



---

**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON  
23 MARCH 2021**

**SUBJECT: 20/01026/S36 - PROPOSED WIND FARM EXTENSION (9  
TURBINES UP TO 149.9M HIGH) AT BERRY BURN WIND FARM,  
DUNPHAIL, FORRES, MORAY**

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

**1. REASON FOR REPORT**

- 1.1 This report asks Committee to consider the consultation received from the Energy Consents Unit (ECU) of the Scottish Government in relation to an Electricity Act 1989 Section 36 application (which includes deemed planning permission) for a new windfarm. This Section of the Electricity Act relates to consenting onshore electricity generation.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to exercising the functions of the Council as Planning Authority.

**2. RECOMMENDATION**

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

- i) consider and note the contents of the report, as set out in Appendix 1, including the conclusions about the planning and wider merits of the development (see Section 4 below) where taking into account the Moray Local Development Plan 2020 and all material considerations including the presence of an existing windfarm at Berryburn, it is recommended that subject to the conditions/informatives contained with Appendix 1, Moray Council does not object to the Section 36 application;**
- ii) if the proposal is to be approved by the Energy Consents Unit seek further involvement in the formulation of any final list of conditions (such as those related to noise) and delegate authority to officers in this event and;**

- iii) **if minded to object, provide planning reasons for objecting and instruct Officers to respond with those reasons formally objecting to the Section 36 application.**

### **3. BACKGROUND**

- 3.1 The applicant BB2 Wind Farm Ltd has lodged an application for consent under Section 36 of the Electricity Act 1989 for the construction, operation and decommissioning of a proposed windfarm to be an extension of the existing Berryburn windfarm. The existing Berryburn windfarm has been in operation since 2014 and has 29 turbines at 104m in height. The proposal would consist of 9 turbines each to a height of up to 149.9m. If granted, planning permission is deemed to be granted for the development (see information in **Appendix 2** Information Pack).
- 3.2 As the estimated output of the windfarm will (collectively with the existing Berryburn windfarm) exceed 50mW, the proposal is to be determined by the ECU. Responsibility for consultation with statutory consultees, relevant local authorities, receipt of representations and determination lies with the ECU. In these circumstances the role of Moray Council, as planning authority, is as a consultee rather than being the determining authority.
- 3.3 The Scottish Government (Energy Consents & Deployment Unit) has invited Moray Council to comment on the proposed wind farm development within a specific timeframe along with other consultees. The period for consultation for Moray Council expires in March and an extension to this period has been granted previously from January to accommodate referral to this meeting of the committee.
- 3.4 The developers were required to go through Pre-Application Consultation with local communities and public exhibitions were advertised and held 2019. Due to Covid restrictions subsequent public engagement was carried out online in 2020.

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

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

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

**(b) Policy and Legal**

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

conditions attached to the formal decision to grant consent will pass to Moray Council.

**(c) Financial implications**

If Moray Council agrees to object to the proposal, a Public Local Inquiry would be arranged by Scottish Government. Moray Council would be expected to attend and participate in the Inquiry process, including any pre-Inquiry arrangements with resultant costs, including officer, legal representation and consultant costs where required/appropriate.

Furthermore as officers have recommended no objection then any case presented to a PLI would need to be by the relevant Councillors who moved against the officer recommendation. They would get support from legal but not from Development Management planning officers directly, although Strategic Planning & Development may assist.

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

**(d) Risk Implications**

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

If deciding to object, the outcome of any Public Local Inquiry held to consider this proposed development is uncertain: it might uphold and support the Council's decision to object, but equally the objection could be dismissed and consent granted for the development.

**(e) Staffing Implications**

In the event of a Public Local Inquiry, staff time and resources (Elected Members, planning and legal officers) will be required for preparation and attendance at any Inquiry.

**(f) Property**

None.

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

None.

**(h) Consultations**

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

**5. CONCLUSION**

**5.1 From Appendix 1, the planning merits have been considered relative to current development plan policy and material considerations, including**

**the non-statutory wind energy supplementary planning policy guidance and wind energy landscape capacity study adopted by the Council.**

- 5.2 National policy and guidance continue to provides support for onshore renewable energy and climate change initiatives, although not all aspects of national guidance in relation to landscape impact have been complied with, the effects of the proposal is not considered to be significant enough to warrant a recommendation to object. Weight is also attached to wider carbon reduction target, which such an extension would contribute towards.**
- 5.3 The decision to object or not must be based on planning policy and relevant material considerations. In reaching a decision regard should be had to how much weight is given to national planning policy considerations when Section 36 applications are determined by the Scottish Government which leads to many such application being consented. This history of consents should be taken into consideration but does not outweigh the assessments of the merits of the proposal itself In this case the balanced view of officers is that there are not policy grounds to lodge an objection.**
- 5.4 In recommending Moray Council does not object, we would seek to volunteer conditions we would wish to see attached in the event of approval by the Energy Consents Unit, and would further seek to be involved in the formulation of any final list of conditions.**

Author of Report: Neal MacPherson, Principal Planning Officer

Background Papers:

Ref: 20/01026/S36