

20/00679/APP
5th June 2020

Section 42 application to vary condition 11 (retention of trees on line A-B) and variation of condition 9 (Landscape) of planning permission ref 17/00808/APP for installation of photovoltaic solar panel farm and ancillary works at Speyslaw Farm Urquhart Elgin Moray for Elgin Energy EsCo Ltd

Comments:

- The application is reported to Committee because the original application was previously reported to Committee and the appointed officer considers that significant amendments are proposed to this consent.
- The proposal has been advertised for neighbour notification purposes.
- No representations received.

Procedure:

- None

Recommendation - Approve subject to conditions

Conditions/Reasons

- 1 This planning permission shall expire and cease to have effect after a period of 31 years from the date when electricity is first exported from any of the approved solar panels to the electricity grid network (the "First Export Date"). Upon the expiration of a period of 30 years from the First Export Date, the solar panels shall be decommissioned and removed from the site, with all decommissioning and restoration works undertaken in accordance with the terms of condition 3 of this permission. Written confirmation of the First Export Date shall be submitted in writing to the Council, as Planning Authority within one month of the said date.

Reason: In recognition of the temporary nature of the proposed development and to secure removal.

- 2 Following the First Export Date, a continuous record of information regarding the monthly supply of electricity to the national grid from each array within the development hereby granted shall be maintained and retained for a period of at least 24 months. The information shall be made available to the Council, as Planning Authority within one month of any request being made.

In the event that any array(s) installed and commissioned fail(s) to supply electricity on a commercial basis to the grid for a continuous period of 6

months, or is no longer required, the array(s) in question shall be deemed to have ceased to be required. Under such circumstances, the array(s) along with all ancillary equipment, fixtures and fittings no longer required in connection with the retained array(s) shall, within 3 months of the end of the said continuous six month period or when ceasing to be required, be dismantled and removed from the site and the surrounding land shall be re-instated in accordance with a re-instatement scheme which shall previously have been submitted to and approved by the Council, as Planning Authority.

Reason: To ensure that any redundant or non-functioning solar array(s) and ancillary equipment, etc. is/are removed from the site in the interests of public safety, amenity and environmental protection and to ensure acceptable arrangements for the reinstatement of the ground are provided.

- 3 No development shall commence until a draft Decommissioning and Restoration Plan (DRP) for the site has been submitted to, and approved in writing by the Council, as Planning Authority in consultation with SNH and SEPA. Thereafter:
- a) no later than 3 years prior to the decommissioning of the development, the draft DRP shall be reviewed by the Solar Farm Operator and a copy submitted to the Council, as Planning Authority for their written approval, in consultation with SNH and SEPA; and
 - b) no later than 12 months prior to the decommissioning of the development, a detailed DRP, based upon the principles of the approved draft DRP, shall be submitted to, and approved in writing by, the Council as Planning Authority, in consultation with SNH and SEPA and thereafter, the detailed DRP shall be implemented in accordance with the approved details.

The DRP shall include the removal of all above-ground elements of the development, the treatment of ground surfaces, management and timing of the works, environmental management provisions and a traffic management plan to address any traffic impact issues during the decommissioning period.

Reason: To ensure that the decommissioning of the development and restoration of the site are carried out in an appropriate and environmentally acceptable manner.

- 4 No development shall commence until details have been 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 all solar arrays cease to be required, whichever is the sooner. The required bond or equivalent shall:
- I. be based on the DRP (as required by Condition 3); and
 - II. include documentary evidence to demonstrate that the amount of the bond or financial provision is sufficient to meet the full estimated costs

- of decommissioning, including dismantling, removal, disposal, site restoration, remediation and all other incidental works and professional costs; and
- III. include details to ensure that the proposed financial arrangements will be maintained and be subject to periodic review throughout the lifetime of the development. 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 and the findings of the review shall be submitted to and approved by 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 expected full costs of decommissioning and re-instatement and restoration of the site.

- 5 No development shall commence until details have been submitted to and approved by the Council, as Planning Authority regarding:
- I. the make, model, design and power rating of the solar panels to be used together with evidence to confirm that the energy generation capacity (output) of the development is not greater than 50MW ;
 - II. the arrangement and layout of all solar panels to be installed; and
 - III. the, design specifications and external material finishes and colour of the substation and inverter stations. Both the substation and inverter stations shall be finished in green or other similar recessive colour and shall have a mat, non-reflective, finish.

All details shall be in accordance with the details shown on approved drawing WSP-0832-GA-600-ST-242 PO8. 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 environmental impacts.

- 6 No development shall commence until a Habitat Management Plan (HMP) has been submitted to, and approved in writing by, the Council as Planning Authority in consultation with SNH and RSPB. The HMP shall provide for measures to protect and manage habitat and species within and adjoining the application site and include:
- I. the identification of management methods and opportunities to mitigate for any adverse impacts on sensitive habitats as identified in the Extended Phase One Habitat and Protected Species Survey, the Breeding Bird Survey or other documentation as submitted and/or approved as part of the permission hereby granted;
 - II. a breeding bird protection plan; and

- III. targeted management for corn bunting and lapwing species and other farmland wildlife.

Thereafter the development shall be implemented in accordance with the approved HMP details.

Reason: To protect and enhance the nature conservation interests of the area, including the management of vegetation and woodland on the site, mitigate any effects on breeding birds and their habitat and avoid adverse effects on other identified species of nature conservation interest.

- 7 No development or works shall take place within the development site until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which shall be submitted to and approved by the Council, as Planning Authority in consultation with Aberdeenshire Archaeology Service. The scheme shall provide for a trial trenching evaluation within part of the site area i.e. within Field 3 as defined on Figure 1 of the applicant's submitted "Historic Environment Desk-Based Assessment NGR: NJ2853 6663, Report No. 1191, v.1.0, May 2017 (by Foundations Archaeology) and a watching brief over ground-breaking works. Thereafter, the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Council, as Planning Authority and Aberdeenshire Archaeology Service.

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

- 8 No development or work shall commence on site until a Construction Traffic Management Plan has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The Construction Traffic Management Plan shall include the following information:
- I. duration of works;
 - II. construction programme;
 - III. number of vehicle movements (i.e. materials, plant, staff, components);
 - IV. anticipated schedule for delivery of materials and plant;
 - V. full details of any temporary construction access;
 - VI. route of construction and delivery traffic between the site and the A96;
 - VII. measures to be put in place to prevent material being deposited on the public road; measures to be put in place to safeguard the movements of pedestrians;
 - VIII. traffic management measures to be put in place during works including any specific instructions to drivers; and
 - IX. parking provision, loading and unloading areas for construction traffic.

Thereafter, the development shall not be implemented except in accordance with the approved details.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site.

- 9 All landscaping works shall be carried out in accordance with the details contained in the submitted Landscape and Visual Impact Assessment and approved plan WSP-0832-GA-600-ST-242 PO8.

Prior to any development commencing, a scheme for the planting of a hedgerow of native species between points A and B on approved plan WSP-0832-GA-600-ST-242 PO8, which specifies the location, spacing and species of the hedgerow, shall be submitted to and approved in writing by the Council.

All planting, seeding or turfing forming part of the approved landscape schemes shall be carried out not later than the end of the first planting and seeding seasons following the commencement of development.

Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless otherwise approved by the Council, as Planning Authority.

Reason: To ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.

- 10 The rating level of noise emitted from the proposed development shall, at all times, not exceed the existing background sound level by more than 5dB. The noise levels shall be determined at the nearest noise sensitive premises. Measurements and assessments shall be made according to BS 4142: 2014 Method for rating and assessing industrial and commercial sound.

Reason: In the interests of residential amenity.

Reason(s) for Decision

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

The proposed variation to condition 9 and removal of condition 11 of planning permission 17/00808/APP are considered suitable in light of the recent felling of trees on the site, which complies with the requirements of the Moray Local Development Plan 2020. There are no material considerations that indicate otherwise.

List of Informatives:

THE CONTAMINATED LAND SECTION has commented that:-

This development lies close to the World War II "Kingston Bombing Range". The developer should consider investigating this matter further prior to proceeding with any groundworks.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Prior to the commencement of deliveries or construction work a Section 96 Wear and Tear 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 Transportation Manager must always be contacted before any works commence. This includes any temporary access, which should be agreed with the Roads Authority prior to work commencing on it.

THE SCOTTISH ENVIRONMENT PROTECTION AGENCY has commented that:-

Proposed engineering works within the water environment will require authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended). Management of surplus peat or soils may require an exemption under The Waste Management Licensing (Scotland) Regulations 2011. Proposed crushing or screening will require a permit under The Pollution Prevention and Control (Scotland) Regulations 2012. Consider if other environmental licences may be required for any installations or processes.

Details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory team in your local SEPA office at: 28 Perimeter Road, Pinefield, Elgin IV30 6AF Tel: 01343 547663

ABERDEENSHIRE ARCHAEOLOGY SERVICES has commented that:

The proposed development will have a significant direct impact on the archaeology site NJ26NE0040, an area of cropmarks indicating human activity likely to date to the prehistoric period (which, on checking aerial photographs, actually extends eastwards beyond the area recorded to date), located within "Field 3" of the proposed plan.

If this area is not excluded from the development, this area would need to be subject to a 5% trial trenching evaluation and a watching brief is required for the formation of access tracks, cabling trenches and substations.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No. WSP-0832-GA-600-ST- 242 PO8	Title/Description Site layout



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:

20/00679/APP

Site Address:

Speyslaw Farm
Urquhart

Applicant Name:

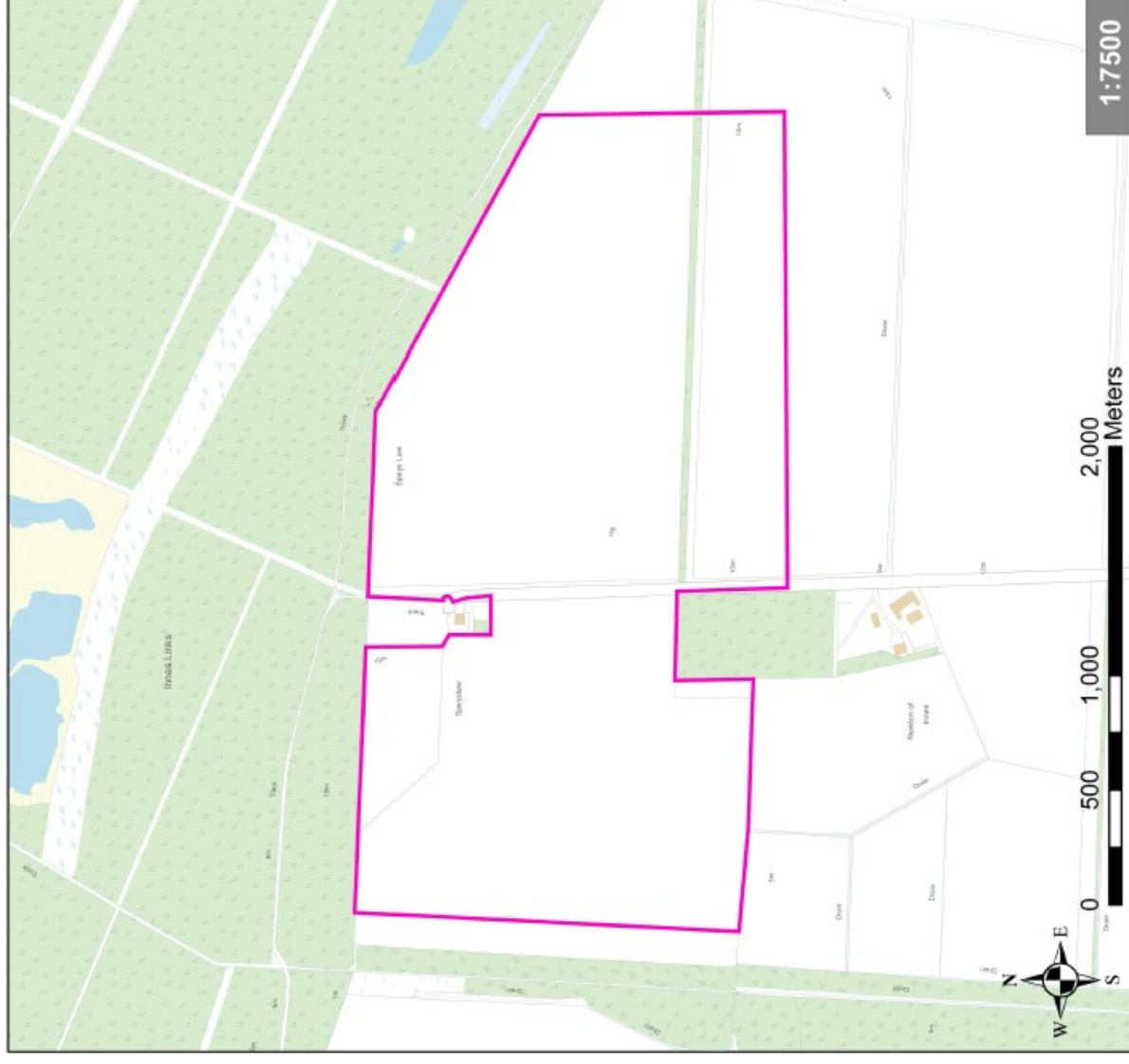
Elgin Energy EsCo Ltd

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Location Plan



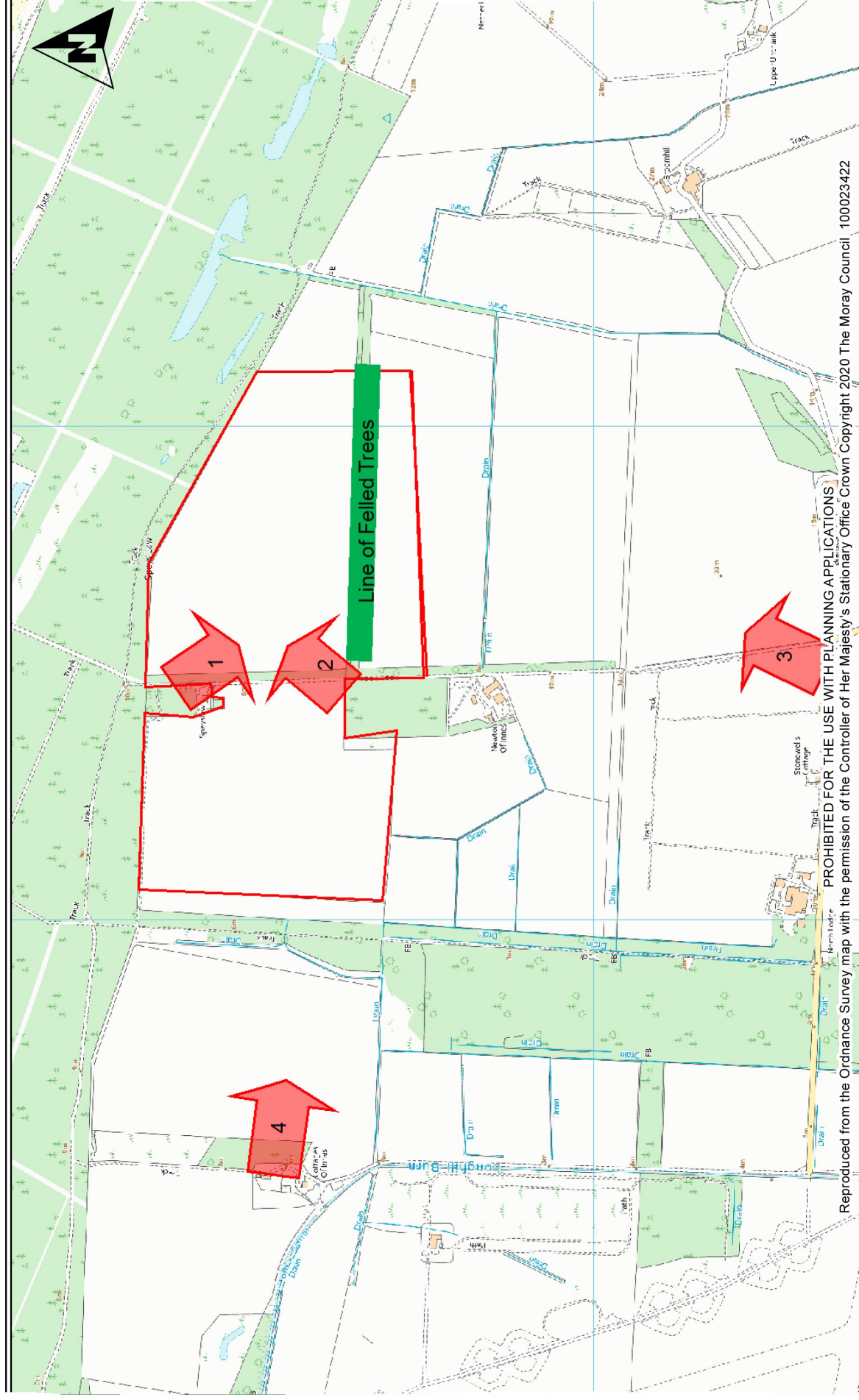
Site Location



Site layout



20/00679/APP - Photograph Positions



Map Description: Arrows point in direction photograph was taken.

PROHIBITED FOR THE USE WITH PLANNING APPLICATIONS

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Scale: 1:10,000 @ A4



Existing view from viewpoint



The Department of...

Looking down from a viewpoint





PLANNING APPLICATION: 20/00679/APP

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

THE PROPOSAL

- Application under section 42 of the Town and Country Planning Act (Scotland) (1997) (as amended) to remove condition 11 and vary condition 9 of planning consent 17/00808/APP.
- Planning approval 17/00808/APP granted consent for a solar photovoltaic (PV) farm with associated infrastructure (including substation).
- Condition 11 of 17/00808/APP requires the retention of trees, shrubs and planting on a specified tree belt that bisects the eastern half of the site.
- Condition 9 requires landscaping to be undertaken in accordance with a landscaping scheme approved as part of the application.
- This application proposes to remove condition 11 on the basis the tree belt to be replaced is no longer in place, and amend condition 9 to require a row of hedge along the belt where trees were felled.

THE SITE

- The site is approx. 47 ha of farmland extending over two field areas located on either side of an existing track leading between Lochhill and Speyslaw Cottage.
- The site is enclosed to the north and west by mature trees and some tree cover to the south-west and east of the site.
- The site is largely flat but becomes more undulating to the south.
- There are individual houses and farm buildings around the site to the south, east and west with the nearest property, Speyslaw sitting approx. mid-way along the northern boundary of the site and between the two field areas that form the application site. This property, owned by Innes Estate, effectively lies within the solar PV farm.
- The Scheduled Monument, "Innes Links, anti-invasion defences, Kingston to Lossiemouth" is located to the north of the site within an area of woodland extending along the coastline.
- Knight's Hillock Motte is a Scheduled Monument located to the south of the site.
- Innes House, a Category A Listed Building set within a Designed Landscape, is located to the south of the site. There are a number of Category B and C listed buildings associated with Innes House, also to the south of the site.
- The Loch Spynie Special Protection Area (SPA) and RAMSAR designation is located to the west of the site and the Moray and Nairn Coast SPA and RAMSAR designation is located to the north and east of the site. In addition, the Lower River Spey - Spey Bay Special Conservation Area (SAC) is located to the north east of the site.

HISTORY

15/01040/PE - Erect 50MW ground mounted solar PV array with associated infrastructure on land at Milltown Airfield, and erect up to 20MW ground mounted solar PV array with associated infrastructure on land at Speyslaw - following a pre-application meeting, the response (1 October 2015) identifies information requirements for any formal application for planning permission and recommends further pre-application consultation with consultees.

15/02014/SCN - [Screening opinion] Install solar PV array at Speyslaw - formal Screening Opinion adopted/issued on 22 December 2015 where, under the Environmental Impact Assessment Regulations 2011 (EIA) and after taking account of the characteristics and location of the development and the characteristics of its potential impact, the proposal, as a 'Schedule 2 development', would not be likely to result in significant environmental effects, hence the proposal is not EIA development and formal EIA procedures are not required.

17/00452/SCN - [Screening opinion] Install Solar PV Array (approx. 80,000 fixed solar panels) at Speyslaw - formal Screening Opinion adopted/issued on 12 April 2017 where, under the Environmental Impact Assessment Regulations 2011 (EIA) and after taking account of the characteristics and location of the development and the characteristics of its potential impact, the proposal, as a 'Schedule 2 development', would not be likely to result in significant environmental effects, hence the proposal is not EIA development and formal EIA procedures are not required.

17/00165/PAN - Proposal of Application Notice to erect photovoltaic solar farm on land at Speyslaw - response (9 February 2017) confirms requirements for consultation with the local Community Councils and the proposed public event. Following consideration, the Planning & Regulatory Services Committee advised (on 26 February 2016) that there were no provisional views/relevant issues which they wished to raise about the proposed development.

17/00808/APP – Planning permission for a solar PV farm comprising ground mounted fixed solar modules, primary and inverter substations, access tracks, perimeter deer fences and pole mounted CCTV cameras granted planning permission by the Planning and Regulatory Services Committee on 21 August 2017. Members resolved to grant consent per the recommendation with two minor amendments to conditions 7 and 9, as well as the inclusion of condition 11 to ensure trees are retained (i.e. those trees that have since been removed).

17/01185/S36 – Application to Scottish Ministers for Section 36 consent under the Electricity Act 1989 for the erection of solar panels and associated works including the installation of a primary substation inverter substation internal access track and other ancillary equipment at former Milltown Airfield. Members of the Planning & Regulatory Services Committee resolved that Moray Council raise no objections to the application on 5 December 2017, with Scottish Ministers granting Section 36 consent on 25 May 2018.

20/01196/APP – Application under section 42 to vary condition 1 of the planning permission 17/00808/APP. This application seeks to vary the period limiting the siting of the solar farm from 31 years to 41 years, and is currently pending consideration.

POLICY - SEE APPENDIX

ADVERTISEMENTS

Advertised for neighbour notification purposes.

CONSULTATIONS

Developer Obligations – No obligations sought.

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]

The Matters Raised in the representation can be summarised as follows:

Issue: Developer should ensure flora and fauna are protected, including bats, and plant trees and wildflowers.

Comment (PO): Whilst mature trees have been felled, this was outwith the planning controls. The applicant has proposed to plant a hedgerow to replace the felled trees, and it is hoped this will improve biodiversity.

Issue: Work to listed buildings and within conservation areas should be to the strictest standards.

Comment (PO): The development is not located within a conservation area, nor does it involve works to a listed building.

OBSERVATIONS

Legislative Matters

Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended allows applicants to apply to develop land without compliance with conditions previous attached to a planning consent. In determining such an application, the Council, as Planning Authority can only consider the conditions subject to which planning permission should be granted and may:

- grant permission unconditionally (i.e. remove the conditions attached to the planning consent);
- grant permission conditionally with differing conditions; or
- refuse the application (i.e. keep the conditions attached to the planning consent).

The principle of the development as a whole is not therefore to be re-considered, but if the Section 42 application were refused, the applicant would need to address the landscaping issue, which cannot be progressed under the extant planning conditions.

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the Adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise. The main planning issues are considered below:

Background

The existing consent 17/00808/APP for the erection of a solar PV farm (as outlined in the history above) has not been implemented. That consent requires the retention of a belt of trees that bisects the eastern half of the site which had been proposed by the applicant and was specifically sought by Elected Members in their discussions at committee in August 2017. Since consent was granted, the trees have been felled (prior to the applicant taking control of the site). This application has been submitted to remove condition 11 requiring retention of these trees.

As the consent has not been implemented, there is no breach of condition. The felling of the trees in their own right does not constitute a breach of planning control as they are not covered by a condition on an implemented planning consent, nor are they protected by a conservation area or Tree Preservation Order. In a supporting letter provided by the applicant, it notes they do not control the land and the tree felling has been undertaken as part of wider land management of the site by the current land owner.

Policy Considerations

In determining whether the proposed alternative condition is acceptable, consideration must only be given to whether or not the proposed variation to conditions complies with planning policy. The planning principles of the wider development are not open for consideration.

Policy from a national to local level creates a presumption in favour of tree retention as part of any development, or where this is not possible, replacement/compensatory planting should be undertaken. With reference to the Moray Local Development Plan 2020, where it is apparent development may have an impact on trees, policy EP7 requires any proposal to retain and incorporate healthy trees unless it is technically unfeasible for their retention.

Policies DP1 (Development Principles) and DP9 (Renewable Energy) both echo the requirement of policy EP7, presuming retention of trees and their replacement where retention is not feasible as part of wider requirements to minimise the impact of development on the natural environment. Policy EP2 (Biodiversity) requires all development to preserve and enhance features of biological interest where possible.

Since the trees required to be retained under condition 11 have been felled retention is obviously impossible. The applicant proposes to replace the trees with a hedgerow of native species. The applicant states that the planting of a hedgerow would increase biodiversity by introducing native species and offering habitat for wildlife. From an operational perspective, it would allow for greater dust control compared to the trees, as well as minimising overshadowing of the solar farm. It is noted from previous visits to the site that the tree belt that was removed over little in the way of ground or low level shrub cover with the tree belt comprising mainly of a single row of coniferous trees.

Whilst the loss of mature trees is regrettable, the benefits of replacing the tree line with a hedgerow are recognised from a biodiversity perspective. In addition, the subsequent minimising of overshadowing will allow for greater renewable energy output from the solar

farm, particularly during the winter months of lower sun level, greater shadow cover and limited hours of sunshine.

From a landscape impact perspective, an alternative condition requiring the planting of a hedgerow will break up what would otherwise continuous view of solar panels in the rural landscape. From various low lying vantage points a hedge would provide in the long term a more appropriate visual barrier than the single row of trees.

Accordingly, the revised condition is considered to comply with the requirements of policies DP1, DP9, EP2 and EP7.

Six Tests of Planning Conditions

Where varying conditions, or indeed imposing conditions on planning permission, they must meet the requirements of the six tests for planning conditions. These are set out in Planning Circular 4/1998: The Use of Conditions in Planning Permissions. The six tests are:

- Need for a Condition – would permission have to be refused if the condition were not imposed?
- Relevance to Planning – the condition must serve a planning purpose.
- Relevance to the Development to be permitted – it must deal with the impact of the development.
- Enforceability – a condition should not be imposed if it is not practical to enforce it.
- Precision – the applicant must be able to understand exactly what the condition requires.
- Reasonableness – the condition must be reasonable in all other respects and must not be unduly restrictive.

Condition 11 is no longer required on the basis the trees it seeks to protect no longer exist, therefore it fails to meet the six tests.

With reference to the proposed variation to condition 9, the proposed hedgerow is considered to be a suitable replacement for the trees that have been felled, especially since the solar panels are not high structures. To simply not require alternative landscaping would not be acceptable, particularly from a landscape and biodiversity perspective. Therefore the need for the condition is justifiable.

The condition serves a planning purpose, there being no other legislation by means of which to secure the hedgerow required to minimise the visual impact of the solar farm. This can also be said for the relevance to the development.

In terms of enforceability and precision, the proposed variation to the condition is clear in what is required and when, therefore it can be enforced and is precise to ensure the applicant knows what is required.

Finally, in terms of reasonableness, the condition is more than reasonable on the basis mature trees required for retention were felled.

Conclusion

Whilst it is unfortunate mature trees that were to be protected were felled prior to the applicant taking control of the land and implementing their planning permission, the proposed hedgerow is considered an appropriate alternative to the row of trees that were felled. The loss of the trees would not bring about any change in view that the proposals

accord with the current local development plan, such that the conditions could not be accepted.

Recommendation

Approve subject to conditions.

REASON(S) FOR DECISION

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

The proposed variation to condition 9 and removal of condition 11 of planning permission 17/00808/APP are considered suitable in light of the recent felling of trees on the site, which complies with the requirements of the Moray Local Development Plan 2020. There are no material considerations that indicate otherwise.

Author/Contact

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Officer:

Planning Officer

Beverly Smith

Development Management & Building Standards Manager

APPENDIX

POLICY

Moray Local Development Plan 2020

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, paviers, turning areas and junctions. The road layout must also be designed to enable safe working practices, minimising reversing of service vehicles, with hammerheads minimised in preference to turning areas 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 pipeworks within the development, to its curtilage, for future connection to a heat network.
- Proposals should consider the provision of energy centres, or the reservation of land for an energy centre to facilitate future connection to a heat network.

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

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

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

EP2 BIODIVERSITY

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

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

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

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

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

EP7 FORESTRY, WOODLANDS AND TREES

a) Moray Forestry and Woodland Strategy

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

b) Tree Retention and Survey

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

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

c) Control of Woodland Removal

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

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

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

d) Tree Preservation Orders and Conservation Areas

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

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

e) Compensatory Planting

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

GUIDANCE TREES AND DEVELOPMENT

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

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

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

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

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

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

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

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

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

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

Landscape Scheme

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

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

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