

THE HIGHLAND COUNCIL

**SOUTH PLANNING APPLICATIONS COMMITTEE
17 May 2016**

Agenda Item	7.1
Report No	PLS/036/16

**15/04608/FUL: Nanclach Limited
Tom Nan Clach Wind Farm, Glenferness**

Report by Head of Planning and Building Standards

SUMMARY

Description: Further application to extend the duration of Tom nan Clach Wind Farm, Cawdor, Nairn (permission P/PPA/270/2043) from 3 to 5 years.

Recommendation: GRANT planning permission.

Ward: 19 – Nairn

Development category: Major

Pre-determination hearing: None

Reason referred to Committee: Major development

1.0 PROPOSED DEVELOPMENT

- 1.1 This proposal follows on from a grant of planning permission, on appeal, for a 17 turbine development with an output of 39MW, permission for which will expire on 16 June 2016.
- 1.2 The application is submitted under Regulation 11 of the Town and Country Planning (Scotland) (Development Management Procedures) Regulations 2013. The applicant is seeking a further two years in which to commence the development.
- 1.3 The development is Environmental Impact Assessment development. However, as the change only relates to an extension of time in which to implement the permission, the requirement for an Environmental Statement (ES) has been screened out.
- 1.4 The effect of a grant of a further application is essentially to grant a new planning permission subject to existing conditions, where appropriate, and allowing additional time in which to commence development.

2.0 SITE DESCRIPTION

- 2.1 The wind farm site lies approximately 8km to the northeast of the nearest settlement of Tomatin, 14km south of Cawdor and 16km north-west of Grantown-on-Spey. The application site forms part of the upland land holdings of Cawdor Estate, an area used principally for grouse shooting, although part of the application site, required for the access track, is owned by the neighbouring Lethan Estate.
- 2.2 The proposed wind farm and access track lie within the catchment of the River Findhorn. The wind farm site includes several small watercourses; Allt a Choire Buidhe, Caochan a Ghibhais and Allt a Choire that flow north-west to the Findhorn and the Allt Carn an t-Sean Liathanaich and Allt an t-Slugain Mhoir, tributaries of the Rhilean Burn, that flow north to the Findhorn 8km upstream. The access track crosses the Rhilean Burn, Leonach Burn and the Tomlachan Burn which all drain to the north. The predominant habitat on the site is blanket bog, a priority habitat under the EC 'Habitats' Directive.
- 2.3 There are no statutory natural heritage designations on the site. However, parts of the site, for example those areas adjacent to the principal watercourses and the young pine woodland areas adjacent to the borrow pit search area A, are likely to support otter and wildcat respectively, both of which are European Protected Species (EPS). In addition, the habitat is likely to support breeding peregrine, golden plover and merlin, which are protected under the EC Birds Directive, as well as providing foraging for hen harrier, golden eagle and red kite. Black grouse lek sites have been known to exist within the site and surveys have identified some suitable habitat around the borrow pit search area A.
- 2.4 There are a number of statutory designated sites in the wider area (i.e. within 10 km of the proposed wind farm).
- 2.5 The wind farm site is located on a landscape character type described as 'open uplands' in the Moray and Nairn Landscape Character Assessment (SNH, 1998) and on the edge of the 'rolling uplands' character type described in the Inverness District Landscape Character Assessment (SNH, 1999). The character of the site as a whole could be succinctly described as a remote undulating area of unenclosed upland moorland.
- 2.6 The site lies within the Drynachan, Lochindorb and Dava Moor Special Landscape Area (SLA).
- 2.7 The boundary of the National Park is approximately 6km and the Cairngorm Mountain National Scenic Area (NSA) 21km south-east/south of the site respectively.

3.0 PLANNING HISTORY

- 3.1 30.08.2010 - Planning permission refused for 17 wind turbine proposal (09/00439/FULIN).
- 3.2 14.06.2013 - Planning permission granted for 17 wind turbine proposal on appeal (PPA-270-2043).
- 3.3 The Reporter granted planning permission summarising his decision as follows:

1. In respect of the Development Plan:

- Overall, the proposal would be consistent with the policies of the development plan. Policy 67 of the HWLDP supports renewable energy development in locations such as the appeal site where there is a good wind resource, provided impacts would not be significantly detrimental.
- Here the compact arrangement and remote siting would limit the significance of the impacts on the sensitive areas of the national park and the pSLA. There would be no conflict with policy 57 of the HWLDP.
- There would be no significant consequences for protected species or habitats. Policies 58 and 60 of the HWLDP would not therefore be breached.

And, for these reasons, The Reporter considered that approval of the proposed development would be consistent with the development plan as a whole.

2. With regard to other material considerations:

- The site is outside the national park. The park's setting would not be unduly harmed either by this development alone or in conjunction with existing or planned wind farms (excepting Glenkirk).
- The impact on tourism would probably be low.

The Reporter considered that other matters had been addressed by the Environmental Statement and, subject to conditions protecting the environment and local amenity there were no overriding reasons to refuse the appeal.

- 3.4 13.04.2015 - Proposal of Application Notice received in relation to the extension of time duration for the 17 turbine scheme (15/01404/PAN).
- 3.5 26.01.2016 - Planning permission refused for erection of 13 wind turbines, including site tracks, crane hardstanding, 80m permanent anemometer mast, substation compound, temporary construction compound and provision for 3 onsite borrow pits (15/03286/FUL).
- 3.6 14.03.2016 - Appeal lodged in respect of the decision to refuse planning permission for application 15/03286/FUL (PPA-170-2150).
- 3.7 The Report on the original application (09/00439/FULIN), and the accompanying Policy Report, is contained within Appendix 2. The Scottish Minister's decision on the appeal is contained within Appendix 3.

4.0 PUBLIC PARTICIPATION

4.1 Advertised: The application was advertised as Schedule 3 development in the Nairnshire Telegraph and Inverness Courier.

Representation deadline: 03 May 2016

Representations against:	11
Comments:	0
Representations in support:	0

4.2 Material considerations raised are summarised as follows:

- The status/importance of the landscape is recognised by a local designation as a Special Landscape Area (SLA)
- Landscape and visual impact undervalued at time of original appeal decision
- Planning policy framework has changed
- Importance of the peat environment
- Principle of development
- Impacts on landscape and visual amenity, wildlife and cultural heritage

4.3 Non-material considerations raised are summarised as follows:

- Transmission network matters

4.4 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam.

5.0 CONSULTATIONS

5.1 Cawdor and West Nairnshire Community Council support this application. It's response concludes:

'It has previously been identified that there will be huge local economic benefits from this scheme during construction and operation. Investigation works are already underway and therefore it [sic] the clear intention that the wind farm will be built. There is no change in the visual amenity or indeed any other factor and this application is merely an opportunity to offer the developer more time to comply with the rigours of the conditions associated with the development. We therefore urge the Highland Council to approve the application to extend the duration of the planning application for Tom nan Clach Wind Farm.'

5.2 East Nairnshire Community Council has not responded.

5.3 Dulnain Bridge and Vicinity Community Council has not responded.

5.4 Grantown on Spey Community Council has not responded.

5.5 Strathdearn Community Council object for the reasons stated in Community

Council's original objection to the wind farm dated 20 August 2009.

5.6 Carrbridge Community Council has not responded.

5.7 Scottish Environment Protection Agency (SEPA) has no objection.

5.8 Scottish Natural Heritage (SNH) has no comment to make on the proposal.

6.0 DEVELOPMENT PLAN POLICY

6.1 The following policies are relevant to the assessment of the application:

Highland Wide Local Development Plan (April 2012)

Policy 28	Sustainable Development
Policy 29	Design, Quality and Place Making
Policy 53	Minerals
Policy 51	Trees and Development
Policy 55	Peat and Soils
Policy 56	Travel
Policy 57	Natural, Built and Cultural Heritage
Policy 58	Protected Species
Policy 59	Other Important Species
Policy 60	Other Important Habitats
Policy 61	Landscape
Policy 63	Water Environment
Policy 64	Flood Risk
Policy 67	Renewable Energy <ul style="list-style-type: none">• Natural, Built and Cultural Heritage• Other Species and Habitat Interests• Landscape and Visual Impact• Amenity at Sensitive Locations• Safety and Amenity of Individuals and Individual Properties• The Water Environment• Safety of Airport, Defence and Emergency Service Operations• The Operational Efficiency of Other Communications• The Quantity and Quality of Public Access• Other Tourism and Recreation Interests• Traffic and Transport Interests
Policy 72	Pollution
Policy 77	Public Access

Inner Moray Firth Local Plan (July 2015)

6.2 The Inner Moray Firth Local Plan does not contain any specific policies on on-shore wind energy development. The Inner Moray Firth Local Plan does however define the extent of the Drynachan, Lochindorb and Dava Moor Special Landscape Area (SLA) that is relevant to consideration of Policy 61 and Policy 67 of the Highland wide Local Development Plan (April 2012).

Supplementary Guidance

6.3 The following Supplementary Guidance forms a statutory part of the development plan and are considered pertinent to the determination of this application:

- Flood Risk and Drainage Impact Assessment (January 2013)
- Highland Historic Environment Strategy (March 2013)
- Managing Waste in New Developments (March 2013)
- Sustainable Design Guide (January 2013)
- Trees, Woodlands and Development (January 2013)
- Highland Statutorily Protected Species (March 2014)

7.0 OTHER RELEVANT PLANNING POLICY

Onshore Wind Energy: Draft Supplementary Guidance (September 2015)

7.1 This document provides additional guidance on the principles set out in Policy 67 – Renewable Energy Developments of the Highland-wide Local Development Plan and reflects the updated position on these matters as set out in Scottish Planning Policy. Once finalised, the document will include an assessment of landscape/visual sensitivity for those areas most under pressure from on-shore wind development. At this stage, the draft document is a material consideration in the determination of planning applications but the weight attached to it should reflect its draft status. It is anticipated that the document will be adopted mid-2016.

Highland Renewable Energy Strategy (HRES) (May 2006)

7.2 While superseded in many respects by the Draft Supplementary Guidance noted above, HRES is still relevant as a strategy document. HRES sets out the Council's on-shore wind energy installed capacity targets. These are 1200MW by 2015, 1400MW by 2020 and 2900MW by 2050.

7.3 HRES policies relevant to the current application, not otherwise superseded by the above noted Supplementary Guidance, include:

- Policy H1 Education and Training
- Policy K1 Community Benefit
- Policy N1 Local Content of Works

Scottish Government Planning Policy and Guidance (June 2014)

7.4 The Scottish Government published its updated policy statement and advice in June 2014. It advances principal policies on Sustainability and Place-making, and subject policies on A Successful, Sustainable Place; A Low Carbon Place; A Natural, Resilient Place; and A Connected Place. It also highlights that the Development Plan continues to be the starting point of decision making on planning applications. The content of the SPP is a material consideration that carries significant weight, although it is for the decision maker to determine the appropriate weight to be afforded to it in each case.

7.5 SPP contains a general support for onshore wind development. It requires Planning Authorities to progress, as part of the Development Plan process, a spatial framework identifying areas that are most likely to be most appropriate for onshore wind farms as a guide for developers and communities.

7.6 In addition to the above, the Scottish Government sets out further advice on Renewable Energy in a number of documents and web based information that is regularly updated including: -

- National Planning Framework for Scotland 3
- PAN 1/2011 Planning and Noise PAN
- 1/2013 Environmental Impact Assessment PAN 60 – Planning for Natural Heritage
- Scottish Government policy on Woodland Removal
- 2020 Routemap for Renewable Energy & updates
- Onshore Wind Turbines
- Wind Farm developments on Peat Lands

8.0 PLANNING APPRAISAL

8.1 Section 25 and of the Town and Country Planning (Scotland) Act 1997 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise.

Determining Issues

8.2 The determining issues are:

- do the proposals accord with the development plan?
- if they do accord, are there any compelling reasons for not approving them?
- if they do not accord, are there any compelling reasons for approving them?

Planning Considerations

8.3 This proposal relates to a request to extend the period in which to satisfy the conditions of the existing permission and commence development on site. There is no material amendment proposed to the development that was granted permission on appeal in 2013. The key consideration relates to the policy framework in which the development must now be considered.

Development Plan

8.4 When application 09/00439/FULIN was considered on appeal, the Development Plan framework consisted of the Highland Structure Plan (2001) and the Nairnshire Local Plan. There were no specific policies relating to wind energy development in this latter plan.

8.5 The current Development Plan comprises the adopted Highland wide Local Development Plan (HwLDP) and the Inner Moray Firth Local Plan (2015). There are no site specific policies affecting this application site within the Inner Moray

Firth Local Plan either. However, this plan does confirm the Drynachan, Lochindorb and Dava Moor Special Landscape Area (SLA) designation which, had previously been identified as a proposed Area of Great Landscape Value (pAGLV) within the Highland Structure Plan.

- 8.6 The HwLDP recognises the potential for renewable energy development in Highland. Policy 67 (Renewable Energy Developments) of the Highland-wide Local Development Plan gives general support to this type of renewable energy development and is the key policy consideration in assessing wind energy development. However, various considerations and safeguards are built into the policy wording. Policies 28 (Sustainable Design), 57 (Cultural and Built Heritage), 58 (Protected Species) and 61 (Landscape) are all relevant to this application and require to be given due weight. These are very similar provisions to that identified within the Highland Structure Plan; in particular Policies E2, G2, BC1, G6, N1, and L4.
- 8.7 Under either framework, where development is located, sited and designed in such a way as not to be **significantly detrimental**, either individually or cumulatively with other developments, proposals would accord with the Development Plan.
- 8.8 There is no doubt that the weight to be afforded to the SLA is now greater than that afforded to the pAGLV by the Reporter. However, the Council's approach to the designation within the Report, and during the subsequent Appeal, was to give the pAGLV significant weight. The Council's position was that the development was incompatible with the designation. Nevertheless, the Reporter considered that the development did not have a significant adverse impact on this local landscape designation.
- 8.9 Notwithstanding confirmation of the status of the pAGLV as an SLA, the content within the policy framework remains unchanged from the time that the original planning application was considered and granted. The principle of the development is now firmly established as part of the planning history of the application site. The proposal does not introduce any other matters that require to be tested against the Development Plan.

Supplementary Guidance

- 8.10 Following the publication of SPP, in June 2014, the Council reviewed its Supplementary Guidance. The 2015 draft Onshore Wind Energy Supplementary Guidance is a material consideration in the determination of planning applications; the weight to which can be afforded should be reflective of its draft status.
- 8.11 The site falls within a Group 2 'area of significant protection.' The reason for this is the peat environment. The guidance expands on the considerations/criteria set out within the Development Plan, including potential for development within the peat environment. In other words, development is possible.
- 8.12 The Dava Moor area will be included in the ongoing landscape sensitivity work related to this guidance. In this context, in so far as it remains an extant planning permission, the 17 turbine Tom nan Clach development will be considered as a

committed scheme and be considered as part of the established pattern of development within the area.

National Policy

- 8.13 As indicated above, in addition to the change in Development Plan policy, Scottish Planning Policy was also revised in 2014. In this same year, National Planning Framework 3 replaced the previous version.
- 8.14 These documents reinforce the importance of renewable energy development. The Scottish Government now has a target of 50% of Scotland's electricity demand generated from renewable resources by 2015 and 100% of demand by 2020. This is significantly higher than previous ambitions. Other notable changes included the requirement to protect wild land areas, identified by SNH, and the need to minimise impacts on the peat environment.

Other material considerations

- 8.15 Subject to the satisfaction of a number of pre-commencement conditions, development could commence on site. The applicant is committed to developing the proposal, has the necessary funding to do so, and is currently in the process of seeking to satisfy the conditions of the permission. It is anticipated that this will be progressed prior to the expiration of the permission.

9.0 CONCLUSION

- 9.1 The Council did not support this development. However, it was granted planning permission by Ministers following a Public Local Inquiry. This decision took into account the relevant national and Development Plan Policy at that time.
- 9.2 The national policy position has not substantially changed since this decision other than to strengthen the desire to achieve increased capacity targets. There is no impact on wild land areas arising from the proposal. Policy does not preclude development within the peat environment.
- 9.3 The most significant change in Development Plan Policy is the confirmation of the Drynachan, Lochindorb and Dava Moor Special Landscape Area. There is no doubt that more weight can now be attributed to this landscape designation. It is unknown whether the Reporter would look at this differently now, yet what we are left with is a decision that confirms that Tom nan Clach is committed development and one that remains capable of implementation provided the pre-commencement conditions are purified before the permission expires. This is a significant material consideration.
- 9.4 It is considered that the weight to be given to this significant material consideration is a compelling reason to set aside the provisions of the Development Plan.

10.0 RECOMMENDATION

It is recommended the application be **GRANTED** subject to the conditions previously imposed but with a Direction requiring development to commence within 2 years.

Designation: Head of Planning & Building Standards

Author: David Mudie (01463) 702255

Date: 21 March 2016

Background Papers: Documents referred to in report and in case file.

THE HIGHLAND COUNCIL

INVERNESS, NAIRN, BADENOCH AND STRATHSPEY PLANNING APPLICATIONS COMMITTEE 23 August 2010

Agenda Item	
Report No	

APPLICATION FOR PLANNING PERMISSION FOR CONSTRUCTION OF A 17 TURBINE WIND FARM, ASSOCIATED ACCESS TRACKS AND BORROW PITS ON LAND APPROXIMATELY 8KM NORTHEAST OF TOMATIN – ‘THE TOM NAN CLACH WIND FARM’ 09/00439/FULIN

Report by Head of Planning and Building Standards

SUMMARY

Description: The proposal is a 17 turbine development with installed capacity of 39.1MW on land within the Cawdor Estate approximately 8km northeast of Tomatin. The turbines will be a maximum of 110m to blade tip in height. Access will be taken from the B9007.

Recommendation: **REFUSE** planning permission.

Wards: 19 – Nairn

Development category: Major Application

Pre-determination hearing: Yes – combined with Glenkirk

Reason referred to Committee: More than 5 objections

1.0 PROPOSAL

- 1.1 It is proposed to erect 17 wind turbines each of up to 2.3MW power rating (39.1MW in total) and associated infrastructure including control building, sub-station, cabling, access tracks, watercourse crossings, hard standings, borrow pits, and a permanent wind monitoring mast.
- 1.2 The proposed wind turbines will have a maximum tower height of 75 metres and overall height of 110 metres to blade tip (giving a rotor diameter of 70m). A 75 metre high anemometry mast is proposed adjacent to turbine 5. The candidate turbine for the purposes of noise impact is given as the Enercon E-70.
- 1.3 Access to the site will be from a new junction on the B9007. This access road will be around 12km in length and involve the construction of four separate main watercourse crossings. The track will have a typical running surface width of 5m. The junction on the B9007 and the first 100m of the access track will be finished

in tarmac (Figure 5.1).

- 1.4 The power produced by the turbines will be fed to a control building, located at the south western edge the site. Only indicative details of the proposed control building have been given but the proposed compound will measure approximately 60m x 40m. In addition to the control building the substation compound would consist of a maintenance building and an auxiliary transformer. The control room building would house switchgear, control and monitoring computers, limited office accommodation and welfare provision. Cabling connecting wind turbines to switch rooms and the substation is to be laid alongside tracks.
- 1.5 No detail of grid connection has been provided but the connection, as well as the transformer, is likely to be subject of a separate application under section 37 of the Electricity Act 1989.
- 1.6 It is proposed that stone sourced from a local quarry will provide the necessary crushed rock for the access track up to the Leonach burn and thereafter it is proposed to use stone extracted from two on-site borrow pits; the Eastern Borrow Pit located approximately 3km to the east of the turbines on the northern flank of Carn a Gharbh-ghlaic and the Central Borrow Pit located approximately 1km to the east of the wind farm (Figure 5.1).
- 1.7 The Eastern Borrow Pit will measure approximately 100m x 90m (0.7 ha) and the Central Borrow Pit will measure approximately 285m x 165m (3.2 ha). It is estimated that approximately 50,000m³ of solid rock from the Eastern Borrow Pit and 87,500 m³ of solid rock from the Central Borrow Pit will be required to construct the wind farm (tracks and access road, construction compound, concrete, substation compound, hard-standings and passing bays).
- 1.8 The application has been made by Nan Clach Limited, a consortium between the landowner, Cawdor Estates, and Infinergy.

2.0 SITE DESCRIPTION

- 2.1 The wind farm site lies approximately 8km to the northeast of the nearest settlement of Tomatin, 14km south of Cawdor and 16km north-west of Grantown-on-Spey (Figure 1.1). The application site forms part of the upland land holdings of Cawdor Estate, an area used principally for grouse shooting, although part of the application site, required for the access track, is owned by the neighbouring Lethan Estate.
- 2.2 The proposed wind farm and access track lie within the catchment of the River Findhorn. The wind farm site includes several small watercourses; Allt a Choire Buidhe, Caochan a Ghibhais and Allt a Choire that 1.5km flow north-west to the Findhorn and the Allt Carn an t-Sean Liathanaich and Allt an t-Slugain Mhoir, tributaries of the Rhilean Burn, that flow north to the Findhorn 8km upstream. The access track crosses the Rhilean Burn, Leonach Burn and the Tomlachan Burn which all drain to the north. The predominant habitat on the site is blanket bog, a priority habitat under the EC 'Habitats' Directive.

2.3 There are no statutory natural heritage designations on the site. However, parts of the site, for example those adjacent to the principal watercourses, are likely to support otter which is a European Protected Species (EPS). In addition, the habitat is likely to support breeding peregrine, golden plover and merlin, which are protected under the EC Birds Directive, as well as providing foraging for hen harrier.

2.4 There are a number of statutory designated sites in the wider area (i.e. within 10 km of the proposed wind farm):

Carn nan Tri-Tighearnan Sites of Special Scientific Interest (SSSI)/Special Area of Conservation (SAC) (NH 83292 38819) is the nearest statutory designated site for nature conservation and is approximately 1.3 km to the northeast of proposed wind farm and 2 km to the northeast of the proposed access track. The qualifying interests of the site are Blanket Bog and upland habitats including sub-alpine dry heaths;

Slochd SAC (NH 82159 27049) is approximately 7.5 km south of the wind farm and 9 km south of the access track. The qualifying interests of the site are European Dry Heath;

Kinveachy Forest SSSI, Special Protection Area (SPA) and SAC (NH 85744 17432) (NH849 169) is approximately 12 km to the south of the wind farm and 13.5 km south of the access track. The qualifying interests of the site is Capercaillie;

Cawdor Wood SSSI (NH84882 48667) is situated approximately 12 km to the north of the wind farm and 10.5 km north of the access track;

Moidach More SSSI/SAC (NJ 03452 41634) is approximately 16 km northeast of the wind farm and 8 km northeast of the access track;

The Allt A'Choire SSSI lies approximately 500m from the access track. This has been designated for its geomorphology value;

Findhorn Terraces SSSI, the highest set of river terraces in Scotland, is approximately 1 km from the nearest wind turbine and approximately 1.4 km from the proposed access track.

2.5 The wind farm site is largely located on a landscape character type described as 'open uplands' in the Moray and Nairn Landscape Character Assessment (SNH, 1998) with two turbines (T1 & T2) on the edge of the 'rolling uplands' character type described in the Inverness District Landscape Character Assessment (SNH, 1999). The character of the site as a whole could be succinctly described as a remote undulating area of unenclosed upland moorland.

2.6 The site lies within the proposed Drynachan, Lochindorb and Dava Moor Area of Great Landscape Value (AGLV) (Drynachan, Lochindorb and Dava Moor Special Landscape Area (SLA)).

- 2.7 There are five scheduled monuments within 10km of the development that the proposed turbines would be visible from; Edinchat (Cairn) 4.5km to the south-west, Soilsean (township and hut circle) 7.5km south south-west and Alltlaigh (farmstead) 6.5km to the south-east, Burnside Bridge approximately 8km to the north-east and Lochindorb Castle situated within Lochindorb approximately 8km to the south-east. There are three Inventory garden and design landscapes sites with 35km; Cawdor Castle, Leys Castle and Castle Grant.
- 2.8 While the nearest settlement is the village of Tomatin, approximately 8km to the south west, the nearest residential property to the proposed turbines is at 'Ballachrochin' which is 1400m to the north of Turbine 6.
- 2.9 The boundary of the National Park is approximately 6 km south-east of the site.

3.0 SITE HISTORY

- 3.1 There is no planning history associated with this application.
- 3.2 The following wind energy projects are within a 35km radius of this proposed wind farm:-

Farr (Highland – 12 km)
Dunmaglass (Highland – 25km)
Glenkirk (Highland – 0.5km)
Berryburn (Moray – 23km)
Paul's Hill (Moray – 25km)
Rothes (Moray – 34km)
Findhorn (Moray – 34km)
Broombank Farm (Moray – 21km)

4.0 PUBLIC PARTICIPATION

- 4.1 The proposal was advertised in the Inverness Courier and Edinburgh Gazette on 24 July 2009, again on 28 August 2009 when the addendum to the Environmental Statement was submitted, for the second addendum to the Environmental Statement on 11 December 2009 and again for the third addendum on 30 April 2010.
- 4.2 In total 1079 timeous and 43 non-timeous representations against the proposal have been received; including Grantown on Spey & Vicinity Community Council, Nairn River Community Council, Dulnain Bridge and Vicinity Community Council, Fergus Ewing MSP, Findhorn District Salmon Fishery Board, The Royal Society for the Protection of Birds, Ramblers Scotland and The Scottish Rights of Way and Access Society. A list of all timeous objectors is provided in Annex 1. Also included in this list is one letter of comment from Visit Scotland.
- 4.3 In summary, the **main grounds of objection against** the grant of planning permission are as follows:
1. Adverse impact on wildlife (golden plover, salmon, merlin, golden eagle, hen-

- harrier, osprey and peregrine falcon in particular)
2. Adverse impact on landscape qualities (particularly remoteness/wilderness)
 3. Adverse impact on visual amenity
 4. Adverse impact on the historic and special qualities of Lochindorb
 5. Negative effect on experience of area for the recreational user
 6. Adverse impact upon tourism and thereby the economy
 7. Unacceptable cumulative impacts with Glenkirk and other wind farms
 8. Potential need for additional pylon grid connections
 9. Adverse noise impact
 10. Potential for peat slide
 11. Impact upon water courses, quality and flooding
 12. Damage to carbon storing peat bog
 13. General misgivings of on-shore wind energy, including:-
 - Need
 - Government policy
 - Economic viability
 - Greenhouse gas emissions
 - Alternatives including off-shore
 14. Perceived devaluation of property prices*
 15. Contrary to the policies contained within the Highland Structure Plan
 16. Contrary to the Highland Renewable Energy Strategy & Planning Guidelines
 17. Road safety
 18. Inadequate EIA

* This is not a material planning consideration

4.4 127 letters, cards and e-mails of support have been received. These parties are listed in Annex 2.

4.5 In summary, the **main grounds of support** are as follows:

1. Clean, green and positive alternative to power
2. Create employment
3. May result in direct financial benefit to the community
4. Acceptable in terms of visual amenity/landscape impact
5. Contribute to renewable energy targets
6. Make positive contribution to tourism

All letters of representation are available for inspection in the Planning and Development Service at Council Headquarters, Glenurquhart Road, Inverness and will be available at the meeting.

5.0 CONSULTATIONS

5.1 Strathdearn Community Council objects on to the application. The reasons given are:

- Direct impacts on the environment at the site and scarring from wide access tracks.
- Visual impacts detracting from the quality of the landscape around

Strathdearn and Dava Moor.

- Lack of a clear expression on how and where the grid connection from this application would be made.
- Serious concern over the consequence of The Highland Council approving infrastructure for the current application for 17 turbines which could then make a further application based on the original proposal for 51 turbines more likely.
- Serious concerns regarding the cumulative impacts in the event of the proposed Glenkirk windfarm (for 31 turbines) proceeding. The proposed route to Tom nan Clach was noted as potentially also facilitating access for the proposed Glenkirk site located adjacent to Tom nan Clach and other sites in the vicinity.
- Flawed expectations in high level policy and strategies on the ability of large scale onshore windfarms to contribute to national energy needs in a sustainable, reliable and cost-effective way.

- 5.2 Carrbridge Community Council object to the development as in its view the construction traffic would have an adverse impact upon road safety, that the existing presumption against development should be respected (HRES/AGLV) to preserve the outstanding natural wilderness qualities of the area and on the basis that it will have an unacceptable economic impact through reduction in tourism revenue. The Community Council also has concerns regarding the technical adequacy of the submissions, cumulative impact with Glenkirk (shared access) and the future restoration of the site.
- 5.3 Cawdor and West Nairnshire Community Council state that two out of the seven Community Councillors object to the proposals with the other five supporting the development with reservations. These reservations relate to the peat environment and the cumulative effect of wind energy developments in the area – particularly the visual effect of these from Lochindorb and surroundings.
- 5.4 Nairn West Community Council has commented on community benefit and the need for a Highland fund, the impact on the development on the Nairnshire Challenge (positive in terms of potential sponsorship and negative in terms of impact on scenery) and opportunities to encourage access and recreation within the site.
- 5.5 Nairn East Community Council has received no letters of representation and therefore considers there is not an issue with this application but comments on the need for the Community Council to be included in any community benefit discussion, the need for road improvements on the B9007 and the need for the developer to commit to using local contractors/business.
- 5.6 TEC Services (Roads and Transportation) agree with the measures proposed to mitigate the impact of the development contained within the Environmental Statement but consider that in addition to this the applicant should put in place a bond under Section 96 of the Roads (Scotland) Act 1984, including before and after road condition surveys. Conditions covering survey work, subsequent road improvements required and traffic management measures are requested.

- 5.7 TEC Services (Environmental Health) has no objection subject to conditions; in particular a condition requiring a night-time noise limit of 38dB(A) and quiet waking hours of 35dB(A).
- 5.8 Council Archaeology Unit advises that the development is situated in an area where there are only a few visible archaeological/historic features but that there is still potential for impacts on unburied remains. Mitigation in the form of surveying and marking out the remains of two historic settlements identified to protect them from construction is recommended. This mitigation can be secured by condition.
- 5.9 Council Access Officer advises that a condition is attached to any planning permission to allow for continuing public access.
- 5.10 Scottish Water advises that its assets are not affected.
- 5.11 Scottish Environment Protection Agency (SEPA) has no objection to the proposal subject to conditions to control and require additional details on construction methodology through amongst other things production of an environmental management plan that will also include a peat management plan.
- 5.12 Scottish Natural Heritage (SNH) initially objected to the development as a result of the likely impact of the access track on the Allt a'Choire SSSI. The third addendum has addressed this objection.

Given this, SNH advice is that the wind farm development will not impact on the notified interests of the adjacent protected sites (Carn nan Tri Tighearnan SSSI and SAC, Findhorn Terrace SSSI, Allt A'Choire SSSI and Allt na Feithe Sheilich SSSI).

SNH recommends that pre-commencement surveys be undertaken for otter, wildcat and water-vole.

With regard to birds, SNH advises that the development, on its own or in combination with other developments, will not have a significant impact on the national population of any protected species however advises that the loss or displacement of any breeding pairs of golden plover is likely to have a significant effect on the population of this species within the Central Highland Natural Heritage Zone. SNH recommends that measures to safeguard nesting plovers be secured by condition. SNH notes that a proposed habitat management plan is to include management for golden plover but advise that this requires further consideration to provide meaningful outcomes; again to be controlled by condition.

On the matter of landscape and visual impact assessment, SNH believes the ES to be a clear, robust assessment and generally agree with the findings. SNH states that 'whilst there would be significant effects on the Lochindorb AGLV/pAGLV designation, we agree with the concluding assessment contained within the ES that the wind farm appears marginal to the main core of the AGLV/pAGLV, that significant impacts would be localised and the wind farm would not dominate the much wider extent of the designation area.'

In relation to cumulative landscape and visual impact, SNH is of the view that the development of both Glenkirk and Tom nan Clach would increase the severity of residual landscape and visual impacts and would exceed the capacity of the combined site. The reasons for this appear to relate more to the impacts of the proposed Glenkirk wind farm and in particular the extent of it (the spread) of development compared to the relatively compact design of Tom nan Clach. SNH recommends that should both schemes go ahead that access be shared or rationalised.

Subject to conditions relating to mitigation, SNH has no objection.

- 5.13 Scottish Executive Trunk Road Network Management Division has no comment.
- 5.14 Scottish Executive Environment Group (Climate Change and Water Industry Directorate) advises that the developers should ensure that there is no significant impact on the water environment during and after construction.
- 5.15 Health and Safety Executive has no comment.
- 5.16 Historic Scotland advises that the proposals will not have any significant impact on the setting of any scheduled ancient monument. With regard to the impact on Lochindorb Castle, following a review of the visualisations (VP23 in particular), it advises:

“The monument is a well-preserved example of a high medieval aristocratic residence, which is likely to have been located with reference to extended hunting grounds in the area. The primary aspect of its setting is a location in a c.3km wide ‘bowl’ centred approximately on the loch. The wider landscape visible to the east and west of the loch is likely to represent part of the wider hunting grounds of the castle.

Having considered the enclosed visualisations, the turbines will be directly visible on the skyline to the west of the development. However, we consider that appreciation of the relationships of the castle to the wider landscape (including the likely hunting grounds) will not be significantly impacted by the visible elements of the wind farm. The turbines will be visible in the distant backdrop to the castle, but only from relatively limited arcs of view within the area of the loch. Therefore, the latest visualisations do not alter our initial view of the impact of the proposed development on the setting of the castle.

We have also considered the potential cumulative impact of the development in concert with that of Glenkirk wind farm. Given the relatively similar location of the Glenkirk development, we believe that the cumulative impact on the setting of Lochindorb Castle likely to be low.”

- 5.17 The Cairngorm National Park Authority (CNPA) objects to the proposal; principally in relation to cumulative impact.

While the CNPA has less concern with Tom Nan Clach in isolation it has serious

reservations that if wind farms at Tom Nan Clach and Glenkirk receive permission that this would lead to a major adverse visual impact on the Park to the detriment of the enjoyment for residents and visitors and therefore be contrary to the first aims of the Park which are to conserve and enhance the natural and cultural heritage of the area.

The CNPA is concerned that the cumulative impact of wind farm proposals to the north and west of the Park boundary is such that it would restrict the ability of raptors (golden eagle, merlin, red kite and white tailed eagle) to colonise the Park from areas outwith the area and therefore hinder the ability of populations outwith the Park to reinforce those within the Park. The CNPA is also concerned regarding the dispersal of species both within and outwith the Park as a result of the cumulative effect of wind farms.

The CNPA also raises issues relating to the quality of visual information for the purposes of assessment and the lack of a national strategy for the location of wind farms.

- 5.18 National Air Traffic Services Limited (NATS) has no safeguarding objection to the application.
- 5.19 Civil Aviation Authority (Directorate of Airspace Policy) advise that aviation obstruction lighting may be required.
- 5.20 Highlands and Islands Airports Ltd has no objection to the proposals.
- 5.21 Ministry of Defence has no objection provided that the turbines do not exceed 110m to blade tip and advises that aviation lighting will be required.
- 5.22 Ofcom has found that no civil fixed links should be affected by the proposal.

All consultation responses are available for inspection in the Planning and Development Service at Council Headquarters, Glenurquhart Road, Inverness and will be available at the meeting.

6.0 ASSESSMENT

- 6.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan in this case comprises the Highland Structure Plan (approved March 2001) and the Nairnshire Local Plan (December 2000).

Determining Issues

- 6.2 The determining issues are:

- do the proposals accord with the development plan?;
- if they do accord, are there any compelling reasons for not approving them?
- if they do not accord, are there any compelling reasons for approving them?

Planning Considerations

- 6.3 In order to address the determining issues, the Committee must consider a) compliance with the development plan policy, b) compatibility with national policy, c) compatibility with the Highland Renewable Strategy and Planning Guidelines, d) airport safeguarding, e) roads and transport, f) peat stability, construction impacts and pollution control generally, g) noise, h) the impact on natural heritage, i) the impact on built and cultural heritage, j) the visual impact and impact upon landscape resource, k) the impacts on the local economy but particularly tourism and l) any other material considerations.

Development Plan Policy

- 6.4 The Development Plan is based on policies of sustainability including the use of resources to produce renewable energy. Indeed Policy E2 (Wind energy developments) of The Highland Structure Plan supports this type of renewable energy development and is the key policy consideration in assessing this application. However, various safeguards are built into the policy wording. In addition, Policies G2 (Design for sustainability), G6 (Conservation and promotion of Highland heritage), L4 (Landscape character), and T6 (Scenic Views) are all relevant in this regard and require to be given due weight.
- 6.5 The Nairnshire Local Plan has no specific policies relating to this type of development. However, the site is covered by background policies that only support development where there would be no significant effects impact on heritage features, amenity or public health.
- 6.6 The development plan supports renewable energy development. Providing that the impacts of the development are not considered to be **seriously adverse** or **significantly detrimental** particularly in relation to issues in the locality of the site the proposals would comply with the development plan.

National Policy

- 6.7 While many objectors challenge the rationale of the UK and Scottish Government policy on renewable energy, particularly the extent to which on-shore wind farms are promoted, it is not the role of the Planning Authority to review the adequacy of national planning policy or guidance here. This policy and guidance is, however, a material consideration in the determination of this application.
- 6.8 In responding to climate change and advancing sustainable development the Scottish Government has recently re-emphasised within the National Planning Framework (NPF2) and Scottish Planning Policy (SPP) its support and commitment to achieving 50% renewable output in Scotland by 2020. The aim of the policy is to assist the planning system in the process of encouraging, approving and implementing renewable energy proposals when preparing development plans and processing planning applications. As the technology is well developed it is expected that the majority of this energy will be from on-shore wind farms.

- 6.9 SPP does however recognise that support for renewable energy projects and the need to protect and enhance Scotland's natural and historic environment must be regarded as compatible goals. The planning system has a significant role in securing appropriate protection to the natural and historic environment without unreasonably restricting the potential for renewable energy. National policies highlight potential areas of conflict but also advise that detrimental effects can often be mitigated and or effective planning conditions can be used to overcome potential objections to development.
- 6.10 Assuming that the impacts of the proposed development do not have a significant impact upon the landscape resource, amenity and heritage of the area then the development could be seen to compatible with Scottish Government policy and guidance and make a useful contribution to the target of producing 50% of Scotland's energy through the use of renewable technologies by 2020.

Highland Renewable Energy Strategy and Planning Guidelines

- 6.11 Although the Highland Renewable Energy Strategy and Planning Guidelines (HRES) will be replaced by new guidance on the location of on-shore wind farms that conforms to national policy within the coming months it remains the approved Highland Council strategy and is a material consideration to this application.
- 6.12 According to the Highland Renewable Energy Strategy and Planning Guidelines (HRES), the proposed Tom Nan Clach wind farm lies wholly within an area where there is a "presumption against" major scale onshore wind development. This demands that a precautionary approach to development should be taken.
- 6.13 The Strategy is not intended to be a site specific planning tool, but a strategic document for the siting of renewable energy developments in the Highlands. At this strategic level the Strategy cannot be prescriptive but it does nevertheless provide a starting point for the assessment of a proposal. In many cases it would be possible through a more rigorous assessment of the proposal set out in the Environmental Statement to address and set aside the constraints identified by the Renewable Energy Resource Assessment (RERA), the model that informs HRES, that indicates a presumption against development and thereby overcome this precautionary approach. This would be the normal approach. In this case however the applicant considers that HRES should simply be afforded limited weight.
- 6.14 The key constraints identified by the Renewable Energy Resource Assessment (RERA) that indicates a presumption against development in this case relates to the existence of the Area of Great Landscape Value (AGLV), Annex 1 species, moorland and proximity to airport radar.
- 6.15 While it may be possible to address the other issues, it is difficult to see how the AGLV constraint can be set aside unless the balance in favour of meeting national energy targets outweighs the importance of the local landscape designation. If this view is accepted then the constraint could be set aside and the site may then be considered appropriate for wind farm development. If not, the Highland Renewable Energy Strategy has correctly identified the site as not appropriate for

wind farm development.

- 6.16 Until such time as a viable turbine manufacturing base is established within the Highlands, it is unlikely that schemes will be capable of meeting with the agreed guideline levels for local content set out by Policy E7.

Airport Safeguarding

- 6.17 The proposals will have no adverse impact on airport safeguarding or air safety. The MoD, CAA and Highlands and Islands Airport Ltd have not objected to the development. The airport safeguarding constraint identified by RERA has been addressed.

Roads and Transport

- 6.18 The site has good access which for the most part would utilise the trunk road network. Transport Scotland considers that there will only be a slight increase in the use of its road network as a result of this development and has no objection.
- 6.19 The final miles of turbine component and materials delivery will however require the use of the local road network; the A938 on the northern edge of Carrbridge for general traffic and Dulnain Bridge for turbine components and then onto the B9007. Carrbridge Community Council and many of the local residents are concerned that there will be a significant adverse impact upon road safety as a result of this development.
- 6.20 The increase in HGV vehicles using the B9007 during construction has been estimated as 24%. However, the applicant estimates that the increase through Carrbridge will be a relatively low 6%. This increase will only occur over two short periods; during an 18 month construction period and decommissioning which will be less. Mitigation in the form of minor road improvements and the development and implementation of a Traffic Management Plan is offered by the applicant.
- 6.21 While the increase in traffic will be noticeable and have an impact upon the amenity of some residents this impact will be over a relatively short period of time. Subject to conditions to secure the mitigation proposed by the applicant and a 'wear and tear' agreement under s96 of the Road (Scotland) Act 1994 TEC Services – Roads and Transportation has no objection. On this basis it is considered that road safety will not be unduly compromised.

Peat stability, construction impacts and pollution control

- 6.22 Within the Environmental Statement accompanying the application, the applicant has committed to a number of mitigation measures addressing pollution prevention including matters such as use of buffer zones to reduce sediment movement, vehicle washers, bunds, active drainage management and wildlife management. The submission of an Environmental Policy and Construction and Environmental Management Plan (CEMP) secured by condition attached to any permission would address the majority of matters relating to construction impacts and control identified by statutory consultees.

- 6.23 Naturally occurring sudden peat slide events are relatively rare in the UK, but are not unknown. Erosion tends to be progressive rather than catastrophic and occurs as a result of natural factors. There is evidence of erosion on the application site but not landslip. The Council is well aware of the potential impacts of building on peat; particularly the stability of peat when saturated by heavy rainfall events.
- 6.24 A study of the site with regard to peat has been carried out. This has included a desk study, site reconnaissance, field testing and risk assessment. In general the site is of low to moderate risk, with the majority of turbines and access tracks located in areas of lower risk. Turbines 4, 7, 8 and 14 in particular are located in areas of high risk and within a few hundred metres of tributary Salmon spawning grounds of the River Findhorn. The potential adverse impact on this sensitive receptor, in combination with other such developments planned within the river catchment, has been raised by objectors. However, appropriate construction management controls should provide sufficient mitigation.
- 6.25 SEPA has no objection to the proposals subject to conditions to secure the proposed mitigation, construction environmental management plan, site waste management plan and peat management plan. SEPA has advised that that if this rigorous approach is taken with all developments within the river catchment that there should be no cumulative impact on water quality.

Noise

- 6.26 A noise prediction assessment was carried out for the nearest noise sensitive property at Ballachrochin 1.4km north-west of the development and at three other nearby noise sensitive locations. It was concluded that predicted level at Ballachrochin, based on the measured sound power level of a 2.3MW Enercon E-70 wind turbine, would be below the lower absolute noise criteria contained within the ETSU-R-97 – *Recommended Good Practice on Controlling Noise from Wind Farms* (DTI, 1997) guidance and would be capable of complying with the conditions recommended by TEC Services – Environmental Health.
- 6.27 Representations received from residents of Tomatin in particular claim that the cumulative noise impact of the Tom nan Clach and Glenkirk schemes would be unacceptable. Residents indicate that their experience of Farr, which has been operational since July 2006, is that noise can be an issue when the wind is coming from a generally westerly direction; the prevailing wind. Glenkirk and Tom nan Clach are to the north-east which is usually the alternate wind direction. It may not be unreasonable to assume that given the relative distances the developments may have the same resultant effect dependant upon wind direction. However, the noise assessment contained within the Tom nan Clach Environmental Statement considers the cumulative effect of Farr, Glenkirk and Tom nan Clach and concludes that Tom nan Clach will add marginally to the overall noise levels and that the cumulative effect will comply with the lower absolute noise criteria ETSU-R-97 simplified criterion of 35dB LA90. This assessment has been carried out on a worst case basis using down wind predictions.

Natural Heritage

- 6.28 There are no natural heritage designations on the site. The site is likely to support a number of species of conservation importance. Third parties point to the fact that the site is known to be used by several species listed under Annex 1 of the EC Wild Birds Directive. While a wider range of species may be evident within the wind farm area, the site itself supports breeding populations of peregrine, golden plover and merlin in addition to providing suitable foraging ground for hen harrier. Evidence provided by the applicant indicates that otter are present on the site and that the site provides suitable habitat for wildcat; species that are protected under the EC Habitats Directive.
- 6.29 SNH considers that the proposal is unlikely to affect mammals that may be present on the site. Subject to the need to undertake pre-commencement surveys for otter, wildcat and water vole SNH is satisfied that these species can be adequately protected.
- 6.30 The Royal Society for the Protection of Birds (RSPB) and the Cairngorm National Park Authority both object to the development on the basis of its impact upon birds. While the Cairngorm National Park Authority is particularly concerned about the cumulative effect of wind farms on the dispersal of species, RSPB is more focussed on the direct impact of Tom Nan Clach on golden plover which in its view would constitute a 2.5% reduction of the total population in the Central Highlands Natural Heritage Zone.
- 6.31 SNH is of the view that the proposal will have no significant effect on the national population of any protected bird species either as a result of this development or in combination with other wind farm proposals within the Central Highlands Natural Heritage Zone. Having said that, SNH does consider that in combination with other developments the loss and displacement of pairs arising from this proposal is likely to have a significant effect on the population of golden plover in the Natural Heritage Zone. However, subject to conditions to safeguard nesting plovers and securing a habitat management plan that includes management proposals for golden plover SNH is satisfied that the proposals will have no significant adverse impact upon golden plover or any other protected bird species. As the Council's advisors on such matters it is reasonable to rely on SNH's advice.
- 6.32 The primary habitat on the site is blanket bog. The site also contains pockets of dry heath and also wet heath, the latter habitat which is traversed by a considerable length of the proposed main access track from the B9007. These habitats are all contained within Annex 1 of the EC Habitats Directive. SNH has raised no particular issue with the loss of these habitats, presumably as the wind farm only affects a very small percentage of the available UK habitat and on the basis that the habitat management plan will include measures to restore and enhance the moorland habitats. In light of this, the Annex 1 and moorland constraints identified by the RERA assessment can be considered removed.

Built and Cultural Heritage

- 6.33 The Highland Council Archaeology Unit is content that the mitigation measures proposed, secured through the imposition of conditions, would be sufficient to preserve the archaeological interest of the site and its environs.
- 6.34 According to the ZTV contained within the ES, the turbines will not be visible from any of the three inventory gardens and designed landscapes with the 35km of the site. It is therefore unlikely that the proposals will have any impact upon Leys Castle, Cawdor Castle and Castle Grant. No listed buildings will be affected.
- 6.35 Historic Scotland advises that the proposals will not have any significant impact on the setting of any scheduled ancient monument. While Historic Scotland recognise that the turbines would be visible from Lochindorb Castle, it considers that the primary aspect of the castle's setting is a location within a c.3km wide 'bowl' on the loch. Historic Scotland acknowledge that the surrounding landscape will have formed part of the wider hunting grounds but consider that the wind farm will be a distant backdrop to the castle, visible from relatively limited arcs of view within the area of the loch and therefore of limited impact.
- 6.36 For many who have made representation however, the relationship of the castle, the loch and the wider landscape is not just about built heritage and setting but also a matter of history, folklore and legend. Lochindorb was after all the stronghold of the infamous Wolf of Badenoch, Alexander Stewart, who in an act of revenge against the church for supporting his estranged wife, ransacked Forres before burning Elgin cathedral to the ground in 1390. This drama provides more the sense of place and has a defining effect on the experience of Lochindorb.

Landscape and visual impact

- 6.37 The majority of turbines are located on a landscape character type described as 'open uplands' in the Moray and Nairn Landscape Character Assessment (SNH, 1998), with the exception of two turbines (T1 & T2) that are located on the edge of the 'rolling uplands' character type described in the Inverness District Landscape Character Assessment (SNH, 1999).
- 6.38 The key characteristics of the open uplands landscape character is the openness of the hills which are generally of similar height with broad smooth ridges and expansive gently undulating plateaux. The key characteristics of the rolling uplands are broadly similar and certainly in the context of this particular location are indistinguishable. The Moray and Nairn Landscape Character Assessment identifies that there are few large tracts of open water within the open uplands landscape character which makes Lochindorb a unique feature in the landscape.
- 6.39 The Moray and Nairn Landscape Character Assessment considers that in *'the remoter regions of this Open Moorland landscape [which includes open upland], where there is often a feeling of 'wildness' away from linear patterns of commercial forest and settlement, the perception of wind turbines as an industrial element may conflict with this experience. As such, a wind farm may appear as a man-made intrusion and be an inappropriate element to introduce in these areas.'*

It goes on to suggest that wind farm *'development could possibly be visually accommodated in the more accessible and human influenced parts of this landscape, providing the general openness of the landscape was not cluttered by a profusion of wind turbines and ancillary developments such as connecting power lines and access roads.'*

- 6.40 The Inverness District Landscape Character Assessment states that the location of a wind farm within this landscape *'is unlikely to dominate the large open areas of this landscape character type. However, it will tend to be highly visible within the open surroundings and create a focus in the landscape, possibly also affecting the sense of remoteness.'* It continues that impact will very much *'depend on its siting and design.'*
- 6.41 The Tom nan Clach development has been designed to minimise the impact on the landscape resource by virtue of its relatively compact layout. The conclusions contained within the Environmental Statement are that overall there would be a slight adverse impact upon the landscape resource but given the extent of the landscape character type that this impact would not be significant. This is considered a reasonable conclusion.
- 6.42 The applicant believes that Tom nan Clach would have a slight adverse cumulative impact on the 'rolling uplands' character type which is considered not significant by virtue of the dominance of the existing Farr and proposed Corriegarh and Dunmaglass wind farms. Glenkirk would extend this further but Tom nan Clach would appear as a small addition to this. The impact on the 'rolling uplands' landscape character type is on the other hand considered to be significant in that Tom nan Clach in combination with Paul's Hill and the proposed Berryburn wind farms would begin to dominate this landscape character type. Again this it is not unreasonable to conclude that if all these developments were to proceed that this latter landscape character type would become a 'wind farm landscape'.
- 6.43 The effects on visual amenity however relate to changes to available views rather than perceived changes to whole areas of a distinctive landscape character. The Environmental Statement (ES) provides an assessment of visual impact having analysed some 'representative' views. The 'zone of theoretical visibility' (ZTV) provided within the ES indicates that the visual influence of the turbines will be relatively contained within the landscape, as would be expected with a more compact design of development.
- 6.44 The changes to views are likely to be most significant for two particular groups; visitors passing through the area by road and recreational users; particularly in locations to the north and east. The Environmental Statement considers that the wind farm will have significant visual impacts from the A939 just south of Ferness and the B9007 near Lochindorb where the impact will be most significant. While the sensitivity of visual receptors in the National Park is viewed as high, the distances involved has meant that the overall impact is considered to be of moderate significance. Views from the A9 at the Findhorn bridge and near Dalmagarry are considered to have slight and moderate adverse impact, while the impact on the minor road at Drynachan is seen as moderate adverse also.

- 6.45 Although the assessment contained within the ES is reasonable on the whole, the sensitivity of some views is under rated. For example, the minor road at Drynachen could be considered to be of high sensitivity rather than low sensitivity since it is representative of the more elevated views of the Streens gorge, an area that is popular with recreational users and visitors. This landscape will be familiar with participants and spectators of the Nairnshire Challenge, regular visitors to Dulsie bridge and, albeit at a lower level, those walking the Forres-Moy 'Heritage Path' right of way. Given that the activity is likely to be the main reason for visiting rather than the landscape itself it may be reasonable to arrive at the same overall conclusion – a moderate adverse impact. However, the impact remains significant. SNH in its consultation response agrees that the most significant adverse visual impacts of the development are from the B9007, the minor road above Streens and the A939 south of Ferness but in addition include the A9 near Dalmagarry.
- 6.46 Notwithstanding this, the ES does not assess the impact on the views from Lochindorb which is arguably the most important visual receptor given its unique status within the landscape character assessment noted above, its popularity as evidenced by the those making representations and the fact that it lies within the Area of Great Landscape Value (AGLV)/Special Landscape Area (SLA). The draft citation for the SLA considers the special qualities of the area to be the lonely open moorland, vast skies and ephemeral atmosphere. These, in combination with the uniqueness of the loch itself all come together at Lochindorb.
- 6.47 A visualisation has been produced from the shore of Lochindorb. Using the methodology outlined within the ES, it can be concluded that the impact of the proposed Tom nan Clach wind farm would be of substantial adverse significance. The proposed wind farm would be a dominant feature in the landscape from various points along the east shore.
- 6.48 The impact that the proposals would have on the value of the Drynachen, Lochindorb and Dava AGLV/SLA is considered to be underplayed in the Environmental Statement. It is recognised that Lochindorb, indeed the viewpoint on the B9007 which the wind farm is also considered to have a substantial adverse impact on, forms only a small part of the AGLV/SLA, and that the undulating nature of the area is such that for road users in particular the wind farm is unlikely to be visible for any prolonged period. However, there are key stretches of the road network, particularly to the north of Lochindorb, where there would remain almost constant visibility. Visibility would also be high for those people enjoying lower walks around the area or the scenery; particularly at Lochindorb. The likelihood is that the wind farm would become a dominant feature on in the landscape and conflict with the feeling of wildness. The lonely, remote and isolated character of the landscape is consistent through the area and the reason presumably that people stop to visit Lochindorb. It is considered that the wind farm would adversely affect visual amenity and diminish the visitor experience.
- 6.49 The development is a relatively compact design. While a reduction in number of turbines may be possible to further 'improve' the impact on the A9 which appears to be a concern of SNH, it would not address the impact from the north or east; the sensitive areas of Lochindorb, Drynachen/Streens or the National Park.

- 6.50 While it may be possible to see other wind farms in combination with Tom nan Clach, the most significant cumulative impact will be that of Tom nan Clach and Glenkirk wind farm since they are immediately adjacent to one another. The issue of cumulative impact of Tom nan Clach and Glenkirk wind farm has been raised as a concern by The Cairngorm National Park Authority and SNH as well as many making representations against the development.
- 6.51 Regarding cumulative impact on landscape resource, the ES concludes that the development would not have a significant additional adverse impact on the 'rolling uplands' character but acknowledges that it would have a significant impact on the 'open uplands' character when taken in combination with Paul's Hill and the proposed Berry Burn since it would extend the dominance of wind energy developments with this landscape character type.
- 6.52 With regard to cumulative visual impact, the ES considers that the overall additional significance of impact would be moderate at worst. The justification is that the compact nature of the development would be seen as a minor extension to the more spread out and fragmented nature of Glenkirk. This is a view shared by SNH and the CNPA and is well demonstrated in views from the A9, Streens and over longer distances to the east. However, from the viewpoint at Lochindorb the different designs of the respective developments will be clearly evident. Tom Nan Clach, with its contained cluster, could be said to provide an imbalance to the wider array of Glenkirk.
- 6.53 The wind farm access road, internal tracks and borrow pits will be seen but these will be reinstated to a greater degree in the shorter term which would mitigate their visual impact.

Impact on tourism

- 6.54 Separate studies have been carried out by industry and the Scottish Government into the effects of wind farm developments on tourism and public acceptability respectively; the most recent conducted by Glasgow Caledonian University/Cogent Si (2008) for the Scottish Government. These studies have indicated both benign and positive effects. Members may not wish to rely on these studies entirely in forming a view given the unique circumstances in Highland.
- 6.55 Several representations received, including some from local tourism companies, indicate that tourism will be adversely affected. It is however difficult to be certain that this would be the case. The issue is still very much a matter of subjective judgement given the range of individual responses to wind farm development. However, the quality of scenery is the most significant attraction of the Highlands, and the key reason that visitors return. Therefore any adverse visual impact created by a development is likely to result in the quality of visitor experience being diminished; possibly deterring repeat visits.
- 6.56 In their submission, the applicant acknowledges the importance of tourism to the Highland economy but does not consider that the Lochindorb area is one of the main tourism areas in the Highlands. This appears to be based on the fact that Lochindorb is not promoted as a specific tourist destination. This is not disputed

although, while it may not in itself be an income generator, it is still an extremely well visited area.

- 6.57 A key reason for this may be that the A939 is a designated national tourist route between Inverness and Aberdeen; something that appears to have been overlooked within the section on tourism within the ES. While Tom nan Clach's visual impact on the A939 will be limited to short sections of the road it is considered to have an adverse impact on the special qualities and experience of the area when first entering Dava moor just to the south of Ferness. The development is therefore likely to diminish the visitor experience. This impact will be most noticeable within 1km of the exit from the A939 to Lochindorb where the dominant cumulative extent of both Tom nan Clach and Glenkirk wind farms, if consented, would be experienced. This impact would remain once the visitor arrives at the loch shore.
- 6.58 Many of the representations against the development received are from visitors, some of whom are repeat visitors, who indicated an unwillingness to return to the area if the Tom nan Clach wind farm received planning permission. While Visit Scotland does not object to the proposal, it does make comment on the importance of the area. Given that the proposal is considered to have a significant impact on the visual amenity and special qualities of the AGLV/SLA, it would be reasonable to assume that the proposal would most likely have a negative impact on tourism.

Other material considerations

- 6.59 Representations received have criticised the quality of the Environmental Statement, in particular the quality of the visualisations produced. While SNH has commented that it was disappointed with the quality of some sections on habitats and ornithology this was not to any extent that it was unable to provide the advice it did. With regard to the visualisations, this was brought to the attention of the applicant and new visualisations that conform to the Council's standards were provided.
- 6.60 Representations received raise the issue of connection to the grid. Other than the electrical connections within the site this has not been provided. It will however likely require further permissions under section 37 of the Electricity Act 1989. The Council would be a consultee to that process.
- 6.61 There are no other material considerations that need to be addressed.

7.0 CONCLUSION

- 7.1 The Development Plan and national policy support renewable energy development, with a range of differing technologies, where projects can be located without undue environmental or amenity impact. Representations against this application have specifically highlighted conflict with protected species, loss of peat habitat and pollution as well as amenity impacts on landscape resource and the scenic and ethereal quality of the area both as a result of this development and in combination with neighbouring developments of a similar nature. Objectors

highlight that the resultant effect would be to the detriment of tourism.

- 7.2 Planning Advice Note 58 - Environmental Impact Assessment states that experience shows that there will usually be a small number of major issues, perhaps only one, on which the acceptability of a project hinges and that these major issues should be highlighted in the planning report, drawing on the content of the Environmental Statement.
- 7.3 As is evident from the assessment, many of the impacts of the proposed development will not be significantly detrimental and could be adequately controlled through both the mitigation measures proposed or through conditions of any planning permission. The major issues in this case relate to the impact that the proposed development would have on visual amenity, the special qualities of the proposed Drynachan, Lochindorb and Dava Moor AGLV (Special Landscape Area) and tourism. Linked to this is also the question of compatibility with Highland Renewable Energy Strategy and Planning Guidelines.
- 7.4 The acceptability of the proposals with regard to their visual impact is largely a subjective matter. The ES considers that there would be a slight adverse impact upon the landscape resource but the visual impact of the development to be of adverse significance. This is considered to be substantial from the B9007 and, having adopting the same methodology, at Lochindorb. From the A939 and the minor road above Drynachan the overall conclusions in the ES are that the impact will be moderate adverse. It can be concluded from this that the visual experience for those entering the Dava moor from Ferness, visiting Lochindorb and other areas to the north will be adversely affected to a significant degree. The visualisations produced support this conclusion.
- 7.5 The area, particularly around Lochindorb, is well visited by locals and tourists alike. It is considered that a wind farm in this proposed location would dominate the views over the loch and have an adverse impact on the special qualities of the AGLV/SLA. As a consequence it may have a negative impact on repeat visits. While the development is relatively well designed in that it has a compact form, this does not render the proposal acceptable in terms of its impact on the visual and ethereal qualities of the AGLV/SLA. The view that Tom nan Clach can be considered as a minor extension to Glenkirk does not justify the impact of the individual development when considering the cumulative impact. The developments read as two separate schemes, certainly from Lochindorb.
- 7.6 The remaining constraint in the 'presumption against' development is the fact that the site forms part of an Area of Great Landscape Value. While the Highland Renewable Energy Strategy and Planning Guidelines do not comply with the most recent Scottish Planning Policy (SPP) since it takes a 'sequential' approach to site selection, new guidance is currently being produced to conform to the SPP. This will identify 'areas of search' as opposed to 'no go' areas. With the proposed Highland wide Local Development Plan intending to reconfirm the proposed AGLV designation (albeit re-titled as a Special Landscape Area), it is highly unlikely that this site will fall within an area of search. The conclusion of this must surely be to offer the proposed designation a significant degree of protection

rather than diminish its importance. There are other developments within Highland where development could be permitted without impacting on locally important landscape areas and areas of high amenity value.

- 7.8 The benefits of a proposal must be weighed against potential drawbacks and then both considered in the round. The project carries considerable support in principle by virtue of the Government's policy and targets towards greater renewable energy production. With a generating capacity of up to 39.1MW the proposal would make a useful contribution to meeting both national and the Highland Council's own renewable energy targets. There will also be a significant number of construction jobs, albeit short term, and economic benefits to the local economy during the construction of the wind farm. Despite some criticisms of the Environmental Statement, the applicant has also been able to demonstrate that many of the adverse impacts can be adequately addressed. However, it is considered that significant weight must be given to the objections from Community Council's, visitors and local residents in respect of the impact to visual amenity in addition to the need to protect the local landscape designation of the Drynachan, Lochindorb and Dava Moor AGLV/SLA for future generations. As the Council is on track to exceeding its own targets for on-shore wind energy, there is no over-riding public interest in accepting development within this location.
- 7.9 The development is considered to have a significantly adverse detrimental impact upon the visual amenity for those experiencing the AGLV/SLA, particularly when viewed from Lochindorb. For this reason the development is not considered consistent with the Development Plan and therefore it is recommended that the Council object to the proposed wind farm.

RECOMMENDATION

REFUSE planning permission for the following reasons:

1. The proposal is contrary to Policy E2 of the Highland Structure Plan, with regard to Wind Energy development, and Policy G2 of the Highland Structure Plan, Design for Sustainability, as it would have a significant detrimental impact upon visual amenity and enjoyment of Lochindorb and its surrounding area and therefore the special qualities of the Drynachan, Lochindorb and Dava Moor AGLV/SLA.
2. The proposal is contrary to Policy E2 of the Highland Structure Plan, with regard to Wind Energy development, and Policy G6 of the Highland Structure Plan, Conservation and Promotion of Highland Heritage, as it would have a significant detrimental impact upon the special qualities of the Drynachan, Lochindorb and Dava Moor AGLV/SLA, both on its own and cumulatively with Glenkirk.

Signature:

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Date: 13 August 2010

Ref: 09/00439/FULIN

Background Papers:

THE HIGHLAND COUNCIL
INVERNESS, NAIRN, BADENOCH & STRATHSPEY
PLANNING APPLICATIONS COMMITTEE
23 August 2010

Agenda Item	
Report No	

POLICY OVERVIEW IN RELATION TO THE GLENKIRK AND TOM NAN CLACH
WINDFARMS AND ACCESS TRACKS

Report by Head of Planning and Building Standards

SUMMARY

This paper summarises the key national and development plan policies and guidance that must be taken into consideration in coming to a decision on the proposed Glenkirk and Tom nan Clach wind farms and access tracks.

1.0 INTRODUCTION

1.1 The purpose of this report is to set the policy context for the Council's consideration of the proposed wind farms at Tom Nan Clach and Glenkirk aswell as the proposed access track for Glenkirk. This report has been prepared to avoid excessive repetition in the respective reports. These reports however must be read in conjunction with this report.

2.0 STATUTORY REQUIREMENTS

2.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise.

2.2 The range of considerations which might be considered material in planning terms is not legally defined and falls to be determined in the context of each case. Scottish Government guidance is that they should firstly be related to the development and the use of land but also suggest that the follow matters are most likely to be relevant:

- Scottish Government policy and guidance
- Views of statutory and other consultees
- Public representation
- The environmental impact of the proposal including cumulative impact
- Design
- Access, provision of infrastructure and planning history of the site

2.3 The Development Plan in this case comprises the Highland Structure Plan (approved March 2001), the Inverness Local Plan (adopted March 2006) and the Nairnshire Local Plan (adopted December 2000). Other material policy guidance and statements are contained within Scottish Planning Policy (SPP), Planning Advice Notes (PANs) and Supplementary Planning Guidance (SPG), most notably the Council's Renewable Energy Strategy and Guidelines.

3.0 THE HIGHLAND STRUCTURE PLAN (March 2001)

3.1 All Structure Plan policies, which were approved by Ministers in March 2001, are predicated on the Plan's sustainable objectives contained within Policies G1 – G8. Of most relevance here are **Policy G2, Policy G6 and Policy G8**.

3.2 **Policy G2 Design for sustainability** in particular details a number of criteria against which proposed developments will be assessed. These include the extent to which the proposal:

- is compatible with service provision (water and sewerage, drainage, roads, schools, electricity)
- maximises energy efficiency in terms of location, layout and design, including the utilisation of renewable sources of energy
- impacts on individual and community residential amenity
- impacts on the following resources, including pollution and discharges, particularly within designated areas – habitats, species, landscape, scenery, freshwater systems, marine systems, cultural heritage, air quality
- demonstrates sensitive siting and high quality design in keeping with local character and historic and natural environment and in making use of appropriate materials
- contributes to the economic and social development of the community.

Developments which are judged to be significantly detrimental in terms of the stated criteria shall not accord with the Structure Plan.

3.3 Policy G3 Impact Assessment

“Where environmental and/or socio-economic impacts of a proposed development are likely to be significant by virtue of the nature, size or location, the Council will require the preparation by developers of appropriate impact assessments. Developments that will have significant adverse effects will only be approved if no reasonable alternatives exist, if there is demonstrable over-riding strategic benefit or if satisfactory overall mitigating measures are incorporated.”

3.4 Policy G4 Community Benefit

“The Council will expect developments to benefit the local community and contribute to the wellbeing of the Highlands, whilst recognising wider national interests”

3.5 **Policy G6 Conservation and promotion of the Highland heritage**

“The Council will seek to conserve and promote all sites and areas of Highland identified as being of a high quality in terms of nature conservation, landscape, archaeological or built environment.”

This includes local landscape designations such as Areas of Great Landscape Value (AGLV's) that are identified within local plans. The Drynachan, Lochindorb and Dava Moor Areas of Great Landscape Value is shown in Annex A to this report.

3.6 **Policy G8 Precautionary Principle**

“In the relatively rare situation of assessing development proposals where the potential impacts are uncertain, but where there are scientific grounds for believing that severe damage could occur either to the environment or the wellbeing of communities, The Council will apply the precautionary principle.”

3.7 The Structure Plan contains specific policies in relation to renewable energy, notably Policy E1 and Policy E2.

3.8 **Policy E1 Distributed renewable energy developments**

“The Council supports the utilisation of the region's distributed renewable energy resource, including hydro, wind, wave and tidal stream power. Proposals will be assessed against the provisions of the General Strategic Policies.

Approvals for renewable energy developments will normally be for a temporary period only (tied to the lifetime of a project), with provision where appropriate for the removal and reinstatement of affected areas. Earlier action for removal and reinstatement will be required in the event of premature permanent cessation of energy production.”

3.9 **Policy E2 Wind energy developments**

“Wind energy proposals will be supported provided that impacts are not shown to be significantly detrimental. In addition to the General Strategic Policies, wind energy proposals will be assessed in respect of the following:

- visual impact;
- noise;
- electro-magnetic interference;
- roads, bridges and traffic;
- aircraft flightpaths/MOD operations; and
- cumulative effects.”

3.10 Other relevant Structure Plan policies relate to the nature conservation, landscape and cultural resource; including those aspects that are important to tourism.

3.11 Policy M2 Mineral extraction

“Applications for mineral extraction will be supported provided that they conform to the General Strategic Policies and that there are no significant adverse environmental or socio-economic impacts. An Environmental Assessment will normally be required for all new workings and major extensions. Approvals for mineral extraction will be for a temporary period only, with conditions tied to a method statement and plan covering working procedure, phasing, environmental protection, restoration, after-use and after-care. Where necessary a financial guarantee in respect of restoration and aftercare will be sought.”

3.12 Policy T6 Scenic views

“The Council will protect important scenic views enjoyed from tourist routes and viewpoints, particularly those specifically identified in Local Plans. There will be a presumption against development in narrow areas of land between roads and railways and open water.”

3.13 Policy N1 Nature Conservation

“New developments should seek to minimise their impact on the nature conservation resource and enhance it wherever possible...”

3.14 Proposal L3 Areas of Great Landscape Value

“Local Plans shall identify Areas of Great Landscape Value in general accordance with the areas identified in Figure 12. Existing Areas of Great Landscape Value and other designations will be reviewed by the Council and brought forward for inclusion in the Structure Plan.”

3.15 Policy L4 Landscape character

“The Council will have regard to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals, including offshore developments.”

3.16 Policy BC1 Preservation of archaeological sites

“Archaeological sites affected by development proposals should be preserved, or, in exceptional circumstances where preservation is impossible, the sites will be recorded at developers’ expense to professional standards. Provision will be made in Local Plans for the appropriate protection, preservation and enhancement of archaeological sites.”

4.0 INVERNESS LOCAL PLAN

4.1 Both the Glenkirk wind farm and the proposed access track to the wind farm fall within Inverness Local Plan boundary. While there are no specific policies relating to wind energy development, the Local Plan (paragraph 1.21, page 11) does recognise the potential for wind energy development in areas where there are no

significant constraints. The most relevant policies are:

4.2 **Background Policy BP2**

“The Council will permit development unless this would be likely to have a significantly adverse effect on, or be significantly adversely affected by, the features for which the area has been designated. Where it is concluded that any such adverse effects are likely to arise, development will only be permitted where it is considered that these would be outweighed by social or economic benefits”

4.3 **Background Policy BP3**

“The Council will presume against development particularly where there would be significant damage to heritage, amenity or public health”

4.4 **General Policy 8 Mineral workings**

“...any proposals for minerals development will be subject to Policy M2 of The Structure Plan and the general policies contained in the Local Plan.”

General Policy 14 Surface water drainage

“...The Council will expect surface water drainage to be disposed of in accordance with SUDS (Sustainable Urban Drainage Systems)...”

General Policy 16 Flood Appraisal

“The Council supports the preparation of an Integrated Catchment Management Plan for the River Ness and River Nairn to be prepared under the EC Water Framework Directive...”

General Policy 23 Habitats which seeks to protect habitats and species, particularly where these contribute to the coherence of a Natura network. Proposals that are judged to have a significantly detrimental effect on such habitats and species will not accord with the Plan.

5.0 **NAIRNSHIRE LOCAL PLAN**

5.1 The site of the Tom Nan Clach wind farm, including its access route, falls within the Nairnshire Local Plan. The most easterly part of the Glenkirk wind farm site straddles the boundary of the Nairnshire Local Plan and the Inverness Local Plan.

5.2 There are no specific policies relating to wind energy development. The most relevant policies are:

5.3 **Background Policy ENV2**

“The Council will favour development unless this would significantly affect factors of local importance.”

5.4 **Background Policy ENV3**

“The Council will presume against development particularly where there would be significant damage to heritage, amenity or public health”

6.0 **NATIONAL POLICY**

6.1 The proposals require to be assessed against relevant parts of Scottish Planning Policy (SPP), National Planning Framework 2 and Planning Advice Notes (PANs).

6.2 The Scottish Government's planning policies are set out in the National Planning Framework, Scottish Planning Policy, Designing Places, Designing Streets and Circulars. The National Planning Framework for Scotland 2 (NPF) (June 2009) presents the Scottish Government's strategy for Scotland's long term development. Scottish Planning Policy (February 2010) contains policies relevant to this proposed development. In addition, detailed guidance on a range of topics are provided with the Planning Advice Notes (PANs).

6.3 Statements of Scottish Government policy in the SPP, NPF and Circulars are material considerations which should be taken into account when coming to a decision.

National Planning Framework for Scotland 2

6.4 Under ‘Renewable Energy’ NPF 2 states:

“While the target of generating 50% of the electricity we use from renewable sources by 2020 is likely to be met, we also need to derive a higher proportion of our energy requirements for heating and transport from renewable sources. In line with EU objectives, the Scottish Government is committed to working towards deriving 20% of total energy use from renewable sources by 2020...”

6.5 It continues...

“The Government is committed to establishing Scotland as a leading location for the development of renewable energy technology and an energy exporter over the long term. It is encouraging a mix of renewable energy technologies, with growing contributions from offshore wind, wave, and tidal energy, along with greater use of biomass. The aim of national planning policy is to develop Scotland's renewable energy potential whilst safeguarding the environment and communities.”

6.6 Under ‘A Growing Economy’ NPF2 acknowledges the contribution of the natural and cultural heritage to the Scottish economy as well as the general wellbeing of sustainable communities. In the section titled Landscape and Cultural Heritage it states:

“In their rich diversity, Scotland's landscapes are a national asset of the highest value. They provide the context for our daily lives and are a major attraction for our

tourist visitors. They are settings for outdoor recreation and are valued as a source of refreshment and inspiration by many. Nationally important landscape characteristics include openness, intervisibility, perceived naturalness, and remoteness..." (Paragraph 97).

6.7 It continues:

"Our landscapes have been shaped by human activity since prehistoric times. Natural and cultural landscapes and the historic fabric of our cities, towns and rural areas are important aspects of our national identity and the distinctive character of each part of Scotland. Edinburgh's Old and New Towns, New Lanark, St. Kilda, the Neolithic monuments of Orkney and the Antonine Wall have been accorded an international status as World Heritage sites. The Lochaber and North West Highland Geoparks are part of the UNESCO European Geopark Network. Natural and historic environments help create a sense of place, contribute to the quality of life and are a rich resource for tourism and leisure, our creative industries, education, and national and regional marketing. They can also provide a focus for regeneration. The Scottish Government is committed to protecting, promoting and supporting the sustainable management of these key assets." (Paragraph 98).

6.8 "Landscapes evolve continuously in response to climatic, economic, social and technological change. As the European Landscape Convention recognises, their value extends beyond those protected by formal designations to all areas which reflect the interaction of natural processes with human activities. Landscape and visual impacts will continue to be important considerations in decision-making on developments. The cumulative effects of small-scale changes require as much attention as large developments with immediately obvious impacts. Some of Scotland's remoter mountain and coastal areas possess an elemental quality from which many people derive psychological and spiritual benefits. Such areas are very sensitive to any form of development or intrusive human activity and great care should be taken to safeguard their wild land character. (Paragraph 99)."

Scottish Planning Policy (SPP)

6.9 SPP is a statement of Scottish Government policy on land use planning and contains amongst other things concise subject planning policies relevant to development planning and development management.

6.10 For the applications under consideration the most relevant subject policies relate to Renewable Energy, Landscape and Natural Heritage, Historic Environment, Minerals, Flood Risk and Transportation.

Renewable Energy

6.11 "The commitment to increase the amount of electricity generated from renewable sources is a vital part of the response to climate change. Renewable energy generation will contribute to more secure and diverse energy supplies and support sustainable economic growth. The current target is for 50% of Scotland's electricity to be generated from renewable sources by 2020 and 11% of heat demand to be met from renewable sources. These targets are not a cap." (Paragraph 182).

6.12 “Planning authorities should support the development of wind farms in locations where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed. Development plans should provide a clear indication of the potential for development of wind farms of all scales, and should set out the criteria that will be considered in deciding applications for all wind farm developments including extensions. The criteria will vary depending on the scale of development and its relationship to the characteristics of the surrounding area, but are likely to include:

- landscape and visual impact,
- effects on the natural heritage and historic environment,
- contribution of the development to renewable energy generation targets,
- effect on the local and national economy and tourism and recreation interests,
- benefits and disbenefits for communities,
- aviation and telecommunications,
- noise and shadow flicker, and
- cumulative impact.

The design and location of any wind farm development should reflect the scale and character of the landscape. The location of turbines should be considered carefully to ensure that the landscape and visual impact is minimised.” (Paragraph 187).

6.13 With regard to cumulative impact the SSP states:

“When considering cumulative impact, planning authorities should take account of existing wind farms, those which have permission and valid applications for wind farms which have not been determined. Decisions should not be unreasonably delayed because other schemes in the area are at a less advanced stage in the application process. The weight that planning authorities attach to undetermined applications should reflect their position in the application process. Cumulative impact will largely relate to the scale and proximity of further development. The factors that will be taken into account when considering cumulative impact should be set out in the development plan or supplementary guidance.” (Paragraph 188).

6.14 The forgoing is set within the context that the SSP expects planning authorities to have in place a spatial policy framework for onshore wind farms. However, the SPP considers that “planning authorities should continue to determine applications for wind farms while local policies are being updated.” It also states that such “frameworks should not be used to put in place a sequential approach to determining applications which requires applicants proposing development outwith an area of search to show that there is no capacity within areas of search.” (Paragraph 189).

Landscape and Natural Heritage

6.15 “Scotland's landscape and natural heritage are internationally renowned and important, underpinning significant industries such as the food, drink and tourism

industries, and are a key component of the high environmental quality which makes Scotland an attractive place in which to live, do business and invest.” (Paragraph 125).

- 6.16 “The most sensitive landscapes may have little or no capacity to accept new development. Areas of wild land character in some of Scotland's remoter upland, mountain and coastal areas are very sensitive to any form of development or intrusive human activity and planning authorities should safeguard the character of these areas in the development plan.” (Paragraph 128).
- 6.17 “Landscapes and the natural heritage are sensitive to inappropriate development and planning authorities should ensure that potential effects, including the cumulative effect of incremental changes, are considered when preparing development plans and deciding planning applications. While the protection of the landscape and natural heritage may sometimes impose constraints on development, with careful planning and design the potential for conflict can be minimised and the potential for enhancement maximised. However there will be occasions where the sensitivity of the site or the nature or scale of the proposed development is such that the development should not be permitted. Statutory natural heritage designations are important considerations where they are directly or indirectly affected by a development proposal. However, designation does not necessarily imply a prohibition on development.” (Paragraph 131).
- 6.18 Many species are legally protected and their presence or potential presence is an important consideration in decisions on planning applications. Although their presence rarely imposes an absolute block on development, mitigation measures are often needed and the layout, design and timing of works may be affected. If there is evidence to suggest that a protected species is present on site or may be affected by a proposed development, their presence must be established, the requirements of the species factored into the planning and design of the development and any likely impact on the species fully considered prior to the determination of the planning application. (Paragraph 142).

Historic Environment

- 6.19 “The historic environment is a key part of Scotland's cultural heritage and it enhances national, regional and local distinctiveness, contributing to sustainable economic growth and regeneration. It is of particular importance for supporting the growth of tourism and leisure, and contributes to sustainable development through the energy and material invested in buildings, the scope for adaptation and reuse and the unique quality of historic environments which provide a sense of identity and continuity for communities. Planning authorities can help to safeguard historic assets through development plans and development management decisions.” (Paragraph 110).
- 6.20 “The historic environment includes ancient monuments, archaeological sites and landscape, historic buildings, townscapes, parks, gardens and designed landscapes and other features. It comprises both statutory and non-statutory designations. The location of historic features in the landscape and the patterns of past use are part of the historic environment. In most cases, the historic

environment (excluding archaeology) can accommodate change which is informed and sensitively managed, and can be adapted to accommodate new uses whilst retaining its special character. However, in some cases the importance of the heritage asset is such that change may be difficult or may not be possible. Decisions should be based on a clear understanding of the importance of the heritage assets. Planning authorities should support the best viable use that is compatible with the fabric, setting and character of the historic environment. The aim should be to find a new economic use that is viable over the long term with minimum impact on the special architectural and historic interest of the building or area.” (Paragraph 111).

Minerals

- 6.21 “Small workings, sometimes called borrow pits, commonly associated with roads and wind farm construction, forestry or agriculture, allow for the extraction of minerals near to or on the site of the associated development. Applicants will need to demonstrate the particular operational, community or environmental benefits of such proposals. They should be time-limited consents, tied to a particular project and accompanied by full restoration proposals.” (Paragraph 229).

Flood Risk

- 6.22 “Functional flood plains store and convey flood water during times of flood. These functions are important in the wider flood management system. For planning purposes the functional flood plain will generally have a greater than 0.5% (1:200) probability of flooding in any year. Development on the functional flood plain will not only be at risk itself, but will add to the risk elsewhere. Built development should only take place on functional flood plains where it will not affect the ability of the flood plain to store and convey water, where the development will not be at risk of flooding and where the development will not increase the risk of flooding elsewhere. Piecemeal reduction of the flood plain should be avoided because of the cumulative effects of reducing storage capacity. There may be exceptions for infrastructure if a specific location is essential for operational reasons or it cannot be located elsewhere. In such cases, the development should be designed to remain operational in times of flood and not impede water flow, and the effect on the flood water storage capacity should be kept to a minimum. Development should not take place on land that could otherwise contribute to managing flood risk, for instance through managed coastal realignment, washland creation or as part of a scheme to manage flood risk.” (Paragraph 203).

Transportation

- 6.23 “The strategic transport network, which includes the trunk road, motorway and rail networks, is critical in supporting a level of national connectivity that facilitates sustainable economic growth. The primary purpose of the strategic transport network is to provide for the safe and efficient movement of strategic long distance traffic between major centres, although in rural areas it also performs important local functions. Development proposals that have the potential to affect the performance or safety of the strategic transport network need to be appraised to determine their effects. If required, mitigation measures should be agreed with Transport Scotland that would, where practicable, achieve no net detriment to

safety or in overall performance, including journey times and connections, emissions reduction and accessibility.” (Paragraph 174).

- 6.24 “Providing for the safe and efficient movement of traffic on the strategic road network requires the implications of development proposals on traffic and road safety to be taken into account in development plans and development management decisions. New junctions onto the motorway and trunk road network are not normally acceptable, but the case for such junctions will be considered where significant economic growth or regeneration benefits can be demonstrated. Direct access onto any strategic road should be avoided as far as practicable. Access should be from a secondary road unless there is no alternative.” (Paragraph 175).

Planning Advice Notes (PANs)

- 6.25 The key PANs applicable to these applications include Environmental Impact Assessment (PAN 58), Renewable Energy Technologies (PAN 45), Planning for Natural Heritage (PAN 60) and Planning and Noise (PAN 56).

PAN 45 – Renewable Energy Technologies

- 6.26 PAN 45 sets out good practice guidance in respect of the issues raised by wind farm developments including siting in the landscape, visual impact and noise.
- “There are no landscapes into which a wind farm will not introduce a new and distinctive feature. Given the Scottish Ministers’ commitment to addressing the important issue of climate change and the contribution expected from renewable energy developments, particularly wind farms, it is important for society at large to accept them as a feature of many areas of Scotland for the foreseeable future.” (Paragraph 71).
 - But, “This is not to suggest that areas valued for their international or national landscape and nature conservation interest will have to be sacrificed.” (Paragraph 72).
 - And, “A cautious approach is necessary in relation to particular landscapes which are rare or valued, such as National Scenic Areas and proposed National Parks and their wider settings.” (Paragraph 75).
 - PAN 45 notes that “The cumulative impact of a number of neighbouring developments may also be a relevant consideration” (Paragraph 89) and advises that the cumulative effects of wind farm development can arise in a number of circumstances including “an existing wind energy development and a proposed extension to that development.” (Paragraph 91).
 - Finally, PAN 45 notes the important contribution that tourism, mainly associated with Scotland’s natural, scenic and cultural heritage, makes to the rural economy. “It is therefore important that the role of tourism in the rural economy and the assets on which it is based should be reconciled with the need to promote renewable energy generation” (Paragraph 172).

PAN 60 – Planning for Natural Heritage

- 6.27 PAN 60 does not specifically address wind energy development (although it does

cover the restoration of mineral workings which is relevant); rather it provides guidance on the siting and design of development generally.

6.28 The general principle is:

“While inappropriate development can detract from scenic quality or adversely affect particular habitats, species or earth heritage interests, well designed and carefully sited development can complement the landscape and substantially increase natural heritage interest. NPPG 14 stresses that the scale, siting and design of new development should take full account of the character of the landscape and the potential impact on the local environment (para. 15) [now encompassed within Paragraph 127 in the SPP]. Landscape character assessment can play a valuable role in informing the development of a policy framework for the siting and design of new development.” (Paragraph 52).

PAN 58 – Environmental Impact Assessment

6.29 PAN 58 provides information and advice on the legislative context for EIA, the process, evaluation and implementation of the Regulations through to the decision. It highlights that:

“Experience shows that there will usually be a small number of major issues, perhaps only one, on which the acceptability of the project hinges. These major issues should be highlighted in the planning report, drawing on the ES.” (Paragraph 93).

PAN 56 – Planning and Noise

6.30 PAN 56 provides guidance on how noise issues should be considered and addressed in relation to development proposals; including the use of planning conditions relating to noise.

7.0 HIGHLAND RENEWABLE ENERGY STRATEGY AND PLANNING GUIDELINES (HRES)

7.1 The Highland Renewable Energy Strategy was approved by the Highland Council on 4 May 2006. The main purpose of the strategy is to promote appropriate renewable energy development to a level that would stimulate economic development within Highland through potential investment opportunities for manufacturing and supply industry. In addition, the policies and aspirations seek to attain more localised community benefit as a result of this kind of development as well as seeking to influence national policy making and regulatory activity.

7.2 The key component that informs the strategy is the Renewable Energy Resource Assessment model (RERA). This considered the likely constraints to development i.e. sensitive sites, connection to grid etc. Having excluded these ‘sensitive’ areas, the outcome was a prediction that Highland could aim to achieve realistic targets for export onshore wind energy of 800MW by 2010, 1200MW by 2015, 1400MW by 2020, 2900 MW by 2050. At the time this 2020 figure equated to around 25% of the Scottish target of 6GW by 2020. Like the Scottish targets this however was not

seen as a cap. At this moment in time, installed capacity is marginally under 800MW but there are other schemes that have recently been consented which if developed within the next year or two which would result in the Council achieving the 2015 target considerably earlier than planned. Should all development that is currently subject to scoping opinion be added to this then the 2020 target would be surpassed.

- 7.3 In addition to being a strategy HRES is supplementary planning guidance. It is therefore a material consideration in the determination of planning applications for renewable energy development. The most relevant relevant policies are Policy E7 and Policy N1.

Policy E7

- 7.4 Policy E7 states that apart from preferred and possible development areas for national and major scale onshore wind farms:

“Elsewhere in Highland there will be a presumption against development. Any proposals for national and major projects will have to overcome a precautionary approach to planning approval. Any development would also need to show that there is no scope for alternative development within other preferred and possible development areas.”

Policy N1

- 7.5 Policy N1 seeks information on the form of ‘local content’ of the works. The term ‘local content’ refers to the amount of work and the value of supply contracts undertaken by local businesses.

At its meeting on 31 May 2006, The Planning, Development, Europe and Tourism Committee agreed to the following guidelines for minimum acceptable levels of local content in capital expenditure:

- 50% Highland content recognising the established transport, civil engineering and fabrication capabilities in this area together with the opportunities for specialist manufacturing start-up.
- 75% Highlands & Islands content recognising the existence of other centres of expertise and production across this wider area.
- 90% Scottish content because the expertise exists within Scotland to deliver virtually all of the necessary project elements from within the national renewable energy supply chain, whilst acknowledging the wider opportunities for export activity, joint venturing and innovation/technology transfer.

- 7.6 New planning policy guidance on the location of on-shore wind farms is currently under preparation and is expected to be out to consultation in Autumn 2010. This policy guidance will supersede HRES. Meanwhile it remains the approved Highland Council strategy on which wind energy proposals are assessed. Yet as it is based on a sequential methodology and in that respect does not comply with Scottish Planning Policy in that respect, the weight to be afforded it as a material consideration has been reduced.

8.0 HIGHLAND WIDE LOCAL DEVELOPMENT PLAN (Proposed Plan – Aug 2010)

8.1 The proposed Highland wide Local Development Plan was approved by the Planning, Europe and Development Committee at its meeting on 11 August 2010. It is a material consideration in the determination of planning applications. The key policies in respect of this application are:

8.2 Policy 29 – Sustainable Design

This essentially re-iterates Structure Plan policy G2.

8.3 Policy 58 – Natural, Built and Cultural Heritage

“All development *proposals* will be assessed taking into account the level of importance and nature of heritage features, the nature and scale of development, and any impact on the feature and its setting, in the context of the policy framework detailed in Appendix 6.2. The following criteria will also apply:

1. For features of **local/regional importance** we will allow developments if we believe that they will not have an unacceptable impact on the amenity and heritage resource.

2. For features of **national importance** we will allow developments that can be shown not to compromise the 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** (Natura 2000 (SPA, SAC) and *Ramsar sites*), 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.”

8.4 Policy 59 – Protected Species

“Where there is good reason to believe that a protected species is present on site 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* 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* 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.
- Birds of Conservation Concern on the Red and Amber Lists

Development that is likely to have an adverse effect, individually and/or *cumulatively* (see glossary), on other protected animals and plants 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.”

8.5 Policy 60 – Other important species

“Development *proposals* should avoid adverse effects, individually and/or *cumulatively* (see glossary), on the following categories of species if not 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
- Species included on the Scottish Biodiversity List

We will use conditions and agreements to ensure that harm to these species is

avoided.”

8.6 Policy 61 – Other important habitats

“We 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*).

We will have regard to the value of the following Other Important Habitats, where not protected by nature conservation site (such as natural water courses) designations, 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*
- Priority habitats listed in the UK and Local Biodiversity Action Plans
- Habitats of principal importance included on the Scottish Biodiversity List

We will use conditions and agreements to ensure that significant harm to the ecological function and integrity of *Article 10 Features* and Other Habitats is avoided.

Where we judge that the reasons in favour of a development clearly outweigh the desirability of retaining those important habitats, we will seek satisfactory *mitigation*.”

8.7 Policy 62 – Landscape

“Development *proposals* should relate to the *landscape characteristics* and special qualities of the area in which it is proposed, including in scale, form, pattern and use of materials also taking into account cumulative effects where these occur. Developments should enhance *landscape characteristics* where the condition of these is deteriorating or has deteriorated, resulting in the loss of landscape quality and/or distinctiveness of place. Landscape Character Assessments and the Council’s *Supplementary Guidance on Sustainable Design* should be taken into account, in addition to relevant capacity studies, design guides and *Supplementary Guidance*.”

8.8 Policy 65 – Flood Risk

“Development *proposals* should avoid areas susceptible to flooding and promote sustainable flood management.

Development *proposals* within or bordering medium to high *flood risk areas*, will need to demonstrate compliance with *Scottish Planning Policy* through the submission of suitable information which may take the form of a *Flood Risk Assessment*.

Development *proposals* outwith indicative medium to high *flood risk areas* may be acceptable. However, where:

- better local flood risk information is available and suggests a higher risk;
- a sensitive land use (as specified in the risk framework of *Scottish Planning Policy*) is proposed, and/or;
- the development borders the coast and therefore may be at risk from climate change;

A *Flood Risk Assessment* or other suitable information which demonstrates compliance with SPP will be required.

Developments may also be possible where they are in accord with the flood prevention or management measures as specified within a local (development) plan allocation or a *development brief*. Any developments, particularly those on the flood plain, should not compromise the objectives of the EU Water Framework Directive.

Where flood management measures are required, natural devices such as wetlands should be incorporated or a justification provided as to why they are impracticable.”

8.9 Policy 68 – Renewable Energy Developments

“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 & Planning Guidelines and where appropriate the On-Shore Wind Energy *Supplementary Guidance* and have regard to any other *material considerations*.

Subject to 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, either individually or *cumulatively* with other developments, having regard in particular to any significant effects on the following:

- natural, built and cultural heritage features;
- species and habitats;
- public health and safety;
- visual impact, and impact on the *landscape character* of the Highlands (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);
- community amenity at sensitive locations including residential properties, work places and recognised visitor sites (in or outwith 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, recreation and film industry interests;
- 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 under Section 75, where necessary), relating to the removal of the development and associated equipment and to the *restoration* of the site, whenever the consent expires or the project ceases to operate for a specific period.”

8.10 **Policy 78 – Public Access**

“Where a proposal affects a route included in a Core Paths Plan or an access point to water, or significantly affects wider *access rights*, then The Council will require it to either;

- retain the existing path or water access point while maintaining or enhancing its amenity value; or
- ensure alternative access provision that is no less attractive, and is safe and convenient for public use.

For a proposal classified as a Major Development, the Council will require the developer to submit an Access Plan. This should show the existing public, non-motorised public access footpaths, bridleways and cycleways on the site, together with proposed public access provision, both during construction and after completion of the development (including links to existing path networks and to the surrounding area, and access point to water).”

8.11 **Appendix 6.2 - Definition of Natural, Built and Cultural Heritage**

Appendix 6.2 identifies Special Landscape Areas as a feature of local/regional importance. Annex B of this report contains the citation for the Drynahan, Lochindorb and Dava Moor Special Landscape Area.

RECOMMENDATION

That Members take full account of the Development Plan Policies, Scottish Planning Policy, relevant PANs and the Council's HRES in the determination of the two planning applications and one s36 consultation that are before them.

Signature:

Designation: Head of Planning and Building Standards

Author: David Mudie, Team Leader – Development Management (01463 702255)

Date: 16 August 2010

Background Papers: None

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Our ref: P/PPA/270/2043
Your ref: MAS/KER/50566.4

14 June 2013

Dear Dr Sales

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

PLANNING APPEAL: 17 WIND TURBINES, ASSOCIATED ACCESS TRACKS AND INFRASTRUCTURE, 2 TEMPORARY CONSTRUCTION COMPOUNDS AND 2 TEMPORARY BORROW WORKINGS; APPROXIMATELY 8km NORTH EAST OF TOMATIN

1. This letter contains the Scottish Ministers' decision on the appeal lodged on behalf of your client, Nanclach Ltd, against the decision by The Highland Council to refuse a planning application for the above.

2. Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1987, as amended, the appeal came into a class to be determined by a person appointed by the Scottish Ministers, rather than by the Scottish Ministers themselves. However, in exercise of the powers under paragraph 3(1) of Schedule 4 to the Town and Country Planning (Scotland) Act 1997, the Scottish Ministers directed, on 28 February 2011, that they would determine the appeal themselves. This was for Scottish Ministers to consider this proposal jointly with the proposed wind farm at Glenkirk. The appeal has been considered by written submissions, site inspections and inquiry sessions by the appointed Reporter, Mr Dannie Onn BSc(Hons) Dip Arch RIBA IHBC. A copy of Mr Onn's report to Scottish Ministers is enclosed.

3. The parties who appeared at the inquiry sessions are listed in the Appendices attached to the report. Chapters 1 and 2 of the report provide relevant background, site description, legislative framework and policy context.

4. In Chapter 4 of the report, the Reporter provides summaries of cases for the parties, his findings of fact, and his conclusions and formal recommendations.

The Reporter's Consideration

5. The Reporter's overall findings and recommendations are contained in Chapter 5.

The Scottish Ministers' Decision

6. The Scottish Ministers have carefully considered all the evidence presented by the Reporter and accept the Reporter's findings of fact, agree with his reasoning and recommendation and adopt them for the purpose of their own decision.

7. Accordingly, the Scottish Ministers hereby uphold the appeal and grant planning permission for the construction of a wind farm comprising 17 wind turbines with a maximum blade tip height above ground level of 110M, associated access tracks and infrastructure, 2 temporary construction compounds and 2 temporary borrow workings; approximately 8km North East Of Tomatin, subject to the conditions set out in the Annex to this letter.

8. The foregoing decision of the Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date hereof. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

9. A copy of this letter and the Reporter's report has been sent to The Highland Council and to the other parties that appeared at the inquiry sessions.

10. If any parties wish to collect their productions (listed in the Appendices of the report) they should contact this office to make the necessary arrangements after the 6 week appeal period mentioned above has elapsed. If not collected, they will be disposed of after 3 months.

Yours sincerely

LYNDSEY MURRAY

ANNEX

PLANNING CONDITIONS ATTACHED TO THE GRANT OF PLANNING PERMISSION FOR THE PROPOSED CONSTRUCTION OF WIND FARM COMPRISING 17 WIND TURBINES WITH A MAXIMUM BLADE TIP HEIGHT ABOVE GROUND LEVEL OF 110M, ASSOCIATED ACCESS TRACKS AND INFRASTRUCTURE, 2 TEMPORARY CONSTRUCTION COMPOUNDS AND 2 TEMPORARY BORROW WORKINGS; APPROXIMATELY 8 km NORTH EAST OF TOMATIN (KNOWN AS TOM NAN CLACH WIND FARM)

General

1. Unless otherwise agreed with the Planning Authority, the development shall be constructed and operated in accordance with the provisions of the application, the submitted plans, and the Environmental Statement. This permission shall be for a maximum of 17 turbines, two borrow pits and 1 anemometer mast, to be sited as shown on the site layout drawing (WIPL93260 SITE LAYOUT\01 RevE) and contained within the Third Addendum to the Environmental Statement for the Tom nan Clach Wind Farm, April 2010. The prior written approval of the Planning Authority shall be required for the siting of any wind turbine or access track more than 30 metres from the approved location. Any such submission shall include a revised site layout for the location of all turbines and access roads.

[Reason: In order to clarify the terms of permission and to ensure restoration of the site.]

2. Permission is granted for a limited period of twenty-six years from the date that electricity is first sold to the grid network. Within six months of the date of expiry of the permission, all wind turbines, buildings and ancillary equipment shall be dismantled and removed from the site and the ground fully reinstated in accordance with details first submitted to and approved in writing by the Planning Authority.

[Reason: to avoid unnecessary development in the Highland landscape.]

Prior to commencement

3. No development shall start on site until evidence of a bond or other financial provision to cover all decommissioning and site restoration costs is in place has been submitted to and agreed by the Planning Authority. Such agreed bond, or other such provision, shall be maintained throughout the duration of the development but will be subject to five yearly review in consultation with the Planning Authority.

[Reason: To safeguard the proper restoration of the site.]

4. No development shall start on site until a Construction Environmental Management Document is submitted to and agreed in writing by the Planning Authority. The Document shall include:

- An updated Schedule of Mitigation (SM) including all mitigation proposed in support of the planning application, other relevant agreed mitigation (e.g. as required by agencies) and set out in the relevant planning conditions
- Processes to control / action changes from the agreed Schedule of Mitigation.

- The following specific Construction and Environmental Management Plans (CEMP):
 - (i) Peat management plan
 - (ii) Habitat management plan
 - (iii) Pollution prevention plan
 - (iv) Drainage management plan - to address both construction and post construction
 - (v) Chemical pollution plan
 - (vi) Site waste management plan
 - (vii) Measures to protect private water supplies; including an emergency response plan
 - (viii) Pre-construction survey for otter, wild cat and water vole and subsequent management plan
 - (ix) Measures to safeguard nesting plovers, including buffer zones as necessary
 - (x) Road Safety and Traffic Management Plan – including identification of necessary road improvements and their maintenance
 - (xi) A site specific scheme of all waterbody engineering and buffers to water bodies
- Details of the appointment of an appropriately qualified Ecological Clerk of Works with roles and responsibilities.
- Methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, Planning Authority and other relevant parties.
- Statement of responsibility to 'stop the job or activity' if a potential breach of mitigation or legislation occurs.

Unless otherwise agreed in writing by the Planning Authority the development shall proceed in accordance with the agreed Document.

[Reason: To protect the environment from the construction and operation of the development.]

5. No development shall start on site until arrangements for an archaeological watching brief to be carried out on site clearance and excavation works has been submitted to approved in writing by the Planning Authority. This shall be prepared in accordance with a specification obtained in advance from the Council Archaeology Unit. No site clearance or excavation works shall take place until that approval has been given and all such works shall thereafter be implemented in accordance with the approved arrangements.

[Reason: In order to protect any features of archaeological importance.]

6. No development shall start on site until the applicant has provided the Ministry of Defence (Defence Estates - Safeguarding) with the following information; a copy of which shall be submitted to the Planning Authority –

- proposed date of commencement of the construction;
- estimated date of completion of the construction;
- height above ground level of the tallest structure;

- maximum extension height of any construction equipment;
- position of the turbines in latitude and longitude plus eastings and northings;

[Reason: In order to ensure the safety of low flying military aircraft.]

7. No development shall start on site until the final specification of wind turbine has been submitted to and agreed in writing by the Planning Authority. The details shall including the make, model, design, power rating and sound power levels. For the avoidance of doubt, wind turbines on this site shall not exceed 110m to blade tip from ground level and 75m to hub height from ground level.

[Reason: In order to clarify the terms of permission and retain effective control over the development.]

8. No development shall start on site until the final specification of the means of access, fencing, design, materials, colours/external finishes and construction of all ancillary elements to the development, including the proposed control building, has been submitted to and agreed in writing by the Planning Authority. The development shall be implemented in accordance with the agreed details.

[Reason: In the interests of visual amenity.]

Construction

9. Access to the site by heavy goods vehicles shall be restricted to 07.00 to 19.00 on Mondays to Fridays and from 07.00 to 12.00 on Saturdays with no such access on Sundays. Unless agreed in writing by the Planning Authority in advance, any construction activity involving audible noise from cutting, hammering and welding shall be subject to the foregoing hours.

[Reason: In order to control noise in the interest of amenity.]

10. Prior to the commencement of delivery of abnormal loads along the public road network, all the necessary and approved improvements and modifications to such parts of the network in order to accommodate the transport of abnormal loads shall have been implemented to the written approval of the Planning Authority.

[Reason: In order to minimise the impact of construction of the development on the public road network and its users.]

11. MOD accredited aviation lighting shall be installed on the corner most turbines and sufficient turbines in the middle of the proposal to indicate the size and layout of the wind farm. The aviation lighting should be 25 candela omni-directional red lighting or infrared lighting (one or the other but not a combination of both types of lighting) with an optimised flash pattern of 60 flashes per minute of 200 ms to 500 ms duration at the highest practical point.

[Reason: In the interests of air safety.]

12. The wind turbines shall be finished in a non-reflective semi-matt pale grey colour, and that colour shall not be altered thereafter unless previously agreed in writing by the Planning Authority.

[Reason: In the interest of visual amenity.]

13. Unless otherwise agreed in writing by the Planning Authority no work shall be carried out on the borrow pit outwith the hours 07.00 to 19.00 Mondays to Fridays and 07.00 to 12.00 on Saturdays.

[Reason: In order to control noise in the interest of residential amenity.]

14. Noise associated with the borrow pit shall not exceed 48dB LAeq (1hour) at any noise sensitive premises.

[Reason: In order to control noise in the interest of residential amenity.]

15. No blasting shall be carried out outwith the hours 10.00 to 12.00 and 14.00 to 16.00 Mondays to Fridays and from 10.00 to 12.00 on Saturdays.

[Reason: In order to control noise in the interest of residential amenity.]

Other suspensive

16. Within three months of the issue of this planning permission, detailed proposals for ornithological monitoring, including arrangements for submitting the results of monitoring, shall be submitted to and approved in writing by the Planning Authority. As far as is practicable, monitoring will be carried out prior to, during, and at intervals after the date that the wind farm becomes operational, in accordance with the approved proposals.

[Reason: In order to safeguard the conservation interest of the site.]

17. Not later than 12 months before the end of this permission, a decommissioning and site restoration scheme shall be submitted to and agreed in writing by the Planning Authority. This scheme shall include details of the removal of all above-ground elements of the development, the method of ground reinstatement, the timing of any works and a Construction Environmental Management Document (CEMD). The agreed scheme shall be implemented.

[Reason: To ensure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and the restoration of the site, in the interests of safety, amenity and environmental protection.]

18. Within twelve months of the date of electricity first being sold to the grid network, such date to be notified in writing to the Planning Authority within three months of this time, an indicative scheme for the ultimate reinstatement of the site, including the removal of all wind turbines and ground reinstatement, shall be submitted to and agreed in writing by the Planning Authority. Such scheme will be reviewed and amended as necessary taking into account scheme operation and monitoring at least twelve months prior to actual decommissioning and reinstatement works.

[Reason: In order to ensure restoration of the site.]

Operational

19. The site shall not be permanently illuminated by lighting without the prior written approval of the Planning Authority which, if the lighting is required by law, shall not unreasonably be withheld.

[Reason: In the interest of visual amenity.]

20. No symbols, signs, logos or other lettering shall be displayed on any part of the wind turbines nor any other buildings or structures without the prior written approval of the Planning Authority.

[Reason: In the interest of visual amenity.]

21. In the event that any wind turbine fails to produce electricity supplied to a local grid for a continuous period of six months not due to it being under repair or

replacement, then it shall be deemed to have ceased to be required and, unless otherwise agreed in writing with the Planning Authority, the wind turbine and its ancillary equipment shall be dismantled and removed from the site within the following six months and the ground fully reinstated in accordance with the indicative scheme agreed under condition 18.

[Reason: to remove unnecessary development from the Highland landscape.]

22. The Wind Farm Operator shall log wind speed and wind direction data continually and shall retain the data which has been obtained for a period of no less than the previous 12 months. The data shall include the average wind speed in metres per second for each 10 minute period. The measuring periods shall be set to commence on the hour or in 10 minute increments thereafter. The wind speed data shall be made available to the Planning Authority on request. The data shall be provided on a Microsoft Excel spreadsheet in electronic format. In the case where the wind speed is measured at a height other than 10 metres, the data shall be supplemented by adjusted values which allow for wind shear, normalised to 10 metre height. Details of the wind shear calculation shall be provided. At Wind Speeds not exceeding 12 metres/second, as measured or calculated at a height of 10 metres above ground level (at the location shown on Figure 2) the Wind Turbine Noise Level at any dwelling or other noise sensitive premises, shall not exceed:-

(a) during Night Hours, 38 dB LA90,10min, or the Night Hours LA90,10min Background Noise Level plus 5 dB(A), whichever is the greater;

(b) during Quiet Waking Hours, 35 dB LA90,10min or the Quiet Waking Hours LA90,10min Background Noise Level plus 5 dB(A), whichever is the greater.

providing that this condition shall only apply to dwellings or other Noise Sensitive Premises existing at the date of this Planning Permission.

At the request of the Planning Authority, following a valid complaint to the Planning Authority relating to noise emissions from the wind turbines, the Wind Farm Operator shall measure, at its own expense, the level of noise emissions from the wind turbines. The measurement and calculation of noise levels shall be undertaken in accordance with "The Assessment and Rating of Noise from Wind Farms", September 1996, ESTU report number ETSU-R-97 having regard to paragraphs 1-3 and 5-11 inclusive, of The Schedule, pages 95 to 97; and Supplementary Guidance Notes to the Planning Obligation, pages 99 to 109. In comparing measured Wind Turbine Noise Levels with Background Noise Levels, regard shall be had to the prevailing Background Noise Levels as measured at specified properties and shown by the best fit curves in the Environmental Statement submitted with this planning application. In the event of a complaint from a property other than one of the specified properties in the Environmental Statement, the measured Wind Turbine Noise Levels at that other property shall be compared to the prevailing Background Noise Levels at the specified property which is most likely to have similar background noise levels.

"Wind Turbine Noise Level" means the rated noise level due to the combined effect of all the Wind Turbines, excluding existing background noise level but including any tonal penalty incurred under the methodology described in ETSU-R -97, pages 99 – 109.

“Background Noise Level” means the ambient noise level already present within the environment (in the absence of noise generated by the development) as measured and correlated with Wind Speeds.

“Wind Speeds” means wind speeds measured or calculated at a height of 10 metres above ground level on the site at a specified Ordnance Survey grid reference agreed with the Planning Authority.

“Night hours” means 23:00 – 07:00 hours on all days.

“Quiet Waking Hours” means 18:00 – 23:00 hours on all days, plus 07:00 – 18:00 on Sundays and 13:00 – 18:00 hours on Saturdays.

“Noise Sensitive Premises” means existing premises, the occupants of which could be exposed to noise from the wind farm and includes hospitals, residential homes, nursing homes, etc.

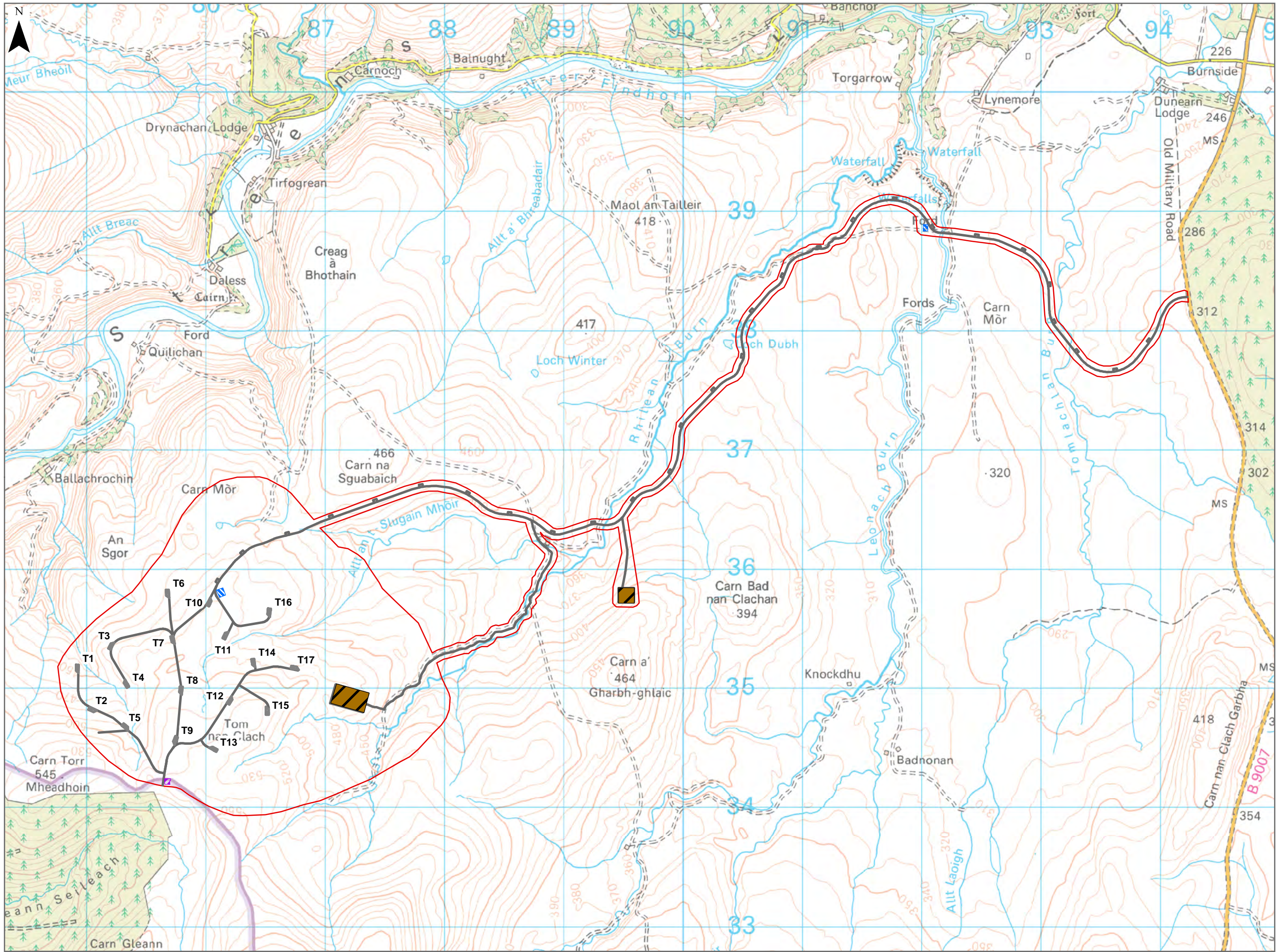
Should the noise levels be exceeded, the Wind Farm Operator shall take immediate steps to ensure that noise emissions from the Wind Farm are reduced to the aforementioned noise levels or less, to the written satisfaction of the Planning Authority.

[Reason: In order to control noise in the interest of amenity.]

Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 4. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.)

Figure 1.2: Permitted Scheme Site Layout



- Legend:
- Permitted Scheme site boundary
 - Permitted Scheme access tracks
 - Permitted Scheme borrow pit search area
 - Permitted Scheme substation
 - Permitted Scheme construction compound
 - T1 Permitted Scheme turbine identification

Title: Permitted Scheme Site Layout	
Project: Tom nan Clach Wind Farm Repowering	
Source: © Crown copyright and database rights 2015. Ordnance Survey 0100031673	
Client: Infinergy	
Drawn by: RT	Checked: AR
Date: 23/07/2015	Figure: 1.2
Scale: 	Revision No: 1
INFINERGY	