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**REPORT TO: MEETING OF THE PLANNING AND REGULATORY SERVICES COMMITTEE ON 25 FEBRUARY 2020**

**SUBJECT: 19/00156/S36 – ADDITIONAL INFORMATION SUBMITTED FURTHER TO THE INITIAL EIA REPORT RELATING TO ALTERNATIVE PROPOSED DEVELOPMENT CONSISTING OF ERECT 23 WIND TURBINES OF WHICH 15 TURBINES OF AN OVERALL HEIGHT FROM BASE TO TIP NOT EXCEEDING 149.9M AND THE REMAINING 8 TURBINES OF AN OVERALL HEIGHT FROM BASE TO TIP NOT EXCEEDING 175M. ASSOCIATED INFRASTRUCTURE INCLUDES EXTERNAL TRANSFORMER HOUSING, CRANE PADS, TURBINE FOUNDATIONS, ACCESS TRACKS, 2 SUBSTATIONS, UNDERGROUND ELECTRICITY CABLES AND ANEMOMETRY MAST AT ROTHES III WINDFARM, MORAY**

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

**1. REASON FOR REPORT**

- 1.1 This report asks Committee to consider a consultation received in relation to an Electricity Act 1989 Section 36 application (which includes deemed planning permission) for a new windfarm. This Section of the Electricity Act relates to consenting onshore electricity generation. An additional consultation has been undertaken following submission of Environmental Impact Assessment Report Additional Information for changes to the windfarm originally submitted.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to exercising the functions of the Council as Planning Authority.

**2. RECOMMENDATION**

**2.1 It is recommended that the Committee:-**

- i) **consider and note the contents of the report, as set out in Appendix 1, including the conclusions regarding the planning merits of the EIA Additional Information which take into account the Moray Local Development Plan 2015 and all material considerations including the presence of existing neighbouring windfarms;**

- ii) respond to the further consultation request from the Scottish Government, maintaining an objection to the alternative proposed development on the basis of the recommendations set out in Appendix 1, in particular in terms of the considered unacceptable significant landscape and visual impacts that would arise from the position and height of proposed turbines on the site (including cumulative impact), transportation issues and the impact on tourism and recreational interests; and
- iii) consider whether any additional comments on the proposal should be submitted in relation to the Additional Information.

### 3. **BACKGROUND**

- 3.1 The applicant Rothes III Limited (subsidiary company of Fred Olsen Renewables) has lodged an application for consent under Section 36 of the Electricity Act 1989 for the construction, operation and decommissioning of a proposed windfarm to be known as Rothes III 2.5km north of Archiestown. If granted, planning permission is deemed to be granted for the development (see Site Plan in **Appendix 2**). Moray Council objected in June 2019 to the proposal as originally submitted for 29 wind turbines consisting of 18 turbines of an overall height from base to tip not exceeding 225m, 8 turbines of an overall height from base to tip not exceeding 200m and 3 turbines of an overall height from base to not exceeding 149.9m. This in turn, triggered the need for a Public Local Inquiry (PLI) to determine the windfarm proposal.
- 3.2 In the approach to the PLI the applicants have 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 which will be listed more fully in **Appendix 1**. Most notable was the presentation of an alternative proposed development as a fall back option which the applicants have submitted "in the event the Reporters are not persuaded as to the acceptability of the submitted proposed development". This alternative sees a reduction in numbers and heights of turbines, with other associated changes such as less tracks and infrastructure proposed. As described above the EIAR AI includes an alternative proposed development with 6 less turbines, and reducing the height of most turbines by 50m.
- 3.3 At this stage in the process, responsibility for collating statutory consultees responses, receipt of representations and determination now fall within the Inquiry process via the DPEA. In these circumstances the role of Moray Council, as planning authority, remains as a consultee rather than being the determining authority. The period for consultation for Moray Council expired in January 2020 but an extension to this period has been granted until late February to accommodate referral to the first available Planning and Regulatory Services Committee of the year.
- 3.4 The applicant has been clear that they still wish to proceed with the scheme as submitted, so the PLI convened will proceed on the basis of the Councils original objection, whether or not the Council separately objects or does not

object to the possible alternative proposed development. The EIAR AI gives the PLI Reporters an alternative proposal, should they not accept the assessment of the submitted proposal. In either case the Reporter would then put a recommendation before to Scottish Ministers for a final determination.

#### **4. SUMMARY OF IMPLICATIONS**

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

Promote economic development and growth and maintain and promote Moray's landscape and biodiversity.

**(b) Policy and Legal**

The application is made for consent under S.36 of the Electricity Act 1989 to Scottish Government. If consented, planning permission is deemed to be granted for the development. For planning purposes proposals require to be determined in accordance with the development plan unless material considerations indicate otherwise. If granted by Scottish Government, the responsibility for the discharge of (planning) conditions attached to the formal decision to grant consent will pass to Moray Council.

**(c) Financial implications**

Moray Council via its previous response is already committed to a Public Local Inquiry arranged by Scottish Government. Moray Council are already participating in the Inquiry process, inclusive of resultant costs, including officer, legal representation and consultant costs where required/appropriate.

At Inquiry, the applicant may seek an award of costs against the Council if it is considered the Council has acted unreasonably.

**(d) Risk Implications**

If the Council decide not to respond within the agreed period it would be open to Scottish Government to proceed and determine the application.

If deciding to object, the outcome of any Public Local Inquiry held to consider this proposed development is uncertain: it might uphold and support the Council's decision to object, but equally the objection could be dismissed and consent granted for the development - either in its original format or the proposed amendment subject of this report.

**(e) Staffing Implications**

Due to the progressed Public Local Inquiry, staff time and resources (planning and legal officers) are already required for preparation and attendance at the Inquiry.

**(f) Property**

None.

**(g) Equalities/Socio Economic Impact**

None.

**(h) Consultations**

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

**5. CONCLUSION**

- 5.1 From Appendix 1, the planning merits have been considered relative to current development plan policy and material considerations, including the wind energy supplementary planning policy guidance and wind energy landscape capacity study approved by the Council.**
- 5.2 Whilst national policy provides support for renewable energy proposals the proposal is not considered to be in full accordance with the Moray Local Development Plan 2015 policies and guidance. Aspects of national guidance in relation to landscape impact have also been departed from.**
- 5.3 Notwithstanding the material considerations advanced by the applicant (including matters identified in the submitted Additional Information Report) on balance, Officers would make the following recommendation that would form the basis of the further response to the DPEA in relation to the Additional Information (as stated in Appendix 1 and repeated below). Notwithstanding the reduction in the proposed alternative development, the previous grounds for objection as stated in para 5.4 remain very similar.**
- 5.4 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. Many of the turbines would be located close to the edges of, and outwith, 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 smaller scale 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 its significant adverse impacts on landscapes and views within Moray. Views from varying distances such as those from Ben Rinnes, Ben Aigen and 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 meet 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 network 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 have been calculated.**

Author of Report: Neal MacPherson, Principal Planning Officer

Background Papers:

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