

4. Policy & Statutory Framework

4.1 Introduction & Summary

4.1.1 This Chapter of the Environmental Impact Assessment Report (EIA Report) describes the legislative and policy background relevant to the proposed Tom na Clach Wind Farm Extension (the 'Proposed Development'). It refers to national energy and planning policy at a national and local level. It provides an objective summary of the energy and planning policy considerations that have been taken into account in the preparation of the EIA Report in order to ensure that it provides the appropriate information for the consideration of the planning application.

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

4.2 Statutory Framework

The Electricity Act 1989

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

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

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

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

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

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

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

4.2.6 The provisions of Schedule 9 of the Electricity Act set out a number of features to which regard must be had by the Scottish Ministers and such features have been addressed in the EIA process.

The Town & Country Planning (Scotland) Act 1997

- 4.2.7 The principal planning statute in Scotland is the Town and Country Planning Act (Scotland) 1997 (the Planning Act) as amended by The Planning etc. (Scotland) Act 2006 and by the Planning (Scotland) Act 2019.
- 4.2.8 Section 57(2) of the Planning Act provides:
“On granting a consent under section 36 or 37 of the Electricity Act 1989 in respect of any operation or change of use that constitutes development, the Scottish Ministers may direct that planning permission for that development and any ancillary development shall be deemed to be granted, subject to any conditions (if any) as may be specified in the direction”.
- 4.2.9 Section 25 of the Planning Act states that:
“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.
- 4.2.10 Section 57(2) of the Planning Act makes no reference to the provisions of section 25 which requires regard to be had to the provisions of the Development Plan. The Courts have confirmed that section 57(3) does not apply section 25 to a decision to make a direction to grant deemed planning permission pursuant to section 57(2)¹.
- 4.2.11 The Scottish Ministers will determine the application having regard to the statutory duties in Schedules 8 and 9 of the Electricity Act, so far as relevant, and any other relevant material considerations, one of which will be relevant aspects of the statutory Development Plan.

4.3 Renewable Energy Policy: Summary

- 4.3.1 In recent years United Kingdom (UK) and Scottish Government policies have focussed increasingly on concerns about climate change. Each tier of Government has developed targets, policies and actions to achieve targets to deal with the climate crisis and generate more renewable energy and electricity.
- 4.3.2 The UK Government retains responsibility for the overall direction of energy policy, although some elements are devolved to the Scottish Government. The UK Government has published a series of policy documents setting out how targets can be achieved. Onshore wind generation, located in Scotland, is identified as an important component to achieve these various goals.
- 4.3.3 The Scottish Government has published a number of policy documents and its own targets. The most relevant policy, legislative documents and more recent statements published by the Scottish Government include:
- The Letter from Chief Planner to all Heads of Planning in relation to energy targets and SPP (November 2015);
 - Scottish Energy Strategy (December 2017);
 - Onshore Wind Policy Statement (October 2021);

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

- The Scottish Government's declaration of a Climate Emergency (April 2019);
- The Scottish Government's 'Programme for Government' (September 2020);
- The Scottish Climate Change Plan Update (2020);
- The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the legally binding net zero target for 2045 and interim targets for 2030 and 2040;
- The Scottish Government's 'Programme for Government' (September 2021); and
- The Onshore Wind Policy Statement Refresh: Consultative Draft (October 2021).

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

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

(a) 2020 is at least 56% lower than the baseline,

(b) 2030 is at least 75% lower than the baseline, and

(c) 2040 is at least 90% lower than the baseline."

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

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

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

4.4 National Planning Policy

The National Planning Framework

4.4.1 National Planning Framework 3 (2014) (NPF3) is a long-term strategy for Scotland. It is the spatial expression of the Scottish Government's Economic Strategy, and of plans for development and investment in infrastructure.

4.4.2 Part of the vision is of Scotland as a low carbon place, where the opportunities arising from the ambition to be a world leader in low carbon energy generation have been seized. NPF3 is informed by, and aims to help achieve, the Scottish Government's climate change and renewable energy targets.

- 4.4.3 NPF3 acknowledges that the energy sector accounts for a significant share of the country's greenhouse gas emissions, and that addressing this requires capitalising on Scotland's outstanding natural advantages, including its significant wind resource. NPF3 makes it clear that onshore wind will continue to play a significant role in de-carbonising the energy sector and diversifying energy supply.
- 4.4.4 National Planning Policy Framework 4 (NPF4) is under preparation and will include all aspects of national planning policy as per the provisions of the Planning (Scotland) Act 2019. The NPF4 'Position Statement' was published for consultation on the 26th November 2020 and a consultation draft NPF4 was issued for consultation in November 2021 (this is referenced below).
- 4.4.5 Priority policy changes under consideration include strengthening support for re-powering and expanding existing wind farms and updating the current spatial framework for onshore wind to continue to protect National Parks and National Scenic Areas, whilst allowing development outwith these areas where they are demonstrated to be acceptable on the basis of site-specific assessments. Overall, the Position Statement indicates that existing strong policy support for onshore wind farm development is likely to grow even stronger in response to the declared Climate Emergency and the drive to attain net zero emissions.

Scottish Planning Policy

- 4.4.6 Scottish Planning Policy (2014) (SPP) is Scottish Government policy on how nationally important land use planning matters should be addressed.
- 4.4.7 SPP contains a number of principal policies, one of which expresses "a presumption in favour of development that contributes to sustainable development". Paragraph 28 states that:
- "the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost".*
- 4.4.8 Paragraph 29 highlights a series of criteria which should guide decision-making in this regard and the following provisions are considered relevant to the Proposed Development:
- Net economic benefit;
 - Economic issues, challenges and opportunities;
 - Good design and qualities of successful places;
 - Delivery of infrastructure;
 - Climate change mitigation and adaptation;
 - Principles of sustainable land use as set out in the land use strategy;
 - Protecting, enhancing and promoting cultural heritage;
 - Protecting, enhancing and promoting natural heritage and landscape;
 - Reducing waste; and
 - Over-development, amenity and effects on water, soil and air.

- 4.4.9 SPP sets out at paragraph 154 that to support in achieving the outcome of making Scotland a low carbon place, the planning system should support the change to a low carbon economy, including deriving the equivalent of 100% of electricity demand from renewable sources by 2020. It should support the development of electricity generation from a diverse range of renewable sources. It should guide development to appropriate locations and advise on the issues that should be taken into account when specific proposals are being assessed.
- 4.4.10 Onshore wind is referred to specifically in paragraphs 161 to 166 (development planning considerations) and paragraphs 169 to 174 (development management considerations) of SPP within the 'Low Carbon Place' outcome. Development planning guidance for onshore wind includes reference to the need for planning authorities to set out in their development plans a Spatial Framework identifying those areas that are likely to be most appropriate for onshore wind farms. Table 1 in SPP provides guidance on how spatial frameworks should be set out. They should identify three types of areas including:
- Group 1: Areas where wind farms will not be acceptable (National Parks and National Scenic Areas);
 - Group 2: Areas of significant protection (i.e. national and international designations, nationally important environmental interests, community separation for considering visual impact); and
 - Group 3: Areas with potential for wind farm development (where wind farms are likely to be acceptable subject to consideration of details).
- 4.4.11 More generally, SPP advises that the siting and design of development should take account of local landscape character. Decisions should take account of potential effects on landscapes and the natural and water environment, including cumulative effects. Applicants should seek to minimise adverse impacts through careful planning and design. Planning permission should be refused where the nature or scale of a development would have an unacceptable impact on the natural environment.
- 4.4.12 Beyond the Spatial Framework for wind farms the following considerations, outlined in paragraph 169, should be taken into account (where applicable) when determining development proposals:
- Net economic impact;
 - Scale of contribution to renewable energy generation targets;
 - Effect on greenhouse gas emissions;
 - Cumulative impacts;
 - Impact on communities and dwellings (including visual impact, residential amenity, noise and shadow flicker);
 - Landscape and visual impacts (including wild land);
 - Effect on natural heritage (including birds);
 - Impacts on carbon rich soils (using carbon calculator);
 - Impact on public access (including long distance walking and cycling routes and scenic routes);

- Impacts on the historic environment (including scheduled monuments, listed buildings and their setting);
- Impacts on tourism and recreation;
- Impacts on aviation and defence interests and seismological recording;
- Impacts on telecommunications and broadcasting installations;
- Impacts on transportation (road traffic and adjacent trunk roads);
- Effects on hydrology (water environment and flood risk);
- Opportunities for energy storage; and
- Conditions relating to decommissioning of development, including ancillary infrastructure and site restoration.

4.4.13 As noted, SPP is under review and the new NPF4 will become the single national planning policy document, replacing both NPF3 and SPP and it will have Development Plan status when it comes into force.

National Planning Framework 4

4.4.14 The draft NPF4 was published in November 2021. Once approved, it will replace both NPF3 and SPP and will become part of the statutory Development Plan and will directly influence planning decisions. Now that the document has been published it is a material consideration.

4.4.15 In the Ministerial Foreword, the Minister for Public Finance, Planning and community Wealth states: *“This, our fourth National Planning Framework sets out how our approach to planning and development will help to achieve a net zero, sustainable Scotland by 2045.”*

4.4.16 The draft NPF4 (part 2, page 44) continues the planning policy approach of identifying ‘national developments’ which refers to the allocation of national development status to certain classes of development. The draft NPF4 states that *“national developments are significant developments of national importance that will help to deliver our spatial strategy”*.

4.4.17 18 national developments are proposed to support the delivery of the Spatial Strategy and it has set out that *“this designation means that the principle of the development does not need to be agreed and later consenting processes, providing more certainty for communities, business and investors”*.

4.4.18 There are three categories of national development proposed namely ‘liveable places, productive places and distinctive places’. Within the ‘productive places’ category is proposed national development 12 entitled ‘strategic renewable electricity generation and transmission infrastructure’.

4.4.19 In terms of designation and classes of development, it is set out that a development within one or more of the classes of development set out in the NPF4 and that is of a scale or type that would otherwise have been classified as ‘major’ by the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 is designated as a ‘national development’ - these include: *“Electricity generation, including electricity storage, from renewables of or exceeding 50 megawatts capacity”*.

- 4.4.20 Part 3 of the draft NPF contains proposed new 'National Planning Policy'. The draft policy of particular relevance to the Proposed Development is **Policy 2 entitled 'Climate Emergency'** these states at Part A that "*when considering all development proposals significant weight should be given to the global climate emergency*".
- 4.4.21 Under the theme of 'productive places' (page 90) is **draft Policy 19** in relation to 'Green Energy'.
- 4.4.22 The detailed wording of the proposed policies may well change as a result of the public consultation and through the Parliamentary process for NPF4. However, in terms of Policy 19 'green energy' (page 90) the key elements of the policy as currently proposed, include the following:
- *"Local Development Plans should seek to ensure that an area's full potential for electricity and heat from renewable sources is achieved. Opportunities for new development, extensions and repowering of existing renewable energy development should be supported.*
 - *Development proposals for all forms of renewable energy and low carbon fuels, together with enabling work such as transmission and distribution and energy storage, such as battery storage should be supported in principle.*
 - *Development proposals for wind farms in National Parks and National Scenic Areas should not be supported.*
 - *Outwith National Parks and National Scenic Areas and recognising the sensitivity of any other national or international designations, development proposals for new wind farms should be supported unless the impacts are identified (including cumulative effect) are unacceptable. To inform this, site specific assessments including where applicable environmental impact assessments (EIA) and landscape and visual impact assessments (LVIA) are required.*
 - *Areas identified for wind farms should be suitable for use in perpetuity. Consent may be time limited, but wind farms should nevertheless be sited and designed to ensure impacts are minimised and to protect an acceptable level of immunity for adjacent communities."*
- 4.4.23 The proposed section K of the policy sets out that specific considerations for green energy proposals will vary relative to the scale of the proposal and the area characteristics. Reference is then made to 17 considerations which largely replicate those set out in the current SPP at paragraph 169.

4.5 National Planning Advice

- 4.5.1 Planning Advice Notes (PANs) and Specific Advice Sheets set out detailed advice from the Scottish Government in relation to a number of planning issues. Relevant PANs and Specific Advice Sheets relevant to the Proposed Development are summarised in Table 4.1 below.

Table 4.1: Relevant PANs and Specific Advice Notes

Title	Summary of Document
PAN 1/2013 Environmental Impact Assessment	Provides information on the role local authorities and consultees play as part of the EIA process, and how the EIA can inform development management.
PAN 60 (2000) Planning for Natural Heritage	Advises developers on the importance of discussing their proposals with the planning authority and Scottish Natural Heritage (SNH) (now NatrueScot) and use of the EIA process to identify the environmental effects of development proposals and seek to prevent, reduce and offset any adverse effects in ecology and biodiversity.
PAN 61 (2001) Sustainable Urban Drainage Systems	Good practice drainage guidance.
PAN 68 (2003) Design Statements	This PAN covers the importance of design statements, and provides flexible guidance on their preparation, structure, and content. The PAN also outlines the principles underpinning the production of design statements, as expected by the Scottish Government.
PAN 75 (2005) Planning for Transport	The objective of PAN 75 is to integrate development plans and transport strategies to optimise opportunities for sustainable development and create successful transport outcomes.
PAN 3/2010 Community Engagement	This document provides advice on how to engage with local communities through the planning process.
PAN 1/2011 Planning and Noise	This PAN provides advice on the role of the planning system in helping to prevent and/ or mitigate any potential adverse effects of noise. It promotes the principles of good acoustic design and promotes a sensitive approach to the location of new development.
PAN 2/2011 Planning and Archaeology	The PAN is intended to inform local authorities and other organisations of how to process any archaeological scope of works within the planning process.
Online Renewables Planning Advice - On Shore Wind Turbines (updated 2014)	This Specific Advice Sheet provides an overview of the use of the carbon calculator in estimating the carbon savings resulting from wind farm developments. NB: Please note that this Specific Advice Sheet pre-dates SPP, so the areas covered therein in relation to 'spatial framework', 'spatial planning' and 'areas of search' are no longer relevant.
PAN 51 Planning, Environmental Protection and Regulation (Revised 2006)	Details the role of the planning system in relation to the environmental protection regimes.

Title	Summary of Document
Online Planning Advice on Flood Risk (2015)	Provides advice on the role of the planning system and the assessment and management of flood risk.
Online Planning Guidance, COVID 19 Emergency and Pre-Application Consultation and Requirements for a Public Event (April 2020)	Provides guidance on the effect of the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 which makes temporary suspension of public meetings / events and on alternative online consultation and expected practice.

4.6 The Development Plan & Relevant Policies

4.6.1 The statutory development plan covering the Site comprises the following:-

- The Highland Wide Local Development Plan (HwLDP) (2012);
- The Inner Moray Firth Local Development Plan (IMFLDP) (2015); and
- Relevant Supplementary Guidance, particularly the Onshore Wind Energy Supplementary Guidance (2016) and its Addendum (2017).

4.6.2 The IMFLDP focuses largely on regional and settlement strategies and specific site allocations, rather than planning policies of relevance to onshore wind. A review of the IMFLDP has commenced.

Development Plan Policies

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

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

4.6.4 These most relevant policies are set out in full below. Other relevant HwLDP policies which need to be taken into consideration include the following:

- Policy 28 – Sustainable Design;
- Policy 30 – Physical Constraints;
- Policy 31 – Developer Contributions;
- Policy 56 – Travel;
- Policy 63 – Water Environment;

- Policy 66 – Surface Water Drainage;
- Policy 69 – Electricity Transmission Infrastructure; and
- Policy 77 – Public Access.

4.6.5 **Policy 67 – ‘Renewable Energy Developments’** states:

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

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

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

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

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

- *the amenity of users of any Core Path or other established public access for walking, cycling or horse riding;*
- *tourism and recreation interests; and*
- *land and water-based traffic and transport interests.*

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

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

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

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

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

1. For features of local/regional importance we will allow developments if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource.

2. For features of national importance we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource. Where there may be any significant adverse effects, these must be clearly outweighed by social or economic benefits of national importance. It must also be shown that the development will support communities in fragile areas who are having difficulties in keeping their population and services.

3. For features of international importance developments likely to have a significant effect on a site, either alone or in combination with other plans or

projects, and which are not directly connected with or necessary to the management of the site for nature conservation will be subject to an appropriate assessment. Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, we will only allow development if there is no alternative solution and there are imperative reasons of overriding public interest, including those of a social or economic nature. Where a priority habitat or species (as defined in Annex 1 of the Habitats Directive) would be affected, development in such circumstances will only be allowed if the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment, or other reasons subject to the opinion of the European Commission (via Scottish Ministers). Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, the proposal will not be in accordance with the development plan within the meaning of Section 25(1) of the Town and Country Planning (Scotland) Act 1997.

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

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

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

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

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

4.6.7 Policy 61 – ‘Landscape’ states:

“New developments should be designed to reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area in which they are proposed. This will include consideration of the appropriate scale, form, pattern and construction materials, as well as the potential cumulative effect of developments where this may be an issue. The Council would wish to encourage those undertaking development to include measures to enhance the landscape characteristics of the area. This will apply particularly where the condition of the landscape characteristics has deteriorated

to such an extent that there has been a loss of landscape quality or distinctive sense of place. In the assessment of new developments, the Council will take account of Landscape Character Assessments, Landscape Capacity Studies and its supplementary guidance on Siting and Design and Sustainable Design, together with any other relevant design guidance."

4.6.8 Policy 55 – 'Peat and Soils' states:

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

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

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

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

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

4.6.9 Policy 58 – 'Protected Species' states:

"Where there is good reason to believe that a protected species may be 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 (see Glossary) will only be permitted where:

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

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

- There is no other satisfactory solution; and*

- *The development is required in the interests of public health or public safety.*
- *This will include but is not limited to avoiding adverse effects, individually and/or cumulatively, on the populations of the following priority protected bird species:*
- *Species listed in Annex 1 of the EC Birds Directive;*
- *Regularly occurring migratory species listed in Annex II of the Birds Directive;*
- *Species listed in Schedule 1 of the Wildlife and Countryside Act 1981 as amended; and*
- *Birds of conservation concern.*

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

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

4.6.10 **Policy 59 – ‘Other Important Species’** states:

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

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

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

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

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

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

4.7 Onshore Wind Supplementary Guidance

4.7.1 The Council adopted its Onshore Wind Supplementary Guidance (OWESG)² in November 2016 and it forms part of the statutory Development Plan.

4.7.2 Section 1 ‘Introduction’ states: *“The advice that follows provides a fuller interpretation of HwLDP policies as they relate to onshore wind energy development. The Council will balance these considerations with wider strategic and environmental and economic objectives including sustainable economic growth in the Highlands, and our contribution to renewable energy targets and tackling climate change...”*

4.7.3 Section 2 of the SG includes a Spatial Framework, following the approach of Table 1 in SPP.

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

- *Landscape and Visual Effects;*
- *Safety and Amenity at Sensitive Locations;*
- *Safety of Airport, Defence and Emergency Service Operations;*
- *Operational Efficiency of Other Communications;*
- *Operational Efficiency of Wind Energy Developments;*
- *The Natural and Historic Environment;*
- *The Water Environment;*
- *Peat;*
- *Trees and Woodland;*
- *Tourism and Recreation;*
- *Public Access;*
- *Traffic and Transport Interests;*
- *Electricity and Gas Infrastructure;*
- *Noise Assessment;*
- *Borrow Pits;*

² The Highland Council (2016) Onshore Wind Energy: Supplementary Guidance [Online] Available at: https://www.highland.gov.uk/downloads/file/18793/onshore_wind_energy_supplementary_guidance_november_2016 (Accessed 29/11/19)

- *Mitigation;*
- *Construction Environmental Management Plans;*
- *Restoration Bonds;*
- *Repowering.*

4.7.5 At paragraph 4.16, the SG sets out that “*the following criteria set out key landscape and visual aspects that the Council will use as a framework and focus for assessing proposals, including discussions with applicants*”.

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

4.7.7 The SG includes Addendum Supplementary Guidance ‘Part 2B’ which was adopted in December 2017 and provides landscape sensitivity appraisals for ‘Black Isle, Surrounding Hills and Moray Firth Coast Caithness’. The Moray Firth appraisal is of relevance to the Proposed Development. The addendum to the guidance identifies that the Proposed Development is located within Landscape Character Area (LCA) BL10: ‘Tom nan Clach, Lochindorb to Airdrie Mill, South of River Findhorn’.

4.7.8 The Addendum (2017) has identified that

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

4.8 Conclusions

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

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

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