WARD 02_17

22/00563/APP
12 April 2022

Erection of 3 Wind Turbines (at max height 149.9 metre to blade tip), control building and substation and formation of access tracks (including turning heads), hardstanding, temporary construction compound and associated works and infrastructure at Lurg Hill Deskford Moray for Vento Ludens Ltd

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Comments:

- The appointed officer considers the matter raises matters of wider community interest and/or planning significance by virtue of the scale or height of the turbines, which exceed 40 metre (to blade tip).
- Advertised as a departure from the development plan, under Schedule 3 of the Development Management Regulations 2013 and for neighbour notification purposes.
- 2 letters of objection have been received.

Procedure:

- None.

Recommendation Grant Planning Permission - Subject to the following:

Conditions/Reasons

1. The development to which this permission relates must be begun not later than the expiration of 5 years beginning with the date on which the permission is granted.

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

2. The permission as hereby granted is for a period of 35 years from the date when electricity is first exported from any wind turbine within the development to the electricity grid network (First Export Date), and written confirmation of this First Export Date shall be provided to the Council, as planning authority within one month thereof.

   Reason: To define the duration of the permission.

3. In the event that any wind turbine(s) installed and commissioned fail(s) to supply electricity on a commercial basis to the grid for a continuous period of 12 months, or is no longer required, the turbine(s) in question shall be deemed to have ceased to be required. Under such circumstances, the wind turbine(s) along with any ancillary equipment, fixtures and fittings no longer required in connection with the remaining turbine(s) shall be dismantled and removed from the site within 6 months of the end of the said continuous 6 month period, or when ceasing to be no longer required.

   Thereafter, the surrounding land shall be re-instated in accordance with a re-instatement scheme to include specification of all works and timescale for re-instatement of the land, which shall previously have been submitted to and approved by the Council, as planning authority.

   Reason: To ensure that any redundant or non-functioning wind turbine(s) is/are removed from the site in the interests of public safety, amenity and environmental protection and to ensure acceptable arrangements for the re-instatement of the ground are provided.

4. No development (excluding preliminary ground investigation which shall be permitted) shall commence until:
   a) draft Decommissioning and Site Restoration Plan for the site has been submitted to and approved in writing by the Council, as planning authority in consultation with SEPA, NatureScot and/or other agencies as appropriate; and
   b) thereafter, and not later than 12 months prior to the expiry of this permission or decommissioning of the development, whichever is the sooner, a detailed Decommissioning and Site Restoration Plan, based upon the principles outlined in the approved draft Plan, shall be submitted to and approved by the Council, as planning authority in consultation with SEPA, SNH and/or other agencies as appropriate.

   The required/proposed plans shall include provision for all turbines and ancillary infrastructure and equipment (including all buildings and structures, hardstandings and tracks, etc.) to be decommissioned, de-energised and dismantled to at least ground level and thereafter, removed from the site together with the arrangements to retain any access tracks and other infrastructure on the site, the treatment of disturbed ground surfaces, the management and timing of all proposed works, the provisions for environmental management including traffic and other plans to address issues and impacts likely to arise during the decommissioning period and the provisions for the restoration and aftercare of the site.

   Thereafter, the development shall be decommissioned and the site restored and re-instated in accordance with the approved Plan details.

   Reason: To ensure the arrangements for both decommissioning of the development and re-instatement of the site are undertaken in an appropriate environmentally acceptable and timeous manner, with all wind turbines and associated infrastructure permanently removed from the site in the interests of

safety, environmental protection, amenity and appearance of the site and the surrounding area.

5. Prior to the development commencing, details shall be submitted to and approved in writing by the Council, as planning authority regarding evidence of a bond or other similar financial provision to be put in place to cover all decommissioning and site restoration costs on the expiry of the permission or where the turbines cease to be required, whichever is the sooner. The required bond or equivalent shall:
   a) be based on the Decommissioning and Site Restoration Plan (as required by Condition 4);
   b) include documentary evidence to demonstrate that the amount of the bond or financial provision is sufficient to meet the full estimated costs of decommissioning and site restoration, including dismantling, removal, disposal, site restoration, remediation and all other incidental works and professional costs; and
   c) include details to ensure and demonstrate that the proposed financial arrangements will be maintained and be subject to periodic review throughout the lifetime of the development. The findings of each successive review shall be submitted to and approved by the Council, as planning authority, and include evidence to demonstrate that financial arrangements continue to remain in place and remain sufficient for both the decommissioning of the development and restoration of the site. The review period shall be not less than 5 yearly intervals from commencement of the development, or such other period as may be agreed in writing with the Council, as planning authority.

   Thereafter, the development shall not commence until written evidence has been provided to the Council, as planning authority to confirm that the approved bond or financial provision arrangement has been put in place.

   Reason: To ensure that sufficient funds are available to address the anticipated arrangements and estimate of costs of decommissioning and re-instatement and restoration of the site.

6. No development shall commence (excluding preliminary ground investigation which shall be permitted) until the following information has been submitted to and approved by the Council, as planning authority in consultation with SEPA, NatureScot and other agencies where appropriate:
   a) details of the make, model, design, power rating and sound power levels of all turbines to be used (and at all times the total number of turbines to be erected shall not exceed 3 and the blade tip height shall not exceed 149.9 metres above ground level);
   b) the external colour and/of finish of the turbines including towers, nacelles and blades, which shall be non-reflective, semi-matt pale grey/off-white;
   c) unless otherwise located within the tower of each wind turbine, the location, design specifications, external material finishes and colour of any external wind turbine transformer housing;
   d) for the sub-station compound, the design external appearance and material finishes and colour of all proposed buildings and structures to be erected,

stationed or installed within the compound area (including any sub-station control building) together with the finalised site layout arrangements including the location, dimensions, external appearance and surfacing materials for the compound area, all fencing or other means of enclosure to be erected and all other proposed/required ancillary infrastructure to be provided including any required/proposed external switch gear infrastructure to be located within the compound, the arrangements for access and parking and disposal of foul and surface water from the compound area, external lighting arrangements (where proposed), etc.;

e) for the temporary construction compound, the location, extent and site layout arrangements including the placement and purpose/use of all buildings/structures within the compound, areas for storage of materials, parking, disposal of foul and surface water, means of enclosure, and external lighting arrangements, etc. together with timescales for both establishment and removal of the temporary construction compound and details for restoration and re-instatement of the site following removal of the temporary compound;

f) detailed access track designs for all on-site access tracks and passing places, to include their location and routing, design construction specifications and surfacing materials, and the arrangements for drainage disposal for each track section;

g) the location(s) and design specification(s) for all required/proposed up-graded existing and new watercourse crossings and engineering works within the water environment. With the exception of any proposed watercourse crossings and directly related tracks, the details shall demonstrate that all new infrastructure works occur out with a 50 metre buffer area from water features on the site unless justification is provided, all watercourse crossings shall be adequately sized to enable them to accommodate 1 in 200 year peak flows (with allowance for climate change of 35% increase in flows) at each point without causing constriction of flows or increasing the risk of flooding elsewhere, and where watercourse crossings cannot be avoided, the use of bottomless or arched culverts (or bridging solutions) which do not affect the bed or banks of the watercourse, and all designs of crossings shall follow good practice guidelines;

h) a drainage assessment or strategy addressing all drainage from the site to include the location(s), design specification(s) and timescale(s) for provision of the arrangements for the disposal of foul and surface water from the site, the former shall include the disposal of effluent from the site and the latter shall incorporate SUDs, and provide for details to address both construction and operational stages of the development and demonstrate how run-off will be managed to minimise the risk of flooding, erosion, sediment run-off and pollution of any watercourse;

i) details of arrangements to monitor private water supplies during all stages of the development, and in the event of any adverse effects on water quality or quantity being identified, the arrangements and procedures to undertake restorative and remedial works to maintain any supply. This shall include measures to monitor the supply known as 'Mid Skeith' to detect any changes to water quality and allow for further mitigation measures to be put in place if necessary. This shall include notification to Scottish Water at potectdwsources@scottishwater.co.uk, 3 months in advance of any works

commencing on site to make its operational teams aware (see consultation response date 30 November 2022); and

j) details of all required/proposed mitigation measures (where not already embedded within the submitted design and layout of the development) for all stages of the development, to be contained within a Schedule of Mitigation or similar together with details regarding the process to control/action changes from any agreed Schedule of Mitigation. The Schedule shall include (but not be limited to) all required/proposed measures to mitigate the impact of the development upon the water environment (hydrology, hydrogeology and geology) and nature conservation (ecology and ornithology including protected species and sensitive habitat) interests.

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

Reason: Details of the matters specified are lacking from the submission and to ensure an acceptable form of development in landscape, visual and/or other environmental considerations, including addressing the risk of damage from flooding and surface water effects including pollution, erosion and sediment impacts on the environment, to minimise impacts on ecological habitats, in the interests of good land management and protection and enhancement of habitats, and to maintain the wholesome provision of any private water supply where affected by the development.

7. No development shall commence until a detailed Site-specific Construction Environmental Management Plan has been submitted to and approved in writing by the Council, as Planning Authority in consultation with SEPA, NatureScot and other agencies as appropriate. The Plan shall be closely based on supporting document by Atmos Consulting, dated March 2022, document reference 57120, titled “Lurg Hill Wind Farm - Outline Construction Environmental Management Plan”, address all stages of the development (construction, operation and decommissioning), and identify all works and elements potentially capable of giving rise to pollution or causing environmental harm, and all required/proposed measures to mitigate the identified impacts. The Plan shall include but not be limited to the following:

a) construction method statement covering the provision of all turbines and site infrastructure;
b) pollution prevention and control measures – to include arrangements for storage and management of oil, fuel and concrete on the site;
c) construction surface water management plan - to include a map of all watercourses and ditches on site and all proposed infrastructure, mitigation proposals and justification of appropriateness, a map of all proposed mitigation locations (i.e. silt fences, straw bales, cross drains, settlement lagoons, etc.) and details of procedures for dealing with emergencies and spills;
d) drainage management plan - to address the management of foul and surface water drainage, in both water quality and quantity terms and the arrangements to dispose of foul effluent, and manage surface water to prevent flooding, and pollution of water courses (see Condition 6 h);
e) peat protection/management plan to show how the finalised micro-sited

layout has been designed to minimise impact on and avoid areas of deep peat. Specifically, the plan must show peat probing results and in the vicinity of Turbine 1 and include results of a detailed survey on a 10 metre by 10 metre grid basis around the centre of the proposed turbine base and track leading to it.

f) emergency procedures to include the locations and use of spill kits, etc. and provisions for staff training;

g) adverse weather (wet weather) working – to include an action plan (after H&S considerations) about arrangements for working and assessment of potential damage including sediment mitigation, use of equipment (for example, pumps), etc.;

h) ground and surface water management and treatment - to include details for monitoring (to be established prior to the commencement of works on site and thereafter for all subsequent stages of the development), and a response plan to detail actions to be taken should impacts on the water environment occur;

i) water abstraction – to include details of any abstraction/dewatering, proposed quantities, uses and discharges including use of any temporary sub-surface water controls such as de-watering during construction (and where de-watering is used, the Plan shall demonstrate that any such discharges are limited to discharges that are of uncontaminated groundwater abstracted directly through boreholes/well pointing and discharged without contact with any other drainage run-off);

j) details of construction compound(s) to include the arrangements for refuelling, tools and materials storage, car parking and concrete batching plant, settlement lagoons (to prevent cement and concrete washing out into ground or surface water) and the details of the final outfall to surface or groundwater and the arrangements to treat such effluent prior to discharge, for example by installation of a treatment plant or use of alternative arrangements (for example, that wash out water is tankered off-site, etc.); these details shall be agreed with the Planning Authority in advance in terms of siting and form of construction;

k) dust management plan;

l) measures to prevent loose or deleterious material being deposited on the local road network including provision for on-site wheel cleaning, etc;

m) noise management plan - to identify all sources of noise emissions associated with the construction phase of the development together with details of all measures to manage and mitigate the effects of construction noise occurring at and within the site;

n) details of all required/proposed pre-commencement of development ecological surveys to be undertaken to determine the presence or otherwise of any designated habitat or protected species, to include a schedule identifying which habitats and species will be subject to survey, the scope and time-scale(s) for undertaking each survey, and thereafter the results of the surveys together with all further measures required/ proposed to mitigate the impact of the development upon those species and habitats as identified within the Environmental Appraisal (Chapter 6 Ecology and Chapter 7 Ornithology, mitigation sections for construction and operational phases refers); and

o) invasive non-native species protocol – to address all bio-security and other measures to be adopted to remove or prevent the spread of any non-native plant species on the site.

In addition, the CEMP shall include reference to the terms of appointment of an appropriately qualified Ecological Clerk of Works (ECoW), to be appointed by the applicant/developer/wind turbine operator and approved by the Council, as planning authority in consultation with NatureScot. The terms should identify the period(s) of appointment and the remit of the ECoW in terms of roles and responsibilities which should include (but not be limited to) undertaking pre-construction survey work and monitoring compliance with the hydrological and ecological/ornithological commitments and mitigation arrangements to be undertaken, as identified in the Environmental Appraisal and other supporting documents including the Outline CEMP, overseeing the placement of development infrastructure within the site and addressing all environmental considerations, and the arrangements for reporting upon works undertaken on site and incidences of non-compliance of works to the Council, as planning authority and the applicant/developer/wind farm operator's construction representatives.

Thereafter, the development shall be carried out in accordance with the approved Plan.

Reason: In order to ensure that all development works are undertaken and managed in an environmental acceptable manner and to minimise the impacts arising from construction and operation of the development upon the environment, to secure detailed information on the delivery of mitigation works and measures as identified which are current lacking from the submitted particulars and to secure effective monitoring and compliance of all.

8. Prior to the commencement of any part of the development:
   a) Detailed proposals for undertaking trial runs and also delivery of abnormal indivisible loads, must be submitted for approval by the Planning Authority in consultation with Roads Authority. Details must include but not be limited to detailed proposals (1:200 drawing) of the temporary measures to be provided and the proposed access onto the C4L, temporary and permanent modifications and measures required to protect the public road and structures, traffic, vehicle holding areas and non vehicular management during deliveries, time restrictions for deliveries i.e. outwith school crossing patrol times.
   b) A Construction Traffic Management Plan (CTMP) must be submitted for approval by the Planning Authority in consultation with the Roads Authority. The traffic management plan must cover the duration of the development, methods of dealing with the large delivery vehicles. The plan shall also include, the methods of marshalling and manoeuvring at junctions on the public road network and any temporary traffic waiting restriction requirements and all modifications to the road network and traffic management arrangements. Routes for deliveries to and from the site and confirmations of routes not to be used by construction vehicles and workers to access the site and measures to be put in place to prevent material being deposited on the public road.

c) Details (1:200 scale drawing) of the proposed access junction onto the C4L (Bogmuchals - Berryhillock Road) must be submitted and approved by the Planning Authority in consultation with the Roads Authority. The width of the vehicular access shall be a minimum of 7.3 metres and have a maximum gradient of 1:20 measured for the first 25 from the edge of the public carriageway. The first 25 metres of the access shall be to The Moray Council specification and surfaced with hot rolled asphalt. Any existing ditch, watercourse or drain under the site access shall be piped using a 300 millimetres minimum diameter of pipe. The pipe shall be laid to a self-cleansing gradient. Technical approval required for access to demonstrate proposals will prevent water and loose materials from being discharged onto the public road.

d) A detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing a visibility splay 4.5 metres by 160 metres and a schedule of maintenance for the area within the visibility splay shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority.

e) Detailed drawing(s) (scale 1:500) showing the location and design of 3 passing places at locations to be agreed with the Roads Authority. One approximately 50 – 100 metres to the west of the proposed access onto the C4L to replace the existing passing place at the access onto the C4L. The second (to achieve a maximum passing place spaced of not more than 150 metres) to be located approximately 50 – 100 metres to the east of the proposed access onto the C4L. The third passing place to be located approximately 130-150 metres east of the existing passing place at Greenhill (to achieve a maximum spacing of not more than 150 metres between passing places).

f) Details of the vehicle gross weights and maximum axle loads are required.

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

Reason: To ensure an acceptable development in road safety terms through the provision of details currently lacking.

9. Prior to the commencement of construction and deliveries:

a) Evidence that a S96 ‘Wear and Tear’ agreement between the developer and the Roads Authority has been completed and signed by both parties, must be submitted to the Planning Authority. The scope of the agreement shall assess, monitor and address the impact of construction and delivery traffic on the road network for the duration of the construction of the development and must include all roads within the Moray Council area between the site access and the first ‘A’ class road along the agreed construction access route(s).

b) Abnormal load trial run(s) must be undertaken after all mitigation works have been completed to confirm the works are acceptable and to identify any other restrictions not previously addressed and the frequency and location of abnormal load passing places/oncoming vehicle holding areas required. Representatives from Moray Council Transportation (Traffic), and Police Scotland must be invited to the trial run.

c) Prior to any abnormal indivisible load being delivered to the site, all suspensive works approved through condition (8 a,b,c,d,e,f) required prior to commencement of construction, must be provided in accordance with the approved plans. Any works undertaken are to be permanent for the duration of the operation of the development unless otherwise agreed in writing with the Roads Authority.

d) The visibility splay of 4.5 metres by 160 metres shall be provided and thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 1.0 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.

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

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

10. The proposed route for any abnormal loads on the trunk road network must be approved by Transport Scotland, as the Trunk Roads Authority, prior to the movement of any abnormal load. Any accommodation measures required, including the removal of street furniture, junction widening, traffic management, must similarly be approved. Full details of proposed works shall be developed in consultation with the Trunk Road Operating Company and Transport Scotland Area Manager at the earliest opportunity through a Minute of Agreement (https://www.transport.gov.scot/our-approach/industry-guidance/work-on-the-scottish-trunk-road-network) and issued for their approval prior to the commencement of construction operations.

Reason: To maintain safety for both the trunk road traffic and the traffic moving to and from the development ; and to ensure that the transportation of abnormal loads will not have any detrimental effect on the trunk road network.

11. Any additional signing or temporary traffic control measures deemed necessary due to the size or length of loads being delivered must be undertaken by a recognised Quality Assured traffic management consultant, to be approved by the Planning Authority, in consultation with Transport Scotland as the Trunk Roads Authority, before delivery commences.

Reason: To ensure that abnormal loads will not have any detrimental effect on the trunk road network.

12. The developer shall submit proposals for an abnormal loads delivery trial-run to be undertaken with the involvement of Police Scotland and prior to the commencement of abnormal loads deliveries. Trial-run proposals shall be submitted to and approved in writing by the Planning Authority, in consultation with Transport Scotland as the Trunk Roads Authority.

Reason: To ensure that the transportation of abnormal loads will not have any detrimental effect on the trunk road network.

13. No development shall commence until a Construction Traffic Management Plan (CTMP) has been prepared and approved in writing by the Planning Authority, in consultation with Transport Scotland as the Trunk Roads Authority.

    Reason: To minimise interference with the safety and free flow of the traffic on the trunk road , to ensure the safety of pedestrians and cyclists using the trunk road and adjacent facilities, and to be consistent with current guidance and best practice.

14. All vehicles transporting construction material to and from the proposed development should be sheeted.

    Reason: To ensure that material from the site is not deposited on the trunk road to the detriment of road safety.

15. Prior to the commencement of construction, vehicle wheel cleansing facilities shall be installed and brought into operation, the design and siting of which shall be subject to the prior approval of the planning authority, in consultation with Transport Scotland as the Trunk Roads Authority.

    Reason: To ensure that material from the site is not deposited on the trunk road to the detriment of road safety.

16. Prior to any decommissioning of the development, a Decommissioning Plan shall be prepared and approved in writing by the Planning Authority, in consultation with Transport Scotland as the Trunk Roads Authority.

    Reason: To minimise interference with the safety and free flow of the traffic on the trunk road.

17. No development shall commence unless and until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind turbine upon air safety has been submitted to and approved in writing by the Local Planning Authority in consultation with the Ministry of Defence (MOD).

    The Air Traffic Control Radar Mitigation Scheme is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Lossiemouth (and the air traffic control operations of the MOD which is reliant upon the Radar.

    The Air Traffic Control Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the operational life of the development provided the Radar remains in operation.

    No turbines shall become operational unless and until all those measures required by the approved Air Traffic Control Radar Mitigation Scheme to be implemented prior to the operation of the turbines have been implemented and the Local Planning Authority has confirmed this in writing. The development shall thereafter

be operated fully in accordance with the approved Air Traffic Control Radar Mitigation Scheme.

Reason: To maintain aviation safety.

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

    This should set out:
    a) details of any construction equipment and temporal structures with a total height of 50 metres or greater (above ground level) that will be deployed during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with; and
    b) the locations and heights of all wind turbine generators and any anemometry mast featured in the development identifying those that will be fitted with aviation warning lighting identifying the position of the lights on the wind turbine generators; the type(s) of lights that will be fitted and the performance specification(s) of the lighting type(s) to be used.

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

    Reason: To maintain aviation safety.

19. The undertaker must notify the Ministry of Defence, at least 14 days prior to the commencement of the works, in writing of the following information:
    a) the date of the commencement of the erection of wind turbine generators;
    b) the maximum height of any construction equipment to be used in the erection of the wind turbines;
    c) the date any wind turbine generators are brought into use; and
    d) the latitude and longitude and maximum heights of each wind turbine generator, and any anemometer mast(s).

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

    Reason: To maintain aviation safety.

20. Prior to the commencement of the development or any tree felling on the site, a Compensatory Planting Plan (CP) detailing the provision of 9.3ha of tree planting shall be submitted to and approved in writing by the Council, as Planning Authority in consultation with Scottish Forestry. The CP must provide full details of the proposed planting, including its maintenance over the entire life-span of the

development and include the following information:

a) details of the person(s) that survey, describe, assess, specify and deliver both the felling proposals and on-site and off-site CP proposals must have the relevant qualifications, technical abilities and have the necessary experience e.g. a chartered forester;
b) the location of the on-site and off-site CP covering an area of 9.3ha should be fully detailed, described and supported with good quality maps. If peat depth is a relevant consideration, a full assessment should be undertaken using recognised survey techniques and details of this provided in the application;
c) details of any statutory consents required to carry out the proposed CP;
d) a full silvicultural proposal for compensatory planting, supported with maps should be provided. This should include: ground preparation, drainage, planting technique, stocking density, species, maintenance and a protection plan for the life of the development;
e) details of the timing of the CP. All CP should be completed within five years after the woodland is removed or within two years of the development being completed. A maintenance plan with appropriate timescales should be provided for the life of the development. Subsequent establishment should be completed within the period for which enforcement action can be taken;
f) details for monitoring of CP conditions or arrangements: An independent, qualified and technically competent professional(s) (e.g. chartered forester) with the required experience should inspect the CP scheme at regular intervals (year 1, 5 and 10) to ensure that the trees are planted correctly, maintained to the required standard and ultimately established into woodland. The woodland must be maintained thereafter. This professional individual should report to the planning authority, to allow the CP condition to be managed and ultimately discharged; and
g) restocking timescales should be completed within two years after the woodland is removed or within two years of the associated section of the development being completed. This should only be extended if the Hylobius Decision Support System clearly shows that a delay would be a benefit, restocking should not be extended beyond 5 years in any instance.

Reason: To mitigate the effects of the development on woodland and ensure provision of satisfactory compensatory planting.

21. The permission hereby granted shall not be exercised in addition to, or in conjunction with the permission approved under formal decision notice 22/00339/APP, dated 5 July 2022 (Section 42 application to modify Condition 1 of planning permission 17/01198/EIA / PPA-300-2052, granting permission for "a period of 30 years from the date when electricity if first exported from any wind turbine within the development to the electricity network (First Export Date)" to granting a permission for a period of 35 years).

Reason: In order to avoid any ambiguity regarding the terms of this consent and to ensure that mitigation measures as set out within the EA (omitting turbines 4 and 5) are met.

22. The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty and amplitude modulation (AM) penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

a) the wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). This data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request;

b) within 21 days from receipt of a written request from the Local Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component or is likely to contain an amplitude modulation (AM) component;

c) the assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component and/or amplitude modulation (AM) component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Local Planning Authority under paragraph (b), and such others as the independent consultant considers likely to result in a breach of the noise limits;

d) where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Local Planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise immissions resulting from

the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling;

e) the wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (b), unless the time limit is extended in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Planning Authority, the assessment shall be accompanied by all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes with the exception of audio data which shall be supplied in the format in which it is recorded. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions; and

f) where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c), the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (c) above unless the time limit has been extended in writing by the Local Planning Authority.

Table 1: Between 07:00 and 23:00 – Noise limits expressed in dB $L_{A90,10\ minute}$ as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods**.**

LOCATION	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods								
	4	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
Myreton	**35.0**	**35.0**	**35.3**	**37.9**	**40.9**	**44.1**	**47.7**	**51.6**	**55.8**
Clochmacreich	**35.0**	**35.7**	**38.7**	**41.5**	**44.1**	**46.3**	**47.8**	**48.6**	**48.4**
Kintywaird	**35.0**	**35.0**	**36.2**	**39.1**	**41.9**	**44.6**	**47.0**	**48.9**	**50.0**
Brambleburn Cottage	**35.0**	**35.0**	**35.0**	**37.0**	**39.9**	**42.8**	**45.4**	**47.5**	**48.8**
Over Windyhills	**35.0**	**35.7**	**38.7**	**41.5**	**44.1**	**46.3**	**47.8**	**48.6**	**48.4**
Netherton of Windyhills	**35.0**	**35.7**	**38.7**	**41.5**	**44.1**	**46.3**	**47.8**	**48.6**	**48.4**
Backies	**35.0**	**35.7**	**38.7**	**41.5**	**44.1**	**46.3**	**47.8**	**48.6**	**48.4**
Upper Skeith	**35.0**	**35.7**	**38.7**	**41.5**	**44.1**	**46.3**	**47.8**	**48.6**	**48.4**
Mid Skeith	**35.0**	**35.7**	**38.7**	**41.5**	**44.1**	**46.3**	**47.8**	**48.6**	**48.4**
Little Skeith	**35.0**	**35.0**	**36.2**	**39.1**	**41.9**	**44.6**	**47.0**	**48.9**	**50.0**
Langley	**35.0**	**35.0**	**35.0**	**37.0**	**39.9**	**42.8**	**45.4**	**47.5**	**48.8**
Croylet	**35.0**	**35.0**	**35.0**	**37.0**	**39.9**	**42.8**	**45.4**	**47.5**	**48.8**

Table 2: Between 23:00 and 07:00 – Noise limits expressed in dB $L_{A90,10\ minute}$ as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

LOCATION	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10-minute periods								
	4	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
Myreton	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**42.2**	**47.2**	**52.9**
Clochmacreich	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**43.0**	**45.2**	**46.2**	**45.7**
Kintywaird	**40.0**	**40.0**	**40.0**	**40.0**	**41.0**	**44.1**	**46.2**	**46.7**	**45.1**
Brambleburn Cottage	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**42.8**	**46.6**	**49.8**
Over Windyhills	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**43.0**	**45.2**	**46.2**	**45.7**
Netherton of Windyhills	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**43.0**	**45.2**	**46.2**	**45.7**
Backies	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**43.0**	**45.2**	**46.2**	**45.7**
Upper Skeith	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**43.0**	**45.2**	**46.2**	**45.7**
Mid Skeith	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**43.0**	**45.2**	**46.2**	**45.7**
Little Skeith	**40.0**	**40.0**	**40.0**	**40.0**	**41.0**	**44.1**	**46.2**	**46.7**	**45.1**
Langley	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**42.8**	**46.6**	**49.8**
Croylet	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**	**42.8**	**46.6**	**49.8**

Table 3: Coordinate locations of the dwellings listed in Tables 1 and 2.

Myreton	**349628**	**856425**
Clochmacreich	**349452**	**858035**
Kintywaird	**351482**	**859347**
Brambleburn Cottage	**350969**	**856448**
Over Windyhills	**349264**	**856733**
Netherton of Windyhills	**349308**	**857282**
Backies	**349762**	**858923**
Upper Skeith	**349992**	**859109**
Mid Skeith	**350327**	**859293**
Little Skeith	**350937**	**859394**
Langley	**351560**	**856770**
Croylet	**350359**	**856276**

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

Reason: To ensure an acceptable form of development and in order to protect the amenity of any nearby residents from any undue noise and disturbance.

23. The wind farm operator shall employ an independent consultant, approved by the Planning Authority, to measure, at the operator's own expense, the level of noise immisions from the wind turbines within the first year of the operation of the turbines. The measurement procedures, which may include filtering data according to wind direction, shall be approved by the Planning Authority prior to commencement of monitoring and shall be implemented as approved. The results

of the measurement exercise shall be forwarded to the Planning Authority as soon as practicable after the completion of the monitoring exercise.

Reason: To ensure an acceptable form of development and in order to protect the amenity of any nearby residents from any undue noise and disturbance.

24. Construction works (including vehicle movements) associated with the development audible at any point on the boundary of any noise sensitive dwelling shall be permitted between 0700 - 1900 hours, Monday to Friday and 0700 - 1300 hours on Saturdays only, and at no other times out with these permitted hours (including National Holidays). The above construction hours shall apply, unless otherwise agreed in writing with the Planning Authority, and where so demonstrated exceptional operational constraints require limited periods of construction works to be undertaken out with the permitted construction hours.

    Reason: To ensure an acceptable form of development and in order to protect the amenity of any nearby residents from any undue noise and disturbance.

25. There shall be no blasting at the development.

    Reason: To ensure an acceptable form of development and in order to protect the amenity of any nearby residents from any noise disturbance or vibration.

26. A shadow flicker impact control unit shall be installed prior to operation to turbine 1 at the development, in accordance with the details submitted in the supporting email by Atmos consulting, dated 9th August 2022 and titled “RE:22/00563/APP Lurg Hill - Shadow flicker assessment - Env Appraisal- Section 13”.

    Reason: To ensure an acceptable form of development and in order to protect the amenity of any nearby residents from any undue shadow flicker.

27. At the reasonable request of the Planning Authority following a complaint the wind farm operator shall investigate and instigate appropriate mitigation measures to minimise the effects of shadow flicker.

    Reason: To ensure an acceptable form of development and in order to protect the amenity of any nearby residents from any undue shadow flicker.

28. The blades of all turbines shall rotate in the same direction and no name, symbol, sign or logo or similar means of advertisement, other than those required for health and safety reasons, shall be displayed on any part of the turbines, masts, buildings/ structures and plant, or other infrastructure associated with the development without the prior written consent of the Council, as planning authority.

    Reason: To minimise the visual impact arising from the appearance of the development.

29. a) All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the locations shown in Figure 3.2 Site Layout. The location of

the wind turbines, compounds, areas of hardstanding and tracks may be varied (micro-sited) within the site subject to the following, unless otherwise approved in advance in writing by the Planning Authority:

i. no wind turbine, building, mast, tracks, hardstanding or other ancillary infrastructure shall be moved more than 50 metres from the position shown on Figure 3.2 Site Layout;
ii. all micro-siting permissible under this condition must be approved in advance in writing by the Environmental Clerk of Works (ECoW).

b) No later than two months after the Date of Final Commissioning, an updated site plan shall be submitted to the Planning Authority showing the final position of all wind turbines, anemometry masts, areas of hardstanding, tracks and associated infrastructure forming part of the development. The plan must also specify areas where micro-siting has taken place and, for each instance, be accompanied by the Environmental Clerk of Works or Planning Authority's approval, as applicable.

Reason: To ensure that micro-siting decisions take account of environmental impacts and local ground conditions.

REASON(S) FOR DECISION

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

This proposal represents an acceptable renewable energy development proposal for Moray. The scheme accords with local and national planning policy regarding the expansion of renewable energy, including its contribution to renewable energy targets.

The proposed development would introduce changes to the height and blade dimensions of the turbines and a reduction in turbine numbers from five to three when compared with the consented development at this site. While significant adverse effects on landscape character and views would be associated with this proposal, these effects require to be considered within the context of the existing consent of a wind farm on this site, which carries significant weight as a material consideration.

The omission of the two northern-most turbines would provide mitigation of visual effects in close views from residential properties and from the Cullen House Inventory listed designed landscape (should existing forestry be felled on Clune Hill). The changes made to the size of the turbines (a difference of just under 20m) would not be readily appreciable in the majority of views from the wider area. With this mitigation and when compared to the consented scheme, for landscape and visual effects, the proposal is considered to be an acceptable departure from Policies DP1 and DP9, subject to Turbines 4 and 5 of 17/01198/EIA and 22/00339/APP not being constructed alongside the proposal.

From detailed assessment and subject to conditions to avoid or mitigate any significant impacts, the proposal satisfies all other policy requirements as set out within the Moray Local Development Plan 2020, relating to the natural and built environment, residential amenity, cultural heritage, woodland removal, the water environment, transport, noise, aviation, telecommunications, socio-economic, recreational and tourism interests.

List of Informatives:

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

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

The scope of the S96 Wear and Tear Agreement must include a condition survey of the network including the full extent of the agreed construction traffic route(s) (within Moray) between the site and the 'A' class road network. In addition the wear and tear agreement shall also include condition surveys of all roads identified as 'unsuitable' which must be agreed with the Roads Authority. On the basis of the current indicative access routes the following initial routes are identified as 'unsuitable' for use by construction traffic.

C7L Craibstone - Fordyce Road
U57al Oathillock Road
U57l Main Road/Kirkton Road
C62L Clune – Ardiecow

A programme of monitoring for all routes identified within the CTMP during construction shall be included.

Proposals for the management of abnormal indivisible loads to be approved, must also include measures to ensure the safety of non-vehicular road users.

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

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

Planning consent does not carry with it the right to construct a new road or any part of a road. In accordance with Section 21 of the Roads (Scotland) Act 1984 Construction Consent for new roads (includes passing places, modified junctions and footpaths) that will form part of the public road will be required. Advice on this matter can be obtained by emailing Transport.Develop@moray.gov.uk and reference to the following pages on the Council web site
Checklist: http://www.moray.gov.uk/downloads/file68812.pdf
RCC: http://www.moray.gov.uk/moray_standard/page_65638.html
Specification http://www.moray.gov.uk/downloads/file68813.pdf

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

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

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

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

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

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

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

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

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

TRANSPORT SCOTLAND, has commented that:

The applicant should be informed that the granting of planning consent does not carry with it the right to carry out works within the trunk round boundary and that permission must be granted by Transport Scotland Roads Directorate. Where any works are required on the trunk road, contact details are provided on Transport Scotland's response to the planning authority which is available on the Council's planning portal.

Trunk road modification works shall, in all respects, comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by HMSO. The developer shall issue a certificate to that effect, signed by the design organisation.

Trunk road modifications shall, in all respects, be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice

Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation.

The DEVELOPMENT MANAGEMENT AND BUILDING STANDARDS MAANGER, has commented that:

The control building will require a building warrant.

During the decommissioning phase of the development proposal or when the wind turbines are deemed to have ceased to be required (conditions 2 and 3 of this consent refer) the wind turbines and any ancillary equipment, fixtures and fittings should be recycled and/or re-used when they reach end-of-use as far as is practicable. Details of methods and technologies to be used to recycle and/or re-use these materials should be submitted as part of any prospective submission to purify conditions 3 and 4 of this planning consent.

SCOTTISH WATER, has commented that:

See attached consultation response dated 30 November 2022.

The DEFENCE INFRASTRCTURE ORGANISATION, has commented that:

See attached consultation response dated 9 May 2022.

The ENVIRONMENTAL HEALTH MANAGER, has commented that:

Should the control building that forms part of this development be connected to a private water supply, and if the water is used for human consumption (which includes washing and other sanitary purposes), the supply is likely to come within the scope of The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017. These regulations require that someone who is adding a new part to a private supply system (such as a new water source or connection), must tell the Council as enforcing authority before they do so. It is an offence to use a new or modified supply covered by these regulations unless the supply has been risk assessed and approved by the enforcing authority. You are recommended to contact the Council's Environmental Health section (tel 0300 1234561, email environmentalhealth@moray.gov.uk) at least eight weeks before the supply is intended to be used to arrange for a risk assessment to be undertaken.

Guidance Notes for Noise Condition 22.

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes, any tonal penalty applied in accordance with Guidance Note 3, and any Amplitude Modulation (AM) penalty applied in Guidance Note 6. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and

Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

a) Values of the LA90, 10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable amplitude modulation and/or tonal penalties to be applied in accordance with these Guidance Notes.

b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

c) The LA90 10 minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine, and at any on site meteorological mast, if available, together with the arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the

manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2.

b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (c) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1.

c) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA90, 10 minute noise measurements and corresponding values of the 10 minute standardised 10 metre height wind speed, as derived from the site measured wind speed source(s) agreed in writing with the Planning Authority in accordance with Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3

a) Where, in accordance with the approved assessment protocol under paragraph (c) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

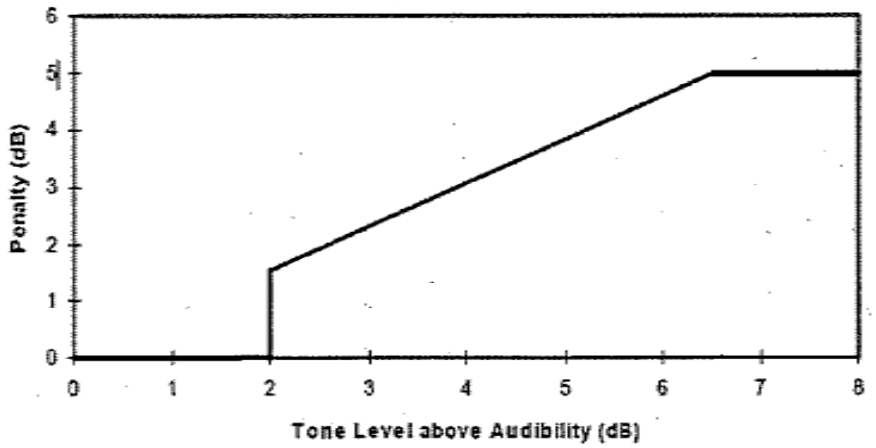
b) For each 10 minute interval for which LA90, 10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available (“the standard procedure”). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure,

as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 to 109 of ETSU-R-97.

d) The average tone level above audibility shall be calculated for each wind speed bin, each bin being 1 metre per second wide and centred on integer wind speeds. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

e) The tonal penalty for each wind speed bin is derived from the margin above audibility of the tone according to the figure below**.**



Guidance Note 4

a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written protocol under paragraph (c) of the noise condition.

b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (d) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (b) and the approved protocol under paragraph (c) of the noise condition.

f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

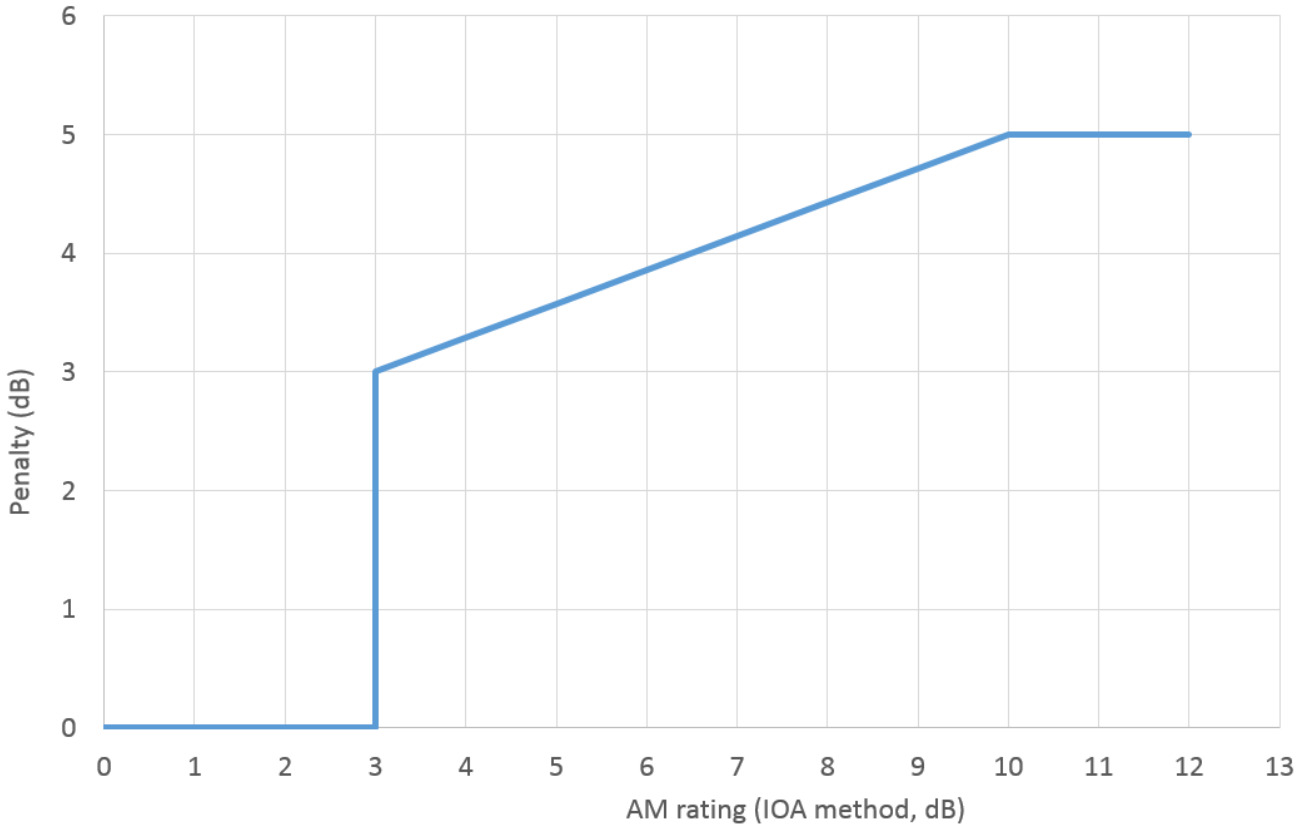
g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

h) If the rating level after adjustment for background noise contribution and adjustment for amplitude modulation and/or tonal penalties (if required in accordance with Guidance Note 3 and 5) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (d) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (d) of the noise condition then the development fails to comply with the conditions.

Guidance Note 5

a) Where, in accordance with the assessment protocol agreed under the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain an amplitude modulation component, an amplitude modulation penalty is to be calculated and applied using the following rating procedure.

b) The analysis of amplitude modulation shall be undertaken using the Institute of Acoustics (IOA) metric described in "A Method for Rating Amplitude Modulation in Wind Turbine Noise" dated 9th August 2016 or any update of that method. The value of AM obtained with the IOA metric for each ten-minute period shall be converted to a penalty in decibels in accordance with the graph below. At each integer wind speed, a penalty for AM would be based on the arithmetic average of the calculated penalties for all valid periods assessed at this wind speed.



Guidance Note 6

At each integer wind speed, the tonal penalty determined in accordance with Guidance Note 3 and the amplitude modulation penalties determined in accordance with Guidance Note 5 would be added arithmetically, except where the AM penalty and the tonal penalty relate to the same characteristic (eg amplitude modulated tones), only the larger of the AM or tonal penalty should be applied.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	**Title/Description**
	Environmental Appraisal
	Forestry Statement
	Outline Construction Environmental Management Plan
	Extended Phase 1 Survey
	Ornithological Survey (sensitive)
FIGURE 3-5	Control building
FIGURE 3-7	Crane hardstanding
FIGURE 3-6	Foundations
FIGURE 6-3	Infrastructure buffers
FIGURE 3-1	Location plan
FIGURE 3-2	Site layout plan
FIGURE 3-4	Turbine elevations

PLANNING APPLICATION COMMITTEE SITE PLAN

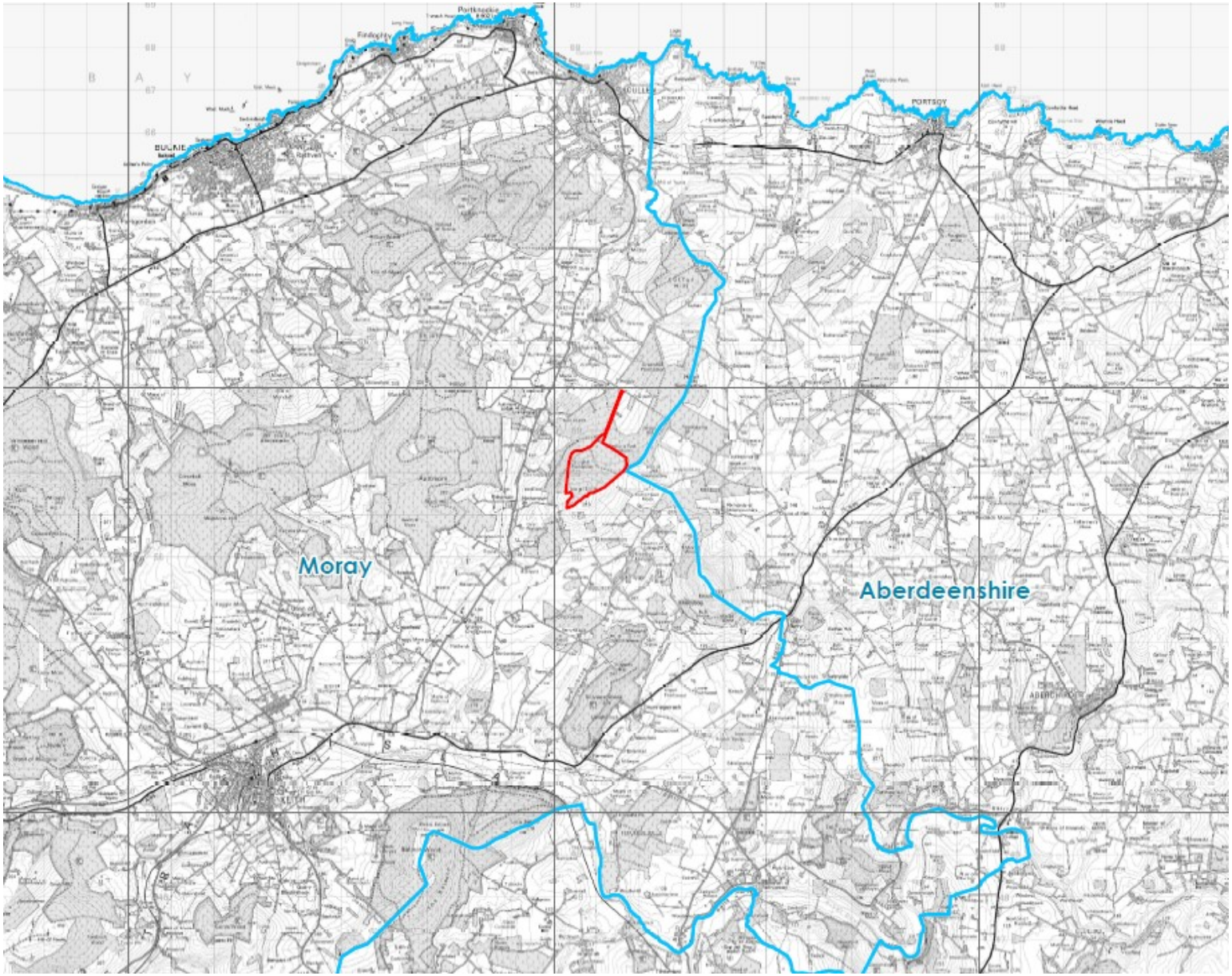
Planning Application Ref Number:
22/00563/APP

Site Address:
Lurg Hill
Deskford

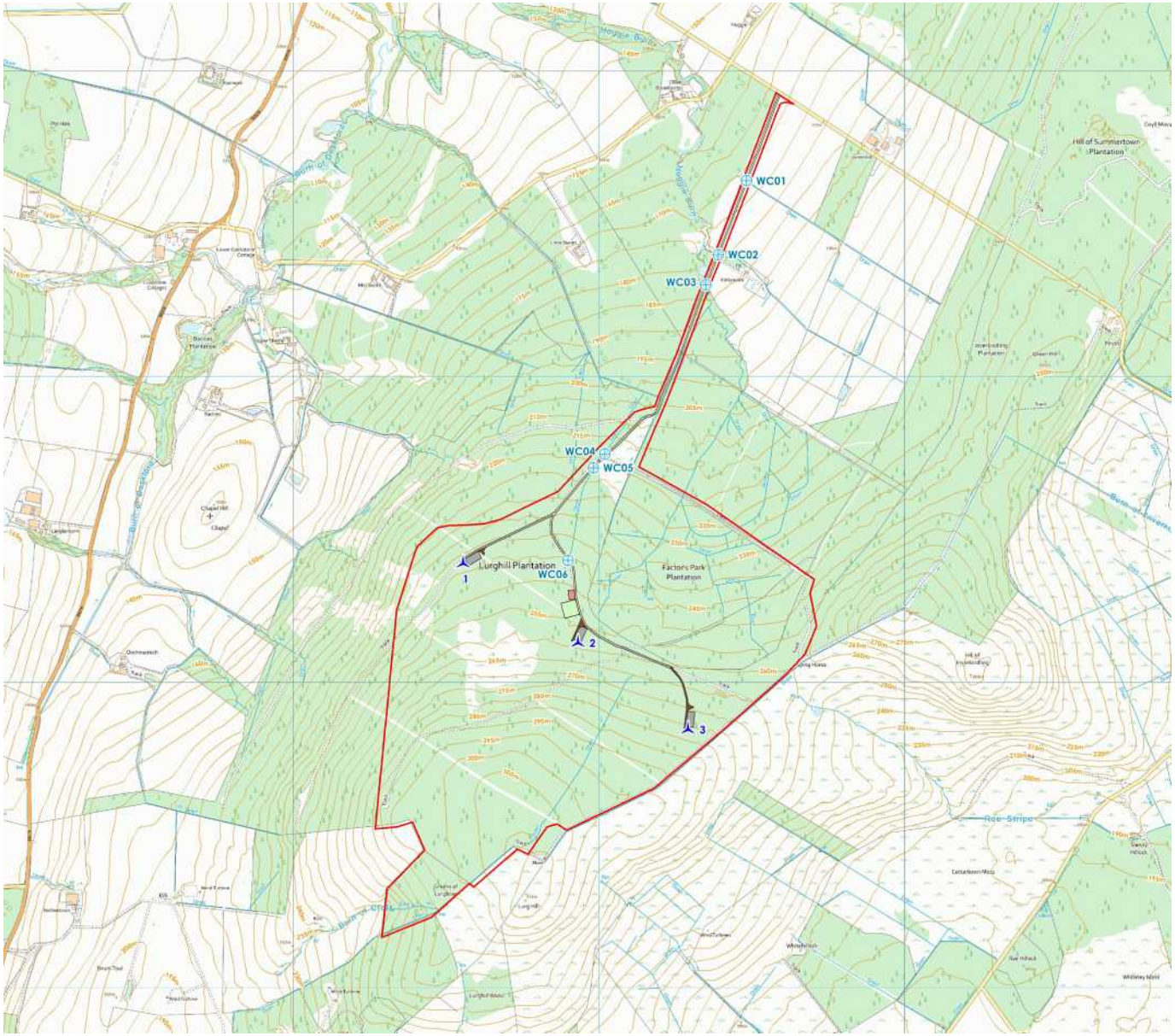
Applicant Name:
Vento Ludens Ltd

Location Plan

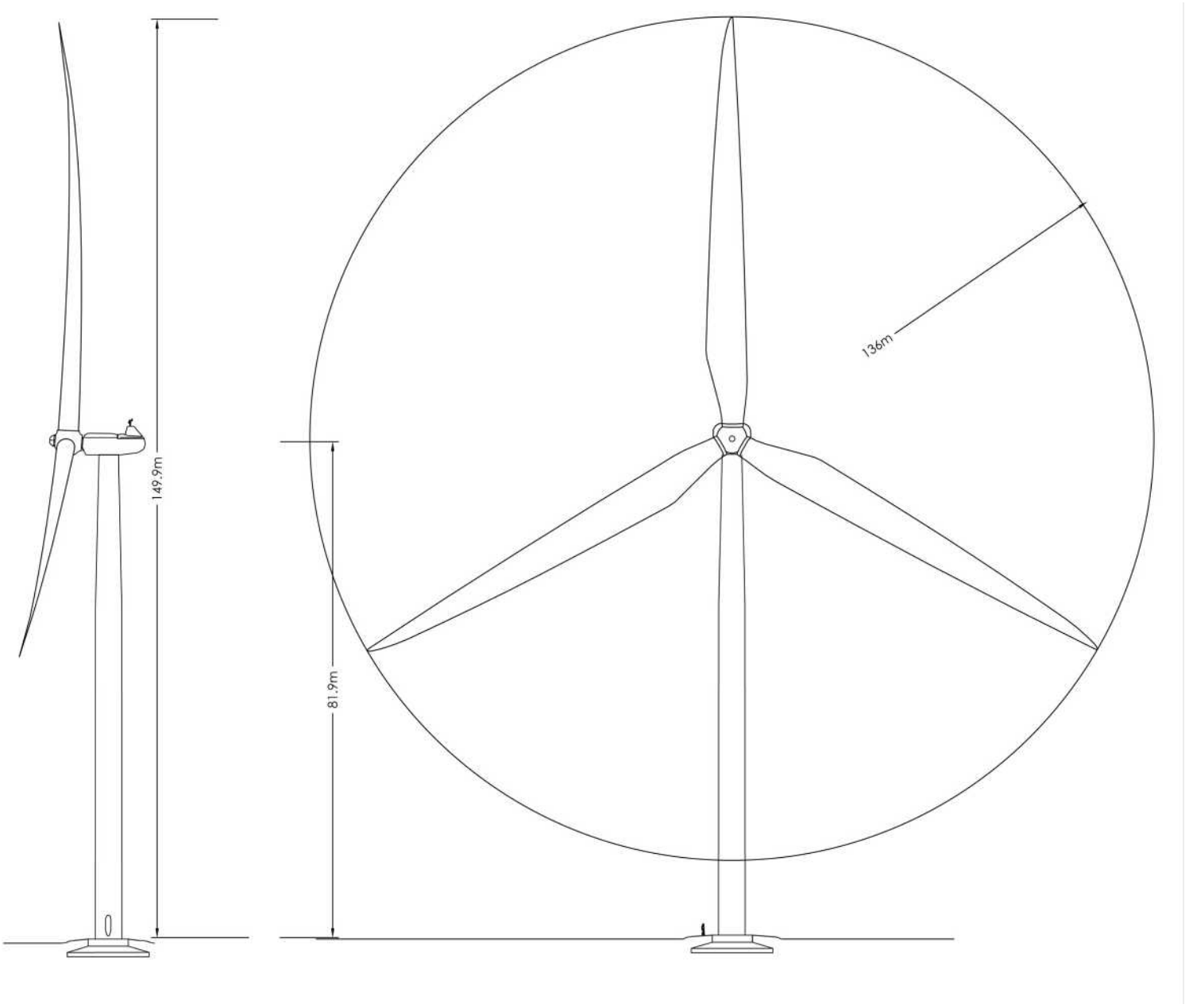
Site Location



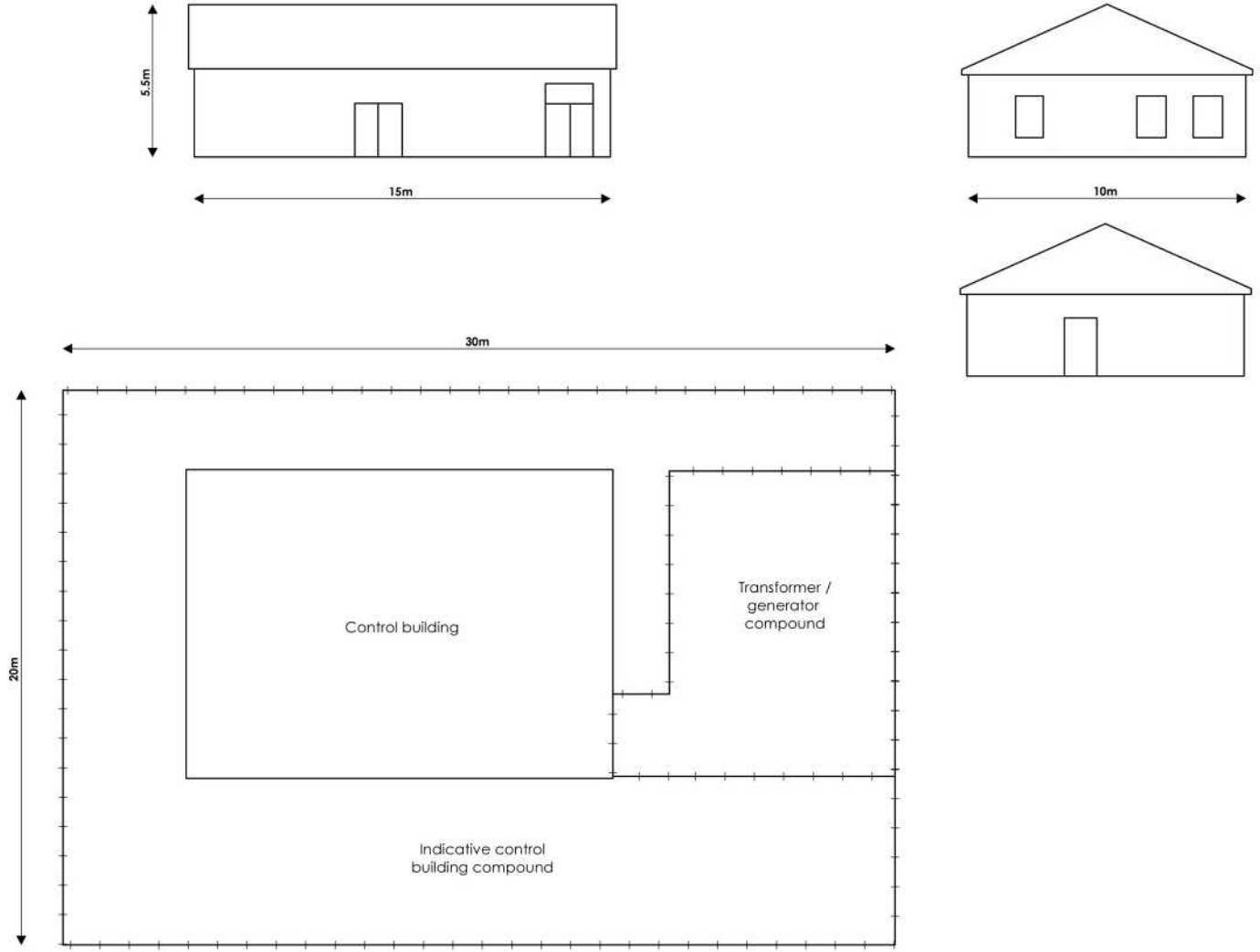
Site layout


WC01
WC02
WC03
WC04
WC05
WC06
Lurghill Plantation
Factors Park Plantation
Hill of Summertown Plantation
Roe Stripe
1
2
3

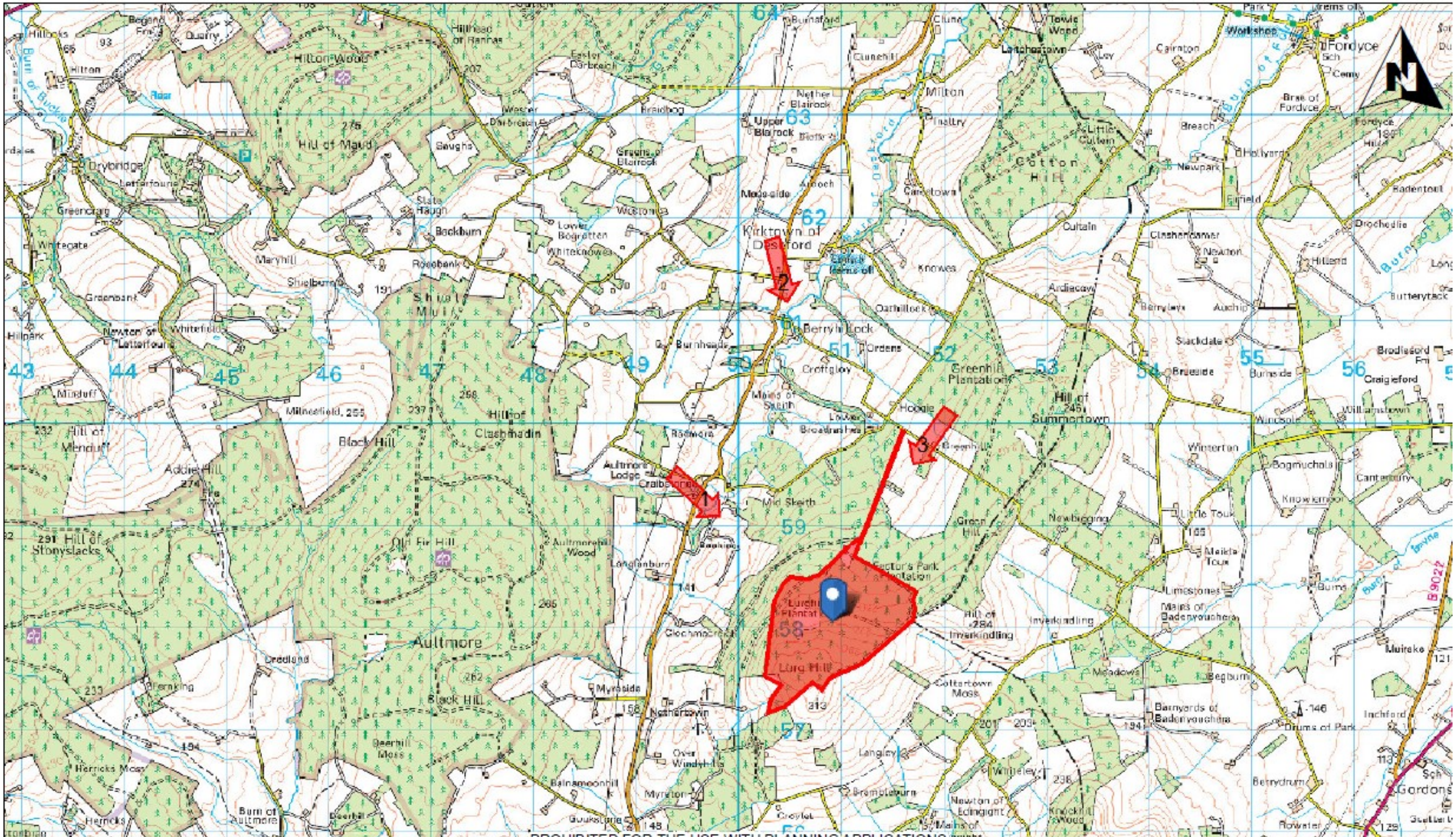
Turbine elevations



Control building



22/00563/APP - Photograph Positions



Map Description: Arrows point in direction photograph was taken.

Scale: 1:50,000 @ A4

Photo 1

Photo 2

Photo 3

PLANNING APPLICATION: 22/00563/APP

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

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1. **THE PROPOSAL**

- This application seeks planning permission for the erection of 3 wind turbines (at maximum height 149.9m to blade tip), control building/substation and formation of access tracks at Lurg Hill, Deskford. This is an alternative scheme to the approved 5 wind turbine 'Consented Development' (17/01198/EIA, Planning Appeal reference: PPA-300-2052 and 22/00339/APP).
- The development components would include the following:
    1. 3 wind turbine generators of up to 149.9 tip height, with a 81.9m high hub, 136m rotor diameter and a maximum rated output of 15MW (3 x 5MW);
    2. Turbine concrete foundations (x3) up to 23m diameter, up to 3m deep (dependent on ground conditions);
    3. Hardstanding areas (x3), approx. 50m x 25m with compacted granular fill over a geo-grid, to be located adjacent to each turbine for crane and temporary storage for turbine components (to be left in place for the lifetime of the development to facilitate future maintenance, replacement of major components and decommissioning).
    4. Compound approx. 30m x 20m of hardcore surface/concrete platforms enclosed by security fencing, containing control building (approx. 10m x 15m x 5.5m) to house switchgear and other control systems plus staff welfare facilities and external transformer/generator compound area. Foul drainage would be collected in a septic tank with soakaway, and water supply for welfare facilities would to be provided by water harvesting and ultraviolet filter system (or other drinking water arrangements to be agreed if not suitable).
    5. Upgraded vehicular site access point onto the public road and construction of passing places;
    6. On-site access tracks (new and upgrading of existing onsite tracks), approx. upgraded track length: 2,670m, approx. new track length: 360m;
    7. On-site electrical connections, cable trenches 1m deep, 1.2m wide installed in areas along access tracks;
    8. Watercourse crossings - 6 no. existing culverts to be upgraded; and
    9. A temporary construction compound and laydown area 50m x 50m.
- As noted from the supporting Planning Statement and Environmental Appraisal:
    - Detailed design will be completed following pre-construction works and a 50m micro siting allowance is proposed for all infrastructure

components to allow for any necessary adjustments (to allow flexibility in siting for localised ground conditions).
    - The locations of the turbines and proposed infrastructure (as per the consented development) have been designed to avoid onsite environmental constraints including gradient, watercourses and peat and remain an appropriate distance away from residential properties to minimise potential impact from noise and visual impact on residential amenity.
    - The proposed development is anticipated to be operational for 35 years, following which it would be decommissioned and restoration undertaken as agreed, or a new planning application submitted to extend the life of the Wind Farm.
- The application is accompanied by supporting documents including an Environmental Appraisal and associated technical appendices (Extended Phase 1 Habitat Survey and Bat Habitat Assessment, Ornithological Survey Report, Residential Visual Amenity Assessment, Shadow Flicker Assessment, Noise Impact Assessment, Forestry Statement, Abnormal Loads Assessment, Cultural Heritage Gazeteer), Design and Access Statement, Planning Statement, Outline Construction Environmental Management Plan (CEMP) and a Pre-Application Consultation Report.
- The proposed development design and footprint remains the same as the consented development, other than the changes outlined below:
    - Reduction in turbines from 5 to 3 turbines (removing the northern-most turbines nos. 4 and 5);
    - Increase in tip height from 130m to 149.9m, and rotor blade diameter from 90m to 136m;
    - Reduction in new track length from approximately 760m to 360m; and
    - Increase in turbine foundation diameter from 20m to 23m.

2. THE SITE

- The proposed development site is located approximately 8.7km south of Cullen and 10km northeast of Keith.
- The turbines would straddle the northern flank of Lurg Hill, located approximately midway between Cullen and Keith.
- The B9018 Keith to Cullen road runs north/south approx. 1km to the west of the site. The site partially borders Aberdeenshire Council area to the northeast.
- The total site area covers approximately 137 hectares and comprises plantation woodland (parts of which have been felled), heathland and tracks, with approx. 2.5ha land take for turbines, and associated infrastructure.
- The site would be accessed from the north via an existing access track (to be upgraded) which joins onto the nearby C4L (Bogmuchals - Berryhillock Road); the access junction onto the C4L is to be upgraded and widened.
- The site is not subject to any international, national, regional or local landscape, built environment or nature conservation designations, and there are no known designated archaeological assets within the site.

- The site is not at risk of flooding from rivers. Small parts of the site are subject to low/medium/high risk of surface water flooding, the extent of which is localised.
- The site lies within the Moray Onshore Wind Energy non-statutory guidance (2020) 'Area of Search' for medium turbines (50m to 80m) but outwith the search area for larger wind turbines.
- The 'landmark hills' of Bin of Cullen and Knock Hill lie 6km and 4km to the north-west and south-east respectively.

3. **HISTORY**

For the site:

22/01324/APP – Section 42 application to modify Condition 1 of planning permission 19/00908/APP to extend the expiration period of the consented meteorological mast at Lurg Hill to 30 September 2025 – approved 27 October 2022.

22/00339/APP – Section 42 application to vary condition 1 of planning permission 17/01198/EIA to extend the operational lifetime of the consented five turbine wind farm at Lurg Hill (Planning Appeal Reference:PPA-300-2052) from 30 years to 35 years - approved 5 July 2022.

21/01269/PAN – Proposal of Application Notice for proposal to construct 5 wind turbines with tip height of up to 149.9m plus associated infrastructure on Lurg Hill, Deskford. Responses dated 3 September and 14 October 2021 confirmed consultation arrangements and publicity event to be acceptable, and provided feedback from the Planning and Regulatory Services Committee to be taken into account in the development of the application. This highlighted the need for the Applicant to mitigate against the impact the extra height of the turbines will have on the landscape by positioning them appropriately; and that connectivity issues be borne in mind for members of the public with poor internet connection during the virtual public consultation.

21/00843/PEMAJ – Pre application major development enquiry to erect 5 wind turbines with a tip height of up to 149.9m, associated infrastructure, crane hardstandings, onsite access track, working areas and substation at Lurg Hill, Deskford. Response issued 5 August 2021 provided pre application advice including policy comments, consultee input and requirements in terms of supporting information to accompany any application.

20/01600/SCN - Screening Opinion adopted 19 January 2021 for proposed development of up to 5 wind turbines with a tip height of up to 149.9m, associated infrastructure, crane hardstandings, onsite access track, working areas and substation at Lurg Hill, Deskford; assessment confirmed the proposal to be a Schedule 2 development but not likely to result in significant environmental effects when compared to the existing consented development, and therefore not requiring to be subject to EIA procedures.

17/01198/EIA – Erection of 5 wind turbines (at max height 130m to blade tip) control building and substation and formation of access tracks (including turning

heads) hardstanding temporary construction compound and associated works and infrastructure at Lurg Hill, Deskford - approved/allowed at appeal by the Planning and Environmental Appeals Division (DPEA) on 25 February 2019 (Planning Appeal Reference:PPA-300-2052).

15/01340/SCO - Scoping Opinion issued for 6 turbines with tip height up to 130m at Lurg Hill, Deskford - response confirmed that EIA was required and environmental issues and potential impacts to be taken into account were identified.

For the area:

21/01887/SCO - Scoping Opinion request for the redesign of Consented Aultmore Wind Farm 16 turbines up to 200m to blade tip. Scoping response to Energy Consent Unit issued 20 January 2022. This site lies 3.4km to the west of the application site.

21/00484/APP – Vary condition 1 attached to planning permission 16/01657/APP to increase the operational life period of Aultmore Wind Farm (13 wind turbines (12 x 110m high, and 1 x 90m high) from 27 to 30 years at Aultmore Forest, Drybridge - approved 20 August 2021. This proposal lies 3.4km to the west of the application site and has yet to be constructed.

16/01657/APP- Vary conditions 1, 18 and 24 of planning permission 07/02375/EIA relating to the Aultmore Wind Farm approved 28/02/17. This consent was granted for a 5 year period and was extended by 21/00484/APP above. This proposal lies 3.4km to the west of the application site.

13/02057/S36 - Erection of 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 wind farm, this proposal was subject of a Public Inquiry in September 2015 (following objection by the Moray Council to the Scottish Government Energy Consents and Deployment Unit (lodged in 2014)), and subsequently approved in June 2017. This wind farm has yet to be constructed and will lie 20km to the south-west of the current proposal.

12/01165/APP - Erection of 1 no. turbine (80m to tip) at Edingight, Grange, Keith - approval/allowed on appeal by DPEA January 2013. This lies 2.1km to the south-east of the application site and is operational.

11/01384/APP - Erection of 1 no. wind turbine (56m rotor diameter) with a maximum height of up to 78m and ancillary infrastructure at Followsters, Newmill - approved February 2012. Permission to vary the turbine model (revised nacelle design) was subsequently approved under 13/00479/APP in May 2013. This lies 9.2km south-west of the application site and is operational.

10/02092/EIA - Formation of wind farm comprising 6 wind turbines (125m in height, total capacity up to 21MW) and associated infrastructure including access tracks, control building housing switchgear equipment and buried cables at Edintore, Keith - approved/allowed at appeal by DPEA in 2012. These are located approx. 15km to the southwest of the site and are operational.

09/00763/FUL - Erection of 2 x 2.3 megawatt wind turbines (92.4m to tip) and associated works at Netherton of Windyhills, Grange Crossroads - approved October 2010. These are located 1.4km south-west of the current application site and are operational.

09/00247/FUL - Install two 800kw wind turbines (79m to tip) at Myreton, Crossroads - approved/allowed following review by Local Review Body July 2010. These are located 1.5km to the south-west of the application site and are operational.

07/01102/FUL - Install a 50kw wind turbine with a hub height of 50m and blade diameter of 48m (79.6m to tip) at Myreton, Crossroads - approved February 2008. This lies 1.4km to the southwest of the application site and is operational.

07/02375/EIA - Construction, operation and decommission of a wind farm comprising 13 wind turbines (12 x 110m high, and 1 x 90m high) and other ancillary development at Aultmore Forest, Drybridge - approved 27.02.2014 and subsequently extended on 28.02.2017 under application 16/01657/APP to vary conditions 1, 18 and 24 of planning permission 07/02375/EIA (extension to time limit and operational period, and noise levels). This proposal lies 3.4km to the west of the application site and has yet to be constructed.

04/02472/FUL - Construct 1 no. wind turbine (70m to tip height) at Balnamoon, Crossroads, Keith - approved/allowed on appeal by Scottish Ministers October 2005. This lies 3.5km to the south-west and is operational.

02/02099/EIA - Erection of 21 wind turbines (100m to tip) and 2 wind masts at Hills of Towie, Knockan and McHattie's Cairn, Drummuir - approved/allowed on appeal in 2005. These lie 18km to the southwest and have been erected and are operational.
Aberdeenshire turbines:

APP/2009/3565 - Erection of 2 no. wind turbines (99.5m to tip) at Land at Muirake, Cornhill, Banff - approved 2010. These are located 5km to the east and are erected and operational.

APP/2012/2786 - Erection of 1 no wind turbine (79m to tip) at Land at Braeside, Fordyce, Banff - approved August 2012. This lies 3.5km to the north-east and has yet to be constructed.

APP/2003/1692 - Erection of 7 Wind Turbines at Boyndie Airfield, Banff - approved July 2004. These lie 12km to the north-east and is operational.

4. **POLICY - SEE APPENDIX**

5. **ADVERTISEMENTS**

5.1 Advertised as a departure from the development plan.
Advertised under Schedule 3 of the Development Management Regulations 2013.

Advertised for neighbour notification purposes.

6. **CONSULTATIONS**

Strategic Planning and Development (SPD) – No objection. Comments outlining relevant provisions of the Moray Local Development Plan 2020, Scottish Planning Policy (SPP) (Spatial Framework) and Moray Onshore Wind Energy (MOWE) Non-Statutory Guidance 2020 and Moray Wind Energy Landscape Capacity Study 2017.

Notes that the principle of development has been established through the existing consent and the proposal seeks to increase the heights of the consent turbines by 19.9m to 149.9m (blade tip). The proposal is likely to incur significant adverse landscape character and visual effects, however these effects need to be considered in the context of the consented scheme and the omission of two turbines of the consented scheme would provide some limited mitigation of visual effects in close views from residential properties and Cullen House. With this mitigation and when compared to the consented scheme, for landscape and visual effects, the proposal is considered to be an acceptable departure from Policies DP1 and DP9, subject to Turbines 4 and 5 of 17/01198/EIA not being constructed alongside the proposal.

The development proposes enhancement measures which will lead to biodiversity gain through the restoration of woodland and habitat reinstatement. The proposal will result in the permanent removal of 9.3ha of woodland that requires off-site compensatory planting and a management plan must be submitted for approval by Scottish Forestry and the Planning Authority prior to commencement of development.

Note that the proposed development will generate up to a maximum of 15MW of renewable electricity, helping meet the Scottish Government's renewable energy generation targets in the post-2020 period and help work towards the net zero GHG emission target by 2045.

The proposal complies with all other relevant policy requirements, as set out in PP3 Infrastructure and Services, DP1 Development Principles, DP9 Renewable Energy, EP2 Biodiversity, EP3 Special Landscape Areas and Landscape Character and EP7 Forestry, Woodlands and Trees, subject to conditions where appropriate.

Environmental Health - No objection, subject to conditions requiring levels of noise immissions from the combined effects of the wind turbines (including application of any tonal penalty and amplitude modulation) not to exceed identified levels; the wind farm operator to log power production data, wind speed and wind direction for not less than 24 months, to be provided to the Council upon request; measures to address any complaints received including assessment of noise immissions; a 12 month monitoring scheme of noise immissions; submission of details the final make/model, design power rating and sound power levels of the turbine; construction activities including vehicle movements permitted only between 07:00 to 19:00 hrs, Monday - Friday and 07:00 to 13:00 hrs, Saturdays, and no other times (including National Holiday)

unless otherwise agreed and where so demonstrated exceptional circumstances require limited periods of construction works; no blasting in the formation and use of borrow pits; the installation of a shadow flicker impact control unit to turbine 1; and measures to address any complaints received regarding shadow flicker.

Environmental Health, Contaminated Land - No objection.

Environmental Health, Private Water Supplies - No objection, subject to condition requiring submission/approval of details of arrangements to monitor private water supplies during all stages of the development, and in the event of any adverse effects on water quality or quantity being identified, the arrangements and procedures to undertake restorative and remedial works to maintain any supply. This shall include measures to monitor the supply known as 'Mid Skeith' to detect any changes to water quality and allow for further mitigation measures to be put in place if necessary.

Informative advice regarding notification to the Council of any water supply to the control building for human consumption which involves a new source or connection to a private water supply.

Scottish Water – No objection. The proposed development activity and site boundary falls within a drinking water catchment where a Scottish Water abstraction is located. Scottish Water abstractions are designated as Drinking Water Protected Areas (DWPA) under Article 7 of the Water Framework Directive. The Muiresk Intake (River Deveron) supplies Turriff Water Treatment Works (WTW) and it is essential that water quality and water quantity in the area are protected. The development activity is a sufficient distance from the intake that it is likely to be low risk, however care should be taken and water quality protection measures must be implemented. Informative advice seeking notification to Scottish Water prior to works commencing.

Environmental Protection/Moray Access Manager - No objection.

Transportation Manager - No objection, subject to conditions as recommended requiring detailed proposals of abnormal load trial run(s) to be undertaken prior to construction and deliveries to determine additional accommodation works, restrictions, frequency; a Construction Traffic Management Plan; details of upgrading works of the C4L (Bogmuchals - Berryhillock Road)/site access junction including access width, radii, kerbing, visibility splay and drainage; detailed drawings/construction of 3 passing places on the C4L road; road widening/alterations/verge hardening to be permanent for duration of development; evidence of a signed S96 'Wear and Tear' agreement including a 'before and after' condition video surveys required for delivery and construction traffic routes; etc.

Moray Flood Risk Management - No objection, subject to conditions regarding submission/approval of a detailed drainage design and SUDs measures; a construction surface water management to include a map of all watercourses, mitigation proposals and justification of appropriateness, map of mitigation locations and emergency and spill procedures; drainage management plans to address surface water and foul drainage; and details of

stream crossings and all water course engineering designed to accommodate the 1 in 200 year flows (including a 30% allowance for climate change).

SEPA – Notes that the application comprises no changes to the footprint or location of infrastructure of the consented development (Planning application 17/01198/EIA, Planning Appeal PPA-300- 2052) apart from an increase in tip height and the removal of the two northern most turbines. For the previous application SEPA requested conditions be attached to any consent and these were attached to the consented development.

As there are no changes to the proposal in relation to its own interests, SEPA requests that the same, or similarly worded conditions be attached to any consent for the present application for the three turbines. It also requests that condition wording is updated to ensure that detailed peat probing results in the vicinity of turbine 1 is supplied with the CEMP to show that deep peat will be avoided.

(Officer Note: For sake of completeness, these conditions require the submission/approval of a plan showing how the finalised micro-sited layout has been designed to minimise impacts on and avoid areas of deep peat; a site-specific Construction and Environmental Management Plan (CEMP) to address all waste management, pollution prevention and environmental management issues; details for all water crossings, to be designed to accommodate 1 in 200 year peak flows (with allowance for climate change) to reduce flood risk; and no borrow pits to be permitted.)

NatureScot – NatureScot has reviewed the application documents and confidential ornithological report. Notes that it has provided advice in the past for this site and there are no impacts on designated sites or issues that would raise concerns of national interest. In support of their planning application the applicant has submitted an environmental appraisal (EA). This includes chapters on ecology and ornithology which include mitigation that is appropriate to minimise the risk to ecological interests during the construction and operation of the wind farm.

RSPB Scotland – No response at time of report.

Scottish Forestry – Scottish Forestry (SF) has previously (17/01198/EIA) been in pre-consultation discussion with the developer in regard to this application and the revised forestry statement incorporates proposed amendments to the previous application, primarily a reduction in the area of woodland loss requiring off-site compensatory planting.
Scottish Forestry notes that whilst considerable effort has been taken to reduce the need to permanently remove woodland, it is unavoidable that 9.3ha of compensatory planting will be required to ensure that there is no net loss of woodland as a result of this development. Commitment from the applicant to provide this planting is set out within the Forestry Statement summary submitted with the application.

Based on the above, SF raises no objection subject to a condition requiring delivery of compensatory planting (CP) through an approved management plan agreed with SF and the planning authority prior to the commencement of the

proposed development and the felling of trees. The CP must provide all the details of the proposed planting, including its maintenance over the entire life-span of the development.

Historic Environment Scotland – Historic Environment Scotland (HES) has assessed the application for its historic environment interests and has no comments to make on the proposals. Our decision not to provide comments should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance.

Transport Scotland - No objection, subject to conditions requiring submission/approval of the routing of any abnormal loads on the trunk road network, accommodation measures and traffic management; additional signing or temporary traffic control measures; proposals for an abnormal loads delivery trail-run with involvement of Police Scotland; a Construction Traffic Management Plan (CTMP); all vehicles transporting construction material to and from the proposed development to be sheeted; installation of vehicle wheel cleansing facilities; and decommissioning plan.

Aberdeenshire Council - No objection. Notes that conditions as detailed under PPA-300-2052 (or variants of such) will apply to the current application, and recommends no further conditions. Also provides a justification statement for information purposes setting out the principle matters for consideration from Aberdeenshire Council's perspective, which relate to landscape and visual impact and resultant noise experienced by sensitive receptors:

<u>Noise</u>
Aberdeenshire Council's Environmental Health service advises no objection. It advises:
Regarding operational noise and receptors in Aberdeenshire, as the development is within Moray Council area it's Moray Councils responsibility to scrutinise the NIA in detail and set appropriate noise limits for all properties, whether in Moray or Aberdeenshire. It is noted that the nearest properties lie within Moray. Provided that reasonable noise limits are set, Environmental Health has no concerns.

An attached consultation response from the Environment Health Service highlights Amplitude Modulation effects which (based on experience in Aberdeenshire) feature in the majority of noise complaints and as such recommends that this should be considered and applied as a condition if the Planning Authority are minded to grant consent.

<u>Assessment of Landscape and Visual impact</u>
In assessing the Landscape and Visual impact of the proposed 3 x 149.9m high (to tip) turbines, they must be considered in the context of the consented scheme comprising 5 x 130m high turbines. It is acknowledged that 3 principal viewpoints have been identified within Aberdeenshire area (Durn Hill (11), Findlater (12) and Cornhill (8). Having now looked that the comparison viewpoints, along with the ZTV's and wirelines of the proposed development and the consented development, it is acknowledged that there is some additional visual dominance in that the turbines will be more visible from some

of the highlighted visual receptors as a result of both the height increment and blade diameter increment. However, it is considered that the increment in height of the 3 southern turbines within the group is somewhat off-set by the removal of the 2 northerly consented turbines from the development.

The increment in scale of the proposed development is more noticeable at locations in close proximity to the proposed site. These locations are outwith the Aberdeenshire Council boundary.

Taking account of the above, the magnitude of change between the consented and proposed developments is considered to be low. On this basis, Aberdeenshire Council raise no objections to the development.

Aberdeenshire Council Archaeology Service - No objection. Requests that comment to be passed to applicant to note that Durn Hill Hillfort (8km to the northwest of the application site) is now designated as a scheduled monument (SM 13748).

MOD Safeguarding – No safeguarding objection, subject to conditions requiring the submission/approval of an Air Traffic Control Radar Mitigation Scheme to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Lossiemouth, an aviation lighting scheme covering construction and operational phases to maintain civil and military aviation safety requirements, and a scheme for aviation charting and safety management confirming date of commencement of works, maximum height of construction equipment, date wind turbines are brought into use and final coordinates and maximum heights of wind turbines and any anemometer mast(s).

National Air Traffic Systems - No safeguarding objection.

Civil Aviation Authority - No response received at time of report.

Aberdeen International Airport Ltd – No objection.

Atkins Global - No objection.

Joint Radio Company (JRC) Windfarms – No objection.

Ofcom - No response received at time of report.

Scottish and Southern Energy - No response at time of report.

Cullen and Deskford Community Council - No objection.

Strathisla Community Council - No response at time of report.

7. **OBJECTIONS-REPRESENTATIONS**

NOTE: Following the determination of this application, name and address details will be/have been removed (i.e. redacted) in accordance with the

General Data Protection Regulations (paragraph 3 of Minute, Planning & Regulatory Services Committee 16 September 2014).

[redacted]

Issue: Shadow flicker concerns affecting nearby residential property due to the close proximity of the nearest turbines, forests may partially screen property from the wind farm for the foreseeable future, but at some point this will be felled, exposing neighbours to turbines that are too close to residential properties.
Comment (PO): From the Environmental Appraisal and updated shadow flicker modelling, three inhabited residential properties to the north are likely to experience potential shadow flicker effects from the northern-most turbine 1, exceeding UK Government guidelines of 30 hours of shadow flicker per year or 30 minutes per day. In order to mitigate these impacts the applicant proposes to install a shadow flicker impact control unit/module to turbine 1 (which would stop and start the turbine during the affected periods) similar to mitigation proposed for the consented development. The Environmental Health Section has reviewed and is content with this information, and has raised no objection subject to imposition of a condition requiring installation of a shadow flicker control module to turbine 1, and measures to address any complaints received regarding shadow flicker.

Issue Grateful that the developers listened to the community and omitted turbines no. 4 and no. 5 from the new development proposal, however was not given any reassurances that the two excluded turbines would not be constructed at a later date.
Comment (PO): The proposed development and associated impacts have been assessed based on evaluation of the submitted plans and information for 3 wind turbines only. As the current proposal and consented development occupy the same area, to ensure a satisfactory form of development (and avoid any ambiguity regarding the terms of this consent) a condition shall be imposed preventing the implementation of this permission in addition to, or in conjunction with the consented development. The applicant has confirmed that it does have an intention to erect turbines 4 and 5 of the consented development.

Issue: Adverse visual impact on the area due to the size of the proposed wind turbines,
Comment (PO): The proposal is considered, on balance, to represent an appropriate form of renewable development for this location with acceptable visual impacts, as outlined within the observations section below. The proposed Development would introduce changes to the proportions of the turbines and a reduction in turbine numbers when compared with the Consented Development. While adverse effects on landscape character and views would be associated with the proposal, these effects require to be considered in the context of the existing consent of a wind farm on this site.

Issue: Impacts on wildlife during construction and operation of the wind farm.
Comment (PO): The EA has assessed the likely effects of the development on ecological and ornithology interests, and predicts no significant adverse impacts subject to mitigation measures identified within the EA being fully

implemented. NatureScot has raised no concerns in relation to the proposal, and from review of the chapters on ecology and ornithology in the EA considers that the proposed mitigation is appropriate to minimise the risk to ecological interests during the construction and operation of the wind farm.

Issue: The planning documentation contains a mistake, contributor's property is not the stated distance from the nearest turbine which is closer.
Comment (PO): The applicant has clarified that page 12 of the Residential Visual Amenity Assessment (RVAA) contains an error. The distance to the contributor's property (Little Skeith) of 1.86km should read 1.1km, as per Table 1 of the RVAA. The distance is evident from the maps within the RVAA and has informed the assessment conclusions.

8. OBSERVATIONS

8.1 Background

For this application, the Pre-Application Consultation Report outlines the extent of the applicant's engagement with the local community in accordance with the Proposal of Application Notice (PAN) *(21/01269/PAN*). This included holding an online virtual public exhibition (attended by 11 people), a second physical in-person public exhibition (attended by 6 people), consultation with Cullen and Deskford Community Council, Strathisla Community Council, Deskford and District Community Association, Fordyce and Sandend Community Council, implementation of a dedicated project website and circulation of two separate letters to 102 local residents within a 2km radius from the proposed development. Nine feedback forms were completed/submitted across both public events.

8.1.1 The report sets out that an interim design (for 5 turbines) was presented to local residents at the virtual public exhibition held in October 2021, with the design being based on the proposed layout for the consented development. Comments raised through consultation then informed the progression of the final project design and amendments were made to the proposals by removing turbines 4 and 5, and the assessment, where necessary. Topics of concern to local residents included ecology and ornithology, transport, visual impacts, noise, access and the impact on local communities. These concerns were previously addressed within the application for the consented development and where relevant were taken forward in the final assessment and design of the current proposed development. Furthermore design changes made following the first public exhibition in October 2021 directly addressed comments received from the public, in particular in relation to feedback regarding turbine 5. As noted from the report the removal of turbines 4 and 5 has lessened the effects of the proposed development further, particularly in respect to noise and visual effects, without compromising the overall positive contribution to achieving climate change targets.

8.1.2 An EIA Screening request has been submitted alongside the application. From review of this request and having screened the application against the EIA Regulations the proposal is not considered to be EIA development.

8.1.3 Following consideration of the revised draft National Planning Framework 4 which was laid before parliament on 8th November 2022, the draft (yet to be formally adopted) is to be given no weight in the consideration of planning applications. Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the Development Plan i.e. the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.

8.1.4 The main issues are considered below.

8.2 **Relationship of proposal to national renewable energy policy/guidance**
International and UK policy frameworks are 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 revised draft National Planning Framework 4 (not adopted) sets out that measures to address the global climate emergency and nature crises, and that reduction of carbon emissions will be accelerated. This includes support for all forms of renewable energy development, onshore and offshore.

8.2.1 The Climate Change (Scotland) Act 2009 (the Climate Change Act) has committed Scotland to becoming carbon-neutral by 2045. This target is legally binding rather than an ambition and requires to be reflected in the way in which renewable energy projects are addressed by public bodies when exercising their functions. Beyond NPF3 there are a number of considerations relevant to the planning consideration process, which have been taken into account in arriving at the recommendation below. These include amongst others, The Scottish Government's Programme for Scotland 2020-21, The Environment Strategy for Scotland, February 2020, Climate Change (Emissions Reductions Targets) (Scotland) Act 2019, Scottish Government Climate Change Plan (2018), Scottish Government Onshore Wind Policy Statement 2017 and Scottish Energy Strategy (2017). These highlight the need to reduce carbon emissions (for which wind energy will play key a part) but do qualify this with the need to protect landscapes, built and natural heritage, residents and other interests.

8.2.2 The commitment to the creation of a low carbon place is reiterated in Scottish Planning Policy. The applicant's Planning Statement sets out that national policy is significant and supportive of this proposed wind farm which will provide clean renewable energy, contributing to electricity supply, and support measures to tackle climate change.

8.2.3 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.

8.3 **Spatial Framework**
Scottish Planning Policy (SPP) requires planning authorities to set out, in the development plan, a spatial framework identifying those areas that are likely to be most appropriate for onshore wind farms as a guide for developers and communities, following a set methodology (Para 161). This has been done through the Spatial Framework within the Moray Local Development Plan (MLDP) 2020, which has been a broad-brush approach required to comply with SPP and covers a significant land area of Moray. All the proposed turbines are located within an area with potential for wind farm development of turbines over 35 metres to tip height, with no upper height limit identified.

8.3.1 The limitations of the very strategic Spatial Framework are recognised and SPP (Para 162) further requires that local development planning authorities should identify where there is strategic capacity for wind farms and areas with the greatest potential for wind development. The Moray Onshore Wind Energy (MOWE) Non-Statutory Guidance 2020 identifies such areas and none of the proposed turbines are located within an Area of Greatest Potential for Very Large Turbines, Extensions and Repowering. Notwithstanding this, the principle of development has been established by the existing consent and therefore the proposal is considered to support the principles of SPP highlighted above.

8.4 **Moray Onshore Wind Energy (MOWE) Non-Statutory Guidance 2020 and Moray Wind Energy Landscape Capacity Study 2017**
The MOWE Non-Statutory Guidance and the Landscape Capacity Study are material considerations for development management purposes. Incorporating the outcomes from the Landscape Capacity Study, the Guidance identifies five typologies of wind turbine, including “Very Large 130m-150m” (to blade tip), and highlights that there is very limited scope to accommodate further large scale wind turbine developments in Moray in landscape and visual terms.

8.4.1 The proposed development is located within the *Broad Forested Hills Within Upland Farmland* (8a) Landscape Character Type (LCT) as defined in the Guidance and Landscape Capacity Study. LCT8a is assessed as having high sensitivity to the very large typology (>130m) with no scope to accommodate turbines of this scale in this landscape. In this case, the principle of development has however been established at this location through the existing consent and the proposal seeks to increase the heights of the consent turbines by 19.9m.

8.5 **Moray Local Development Plan 2020**

8.6 **Principle of Renewable Energy Proposal (DP9 and PP2)**
Policy DP9 Renewable Energy states that all renewable energy proposals will be considered favourably where they meet the following criteria:

i. They are compliant with policies to safeguard and enhance the built and natural environment;
ii. They do not result in the permanent loss or permanent damage of prime agricultural land;

iii. They avoid of 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.

8.6.1 In addition, the policy sets out proposals will be considered against the extent to which it contributes to renewable energy generation targets, effects on greenhouse gas emissions and economic benefits, such as employment.

8.6.2 For onshore wind turbines the policy states that detailed consideration will be determined through site specific consideration of matters such as landscape and visual impact, cumulative impact, along with other impacts such as noise, shadow flicker, visual dominance etc., on which further guidance is set out in the MOWE Non-Statutory Guidance and as informed by the Landscape Capacity Study. The submitted Environmental Appraisal Report (EA-R) provides an assessment of these potential impacts which are detailed within the observations section below.

8.6.3 The Planning Statement (PS) sets out that the proposed development will generate up to a maximum of 15MW of renewable electricity, helping meet the Scottish Government's renewable energy generation targets in the post-2020 period and assist towards meeting the net zero emission target by 2045. This is anticipated to generate an average annual electricity output in the region of 52,500 MWh, the equivalent of electricity for approximately 14,000 households and offsetting 22,601 tonnes of carbon dioxide per year, for its proposed 35-year life. It will therefore make a notable contribution to progress towards achieving the targets set out in the Renewables Route Map and the Onshore Wind Policy Statement. It will also contribute to employment opportunities and likely result in beneficial impacts in terms of job creation and opportunities for local businesses.

8.6.4 PP2 Sustainable Economic Growth states that development proposals which support the Moray Economic Strategy to deliver sustainable economic growth will be supported where the natural and built environment is safeguarded. As noted from the Planning Statement the proposed development would contribute to continued growth of the construction and engineering industry within the region through the provision of employment opportunities.

8.7 **Landscape and Visual Appraisal**
(DP1, DP9 and MOWE Supplementary Guidance)
As already outlined, policy DP9 Renewable Energy supports wind energy proposals in locations where the landscape is capable of accommodating the development without unacceptable significant adverse impacts on landscape

character or visual amenity. Similarly policy DP1 Development Principles seeks to ensure that the scale and design of any development is appropriate to the landscape in which it is set. The proposal has been advertised as a departure from this policy, given that the height of the turbines exceed the height advised as appropriate to the capacity of the landscape in which they would sit.

8.7.1 As already outlined Landscape and Visual Impact Assessment for onshore energy proposals in Moray is assessed against Moray Onshore Wind Energy 2017 Policy Guidance (MOWE) and The Moray Wind Energy Landscape Capacity Study 2017 (MWELCS) which is a technical appendix to the MOWE. This is non statutory Supplementary Guidance forming part of the MLDP 2020 and the Landscape Capacity Study is a material consideration, referenced in policy DP9.

8.7.2 The Council's appointed Landscape Adviser has undertaken a detailed review of the submitted Environmental Appraisal with regard to landscape, visual and cumulative effects from the proposed development. The following assessment is based upon this appraisal and has informed the officer's consideration of these aspects of the application:

8.7.3 <u>The Landscape and Visual Appraisal (LVA) set out in the EA</u>
The Landscape and Visual Appraisal provided by the applicant principally focusses on the difference between the consented and the proposed developments. In adopting this approach, the consented development is assumed to form the landscape and visual baseline. The LVA concludes that the additional effects associated with the proposal (which comprises fewer but larger turbines) would not be significant.

8.7.4 The following appraisal summarises the effects of the proposed development on the existing baseline prior to reaching a judgement on the differences between the consented and proposed schemes in the conclusions to this report.

8.7.5 <u>Effects on landscape character</u>
From review of the LVA, the proposal would result in significant adverse (localised) effects on the *Broad Forested Hills within Upland Farmland* Landscape Character Type (LCT) 8a (in which the site is located). Similar adverse effects would also arise on the smaller scale valley of the Burn of Deskford which lies within the *Rolling Coastal Farmland* LCT 4a to the north of the site. No other LCTs within Moray would be significantly affected.

8.7.6 For the *Broad Forested Hills within Upland Farmland* LCT 8a, the Zone and Theoretical Visibility Map (ZTV) shows that the proposed development would have widespread theoretical visibility. When considered against the existing baseline, the proposed development would have a similarly localised adverse effect on the character of this LCT as the consented development. There is a slight difference in the area of the LCT physically affected by the proposed development as a result of the two removed turbines, and the increased scale of the proposed development turbines also results in very slight increases in theoretical visibility extent across the LCT. However, the underlying landscape characteristics of indistinct upland landform with simple forestry and moorland

landcover found within this LCT provide a clear upland context for development of this scale.

8.7.7 Taking these factors into account, the magnitude of change against the existing baseline situation is considered to be medium-high within a localised area of this LCT (within around 2km of the proposed development turbines). This magnitude of change would reduce to low for parts of the LCT or other parts of the LCT beyond this localised area surrounding the site. When considering the implications of the design change from the consented development, the LVA predicts that the increased scale of the proposed development combined with the reduction of turbine numbers would not result in notable change to the LCT.

8.7.8 For the *Rolling Coastal Farmland* LCT 4a, the ZTV shows that this LCT has widespread theoretical visibility across the Deskford valley with breaks resulting from the landforms of Clune Hill and Cotton Hill, the forestry of which further restricts visibility in northern parts of this LCT, including in the area around Cullen. When considered against the existing baseline, the proposed development would have an adverse effect on the smaller scale of the Deskford valley characteristics of this LCT, as an indirect consequence of the proposed development appearing on the forested ridgeline that forms the backdrop to the valley landscape below it. The magnitude of change against the existing baseline situation is considered to be medium within a localised area of this LCT (within the area of this LCT to the south of Deskford). Magnitude of change would drop to low, north of this localised area and to negligible when north of Clune Hill.

8.7.9 When considering the implications of the design change from the consented development, the LVA concludes that the increased scale of the proposed development combined with the reduction of turbine numbers would not result in any discernible change to the LCT.

8.7.10 <u>Effects on representative viewpoints</u>
The Zone of Theoretical Visibility map in Figure 5.6 of the EA shows consistent theoretical visibility extending within 5km of the wind farm becoming more broken in extent beyond this distance. Visibility is shielded to some degree to the north-west beyond 6km by the higher ground of Bin of Cullen and to the west beyond 8km through Millstone Hill.

8.7.11 14 representative viewpoints have been selected for the LVA with these being agreed with the Council. These viewpoints lie within 10km of the revised proposal, the focussed study area agreed for the LVA. The visualisations produced by the applicant show the consented and proposed schemes from each of these viewpoints to aid comparison. From review of this information, it is considered that significant adverse effects would principally occur from views close to the wind farm within the Deskford valley (including from the B9018) (Viewpoints 1 and 2) and from Knock Hill (Viewpoint 3), with reduced effects for views further from the proposal.

8.7.12 For these closer views the LVA predicts that the increased scale of the proposed development would be discernible in comparison with the scale of the consented development, however the proposal is more compact and with removal of two consented development turbines it would have a reduced

horizontal extent. When balancing these differences brought about by the proposed development, the LVA considers that the change experienced in these views would only slightly increase compared to that experienced for the consented development, and that the magnitude of change of the proposed development against the implications of the design change is considered to be negligible or low.

8.7.13 Effects on residential properties

The Residential Visual Amenity Assessment (RVAA) considers the visual impact of the proposed development on private views and private visual amenity from 30 residential properties within a 2km radius of the site. This has been prepared in accordance with the Landscape Institute's Technical Guidance Note 2/19 'Residential Visual Amenity Assessment' (RVAA), the purpose of the RVAA being to identify those properties where the effect of the proposed development leads to the 'Residential Visual Amenity Threshold' being reached or, in other words, where the effect could be described as overwhelming or overbearing.

8.7.14 The submitted Residential Visual Amenity Assessment (RVAA) concludes that visual amenity from 14 properties would be significantly affected but that none of these would reach the Residential Visual Amenity Threshold such that the development would become overwhelming or overbearing, due to factors such as intervening distance and screening between the properties and proposed wind turbines, and a combination of property setting, visual containment from vegetation and buildings and orientation (views from main windows/property frontages). This is a similar judgement to that reached for the consented development, the findings of which have been verified following site visits.

8.7.15 As noted from the RVAA, removal of the two northern-most turbines, and particularly Turbine 5, would provide mitigation for a number of residential properties. For these properties the RVAA predicts that there would be minor beneficial effects due to the reduced horizontal extent of the development and removal of the northern-most turbines. The increased size of the remaining three turbines is likely to be more discernible where there are close and largely unscreened views, in particular from properties 6 and 11, Clochmariech and Langlanburn, which lie 1.1km and 1.4km to the east of the proposed development. For these, the RVAA concludes that the proposed development would not cause unacceptable overbearing effects however due to the relatively narrow field of view of the proposed turbines affecting a small proportion of the overall views from both properties and the development having a more compact appearance with a reduced horizontal extent. In addition, in terms of orientation, Clochmariech, located below the site has principle views to the north with only limited oblique views of the development. Langlangurn, occupying an elevated position facing east towards Lurg Hill on the west side of the B9018 would have a view of the turbines, however this would not be to an extent that there would be a significant detrimental overbearing impact.

8.7.16 Cumulative landscape and visual effects

The LVA considers cumulative scenarios and combined effects of the proposal with other operational and consented wind farms within 10km and 20km study areas surrounding the site. Cumulative effects are predicted to range between Minor and Negligible, the extent of which would be dependent upon the location

of the receptor. In relation to cumulative effects, the LVA notes that there will be instances where differences in the turbine scale of the proposed development would increase the contrast with the scale of other nearby existing turbines, particularly Myreton and Netherton of Windyhills to the south, however these will be limited and localised in extent.

8.7.17 For the consented scenario, the majority of consented turbines are distant and as such have little visual interaction with the proposed development that would allow comparison of scale to be apparent. The proposed development and consented Aultmore wind farm (of 13 turbines, 90/110m high to blade tip) to the west occupy different parts of the wider skyline. The proposed development, whilst within the same wider visual context as Aultmore would not often be experienced directly in front of or adjacent to it and differences in scale with this consented scheme would not therefore be as apparent as with closer existing turbines.

8.7.18 As noted from the planning history for the area, a revised Aultmore wind farm proposal is currently at scoping stage and should this come forward as an application is likely to comprise substantially larger turbines up to 200m to blade tip. Significant combined cumulative effects over and above those predicted for the Lurg Hill proposal with the consented Aultmore wind farm could occur on landscape character and on views from the B9018, the Bin of Cullen and The Knock and from surrounding settlement where the two developments would be seen together and sequentially. Notwithstanding this, as the proposal is not at application stage it carries less weight than the consented Aultmore wind farm development and has not been appraised in the LVA.

8.7.19 <u>Conclusions on LVA</u>
The proposed development would introduce changes to the proportions of the turbines and a reduction in turbine numbers when compared with the consented development at this site. While significant adverse effects on landscape character and views would be associated with this proposal, these effects require to be considered within the context of the existing consent of a wind farm on this site.

8.7.20 The omission of the two northern-most turbines would provide mitigation of visual effects in close views from residential properties and from the Cullen House Inventory listed designed landscape (should existing forestry be felled on Clune Hill). The changes made to the size of the turbines (a difference of just under 20m) would not be readily appreciable in the majority of views from the wider area. With this mitigation and when compared to the consented scheme, for landscape and visual effects, the proposal is considered to be an acceptable departure from Policies DP1 and DP9, subject to Turbines 4 and 5 of 17/01198/EIA and 22/00339/APP not being constructed alongside the proposal.

8.8 **Residential Amenity (noise and shadow flicker) (DP1, DP9 and EP14)**
Policy DP1 Development Principles seek to ensure that new developments do not create pollution which may adversely affect the environment or local amenity. Policy DP9 Renewable Energy requires proposals to address unacceptable significant adverse effects on communities and local amenity

including impacts on noise and shadow flicker and the potential for associated mitigation. Policy EP14 Pollution, Contamination and Hazards sets out that development proposals which may cause significant air, water, soil, light or noise pollution should be accompanied by a detailed assessment report on the levels, character and transmission of the potential pollution, with measures to mitigate impact.

8.8.1 Chapter 10 of the EA addresses these effects. A revised noise assessment and updated shadow flicker modelling undertaken in accordance with relevant guidance have been submitted with the application.

8.8.2 Noise: The noise assessment has been undertaken based on the proposed wind turbine locations and a candidate wind turbine model accounting for the proposed increase in tip height. This predicts that noise levels from the operation of the proposed development at the closest properties would neither exceed relevant limits nor those set by the consented development. The assessment also shows that cumulative noise levels, due to the operation of the proposed Development and the closest cumulative developments within 5km, would not exceed the noise limits for the closest properties. For noise associated with the construction phase (including decommissioning phase), the noise assessment for the consented development concluded that the separation distance between the construction areas and access routes and the closest receptors was sufficient to ensure that construction-related noise effects would not cause undue disturbance. As the proposed development comprises no changes to the location of the turbines or infrastructure, the conclusions of the construction noise assessment remain unchanged. The anticipated noise effects of the proposed development therefore remain unchanged from the consented development.

8.8.3 The Council's Environmental Health Section has reviewed and is content with the findings of this assessment, and has raised no objection subject to conditions enabling the monitoring and enforcement of noise limits at various properties, submission/approval of full details of the final make/model of the turbine, controls on construction times, no permitted blasting or borrow pits and controls on Amplitude Modulation noise.

8.8.4 Shadow Flicker: The updated shadow flicker modelling undertaken for the proposal assess effects from the three turbines on surrounding properties. Seven residential properties are located within 10 rotor diameters of the proposed turbines, three of which have been identified as experiencing greater than 30 hours of shadow flicker per year from turbine 1. UK Government guidelines note that a limit of up of 30 hours per year or 30 minutes on the worst affected day is considered acceptable. The applicant proposes to install a shadow flicker impact control unit/module to turbine 1 to mitigate potential unacceptable impacts from shadow flicker to residential properties, similar to mitigation proposed for the consented Development.

8.8.5 The Environmental Health Section has reviewed and is content with this information, and has raised no objection subject to imposition of a condition requiring installation of a shadow flicker control module to turbine 1, and measures to address any complaints received regarding shadow flicker.

8.8.6 From the above and subject to the recommended conditions, the proposal is not considered to result in unacceptable significant adverse effects on noise or shadow flicker, including effects on the amenity of any nearby sensitive receptors and would accord with the amenity requirements of policies DP1, DP9 and EP14.

8.9 **Natural Heritage (Ecology and Ornithology) and Biodiversity (EP1, EP2 and DP9)**

Policy EP1: Natural Heritage Designations sets out that development likely to have a significant effect on European Site Designations, National Designations or Local Designations will not be permitted subject to criteria set out within the policy. Where development is likely to affect protected species, a species survey and where necessary a Species Protection Plan should be prepared to accompany any planning application. Policy EP2: Biodiversity sets out that all development proposals must, where possible, retain, protect and enhance features of biological interest and provide for their appropriate management. Policy DP9 Renewable Energy requires proposals to avoid or address significant adverse impacts on ecology.

8.9.1 There are no statutory or non-statutory nature conservation designations within the application site. Designated sites within the wider area include Reidside Moss Special Area of Conservation (SAC) and SSSI, designated for its active raised bog priority feature which lies approx. 9.25km to the east southeast; Sheilwood Pastures SSSI located approx. 5.59 km to the southeast designated for its biological features; and the Moray Firth Special Protection Area (SPA) which supports identified non-breeding and migratory bird species of European importance 7.4km to the north.

8.9.2 Chapter 6 and 7 of the EA evaluates the effects of the proposed development on ecological and ornithology interests on the site, and has been supported by an ecological desk study and two Technical Appendices: 6-1 Extended Phase 1 Habitat Survey and Bat Habitat Assessment, and 7-1 Ornithological Surveys. These predict no significant effects or adverse impacts, including cumulative effects subject to mitigation measures identified within the EA being implemented.

8.9.3 The extended Phase 1 Habitat survey found the site to support habitats typical of those within conifer plantation sites within the surrounding area and Scotland in general. The identified habitats comprised predominantly coniferous plantation, improved grassland, amenity grassland and semi-natural coniferous woodland.

8.9.4 The Habitat survey included a daylight bat feature assessment to identify potential or confirmed roost sites, along with six months of vantage point surveys, and a raptor survey. During the survey visible signs of badger and pine martin, and bat flights were noted, but no setts, dens or bat roosts were recorded (similar to the findings for the consented development).

8.9.5 The recorded level of ornithological activity for the proposed development was observed to be very similar to that for the consented development, with no evidence of breeding within the site. Species were typical of that found within a

commercial forestry plantation and none were recorded in such numbers at heights and location to be considered at collision risk.

8.9.6 The EA also sets out that the proposal would have no adverse effects on the Moray Firth Special Area of Protection (SPA) due to the separation distance with the proposed development site and fact that no qualifying species of the SPA were observed on site.

8.9.7 The applicant proposes a range of mitigation measures and adherence to good practice measures during construction and operation to minimise ecological impacts from the proposal during construction and operation. These include the provision of; a Construction Environmental Management Plan (CEMP), with the full scope to be agreed with Moray Council in consultation NatureScot and SEPA, prior to development commencing; Construction Method Statement; appointment of an Ecological Clerk of Works to oversee works, monitor ecological constraints and audit appointed contractor's environmental performance, delivery of toolbox talks and supervision of construction work; adoption of 'best practice' to reduce/prevent pollution of watercourses and incidents; pre-construction species and bird surveys, with results informing whether the CEMP will include further mitigation with regard to protected species and consultation with NatureScot; re-instatement of habitats to areas subject to disturbance, such as the temporary construction compound area; and establishment of a Habitat Management Plan (HMP).

8.9.8 NatureScot has been consulted and has advised that there are no impacts on designated sites or issues that would raise concerns of national interest. It is also content with the ecology and ornithology chapters within the EA, which set out appropriate mitigation to minimise the risk to ecological interests during the construction and operation of the wind farm.

8.9.9 From the above considerations and subject to conditions where recommended, the proposal is not considered to result in unacceptable significant adverse effects on nature conservation (ecological and ornithological) interests), and would accord with development plan policies EP1, EP2 and DP9.

8.10 **Impact on Woodland**
(EP7 Forestry Woodlands and Trees and Scottish Government Control of Woodland Removal Policy, and DP9)
Policy EP7 Forestry Woodlands and Trees states that proposals that must retain healthy trees and incorporate them within the proposal unless it is technically unfeasible to retain them. Policy DP9 Renewable Energy requires proposals to avoid or adequately resolve impacts on forest and woodlands.

8.10.1 The proposed development site lies within a managed coniferous woodland plantation and will result in felling associated with the construction and operation of the wind farm; some woodland felling has already occurred in accordance with the existing consent for the site and an updated Forestry Statement, including felling and replanting plans, has been provided with the application. This incorporates amendments to the forestry plans as a result of the changes of the layout for a reduced number of turbines, and proposes a reduction of woodland loss requiring off-site compensatory planting of 9.3 ha (previously 12.86 for the consented scheme).

8.10.2 Scottish Forestry (SF) has assessed and is content with this information, and raises no objection to the proposal subject to a condition requiring delivery of compensatory planting through an approved management plan agreed with SF and the Council prior to commencement of development or felling. Subject to this condition being imposed the proposal complies with Policy EP7 and DP9.

8.11 **Hydrology, Hydrogeology and Geology (PP3, DP1, EP12, EP13, EP14, EP16 and DP9)**

Policies PP3 Instructure and Services and DP1 Development Principles (iii) Water Environment, Pollution, Contamination require development to be planned and coordinated with infrastructure to ensure places function properly, and proposals are adequately served by infrastructure and services in terms of foul and surface water drainage and water supply. Policy EP12 Management and Enhancement of the Water Environment requires surface water from development to be dealt with in a sustainable manner (SuDS) that has a neutral effect on the risk of flooding or which reduces the risk of flooding. Policy EP13 Foul Drainage requires developments to connect to the public sewage system whenever possible. Policy EP14 Pollution Contamination Hazards outlines requirements for managing pollution and contamination within development proposals. Policy E16 Geodiversity and soil resources states that developments should minimise disturbance to peat and other carbon rich soils and undertake an assessment of any potential effects. A peat depth survey must be undertaken which demonstrates areas of deep peat have been avoided. Policy DP9 Renewable Energy requires proposals to avoid adverse or address unacceptable significant adverse impacts on the water environment and carbon rich soils and peat land hydrology.

8.11.1 Chapter 8 of the EA addresses the potential effects of the proposed development on the hydrology, hydrogeology and geology. Given the minor changes to the layout and reduction in infrastructure, this assessment of effects has involved a review of the Hydrology, Hydrogeology and Geology information submitted with the Planning Application 17/01198/EIA, any new guidance/information, and also takes account of additional mitigations required by planning conditions of the consented development. The EA concludes that potential effects on the water environment from the proposed development remain unchanged from those of the consented development and that impacts will be negligible or minor, due to environmental measures embedded in the design, and mitigation measures to be adopted during construction and construction best practice (outlined below).

8.11.2 The proposed development occupies an elevated commercial forested area and is not at risk from fluvial flooding. There is some risk of localised pluvial (surface water flooding) along the main watercourses including the Hoggie Burn and in small scattered areas. Apart from watercourse crossings these do not intersect with proposed infrastructure.

8.11.3 Generally, any potential effects from the proposed development are expected to occur during the construction phase, at areas where infrastructure is proposed, with more limited effects during the operational and decommissioning phases. These include impacts on surface water run-off characteristics and water quality, soil erosion, accidental spillages/concrete

pollution/sedimentation entering ground water and surface water environments, effects on private water supplies and abstractions, increased flood risk, and damage to peat or GWDTE's. Where possible, these have been mitigated by environmental measures incorporated within the design of the scheme itself, and where initial impacts are not alleviated, through additional proposed mitigation measures. These measures are summarised as follows:

- The consented Development layout went through a series of changes to minimise disturbance of peat; removal of turbine 4 will mean that no disturbance of peat and therefore all peat is now avoided;
- Use of existing tracks as much as possible, with new track layout designed to minimise length. Further minimisation has been achieved by reducing tack and removing turbines 4 and 5;
- Provision of 50 m buffer zones around all watercourses except where there are watercourse crossings;
- Implementation of a Drainage Management Plan to include for turbine, track, hard standing and cable laying works and operation;
- New ditch design, track cross drainage, silt traps, dams etc. to be in accordance with guidelines as in the consented development;
- All watercourse crossings will accommodate 1:200 year flows with climate change allowance and in accordance with good practice;
- Private Water Supply monitoring arrangements;
- Appointment of an Environmental Clerk of Works (EnvCoW) during construction;
- Development/implementation of a Construction Environmental Management Plan (CEMP) and specific Construction Method Statements (CMS) to focus on good practice mitigation measures and identify measures to prevent or minimise effects on the environment including pollution prevention and environmental monitoring arrangements.

8.11.4 The Private Water Supply Assessment undertaken for the consented development has been reviewed as part of the current proposal. This has identified over 30 potential private water supplies (PWS) within 2km of the proposed development, however only one, located at Mid Skeith, is within the proposed development site. This is not on a public register but its zone of contribution may be within an area potentially impacted by construction and operation of access tracks. To address any potential adverse impacts from construction the EA proposes mitigation measures and a monitoring programme of this source to detect any changes to water quality and allow further mitigation to be put in place if necessary (along the same lines as the previous consented development).

8.11.5 Several potential Ground Water Dependent Terrestrial Ecosystem communities (GWDTE) (M23 rush pasture, M6 flush and M15 wet heath) were identified on and adjacent to the site in small clearings in the plantation and on forest rides. Following a hydrogeological risk assessment these were classified however as habitats with low groundwater dependency and largely surface water fed, and not true GWDTEs.

8.11.6 A peat depth survey was carried out as part of the original work for the consented development in 2017. This revealed several small areas of localised

peat within the site boundary, but none that are likely to be disturbed by construction or operation of infrastructure.

8.11.7 In terms of flood risk the EA concludes that the proposed development would not result in increased flood risk both on and off the site, due to its location outwith any fluvial flood risk area, site characteristics and proposed on site drainage arrangements.

8.11.8 From consultation, SEPA has not objected to the development in terms of its key interests (which include ground water abstractions, peat management, engineering activities in the water environment, pollution prevention and environmental management, borrow pits and GWDTE). As that there are no changes to the footprint or location of the infrastructure of the consented development SEPA has requested that the same, or similarly worded conditions be attached to any consent for the current application, with the exception of updated condition wording to ensure that detailed peat probing results in the vicinity of turbine 1 is supplied with the CEMP to show that deep peat will be avoided. These shall be re-imposed as recommended.

8.11.9 Scottish Water has raised no objection to the proposal and has advised that although the proposed activity and site boundary falls within a drinking water catchment where a Scottish Water abstraction is located, the activity is a sufficient distance from the intake and that it is likely to be low risk. It confirms that water quality protection measures should be implemented to ensure that water quality and water quantity in the area are protected, and in the event of an incident occurring that could affect Scottish Water it be notified immediately. It also highlights that the fact that this area is located within a drinking water catchment should be noted in documentation, contractors working on site should be made aware of this during site inductions and that Scottish Water is notified 3 months prior to works commencing to make its operational teams aware there will be activity taking place in the catchment.

8.11.10 The Council’s Contaminated Land, following consultation, has raised no objection to the proposal.

8.11.11 The Flood Risk Management Section has raised no objection in terms of flooding and drainage impacts, subject to conditions requiring submission/approval of a detailed drainage design and SUDs measures; a construction surface water management to include a map of all watercourses, mitigation proposals and justification of appropriateness, map of mitigation locations and emergency and spill procedures; drainage management plans to address surface water and foul drainage; and details of stream crossings and all water course engineering designed to accommodate the 1 in 200 year flows (including a 35% allowance for climate change).

8.11.12 The Private Water Section has raised no objection, subject to a condition requiring submission/approval of details of arrangements to monitor private water supplies during all stages of the development, and in the event of any adverse effects on water quality or quantity being identified, the arrangements and procedures to undertake restorative and remedial works to maintain any supply. This shall include measures to monitor the supply known as 'Mid Skeith'

to detect any changes to water quality and allow for further mitigation measures to be put in place if necessary.

8.11.13 Drawing from the above and subject to the recommended conditions, the proposal is not considered to result in unacceptable significant adverse effects on hydrology, hydrogeology and geological (drainage, flooding, pollution prevention, contamination and peat) interests and would accord with development plan policies PP3, DP1, EP12, EP13, EP14, EP16 and DP9.

8.12 **Cultural Heritage (EP8, EP10 and EP11)**
Policy EP8 Historic Environment seeks to protect historic and archaeological assets. Policies EP10 Listed Buildings and EP11 Battlefields, Gardens and Designed Landscapes states that development proposals will be refused where they would have a detrimental effect on the character, integrity or setting of listed buildings and Garden and Designed Landscapes. Policy DP9 Renewable Energy requires proposals to avoid or adequately resolve impacts on the historic environment and cultural heritage.

8.12.1 Chapter 9 of the EA assesses the potential for direct physical effects upon archaeological remains as well as the potential for operational and cumulative setting effects upon designated heritage assets. The methodology for the assessment follows best practice guidelines/guidance, including HES's Managing Change in the Historic Environment: Setting (Historic Environment Scotland (HES 2020) based on three study areas (1km, 5km and 10km), and includes a Zone of Theoretical Visibility Map, viewpoint visualisations and analysis of effects on a number of identified assets. The assessment predicts no significant adverse impacts on the historic environment and confirms that no mitigation is required.

8.12.2 One non-designated asset, a modern metal water tank, has been identified within the site which could potentially be affected by the construction of the proposed development due to micro siting. This is considered to be of negligible importance however as it is a common feature with local interest only. The potential for further, as yet unknown heritage assets for the consented development was considered low, due to the proposed development site having been heavily disturbed by ploughing and afforestation. This assessment is unchanged and as such recommends no mitigation.

8.12.3 In terms of the wider area, potential effects on the settings of designated heritage assets within the 5km and 10km study areas have been considered. This includes eight Scheduled Monuments, 21 Listed Buildings, the Cullen House Inventory listed designed landscape, and Berryhillock Conservation Area within the 5km study area lying within the ZTV. Detailed assessments of these assets were carried out for the consented development where it was found that there would be no significant indirect effects on their setting. The anticipated effects on these interests remain unchanged from those predicted for the consented development.

8.12.4 The EA includes a further assessment of potential effects on the Regionally Significant forts on Durn Hill (Asset 78, approx. 8.3km to the northeast of the development), the Bin of Cullen (Asset 123, approx. 6.4km the north northwest) and St John's Church and Tower of Deskford (Asset 21 and 66) (Category A

listed and a scheduled monument) which lie approx. 3.3km to the north. This shows that although the proposal will be visible in some views from these assets, their key archaeological, historic or architectural interests would not be impacted upon negatively due to intervening screening and woodland cover, topography, and for the fort sites, distance from the turbines and expansive panoramic views available from the sites and their landscape setting.

8.12.5 Following consultation, Historic Environment Scotland (HES) has raised no concerns regarding the proposed development.

8.12.6 The Council's Archaeological Advisor following consultation has raised no objection to the proposal.

8.12.7 From the above observations the proposal would not have unacceptable significant adverse effects on cultural heritage interests and complies with development plan policies EP8, EP10, EP11 and DP9.

8.13 **Traffic and Transport (PP3, DP1 and DP9)**
Policy PP3 Infrastructure and Services seeks to ensure development is planned and co-ordinated with infrastructure to enable places to function properly and are adequately serviced. Part (a) (iii) requires, where appropriate, proposed developments to mitigate/modify the existing transport network to address the impact of the proposed development in terms of safety and efficiency. Policy DP1 Development Principles (ii) sets out transportation requirements including provision of safe entry and exit from development, safe access to and from the road network and mitigation of road safety impacts. Policy DP9 Renewable Energy requires proposals to avoid or address unacceptable traffic impacts during construction and operation.

8.13.1 Chapter 9 of the EA considers potential traffic and transport impacts associated with the construction and operation of the proposed development on the surrounding public road network and on sensitive receptors. Assessment methodology has entailed scoping of routes and traffic, traffic counter data gathering, and the carrying out of an Abnormal Loads Assessment and analysis of the likely effects, along with mitigation measures to minimise any effects. The assessment predicts no significant or adverse effects on the road network, and recommends mitigation measures to reduce the potential for effects as far as practicable.

8.13.2 As previously identified, the development site will be accessed from the north via an existing access track which is to be modified for the proposed development. Other offsite road modifications (passing places etc.) to be agreed in consultation with relevant Roads Authorities are likely to required.

8.13.3 Most traffic effects would occur during the construction phase programme which is anticipated to last approximately 6 months, with substantially reduced levels during subsequent commissioning and operational/maintenance phases. Traffic effects during decommissioning are also predicted to be significantly less than that generated for construction.

8.13.4 For the construction phase, road stone for the access tracks and hardstandings, and concrete required for construction would be sourced from

the Blackhillock Quarry, located approx. 29km to the south via the A96, A95, A9022 and C5L roads. General construction traffic (staff LGVs and cars) is anticipated to come from Keith, via the A95, A9022 and C5L roads. Based upon the submitted Abnormal Indivisible Load (AIL) Access Study, the delivery route for the turbine components would be from the Port of Inverness - A9-A96-A97-Aberchirder bypass access road, A9022 and C5L roads.

8.13.5 According to the EA, deliveries of road stone will take place during the first 3 months, the highest number being in month 3 with an average of 56 two-way HGV trips daily. For concrete deliveries, the highest numbers would be made during months 3, 4 and 5 (average 12 two-way daily movements), whilst for delivery of turbines, this would occur during months 4 and 5 (average 30 convoys per month). The EA predicts the increase in HGV traffic on the C5L and A9022 roads (58% and 41% respectively) which is expected given the low baseline levels of HGVs along these rural roads. It also notes that the increase in total traffic levels will be within accepted limits (set out within guidance for assessment of environmental effects of traffic (Institute for Environmental Management and Assessment (1993) 'IEMA Guidelines'), and as all impacts are on a temporary basis, and considerably lower during the other four months of the construction stage, the impact on the C5L and B9022 is considered to be minor.

8.13.6 With no significant traffic effects predicted to occur, the EA concludes that no mitigation is required but, as an enhanced measure, a Construction Traffic Management Plan (CTMP) will be prepared.

8.13.7 Following consultation, Transport Scotland has raised no objection to the development subject to conditions to address impacts on the trunk road network; these include requiring submission/approval of the routing of any abnormal loads on the trunk road network, accommodation measures and traffic management; additional signing or temporary traffic control measures; proposals for an abnormal loads delivery trail-run with involvement of Police Scotland; a Construction Traffic Management Plan (CTMP); all vehicles transporting construction material to and from the proposed development to be sheeted; installation of vehicle wheel cleansing facilities; and decommissioning plan.

8.13.8 Similarly, the Council's Transportation Manager has raised no objection to the development subject to conditions to address impacts on the local road network requiring detailed proposals of abnormal load trial run(s) to be undertaken prior to construction and deliveries to determine additional accommodation works, restrictions and frequency; a Construction Traffic Management Plan; details of upgrading works of the C4L Bogmuchals - Berryhillock Road/site access junction including access width, radii, kerbing, visibility splay and drainage; detailed drawings/construction of 3 passing places on the C4L road; road widening/alterations/verge hardening to be permanent for duration of development; evidence of a signed S96 'Wear and Tear' agreement including a 'before and after' condition video surveys required for delivery and construction traffic routes; etc.

8.13.9 Drawing from the above and subject to conditions requested by consultees, the proposal is not considered to have unacceptable significant adverse effects on

traffic and transport matters, and would accord with policies PP3, DP1 and DP9.

8.14 **Aviation Issues (EP15 and DP9)**
Policy EP15 MoD Safeguarding states that development proposals must not adversely impact upon MoD operations and requires consultation with the Defence Infrastructure Organisation on any proposals within safeguarding consultation zones. Policy DP9 seeks to ensure that renewable energy proposals avoid any impacts resulting from aviation and defence constraints including flight paths and aircraft radar.

8.14.1 Chapter 13 of the EA considers effects of the proposed development on civilian and military aircraft activity, including air safeguarding and radar interests. The assessment predicts that effects to Ministry of Defence (MOD) radar systems at RAF Lossiemouth are likely to occur which will require mitigation. No other impacts on civilian aviation interests are anticipated.

8.14.2 In terms of civil aviation interests, National Air Traffic Systems and Aberdeen Airport have not objected to the proposal as having unacceptable or significant adverse effects on aircraft activity.

8.14.3 For military aviation, the EIA for the consented development identified potential effects on the MoD radar at RAF Lossiemouth, and a technical solution to these was agreed with the MoD subsequent to the submission of the planning application and confirmed in the Appeal Decision for the consented development (PPA-300-2052). The solution to potential radar interference at RAF Lossiemouth by the proposed development remains the same, as agreed with MoD. As per the conditions of the consented development an Air Traffic Control Radar Mitigation Scheme will set out the appropriate measures to be implemented to mitigate the impact on the radar.

8.14.4 The MoD, following consultation, has raised no objection to the current proposal subject to conditions requiring submission/approval of the Air Traffic Control Radar Mitigation Scheme, an aviation lighting scheme covering construction and a scheme for aviation charting and safety management confirming date of commencement of works, maximum height of construction equipment, date wind turbines are brought into use and final coordinates and maximum heights of wind turbines and any anemometer mast(s).

8.14.5 From the above and subject to the conditions, the proposal is not considered to result in unacceptable significant adverse effects on military and civilian aviation and would accord with policies DP9 and EP15.

8.15 **Telecommunications and Electromagnetic Interference (DP9)**
Policy DP9 seeks to ensure that renewable energy proposals avoid any unacceptable significant adverse impacts including electromagnetic interference.

8.15.1 Chapter 13 of the EA considers the potential impacts of the development upon fixed communication links in the vicinity of the site. This predicts no likely effects upon telecommunications during construction or operation, as concluded previously for the consented development. It also commits to

providing mitigation should interference with fixed link frequency band signals be identified as a result of the proposed development, and if required, to make good the fixed link frequency band signals, either by eliminating the cause of the interference or by providing an alternative means by which fixed link frequency band signals may be received.

8.15.2 The turbines are located outwith the zone of influence for known communication links and therefore no impacts are predicted or require mitigation.

8.15.3 Following consultation fixed link network operators have not objected to the development.

8.15.4 As a precaution, and as adopted for the consented development, in the event of any complaint(s) being received regarding interference to television signals or other telecommunication fixed link systems, a condition shall be imposed requiring the applicant/wind turbine operator to investigate and rectify any adverse effects.

8.15.5 Subject to the condition, the proposal is not considered to result in unacceptable significant adverse effects upon telecommunications infrastructure and assets and electromagnetic interference, and would accord with policy DP9.

8.16 **Socio-economic, Recreation and Tourism Interests (DP9 and PP3)**
Policy DP9 seeks to ensure that renewable energy proposals avoid any unacceptable significant adverse impacts on tourism or recreational interests. Policy PP3 Infrastructure and Services part (b) states that development proposals will not be supported where they adversely impact on access routes and cannot be adequately mitigated by an equivalent or better alternative provision in a location convenient for users.

8.16.1 Chapter 12 of the EA assesses the potential impacts of the proposed development upon socio-economic, tourism and recreation interests. This predicts that similar effects would occur to those from the consented development, and these are considered to be negligible to slight beneficial and will typically be localised in nature.

8.16.2 <u>Socio-economic Interests</u>
The EA identifies a positive benefit arising in terms of expenditure and local employment. The proposed development is estimated to make a contribution to the local economy and generate a UK turnover of £10 million during the construction stage, with around £7.7 million in Scottish turnover anticipated, and circa 80 jobs during construction and through its operational life. The EA considers the construction effects to be positive, but short-term and localised, and that potential effects are be unchanged from the conclusion of the consented development 2017 Environmental Statement, and assessed to be negligible.

8.16.3 The EA confirms that in accordance with the Scottish Government's Good Practice Principles for Community Benefits document (published May 2019), the applicant will provide community funding in line with SG recommended

levels (£5,000 per installed megawatt of generating capacity equating to £75,000 per). The setting up of a Community Benefit Fund is not a matter that should influence the planning decision and would be arranged separate to the planning process.

8.16.4 Recreational and Tourism Interests
As the site is not currently used for formal outdoor access purposes the proposal would have a minimal effect on public access during the construction period with any impact being temporary during the construction phase. By improving access to the site and the surrounding area with access tracks being formed and upgraded, potential effects are therefore considered to be unchanged from the conclusion of the consented development 2017 Environmental Statement and are assessed to be slight beneficial.

8.16.5 The proximity of the proposed development to Knock Hill (3.62km to the southeast) would give rise to some adverse effects upon its setting and views from its summit. As the hill is popular with walkers this effect could potentially detract from the recreational value of the path, although it is acknowledged that perceptions towards turbines differ between individuals. It is considered that the change in this view however would only slightly increase in comparison to that experienced for the consented development, and would be acceptable.

8.16.6 Following consultation, the Moray Access Manager has not objected to the proposal.

8.16.7 From the above, the proposal is considered to accord with policies DP9 and PP3 in terms of socio-economic, Recreation and Tourism Interests.

8.17 **Arrangements for decommissioning and site restoration (DP9)**
Policy DP9 seeks to ensure that renewable energy proposals address appropriate provision for decommissioning and site restoration.

8.17.1 Permission is sought for a 35 year period and if permitted recommended conditions will require appropriate mitigation of the site. The EA outlines information in relation to decommissioning and site reinstatement, which would entail preparation of a restoration scheme prior to decommissioning (or submission of a new application to extend the lifetime of the wind farm). A condition is recommended which seeks a bond or other form of financial guarantee to ensure sufficient funds are available to cover all costs of site decommissioning and re-instatement, the latter to be reviewed at regular intervals during the lifetime of the development to ensure it remains sufficient to meet the costs of decommissioning.

8.17.2 Based on the above and subject to the condition the proposal is considered to comply with the decommissioning and restoration requirements of Policy DP9.

8.18 **Developer Obligations (PP3)**
No planning obligations contributions 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 18 October 2012 to remove the pursuit or contribution of funds to "Community Benefit Funds" from the development management system.

Conclusion
This proposal represents an acceptable renewable energy development proposal for Moray. The scheme accords with aspects of local and national planning policy regarding the expansion of renewable energy, including its contribution to renewable energy targets.

The proposed development would introduce changes to the height and blade dimensions of the turbines and a reduction in turbine numbers from five to three when compared with the consented development at this site. While significant adverse effects on landscape character and views would be associated with this proposal, these effects require to be considered within the context of the existing consent of a wind farm on this site, which carries significant weight as a material consideration.

The omission of the two northern-most turbines would provide mitigation of visual effects in close views from residential properties and from the Cullen House Inventory listed designed landscape (should existing forestry be felled on Clune Hill). The changes made to the size of the turbines (a difference of just under 20m) would not be readily appreciable in the majority of views from the wider area. With this mitigation and when compared to the consented scheme, for landscape and visual effects, the proposal is considered to be an acceptable departure from Policies DP1 and DP9, subject to Turbines 4 and 5 of 17/01198/EIA and 22/00339/APP not being constructed alongside the proposal.

Following detailed assessment and subject to conditions to avoid or mitigate any significant impacts, the proposal would be satisfy all other policy requirements set out in the Moray Local Development Plan 2020, relating to the natural and built environment, residential amenity, cultural heritage, woodland removal, the water environment, transport, noise, aviation, telecommunications, socio-economic, recreational and tourism interests.

Subject to the conditions recommended, approval should be granted.

REASON(S) FOR DECISION
The Council's reason(s) for making this decision are:-

This proposal represents an acceptable renewable energy development proposal for Moray. The scheme accords with local and national planning policy regarding the expansion of renewable energy, including its contribution to renewable energy targets.

The proposed development would introduce changes to the proportions of the turbines and a reduction in turbine numbers when compared with the consented development at this site. While significant adverse effects on landscape character and views would be associated with this proposal, these effects require to be considered within the context of the existing consent of a wind farm on this site, which carries significant weight as a material consideration.

The omission of the two northern-most turbines would provide mitigation of visual effects in close views from residential properties and from the Cullen House Inventory listed designed landscape (should existing forestry be felled on Clune Hill). The changes made to the size of the turbines (a difference of just under 20m) would not be readily appreciable in the majority of views from the wider area. With this mitigation and when compared to the consented scheme, for landscape and visual effects, the proposal is considered to be an acceptable departure from Policies DP1 and DP9, subject to Turbines 4 and 5 of 17/01198/EIA and 22/00339/APP not being constructed alongside the proposal.

From detailed assessment and subject to conditions to avoid or mitigate any significant impacts, the proposal satisfies all other policy requirements as set out within the Moray Local Development Plan 2020, relating to the natural and built environment, residential amenity, cultural heritage, woodland removal, the water environment, transport, noise, aviation, telecommunications, socio-economic, recreational and tourism interests.

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APPENDIX

POLICY

Moray Local Development Plan 2020

PP2 SUSTAINABLE ECONOMIC GROWTH
Development proposals which support the Moray Economic Strategy to deliver sustainable economic growth will be supported where the quality of the natural and built environment is safeguarded, there is a clear locational need and all potential impacts can be satisfactorily mitigated.

PP3 INFRASTRUCTURE & SERVICES
Development must be planned and co-ordinated with infrastructure to ensure that places function properly and proposals are adequately served by infrastructure and services.

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

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

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

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

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

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

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

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

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

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

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

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

b) Development proposals will not be supported where they:

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

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

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

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

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

vi) Adversely impact on flood alleviation and mitigation infrastructure.

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

c) Harbours

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

d) Developer Obligations

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

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

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

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

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

DP1 DEVELOPMENT PRINCIPLES

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

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

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

(i) Design

a) The scale, density and character must be appropriate to the surrounding area and create a sense of place (see Policy PP1) and support the principles of a walkable neighbourhood.

b) The development must be integrated into the surrounding landscape which will include safeguarding existing trees and undertaking replacement planting to

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

c) Make provision for new open space and connect to existing open space under the requirements of Policy EP5 and provide details of the future maintenance of these spaces. A detailed landscape plan must be submitted with planning applications and include information about green/blue infrastructure, tree species, planting, ground/soil conditions, and natural and man-made features (e.g. grass areas, wildflower verges, fencing, walls, paths, etc.).

d) Demonstrate how the development will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape.

e) Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity.

f) Proposals do not result in backland development or plots that are subdivided by more than 50% of the original plot. Sub-divided plots must be a minimum of 400m2, excluding access and the built-up area of the application site will not exceed one-third of the total area of the plot and the resultant plot density and layout reflects the character of the surrounding area.

g) Pitched roofs will be preferred to flat roofs and box dormers are not acceptable.

h) Existing stone walls on buildings and boundaries must be retained. Alterations and extensions must be compatible with the character of the existing building in terms of design, form, choice of materials and positioning and meet all other relevant criteria of this policy.

i) Proposals must orientate and design buildings to maximise opportunities for solar gain.

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

(ii) Transportation

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

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

b) Car parking must not dominate the street scene and must be provided to the side or rear ¬and behind the building line. Maximum (50%) parking to the front of buildings and on street may be permitted provided that the visual impact of the parked cars is mitigated by hedging or low stone boundary walls. Roadways with a single carriageway must provide sufficient off road parking to avoid access routes being blocked to larger service vehicles and prevent parking on pavements.

c) Provide safe access to and from the road network, address any impacts on road safety and the local road, rail and public transport network. Any impacts identified through Transport Assessments/ Statements must be identified and mitigated. This may include but would not be limited to, passing places, road widening, junction improvements, bus stop infrastructure and drainage infrastructure. A number of potential mitigation measures have been identified in association with the development of sites and the most significant are shown on the Proposals Map as TSP's.

d) Provide covered and secure facilities for cycle parking at all flats/apartments, retail, community, education, health and employment centres.

e) Garages and parking provision must be designed to comply with Moray Council parking specifications see Appendix 2.

f) The road layout must be designed to allow for the efficient mechanical sweeping of all roadways and channels, paviors, turning areas and junctions. The road layout must also be designed to enable safe working practices, minimising reversing of service vehicles, with hammerheads minimised in preference to turning areas such as road stubs or hatchets, and to provide adequate space for the collection of waste and movement of waste collection vehicles.

g) The road and house layout in urban development should allow for communal refuse collection points where the design does not allow for individual storage within the curtilage and / or collections at kerbside. Communal collection points may either be for the temporary storage of containers taken by the individual householder or for the permanent storage of larger containers. The requirements for a communal storage area are stated within the Council's Kerbside Collection Policy, which will be a material consideration.

h) Road signs should be minimised designed and placed at the back of footpaths to reduce street clutter, avoid obstructing pedestrian movements and safeguarding sightlines;

i) Within communal parking areas there will be a requirement for electric car charging points. Parking spaces for car sharing must be provided where a need is identified by the Transportation Manager.

(iii) Water environment, pollution, contamination

a) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water including temporary/ construction phase SUDS (see Policy EP12).

b) New development should not be located in areas at flood risk or increase vulnerability to flooding (see Policy EP12). Exceptions to this would only be considered in specific circumstances, e.g. extension to an existing building or change of use to an equal or less vulnerable use. Where this exception is applied the proposed development must include resilience measures such as raised floor levels and electrical sockets.

c) Proposals must avoid major hazard sites and address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.

d) Proposals must protect and wherever practicable enhance water features through for example naturalisation of watercourses by introducing a more natural planform and removing redundant or unnecessary structures.

e) Proposals must address and sufficiently mitigate any contaminated land issues.

f) Make acceptable arrangements for waste collection and management and encourage recycling.

g) Avoid sterilising significant workable reserves of minerals, prime agricultural land or productive forestry.

h) Proposals must avoid areas at risk of coastal erosion and coastal change.

DP9 RENEWABLE ENERGY

a) All Renewable Energy Proposals

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

i) They are compliant with policies to safeguard and enhance the built and natural environment;

ii) They do not result in the permanent loss or permanent damage of prime agricultural land;

iii) They avoid or address any unacceptable significant adverse impacts including:

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

- Ecological Impact.
- Impact on tourism and recreational interests.

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

b) Onshore wind turbines

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

i) The Spatial Framework

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

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

ii) Detailed Consideration

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

Landscape and visual impact:

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

Cumulative impact

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

Impact on local communities

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

Other

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

- the proposal addresses any physical site constraints and appropriate provision for decommissioning and restoration.

iii) Extensions and Repowering of Existing Wind Farms

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

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

c) Biomass

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

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

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

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

d) Heat

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

Where no heat network is present or planned:

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

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

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

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

EP1 NATURAL HERITAGE DESIGNATIONS

a) European Site designations

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

In exceptional circumstances, proposals that could affect the integrity of a European Site may be approved where:

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

For European Sites hosting a priority habitat or species (as defined in Article 1 of the The Conservation (Natural Habitat & c.) Regulations 1994), prior consultation with the European Commission via Scottish Ministers is required unless the imperative reasons of overriding public interest relate to human health, public safety or beneficial consequences of primary importance to the environment.

b) National designations

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

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

c) Local Designations

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

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

d) European Protected Species

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

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

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

e) Other protected species

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

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

EP2 BIODIVERSITY

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

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

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

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

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

EP3 SPECIAL LANDSCAPE AREAS AND LANDSCAPE CHARACTER

i) Special Landscape Areas (SLA's)

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

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

b) In urban areas (within defined settlement, rural grouping boundaries and LONG designations);
   - i) Where proposals conform with the requirements of the settlement statements, Policies PP1, DP1 and DP3 as appropriate and all other policy requirements, and
   - ii) Proposals reflect the traditional settlement character in terms of siting and design.

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

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

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

b ii) Landscape Character

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

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

EP7 FORESTRY, WOODLANDS AND TREES

a) Moray Forestry and Woodland Strategy

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

b) Tree Retention and Survey

Proposals must retain healthy trees and incorporate them within the proposal unless it is technically unfeasible to retain these. Where trees exist on or bordering a development site, a tree survey, tree protection plan and mitigation plan must be provided with the planning application if the trees or trees bordering the site (or their roots) have the potential to be affected by development and construction activity. Proposals must identify a safeguarding distance to ensure construction works, including access and drainage arrangements, will not damage or interfere with the root systems in the short or longer term. A landscaped buffer may be required where the council considers that this is required to maintain an appropriate long term relationship between proposed development and existing trees and woodland.

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

c) Control of Woodland Removal

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

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

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

d) Tree Preservation Orders and Conservation Areas

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

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

e) Compensatory Planting

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

GUIDANCE TREES AND DEVELOPMENT

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

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

The Council requires a Tree Survey and Tree Protection Plan to be submitted by the applicant with any planning application for detailed permission on designated or windfall

sites which have trees on them. The survey should include a schedule of trees and/or groups of trees and a plan showing their location, along with the following details;

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

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

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

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

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

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

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

Landscape Scheme
Where appropriate a landscape scheme must be submitted with planning applications, clearly setting out details of what species of trees, shrubs and grass are proposed, where,

what standard and when planting will take place. Landscape schemes must aim to deliver multiple benefits in terms of biodiversity, amenity, drainage and recreation as set out in policy.

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

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

EP8 HISTORIC ENVIRONMENT

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

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

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

b) Local Designations

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

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

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

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.

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

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

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

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

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

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

c) Water Environment

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

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

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

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

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

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

EP13 FOUL DRAINAGE

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

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

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

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

EP14 POLLUTION, CONTAMINATION & HAZARDS

a) Pollution

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

b) Contamination

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

i) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment; and

ii) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/ or treatment of any hazardous material.

c) Hazardous sites

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

EP15 MOD SAFEGUARDING

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

EP16 GEODIVERSITY AND SOIL RESOURCES

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

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

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

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

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

Where development on peat is deemed acceptable, a peat depth survey must be submitted which demonstrates that the areas of deepest peat have been avoided. Where required, a peat management plan must also be submitted which demonstrates that unnecessary disturbance, movement, degradation or erosion of peat is avoided and proposes suitable mitigation measures and appropriate reuse.
Commercial peat extraction will not be permitted.