained for this purpose and will not become permanent residences. Conditions will be applied to planning consents to control this aspect.

To integrate caravan, chalet and glamping developments into their rural setting, stances/pitches will be required to have an informal layout and be satisfactorily landscaped to ensure development is screened and discrete. Provision within sites for touring caravans/campers and tents must be included.

Proposals for hutting will be supported where it is low impact, does not adversely affect trees or woodland interests, or the habitats and species that rely upon them, the design and ancillary development (e.g. car parking and trails) reflects the wooded environment and the proposal complies with other relevant policies. Proposals must comply with 'New Hutting Developments - Good Practice Guidance on the Planning, Development and Management of Huts and Hut Sites' published by Reforesting Scotland.

Proposals for tourism facilities and accommodation within woodlands must support the proposals and strategy set out in the Moray Woodlands and Forestry Strategy.

DP9 RENEWABLE ENERGY.

a) All Renewable Energy Proposals.

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

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

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

b) Onshore wind turbines.

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

i) The Spatial Framework.

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

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

ii) Detailed Consideration.

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

iii) Landscape and visual impact:

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

iv) Cumulative impact.

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

v) Impact on local communities.

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

vi) Other.

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

c) Biomass.

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

- Applicants must confirm which form of biomass will fuel the plant and if a mixture of biomass is proposed then what percentage split will be attributed to each fuel source.
- Proposals must demonstrate that they have taken account of the amount of supply fuel over the life of the project.
- When considering wood biomass proposals, the scale and location of new development is appropriate to the volume of local woodfuel available. Sources of fuel must be identified and must be sustainable.
- The location must have suitable safe access arrangements and be capable of accommodating the potential transport impacts within the surrounding roads network.
- A design statement must be submitted, which should include photomontages from viewpoints agreed by the Council.
- There must be a locational justification for proposals outwith general employment land designations. The proposed energy use, local heat users and connectivity

of both heat users and electricity networks must be detailed. Proposals which involve potential or future heat users will not be supported unless these users can be brought online in conjunction with the operation of the plant.

- Details of the predicted energy input and output from the plant demonstrating the plant efficiency and utilisation of heat must be provided.
- Where necessary appropriate structural landscaping must be provided to assist the development to integrate sensitively.

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

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

DP10 MINERALS.

a) Safeguarding Mineral Reserves.

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

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

b) Mineral Operations.

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

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

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

Proposals for borrow pits will be supported, subject to compliance with other relevant policies, to allow the extraction of minerals near to or on the site of associated development (e.g. wind farm and roads construction, forestry and agriculture) provided it can be demonstrated that the

operational, community and environmental benefits of the proposal can be evidenced. These consents will be time limited, tied to the proposal and must be accompanied by full restoration proposals and aftercare.

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

Proposals must be accompanied by an extractive Waste Management Plan.

c) Restoration and aftercare.

Operators must provide details of their proposed programme of restoration (including the necessary financing, phasing and aftercare of the sites). In some circumstances, the Council may require a financial guarantee/ bond. Restoration programmes must reinstate the site at the earliest opportunity when excavation has ceased.

Restoration must be designed and implemented to the highest standard. After uses must result in environmental improvement and add to the cultural, recreational or environmental assets of the area.

EP1 NATURAL HERITAGE DESIGNATIONS.

a) Natura 2000 designations.

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

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

- i) There are no alternative solutions; and
- ii) There are imperative reasons of over-riding public interest including those of a social or economic nature; and
- iii) Compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.

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

b) National designations.

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

- i) The objectives of designation and the overall integrity of the area will not be compromised; or
- ii) Any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

c) Local Designations

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

- i) Public benefits clearly outweigh the nature conservation value of the site, and
- ii) There is a specific locational requirement for the development, and
- iii) Any potential impacts can be satisfactorily mitigated to conserve and enhance the site's residual conservation interest.

d) European Protected Species

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

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

- i) The need for development is one that is possible for SNH to grant a license for under the Regulations (e.g. to preserve public health or public safety).
 - ii) There is no satisfactory alternative to the development.
 - iii) The development will not be detrimental to the maintenance of the favourable conservation status of the species.
- e) Other protected species.

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

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

EP2 BIODIVERSITY

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

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

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

Developers must demonstrate through a Placemaking Statement which incorporates a Biodiversity Plan, that they have included habitat creation in the design of the development. This can be achieved by providing links into existing green and blue

networks, wildlife friendly features such as wildflower verges and meadows, bird and bat boxes, amphibian friendly kerbing, wildlife crossing points such as hedgehog highways and planting to encourage pollination, wildlife friendly climbing plants, use of hedges rather than fences, incorporating biodiversity measures into SUDS and retaining some standing or lying dead wood, allotments, orchards and woodlands.

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

EP3 SPECIAL LANDSCAPE AREAS AND LANDSCAPE CHARACTER.

i) Special Landscape Areas (SLA's).

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

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

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

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

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

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

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

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

ii) Landscape Character.

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

Proposals for new roads and hill tracks associated with rural development must ensure that their alignment and use minimises visual impact, avoids sensitive natural heritage and historic environment features, including areas protected for nature conservation, carbon rich soils and protected species, avoids adverse impacts upon the local hydrology and takes account of recreational use of the track and links to the wider network.

EP7 FORESTRY, WOODLANDS AND TREES.

a) Forestry.

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

b) Woodlands.

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

Where woodland is removed in association with development, developers must provide compensatory planting to be agreed with the planning authority either on site, or an alternative site in Moray which is in the applicant's control or

through a commuted payment to the planning authority to deliver compensatory planting and recreational greenspace within Moray.

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

c) Trees and Tree Preservation Orders.

Development proposals must to retain existing healthy, mature trees and incorporate them within the proposal. Where mature trees exist on or bordering a development site, a tree survey and tree protection and mitigation plan must be provided with planning applications if the trees (or their roots) have the potential to be affected by development and construction activity. Proposals must identify a safeguarding distance to ensure construction works, including access and drainage arrangements, will not damage or interfere with the root systems in the short or longer term.

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

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

EP8 HISTORIC ENVIRONMENT.

a) Scheduled Monuments and National Designations.

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

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

b) Local Designations.

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

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

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

EP10 LISTED BUILDINGS.

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

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

- The building is not of special interest, or
- The building is incapable of repair.
- The demolition of the building is essential to delivering significant benefits to economic growth or the wider community.
- The repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable price.

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

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

EP11 BATTLEFIELDS, GARDENS AND DESIGNED LANDSCAPES.

Development proposals which adversely affect nationally designated Battlefields or Gardens and Designed Landscapes or their setting will be refused unless;

- a) The overall character and reasons for the designation will not be compromised, or
- b) Any significant adverse effects can be satisfactorily mitigated and are clearly outweighed by social, environmental, economic or strategic benefits.

The Council will consult Historic Environment Scotland and the Regional Archaeologist on any proposals which may affect Inventory 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 as they are unsustainable in the long term due to sea level rise and coastal change.

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

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

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

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

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

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

c) Water Environment

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

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

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

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

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

15m+

20m+

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

EP13 FOUL DRAINAGE

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

- Systems must not have an adverse effect on the water environment.
- Systems must be designed and built to a standard which will allow adoption by Scottish Water.
- Systems must be designed such that they can be easily connected to a public sewer in the future. Typically this will mean providing a drainage line up to a likely point of connection.

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

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

EP14 POLLUTION, CONTAMINATION & HAZARDS.

a) Pollution.

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

b) Contamination.

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

- i) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment, and
- ii) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/ or treatment of any hazardous material.

c) Hazardous sites.

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

EP16 GEODIVERSITY AND SOIL RESOURCES.

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

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

For major developments, minerals and large scale (over 20MW) renewable energy proposals, development will only be permitted where it has been demonstrated that unnecessary disturbance of soils, geological interests, peat and any associated vegetation is avoided. Evidence of the adoption of best practice in the movement, storage, management and reinstatement of soils must be

submitted along with any relevant planning application, including, if necessary, measures to prevent the spread of invasive non-native species.

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

- a) The economic, social and/or environmental benefits of the proposal outweigh any potential detrimental effect on the environment (in particular with regard to the release of carbon dioxide into the atmosphere); and
- b) It has been clearly demonstrated that there is no viable alternative.

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

Commercial peat extraction will not be permitted.