

Chapter 5: Statutory and Policy Framework

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Statutory & Policy Framework

Introduction

5.1 This chapter of the Environmental Impact Assessment (EIA) Report describes the legislative and policy background relevant to the Loch Liath Wind Farm (hereafter referred to as the 'Proposed Development'). It refers to energy and planning policy at a national and local level. It provides an objective summary of the energy and planning policy considerations that have been taken into account in the preparation of the EIA Report to ensure that it provides the appropriate information for the consideration of the planning application.

5.2 This chapter does not include an assessment of the accordance of the Proposed Development against planning policy; a separate Planning Statement has been prepared to support the application and should be referred to for a detailed planning policy appraisal.

The Statutory Framework

The Electricity Act 1989

5.3 The Proposed Development will have an installed capacity of over 50 megawatts (MW). In Scotland, onshore renewable energy developments that have capacity to generate over 50MW require consent from the Scottish Ministers under the Electricity Act 1989 (the Electricity Act). In such cases, the Planning Authority is a statutory consultee in the development management process and procedures.

5.4 In an application under Section 36 of the Electricity Act, the Development Plan does not have primacy in the decision-making process. The provisions of Schedule 9 of the Electricity Act are relevant to the assessment of the Proposed Development.

5.5 Schedule 9, Sub-paragraph 3(2), requires the Scottish Ministers to have regard to:

“(a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and (b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of the sub-paragraph.”

5.6 The duties referred to in Schedule 9 sub-paragraph 3 (1) (a) and (b) of the Electricity Act do not apply to the Applicant, but the matters set out in Sub paragraph 3(1)(a) to which the Scottish Ministers must have regard are:

“... the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest;”

5.7 At sub-paragraph 3(3), the Scottish Ministers [are required to...] *“avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.”*

5.8 The provisions of Schedule 9 of the Electricity Act set out a number of features to which regard must be had by the Scottish Ministers and such features have been fully taken into account in the iterative design process set out in **Chapter 3: Site Selection and Design Strategy** and assessed in terms of the EIA process.

The Town & Country Planning (Scotland) Act 1997

5.9 The principal planning statute in Scotland is the Town and Country Planning Act (Scotland) 1997 (the 1997 Act) as amended by The Planning etc. (Scotland) Act 2006 and by the Planning (Scotland) Act 2019 (the 2019 Act).

5.10 Section 57(2) of the 1997 Act provides:

“On granting a consent under section 36 or 37 of the Electricity Act 1989 in respect of any operation or change of use that constitutes development, the Scottish Ministers may direct that planning permission for that development and any ancillary development shall be deemed to be granted, subject to any conditions (if any) as may be specified in the direction”.

5.11 Section 25 of the 1997 Act states that:

“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.

5.12 Section 57(2) of the 1997 Act makes no reference to the provisions of section 25 which requires regard to be had to the provisions of the Development Plan. The Courts have confirmed that section 57(3) does not apply section 25 to a decision to make a direction to grant deemed planning permission pursuant to section 57(2)¹.

5.13 The Scottish Ministers will determine the application having considered the statutory duties in Schedules 8 and 9 of the Electricity Act, so far as relevant, and all relevant considerations or matters, one of which will be relevant aspects of the statutory Development Plan.

Renewable Energy Policy: Summary

5.14 In recent years, United Kingdom (UK) and Scottish Government policies have focussed increasingly on concerns about climate change. Each tier of Government has developed targets, policies and actions to deal with the climate crisis and generate more renewable energy and electricity.

5.15 The UK Government retains responsibility for the overall direction of energy policy, although some elements are devolved to the Scottish Government. The UK Government has published a series of policy documents setting out how targets can be achieved. Onshore wind generation, located in Scotland, is identified as an important technology to achieve these various goals.

5.16 The Scottish Government has published a number of policy documents and its own targets. The most relevant policy, legislative documents and more recent statements published by the Scottish Government include:

- The Scottish Energy Strategy (December 2017);
- The Scottish Government's declaration of a Climate Emergency (April 2019);
- The Scottish Climate Change Plan Update (2020);
- The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the legally binding net zero target for 2045 and interim targets for 2030 and 2040;
- The Scottish Government's 'Programme for Government' (2022);
- The Onshore Wind Policy Statement (December 2022); and
- The Draft Energy Strategy and Just Transition Plan (January 2023).

5.17 The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 amends the Climate Change (Scotland) Act 2009 and requires that *“The Scottish Ministers must ensure that the net Scottish emissions account for the net-zero emissions target year is at least 100% lower than the baseline (the target is known as the “net-zero emissions target”).”* The target year is 2045 and the Act also sets out challenging interim targets. It requires that:

“The Scottish Ministers must ensure that the net Scottish emissions account for the year—

- (a) 2020 is at least 56% lower than the baseline,*
- (b) 2030 is at least 75% lower than the baseline, and*
- (c) 2040 is at least 90% lower than the baseline.”*

5.18 It is important to note that these targets are minimum targets, they are not maximums or aspirations. The targets legally bind the Scottish Ministers and have largely been legislated to set the framework for Scotland's response to the Climate Emergency.

¹ William Grant & Sons Distillers Limited, Court of Session [2012] CSIH 28.

5.19 The Proposed Development relates to the generation of electricity from renewable energy sources and comes as a direct response to national planning and energy policy objectives.

5.20 The Proposed Development would make a contribution to the attainment of emissions reduction, renewable energy and electricity targets at both the Scottish and UK levels. Detailed reference to the renewable energy policy framework is provided in the Planning Statement.

5.21 In terms of the two latest policy documents, namely the Onshore Wind Policy Statement and the Draft Energy Strategy and Just Transition Plan, these are detailed further below.

The Onshore Wind Policy Statement

5.22 The Scottish Government published an updated Onshore Wind Policy Statement (OWPS) on 21 December 2022. It replaces the version published in November 2017.

5.23 The Ministerial Foreword makes it explicitly clear that seeking greater security of supply and lower cost electricity generation are now key drivers for onshore wind, alongside the need to deal with the climate emergency. In this regard, the Cabinet Secretary for Net Zero, Energy and Transport states (page 3):

"...that is why we must accelerate our transition towards a net zero society. Scotland already has some of the most ambitious targets in the world to meet net zero but we must go further and faster to protect future generations from the spectre of irreversible climate damage".

"Scotland has been a frontrunner in onshore wind and, while other renewable technologies are starting to reach commercial maturity, continued deployment of onshore wind will be key to ensuring our 2030 targets are met".

5.24 The Foreword states that onshore wind has the ability to be deployed quickly, is good value for consumers and is also widely supported by the public. The Minister further states that:

"This Statement, which is the culmination of an extensive consultative process with industry, our statutory consultees and the public, sets an overall ambition of 20GW of installed onshore wind capacity in Scotland by 2030.

While imperative to meet our net zero targets it is also vital that this ambition is delivered in a way that is fully aligned with, and continues to enhance, our rich natural heritage and native flora and fauna, and supports our actions to address the nature crisis and the climate crisis".

5.25 The OWPS contains a mix of policy guidance and also technical information.

5.26 Chapter 1 'Ambitions and Aspirations' (page 5) refers to current deployment of onshore wind in Scotland and states:

"We must now go further and faster than before. We expect the next decade to see a substantial increase in demand for electricity to support net zero delivery across all sectors, including heat, transport and industrial processes."

5.27 Section 1.3 of the OWPS further refers to the new 20 GW ambition and acknowledges that the Scottish Government's Programme for Government 2022/2023 committed Government to enabling up to 12 gigawatts (GW) of onshore wind to be developed and it is stated that:

"It is vital to send a strong signal and set a clear expectation on what we believe onshore wind capacity will contribute in the coming years.

In line with this commitment, and reflecting the natural life cycles of existing wind farms, this statement sets a new ambition for the deployment of onshore wind in Scotland:

A minimum installed capacity of 20GW of onshore wind in Scotland by 2030.

This ambition will help support the rapid decarbonisation of our energy system, and the sectors which depend upon it, as well as aligning with a just transition to net zero whilst other technologies reach maturity".

5.28 This statement is followed by reference to the "Legislative Context", in particular the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the related Net Zero greenhouse gas emissions targets. The OWPS states (paragraph 1.4.1) "meeting these targets will require decisive and meaningful action across all sectors".

5.29 Paragraph 2.4.2 states that "onshore wind will play a crucial role in delivering our legally binding climate change targets".

5.30 Chapter 3 of the OWPS "Environmental Considerations: Achieving Balance and Maximising Benefits' refers to matters relating to specific environmental topics as follows:

- Shared Land Use;
- Peat and Carbon-Rich Soils;
- Forestry;
- Biodiversity;
- Landscape and Visual Amenity; and
- Noise.

The Draft Energy Strategy and Just Transition Plan

5.31 The Scottish Government published a new Draft 'Energy Strategy and Just Transition Plan' entitled 'Delivering a fair and secure zero carbon energy system for Scotland' on 10 January 2023. The new Strategy is to replace the one previously published in 2017. The consultation period on the draft runs up until 4 April 2023.

5.32 The Ministerial Foreword states:

"The imperative is clear: in this decisive decade, we must deliver an energy system that meets the challenge of becoming a net zero nation by 2045, supply safe and secure energy for all, generate economic opportunities, and build a just transition..."

The delivery of this draft Energy Strategy and Just Transition Plan will reduce energy costs in the long term and reduce the likelihood of future energy cost crises.

It is also clear that as part of our response to the climate crisis we must reduce our dependence on oil and gas as that Scotland is well positioned to do so in a way that ensures we have sufficient, secure and affordable energy to meet our needs, to support economic growth and to capture sustainable export opportunities.

For all these reasons, this draft Strategy and Plan supports the fastest possible just transition for the oil and gas sector in order to secure a bright future for a revitalised North Sea energy sector focused on renewables."

5.33 The Foreword adds that the draft Strategy sets out key ambitions for Scotland's energy future including:

- More than 20GW of additional renewal electricity on and offshore by 2030;
- Accelerated decarbonisation of domestic industry, transport and heat;
- Generation of surplus electricity, enabling export of electricity and renewable hydrogen to support decarbonisation across Europe;
- Energy security through development of our own resources and additional energy storage; and
- A just transition by maintaining or increasing employment in Scotland's energy production sector against a decline in North Sea production.

5.34 The draft Strategy states (page 7, Executive Summary) that the vision for Scotland's energy system is:

"That by 2045 Scotland will have a flourishing, climate friendly energy system that delivers affordable, resilient and clean energy supplies for Scotland's households, communities and business. This will deliver maximum benefit for Scotland, enabling us to achieve a wider climate and environmental ambitions, drive the development of a wellbeing economy and deliver a just transition for our workers, businesses, communities and regions.

In order to deliver that vision, this Strategy sets out clear policy positions and a route map of actions with a focus out to 2030".

5.35 A fundamental part of the Strategy is expanding the energy generation sector. The Executive Summary states (page 8) that Scotland's renewable resources mean that:

"...we can not only generate enough cheap green electricity to power Scotland's economy, but also export electricity to our neighbours, supporting jobs here in Scotland and the decarbonisation ambitions of our partners.

We are setting an ambition of more than 20 GW of additional low cost renewable electricity generation capacity by 2030, including 12GW of onshore wind....

An additional 20GW of renewable generation will more than double our existing renewable generation capacity by 2030...

5.36 In terms of policy and onshore wind, the Strategy cross refers to NPF4 and the recently published OWPS and reiterates the new ambition for a deployment of a minimum further 12GW of onshore wind by 2030.

National Planning Framework 4

Procedure and Implementation

5.37 NPF4 has been subject to consultation and Parliamentary Scrutiny over the last year since it was first laid before Parliament in November 2021. The Revised Draft NPF4 was laid before Parliament on 8th November 2022, accompanied by an Explanatory Report setting out how the Scottish Government considered responses to the initial draft and explaining responses to scrutiny and consultation thereof. Revised Draft NPF4 was approved by the Scottish Parliament, without amendments, following a vote on 11th January 2023. NPF4 came into force at 9am on 13 February 2023.

5.38 Section 13, of the 2019 Act amends Section 24 of the 1997 Act regarding the meaning of the statutory Development Plan, such that for the purposes of the 1997 Act, the Development Plan for an area is taken to consist of the provisions of:

- The National Planning Framework;
- Any Strategic Development Plan; and
- Any Local Development Plan (LDP).

5.39 NPF4 therefore now forms part of the statutory Development Plan and should be afforded substantial weight. A key provision of the 2019 Act is that in the event of any incompatibility between the provisions of NPF4 and a provision of an LDP then whichever of them is the later in date will prevail. That will include where a LDP is silent on an issue that is now provided for in NPF4.

5.40 Section 13 of the 2019 Act amends Section 24 of the 1997 Act to provide that:

"In the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail".

5.41 As explained, for the purposes of Section 36 decision making, Section 25 of the 1997 Act is not engaged, however NPF4 forms a significant material consideration in the overall decision-making process

The National Spatial Strategy – Delivery of Sustainable Places

5.42 Part 1 of NPF4 sets out the Spatial Strategy for Scotland to 2045 based on six spatial principles which are to influence all plans and decisions. The introductory text to the Spatial Strategy starts by stating (page 3):

"The world is facing unprecedented challenges. The global climate emergency means that we need to reduce greenhouse gas emissions and adapt to the future impacts of climate change."

5.43 The principles are stated as playing a key role in delivering the United Nations Sustainable Development Goals and the Scottish Government's National Performance Framework².

5.44 The Spatial Strategy is aimed at supporting the delivery of:

- 'Sustainable Places': *"where we reduce emissions, restore and better connect biodiversity"*;
- 'Liveable Places': *"where we can all live better, healthier lives"*; and
- 'Productive Places': *"where we have a greener, fairer and more inclusive wellbeing economy"*.

5.45 Page 6 of NPF4 addresses the delivery of sustainable places. Reference is made to the consequences of Scotland's changing climate, and it states, *inter alia*:

"Scotland's Climate Change Plan, backed by legislation, has set our approach to achieving net zero emissions by 2045, and we must make significant progress towards this by 2030.....Scotland's Energy Strategy will set a new agenda for the energy sector in anticipation of continuing innovation and investment."

5.46 The National Spatial Strategy in relation to 'sustainable places' is described (page 7) as follows:

"Scotland's future places will be net zero, nature-positive places that are designed to reduce emissions and adapt to the impacts of climate change, whilst protecting, recovering and restoring our environment."

Meeting our climate ambition will require a rapid transformation across all sectors of our economy and society. This means ensuring the right development happens in the right place.

Every decision on our future development must contribute to making Scotland a more sustainable place. We will encourage low and zero carbon design and energy efficiency, development that is accessible by sustainable travel, and expansion of renewable energy generation."

5.47 Six National Developments support the delivery of sustainable places, one being 'Strategic Renewable Electricity Generation and Transmission Infrastructure'. A summary description of this National Development is provided at page 7 of NPF4 as follows:

"Supports electricity generation and associated grid infrastructure throughout Scotland, providing employment and opportunities for community benefit, helping to reduce emissions and improve security of supply".

5.48 Page 8 of NPF4 sets out 'Cross-cutting Outcome and Policy Links' with regard to reducing greenhouse gas emissions. It states:

"The global climate emergency and the nature crisis have formed the foundations for the spatial strategy as a whole. The regional priorities share opportunities and challenges for reducing emissions and adapting to the long-term impacts of climate change, in a way which protects and enhances our natural environment."

5.49 A key point in this statement is that the climate emergency and nature crisis are expressly stated as forming the foundations of the national Spatial Strategy. Recognising that tackling climate change and the nature crisis is an overriding imperative which is key to the outcomes of almost all policies within NPF4.

National Developments

5.50 NPF4 sets the approach to planning and development to help achieve a net zero, sustainable Scotland by 2045. It continues the planning policy approach of identifying 'national developments' which refers to the allocation of national development status to certain classes of development. There are three categories of national development proposed namely 'liveable places, productive places and sustainable places'.

5.51 Page 97 of NPF4 sets out that 18 National Developments (NAD) have been identified. These are described as: "significant developments of national importance that will help to deliver the spatial strategy ... National development status does not grant planning permission for the development and all relevant consents are required".

5.52 It adds that:

"Their designation means that the principle for development does not need to be agreed in later consenting processes, providing more certainty for communities, businesses and investors. ... In addition to the statement of need at Annex B, decision makers for applications for consent for national developments should take into account all relevant policies"

5.53 Annex B of NPF4 sets out the various NADs and its related Statements of Need. It states (page 99) that:

"The statements of need set out in this annex are a requirement of the Town and Country Planning (Scotland) Act 1997 and describe the development to be considered as a national development for consent handling purposes".

5.54 Page 103 of NPF4 describes NAD3 and it states:

"This national development supports renewable electricity generation, repowering, and expansion of the electricity grid.

A large and rapid increase in electricity generation from renewable sources will be essential for Scotland to meet its net zero emissions targets. Certain types of renewable electricity generation will also be required, which will include energy storage technology

² The Scottish Government National Performance Framework sets out 'National Outcomes' and measures progress against a range of economic, social and environmental 'National Indicators'.

and capacity, to provide the vital services, including flexible response, that a zero carbon network will require. Generation is for domestic consumption as well as for export to the UK and beyond, with new capacity helping to decarbonise heat, transport and industrial energy demand. This has the potential to support jobs and business investment, with wider economic benefits.

The electricity transmission grid will need substantial reinforcement including the addition of new infrastructure to connect and transmit the output from new on and offshore capacity to consumers in Scotland, the rest of the UK and beyond. Delivery of this national development will be informed by market, policy and regulatory developments and decisions."

5.55 The location for NAD3 is set out as being all of Scotland and in terms of need it is described as:

"Additional electricity generation from renewables and electricity transmission capacity of scale is fundamental to achieving a net zero economy and supports improved network resilience in rural and island areas."

5.56 Reference is made to the designation and classes of development which would qualify as NAD3, and it states in this regard:

"A development contributing to 'Strategic Renewable Electricity Generation and Transmission' in the location described, within one or more of the Classes of Development described below and that is of a scale or type that would otherwise have been classified as 'major' by 'The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009', is designated a national development:

(a) on and off-shore electricity generation, including electricity storage, from renewables exceeding 50 megawatts capacity;

(b) new and/or replacement upgraded on and offshore high voltage electricity transmission lines, cables and interconnectors of 132kv or more; and

(c) new and/or upgraded infrastructure directly supporting on and offshore high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations."

5.57 The Proposed Development, having a capacity which exceeds the 50MW threshold set for a NAD means it would have national development status as per these provisions of NPF4. The Proposed Development is of national importance for the delivery of the national Spatial Strategy.

5.58 The Strategy requires a "large and rapid increase" in electricity generation from renewables and the National Spatial Strategy makes it clear (NPF4, page 6) that "we must make significant progress" by 2030.

National Planning Policy

5.59 Part 2 of the NPF contains proposed new 'National Planning Policy'. The 'lead' policies of relevance to the Proposed Development are Policies 1 and 11.

5.60 Policy 1 entitled 'Tackling the climate and nature crisis' states that: "when considering all development proposals significant weight will be given to the global climate and nature crisis".

5.61 Policy 11 Energy has a stated intent: "To encourage, promote and facilitate all forms of renewable energy development onshore and offshore. This includes energy generation, storage, new and replacement transmission and distribution infrastructure and emerging low-carbon and zero emissions technologies including hydrogen and carbon capture utilisations and storage (CCUS)".

5.62 The desired outcome of this policy is stated as an "Expansion of renewable, low carbon and zero emissions technologies".

5.63 LDPs are directed to seek to realise their area's full potential for electricity and heat from renewable, low carbon and zero emissions sources by identifying a range of opportunities for energy development.

5.64 Policy 11, Energy states:

"a) development proposals for all forms of renewable, low carbon and zero emissions technologies will be supported these include:

Wind farms including repowering, extending, expanding and extending the life of existing wind farms.

Enabling works such as grid transmission and distribution infrastructure;

Energy storage such as batter storage and pumped storage hydro;

Small scale renewable energy generation technology;

Solar arrays;

Proposals associated with negative emissions technologies and carbon capture; and

Proposals including co-location of these technologies.

b) development proposals for wind farms in National Park and National Scenic Areas will not be supported.

c) development proposals will only be supported where they maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities.

d) development proposals that impact on international or national designations will be assessed in relation to Policy 4.

e) in addition, project design and mitigation will demonstrate how the following impacts are addressed:

i. impacts on communities and individual dwellings, including, residential amenity, visual impact, noise and shadow flicker;

ii. significant landscape and visual impacts, recognising that some impacts are to be expected from some forms of renewable energy. Where impacts are localised and /or appropriate design mitigation has been applied, they will generally be considered to be acceptable.

iii. public access, including impact on long distance walking and cycling routes and scenic routes;

iv. impacts on aviation and defence interests including seismological recording;

v. impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;

vi. impacts on road traffic and on adjacent trunk roads, including during construction;

vii. impacts on historic environment;

viii effects on hydrology, the water environment and flood risk;

ix biodiversity including impacts on birds;

x impacts on trees, woods and forests;

xi proposals for the decommissioning of developments, including ancillary infrastructure, and site restoration;

xii the quality of site restoration plans including the measures in place to safeguard or guarantee availability of finances to effectively implement those plans; and

xiii cumulative impacts.

In considering these impacts, significant weight will be placed on the contribution of the proposal to renewable energy generation targets and on greenhouse gas emissions reduction targets.

Grid capacity should not constrain renewable energy development, it is for developers to agree connections to the grid with the relevant network operator. In the case of proposals for grid infrastructure, consideration should be given to underground connections where possible.

f) consents for development proposals may be time limited. Areas identified for wind farms are, however, expected to be suitable for use in perpetuity.

5.65 The other policies of most relevance in NPF4, are as follows:

- Policy 3 – Biodiversity;
- Policy 4 – Natural Places;
- Policy 5 – Soils;
- Policy 6 – Forestry, Woodland and Trees; and
- Policy 7 – Historic Assets and Places.

5.66 **Policy 3 – Biodiversity** seeks to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks with an outcome of ensuring biodiversity is enhance and better connected. Policy 3 states:

“LDPs should protect, conserve, restore and enhance biodiversity in line with the mitigation hierarchy. They should also promote nature recovery and nature restoration across the development plan area, including by: facilitating the creation of nature networks and strengthening connections between them to support improved ecological connectivity; restoring degraded habitats or creating new habitats; and incorporating measures to increase biodiversity, including populations of priority species.

a) Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.

b) Development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management. To inform this, best practice assessment methods should be used. Proposals within these categories will demonstrate how they have met all of the following criteria:

i. the proposal is based on an understanding of the existing characteristics of the Site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;

ii. wherever feasible, nature-based solutions have been integrated and made best use of;

iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;

iv. significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate; and

v. local community benefits of the biodiversity and/or nature networks have been considered.

c) Proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development. Applications for individual householder development, or which fall within scope of (b) above, are excluded from this requirement.

d) Any potential adverse impacts, including cumulative impacts, of development proposals on biodiversity, nature networks and the natural environment will be minimised through careful planning and design. This will take into account the need to reverse biodiversity loss, safeguard the ecosystem services that the natural environment provides, and build resilience by enhancing nature networks and maximising the potential for restoration”.

5.67 **Policy 4 – Natural Places** seeks to protect, restore and enhance natural assets making best use of nature-based solutions and states:

“LDPs will identify and protect locally, regionally, nationally and internationally important natural assets, on land and along coasts. The spatial strategy should safeguard them and take into account the objectives and level of their protected status in allocating land for development. Spatial strategies should also better connect nature rich areas by establishing and growing nature networks to help protect and restore the biodiversity, ecosystems and natural processes in their area.”

Policy 4

a) Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.

b) Development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an “appropriate assessment” of the implications for the conservation objectives.

c) Development proposals that will affect a National Park, National Scenic Area, Site of Special Scientific Interest or a National Nature Reserve will only be supported where:

i. The objectives of designation and the overall integrity of the areas will not be compromised; or

ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance. All Ramsar sites are also European sites and/or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.

d) Development proposals that affect a site designated as a local nature conservation site or landscape area in the LDP will only be supported where:

i. Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or

ii. Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.

e) The precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance.

f) Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation must be factored into the planning and design of development, and potential impacts must be fully considered prior to the determination of any application

g) Development proposals in areas identified as wild land in the Nature Scot Wild Land Areas map will only be supported where the proposal:

i. will support meeting renewable energy targets; or,

ii. is for small scale development directly linked to a rural business or croft, or is required to support a fragile community in a rural area. All such proposals must be accompanied by a wild land impact assessment which sets out how design, siting, or other mitigation measures have been and will be used to minimise significant impacts on the qualities of the wild land, as well as any management and monitoring arrangements where appropriate. Buffer zones around wild land will not be applied, and effects of development outwith wild land areas will not be a significant consideration”.

5.68 **Policy 5 – Soils** seeks to protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development and states:

“LDPs should protect locally, regionally, nationally and internationally valued soils, including land of lesser quality that is culturally or locally important for primary use.

Policy 5

a) Development proposals will only be supported if they are designed and constructed:

i. In accordance with the mitigation hierarchy by first avoiding and then minimising the amount of disturbance to soils on undeveloped land; and

ii. In a manner that protects soil from damage including from compaction and erosion, and that minimises soil sealing.

b) Development proposals on prime agricultural land, or land of lesser quality that is culturally or locally important for primary use, as identified by the LDP, will only be supported where it is for:

i. Essential infrastructure and there is a specific locational need and no other suitable site;

ii. Small-scale development directly linked to a rural business, farm or croft or for essential workers for the rural business to be able to live onsite;

iii. The development of production and processing facilities associated with the land produce where no other local site is suitable;

iv. The generation of energy from renewable sources or the extraction of minerals and there is secure provision for restoration; and

In all of the above exceptions, the layout and design of the proposal minimises the amount of protected land that is required.

c) Development proposals on peatland, carbon rich soils and priority peatland habitat will only be supported for:

i. Essential infrastructure and there is a specific locational need and no other suitable site;

ii. The generation of energy from renewable sources that optimises the contribution of the area to greenhouse gas emissions reductions targets;

iii. Small-scale development directly linked to a rural business, farm or croft;

iv. Supporting a fragile community in a rural or island area; or

v. Restoration of peatland habitats.

d) Where development on peatland, carbon-rich soils or priority peatland habitat is proposed, a detailed site specific assessment will be required to identify:

i. the baseline depth, habitat condition, quality and stability of carbon rich soils;

ii. the likely effects of the development on peatland, including on soil disturbance; and

iii. the likely net effects of the development on climate emissions and loss of carbon. This assessment should inform careful project design and ensure, in accordance with relevant guidance and the mitigation hierarchy, that adverse impacts are first avoided and then minimised through best practice.

A peat management plan will be required to demonstrate that this approach has been followed, alongside other appropriate plans required for restoring and/ or enhancing the Site into a functioning peatland system capable of achieving carbon sequestration.

e) Development proposals for new commercial peat extraction, including extensions to existing sites, will only be supported where:

i. the extracted peat is supporting the Scottish whisky industry;

ii. there is no reasonable substitute;

iii. the area of extraction is the minimum necessary and the proposal retains an in-situ residual depth of part of at least 1 metre across the whole site, including drainage features;

iv. the time period for extraction is the minimum necessary; and

v. there is an agreed comprehensive site restoration plan which will progressively restore, over a reasonable timescale, the area of extraction to a functioning peatland system capable of achieving carbon sequestration”.

5.69 Policy 6 – Forestry, Woodland and Trees seeks to protect and expand forests, woodland and trees and states:

“LDPs should identify and protect existing woodland and the potential for its enhancement or expansion to avoid habitat fragmentation and improve ecological connectivity, helping to support and expand nature networks. The spatial strategy should identify and set out proposals for forestry, woodlands and trees in the area, including their development, protection and enhancement, resilience to climate change, and the expansion of a range of types to provide multiple benefits. This will be supported and informed by an up to date Forestry and Woodland Strategy.

Policy 6

Development proposals that enhance, expand and improve woodland and tree cover will be supported;

Development proposals will not be supported where they will result in:

Any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition;

Adverse impacts on native woodlands, hedgerow and individual trees of high biodiversity value, or identified for protection in the Forestry and Woodland Strategy;

Fragmenting or severing woodland habitats, unless appropriate mitigation measures are identified and implemented in line with the mitigation hierarchy;

Conflict with Restocking Direction, Remedial Notice or Registered Notice to Comply issued by Scottish Forestry.

Development proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal. Where woodland is removed, compensatory planting will most likely be expected to be delivered.

Development proposals onsite which include an area of existing woodland or land identified in the Forestry and Woodland Strategy as being suitable for woodland creation will only be supported where the enhancement and improvement of woodlands and the planting of new trees on the Site (in accordance with the Forestry and Woodland Strategy) are integrated into the design.

National Planning Guidance

5.70 Planning Advice Notes (PANs) set out detailed advice from the Scottish Government in relation to a number of land use planning topics. Relevant PANs are summarised in **Table 5.1** below.

Table 5.1: Relevant PANs

| Title | Summary of Document |
|--|---|
| PAN 1/2013 Environmental Impact Assessment | Provides information on the role local authorities and consultees play as part of the EIA process, and how the EIA can inform development management. |
| PAN 60 (2000) Planning for Natural Heritage | Advises developers on the importance of discussing their proposals with the planning authority and Scottish Natural Heritage (SNH) (now NatureScot) and use of the EIA process to identify the environmental effects of development proposals and seek to prevent, reduce and offset any adverse effects in ecology and biodiversity. |
| PAN 61 (2001) Sustainable Urban Drainage Systems | Good practice drainage guidance. |
| PAN 75 (2005) Planning for Transport | The objective of PAN 75 is to integrate development plans and transport strategies to optimise opportunities for sustainable development and create successful transport outcomes. |
| PAN 1/2011 Planning and Noise | This PAN provides advice on the role of the planning system in helping to prevent and/ or mitigate any potential adverse effects of noise. It promotes the principles of good acoustic design and promotes a sensitive approach to the location of new development. |
| PAN 2/2011 Planning and Archaeology | The PAN is intended to inform local authorities and other organisations of how to process any archaeological scope of works within the planning process. |

| Title | Summary of Document |
|---|--|
| PAN 51 Planning, Environmental Protection and Regulation (Revised 2006) | Details the role of the planning system in relation to the environmental protection regimes. |

The Local Development Plan and Relevant Policies

5.71 The current Local Development Plan for the area comprises:

- The Highland Wide Local Development Plan (HwLDP) (2012);
- The Inner Moray Firth Local Development Plan (IMFLDP) (2015); and
- Relevant supplementary guidance, particularly the Onshore Wind Energy Supplementary Guidance (OWESG) (2016) and Addendum Supplementary Guidance: Part 2b (2017).

5.72 The following sections provides an overview of the planning policies and SG of relevance to the Proposed Development. The focus is in relation to the HwLDP which contains the relevant development management policies. As noted above, further details of the planning policy framework and discussion as to how the Proposed Development accords with the policy framework are included in the Planning Statement which accompanies the application for consent.

HwLDP Policies

Overview of Relevant Policies

5.73 The policies of most relevance in the HwLDP are set out below. Policy 67 is the lead policy. If there are tensions between policies, then policy 67 should prevail given it is specific to the land use proposed by the Development.

5.74 The policies of most relevance in the HwLDP are as follows:

- Policy 67 – Renewable Energy Developments;
- Policy 57 – Natural, Built, and Cultural Heritage;
- Policy 61 – Landscape;
- Policy 55 – Peat and Soils;
- Policy 58 – Protected Species;
- Policy 59 – Other Important Species; and
- Policy 60 – Other Important Habitats.

5.75 These most relevant policies are set out in full below.

5.76 Other relevant HwLDP policies which need to be taken into consideration include the following (it should be noted that these policies contain matters already covered by the comprehensive scope of Policy 67):

- Policy 28 – Sustainable Design;
- Policy 30 – Physical Constraints;
- Policy 31 – Developer Contributions;
- Policy 56 – Travel;
- Policy 63 – Water Environment;
- Policy 66 – Surface Water Drainage;
- Policy 69 – Electricity Transmission Infrastructure; and
- Policy 70 – Public Access.

5.77 Policy 67 – ‘Renewable Energy Developments’ states:

“Renewable energy development proposals should be well related to the source of the primary renewable resources that are needed for their operation. The Council will also consider:

- *the contribution of the proposed development towards meeting renewable energy generation targets; and*
- *any positive or negative effects it is likely to have on the local and national economy;*

and will assess proposals against other policies of the development plan, the Highland Renewable Energy Strategy and Planning Guidelines and have regard to any other material considerations, including proposals able to demonstrate significant benefits including by making effective use of existing and proposed infrastructure or facilities.

Subject to balancing with these considerations and taking into account any mitigation measures to be included, the Council will support proposals where it is satisfied that they are located, sited and designed such that they will not be significantly detrimental overall, either individually or cumulatively with other developments (see Glossary), having regard in particular to any significant effects on the following:

- *natural, built and cultural heritage features;*
- *species and habitats;*
- *visual impact and impact on the landscape character of the surrounding area (the design and location of the proposal should reflect the scale and character of the landscape and seek to minimise landscape and visual impact, subject to any other considerations);*
- *amenity at sensitive locations, including residential properties, workplaces and recognised visitor sites (in or out with a settlement boundary);*
- *the safety and amenity of any regularly occupied buildings and the grounds that they occupy- having regard to visual intrusion or the likely effect of noise generation and, in the case of wind energy proposals, ice throw in winter conditions, shadow flicker or shadow throw;*
- *ground water, surface water (including water supply), aquatic ecosystems and fisheries;*
- *the safe use of airport, defence or emergency service operations, including flight activity, navigation and surveillance systems and associated infrastructure, or on aircraft flight paths or MoD low-flying areas;*
- *other communications installations or the quality of radio or TV reception;*
- *the amenity of users of any Core Path or other established public access for walking, cycling or horse riding;*
- *tourism and recreation interests; and*
- *land and water-based traffic and transport interests.*

Proposals for the extension of existing renewable energy facilities will be assessed against the same criteria and material considerations as apply to proposals for new facilities.

In all cases, if consent is granted, the Council will approve appropriate conditions (along with a legal agreement/obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, as amended, where necessary), relating to the removal of the development and associated equipment and to the restoration of the Site, whenever the consent expires, other than in circumstances where fresh consent has been secured to extend the life of the project, or the project ceases to operate for a specific period.

The Onshore Wind Energy Supplementary Guidance will replace parts of the Highland Renewable Energy Strategy. It will identify: areas to be afforded protection from wind farms; other areas with constraints; and broad areas of search for wind farms. It will set out criteria for the consideration of proposals. It will ensure that developers are aware of the key constraints to such development and encourage them to take those constraints into account at the outset of the preparation of proposals. It will seek to steer proposals, especially those for larger wind farms, away from the most constrained areas and ideally towards the least constrained areas and areas of particular opportunity. It will also set out criteria which will apply to the consideration of proposals irrespective of size and where they are located, enabling proposals to be considered on their merits. It will seek submission as part of the planning application of key information required for the assessment of proposals and provide certainty for all concerned about how applications will be considered by the Council.”

Policy 57 – ‘Natural, Built and Cultural Heritage’ states:

“All development proposals will be assessed taking into account the level of importance and type of heritage features, the form and scale of the development, and any impact on the feature and its setting, in the context of the policy framework detailed in Appendix 2. The following criteria will also apply:

- 1. For features of local/regional importance we will allow developments if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource.*
- 2. For features of national importance we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource. Where there may be any significant adverse effects, these must be clearly outweighed by social or economic benefits of national importance. It must also be shown that the development will support communities in fragile areas who are having difficulties in keeping their population and services.*
- 3. For features of international importance developments likely to have a significant effect on a site, either alone or in combination with other plans or projects, and which are not directly connected with or necessary to the management of the Site for nature conservation will be subject to an appropriate assessment. Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, we will only allow development if there is no alternative solution and there are imperative reasons of overriding public interest, including those of a social or economic nature. Where a priority habitat or species (as defined in Annex 1 of the Habitats Directive) would be affected, development in such circumstances will only be allowed if the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment, or other reasons subject to the opinion of the European Commission (via Scottish Ministers). Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, the proposal will not be in accordance with the development plan within the meaning of Section 25(1) of the Town and Country Planning (Scotland) Act 1997.*

Note: Whilst Appendix 2 groups features under the headings international, national and local/regional importance, this does not suggest that the relevant policy framework will be any less rigorously applied. This policy should also be read in conjunction with the Proposal map.

The Council intends to adopt the Supplementary Guidance on Wild Areas in due course. The main principles of this guidance will be:

- to provide mapping of wild areas;*
- to give advice on how best to accommodate change within wild areas whilst safeguarding their qualities;*
- to give advice on what an unacceptable impact is; and*
- to give guidance on how wild areas could be adversely affected by development close to but not within the wild area itself.*

In due course the Council also intends to adopt the Supplementary Guidance on the Highland Historic Environment Strategy. The main principles of this guidance will ensure that:

- Future developments take account of the historic environment and that they are of a design and quality to enhance the historic environment bringing both economic and social benefits.*
- It sets a proactive, consistent approach to the protection of the historic environment.”*

5.78 Policy 61 – ‘Landscape’ states:

“New developments should be designed to reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area in which they are proposed. This will include consideration of the appropriate scale, form, pattern and construction materials, as well as the potential cumulative effect of developments where this may be an issue. The Council would wish to encourage those undertaking development to include measures to enhance the landscape characteristics of the area. This will apply particularly where the condition of the landscape characteristics has deteriorated to such an extent that there has been a loss of landscape quality or distinctive sense of place. In the assessment of new developments, the Council will take account of Landscape Character Assessments, Landscape Capacity Studies and its supplementary guidance on Siting and Design and Sustainable Design, together with any other relevant design guidance.”

5.79 Policy 55 – ‘Peat and Soils’ states:

“Development proposals should demonstrate how they have avoided unnecessary disturbance, degradation or erosion of peat and soils.

Unacceptable disturbance of peat will not be permitted unless it is shown that the adverse effects of such disturbance are clearly outweighed by social, environmental or economic benefits arising from the development proposal.

Where development on peat is clearly demonstrated to be unavoidable then The Council may ask for a peatland management plan to be submitted which clearly demonstrates how impacts have been minimised and mitigated.

New areas of commercial peat extraction will not be supported unless it can be shown that it is an area of degraded peatland which is clearly demonstrated to have been significantly damaged by human activity and has low conservation value and as a result restoration is not possible.

Proposals must also demonstrate to the Council’s satisfaction that extraction would not adversely affect the integrity of nearby Natura sites containing areas of peatland.”

5.80 Policy 58 – ‘Protected Species’ states:

“Where there is good reason to believe that a protected species may be present onsite or may be affected by a proposed development, we will require a survey to be carried out to establish any such presence and if necessary a mitigation plan to avoid or minimise any impacts on the species, before determining the application.

Development that is likely to have an adverse effect, individually and/or cumulatively, on European Protected Species (see Glossary) will only be permitted where:

- There is no satisfactory alternative; and*
- The development is required for preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; and*
- The development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.*

Development that is likely to have an adverse effect, individually and/or cumulatively, on protected bird species (see Glossary) will only be permitted where:

- There is no other satisfactory solution; and*
- The development is required in the interests of public health or public safety.*

This will include but is not limited to avoiding adverse effects, individually and/or cumulatively, on the populations of the following priority protected bird species:

- Species listed in Annex 1 of the EC Birds Directive;*
- Regularly occurring migratory species listed in Annex II of the Birds Directive;*
- Species listed in Schedule 1 of the Wildlife and Countryside Act 1981 as amended; and*
- Birds of conservation concern.*

Development that is likely to have an adverse effect, individually and/or cumulatively (see glossary), on other protected animals and plants (see Glossary) will only be permitted where the development is required for preserving public health or public safety.

Development proposals should avoid adverse disturbance, including cumulatively, to badgers and badger setts, protected under the Protection of Badgers Act 1992 (as amended by the Nature Conservation (Scotland) Act 2004.”

5.81 Policy 59 – ‘Other Important Species’ states:

“The Council will have regard to the presence of and any adverse effects of development proposals, either individually and/or cumulatively, on the Other Important Species which are included in the lists below, if these are not already protected by other legislation or by nature conservation site designations:

- Species listed in Annexes II and V of the EC Habitats Directive;
- Priority species listed in the UK and Local Biodiversity Action Plans; and
- Species included on the Scottish Biodiversity List.”

5.82 Policy 60 – ‘Other Important Habitats and Article 10 Features’ states:

“The Council will seek to safeguard the integrity of features of the landscape which are of major importance because of their linear and continuous structure or combination as habitat “stepping stones” for the movement of wild fauna and flora (Article 10 Features). The Council will also seek to create new habitats which are supportive of this concept. The Council will have regard to the value of the following Other Important Habitats, where not protected by nature conservation site designations (such as natural watercourses), in the assessment of any development proposals which may affect them either individually and/or cumulatively:

- Habitats listed in Annex I of the EC Habitats Directive;
- Habitats of priority and protected bird species (see Glossary);
- Priority habitats listed in the UK and Local Biodiversity Action Plans; and
- Habitats included on the Scottish Biodiversity List.

The Council will use conditions and agreements to ensure that significant harm to the ecological function and integrity of Article 10 Features and Other Important Habitats is avoided. Where it is judged that the reasons in favour of a development clearly outweigh the desirability of retaining those important habitats, the Council will seek to put in place satisfactory mitigation measures, including where appropriate consideration of compensatory habitat creation.”

Onshore Wind Supplementary Guidance

5.83 The Council adopted its Supplementary Guidance (OWESG) on wind energy in November 2016 and this now forms part of the statutory Development Plan. Section 1 ‘Introduction’ states: “The advice that follows provides a fuller interpretation of HwLDP policies as they relate to onshore wind energy development. The Council will balance these considerations with wider strategic and environmental and economic objectives including sustainable economic growth in the Highlands, and our contribution to renewable energy targets and tackling climate change...”.

5.84 Section 4 of the SG sets out “key development plan considerations” and the topic headings broadly follow those as set out within Policy 67 of the HwLDP. The topic headings, to which additional guidance is provided, broadly follow those as set out within HwLDP Policy 67 and are summarised as follows:

- Landscape and Visual Effects;
- Safety and Amenity at Sensitive Locations;
- Safety of Airport, Defence and Emergency Service Operations;
- Operational Efficiency of Other Communications;
- Operational Efficiency of Wind Energy Developments;
- The Natural and Historic Environment;
- The Water Environment;
- Peat;
- Trees and Woodland;

- Tourism and Recreation;
- Public Access;
- Traffic and Transport Interests;
- Electricity and Gas Infrastructure;
- Noise Assessment;
- Borrow Pits;
- Mitigation;
- Construction Environmental Management Plans;
- Restoration Bonds; and
- Repowering.

5.85 At paragraph 4.16, the OWESG sets out that “the following criteria set out key landscape and visual aspects that the Council will use as a framework and focus for assessing proposals, including discussions with applicants”. The criteria together with the ‘measures’ for development are as follows:

Table 5.2: Criteria & Framework of 'Landscape and Visual Aspects' in the OWESG

| |
|---|
| <p>Criterion 1: Relationship between Settlements/Key locations and wider landscape respected</p> <ul style="list-style-type: none"> The extent to which the proposal contributes to perception of settlements or key locations being encircled by wind energy development. Development should seek to achieve a threshold where: Turbines are not visually prominent in the majority of views within or from settlements/Key Locations or from the majority of its access routes. |
| <p>Criterion 2: Key Gateway locations and routes are respected</p> <ul style="list-style-type: none"> The extent to which the proposal reduces or detracts from the transitional experience of key Gateway Locations and routes. Development should seek to achieve a threshold where: Wind Turbines or other infrastructure do not overwhelm or otherwise detract from landscape characteristics which contribute the distinctive transitional experience found at key gateway locations and routes. |
| <p>Criterion 3: Valued natural and cultural landmarks are respected</p> <ul style="list-style-type: none"> The extent to which the proposal affects the fabric and setting of valued natural and cultural landmarks. Development should seek to achieve a threshold where: The development does not, by its presence, diminish the prominence of the landmark or disrupt its relationship to its setting. |
| <p>Criterion 4: The amenity of key recreational routes and ways is respected</p> <ul style="list-style-type: none"> The extent to which the proposal affects the amenity of key recreational routes and ways (e.g. Core Paths, Munros and Corbetts, Long Distance Routes etc.) Development should seek to achieve a threshold where: Wind Turbines or other infrastructure do not overwhelm or otherwise significantly detract from the visual appeal of key routes and ways. |
| <p>Criterion 5: The amenity of transport routes is respected</p> <ul style="list-style-type: none"> The extent to which the proposal affects the amenity of transport routes (tourist routes as well as rail, ferry routes and local road access). Development should seek to achieve a threshold where: Wind Turbines or other infrastructure do not overwhelm or otherwise significantly detract from the visual appeal of transport routes. |
| <p>Criterion 6: The existing pattern of Wind Energy Development is respected</p> <ul style="list-style-type: none"> The degree to which the proposal fits with the existing pattern of nearby wind energy development, considerations include: Turbine height and proportions; density and spacing of turbines within developments; density and spacing of developments; typical relationship of development to the landscape; previously instituted mitigation measures; Planning Authority stated aims for development of area. Development should seek to achieve a threshold where: The proposal contributes positively to existing pattern or objectives for development in the area. |
| <p>Criterion 7: The need for separation between developments and/ or clusters is respected</p> <ul style="list-style-type: none"> The extent to which the proposal maintains or affects the spaces between existing developments and/ or clusters Development should seek to achieve a threshold where: The proposal maintains appropriate and effective separation between developments and/ or clusters |
| <p>Criterion 8: The perception of landscape scale and distance is respected</p> <ul style="list-style-type: none"> The extent to which the proposal maintains or affects receptors' existing perception of landscape scale and distance. Development should seek to achieve a threshold where: The proposal maintains the apparent landscape scale and/or distance in the receptors' perception. |

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|---|
| <p>Criterion 9: Landscape setting of nearby wind energy developments is respected</p> <ul style="list-style-type: none"> The extent to which the landscape setting of nearby wind energy developments is affected by the proposal. Development should seek to achieve a threshold where: The proposal relates well to the existing landscape setting and does not increase the perceived visual prominence of surrounding wind turbines. |
| <p>Criterion 10: Distinctiveness of Landscape character is respected</p> <ul style="list-style-type: none"> The extent to which a proposal affects the distinction between neighbouring landscape character types, in areas where the variety of character is important to the appreciation of the landscape. Development should seek to achieve a threshold where: Integrity and variety of Landscape Character Areas are maintained |

5.86 The criteria are addressed in **Chapter 6: Landscape and Visual Amenity** of this EIA Report and also within the supporting Planning Statement.

5.87 Paragraph 4.17 adds that the criteria do not set absolute requirements, but rather seek to ensure developers are aware of key potential constraints to development. Following paragraph 4.17 there is a list of 10 criteria, together with associated thresholds and measures for development. An appraisal of how the Development relates to the criteria in the OWESG is contained within the Planning Statement.

5.88 The OWESG includes Addendum Supplementary Guidance 'Part 2B' which was adopted in December 2017 and provides landscape sensitivity appraisals for 'Black Isle, Surrounding Hills and Moray Firth Coast Caithness'. The Caithness appraisal is of relevance to the Development.

5.89 Paragraph 5.4 adds that Applicants will be expected to "*demonstrate how their proposals align with the conclusions of the assessments, and if they do not, will be expected to demonstrate why they are still appropriate developments*". Paragraph 5.6 however states that it provides "general advice" and 5.7 makes it clear that: "*finding the balance between the benefits of a particular scheme and the impacts it may present will be the subject of careful consideration on a case by case basis at the development management stage*".

Conclusions

5.90 This chapter has set out the legislative background, a summary of the national energy policy framework, and the national and local planning policies and guidance relevant to the consideration of the Proposed Development. It provides an objective summary of the energy and planning policy considerations that have been taken into account in the preparation of the EIA Report in order to ensure that it provides the appropriate information for the consideration of the application for consent.

5.91 As noted, the policy appraisal for the Proposed Development is contained in a separate Planning Statement.