

## 5 Planning and Policy Context

### 5.1 Introduction

5.1.1 This chapter of the EIAR describes the legislative and policy background relevant to the Proposed Development. It refers to energy and planning policy at a national and local level. It provides an objective summary of the energy and planning policy considerations that have been taken into account in the preparation of the EIA in order to ensure that it provides appropriate information for the consideration of an application for the Proposed Development.

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

### 5.2 The Statutory Framework

#### The Electricity Act 1989

- 5.2.1 The Proposed Development will have an installed capacity of over 50 megawatts (MW). In Scotland, onshore renewable energy developments that have capacity to generate over 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.
- 5.2.2 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.
- 5.2.3 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.”
- 5.2.4 The duties referred to in Schedule 9 sub-paragraph 3 (1) (a) and (b) of the Electricity Act do not apply to the Applicant, but the matters set out in Sub paragraph 3(1)(a) to which the Scottish Ministers must have regard are:

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

5.2.5 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.”

5.2.6 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 fully taken into account in the iterative design process and assessed in terms of the EIA process.

#### The Town & Country Planning (Scotland) Act 1997

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

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

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

5.2.9 Section 25 of the 1997 Act states that:

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

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

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

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

## 5.3 Renewable Energy Policy: Summary

- 5.3.1 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 deal with the climate crisis and generate more renewable energy and electricity.
- 5.3.2 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 technology to achieve these various goals.
- 5.3.3 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 Scottish Energy Strategy (December 2017);
  - The Scottish Government's declaration of a Climate Emergency (April 2019);
  - The Scottish Climate Change Plan Update (December 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 2022);
  - The Onshore Wind Policy Statement (December 2022); and
  - The Draft Energy Strategy and Just Transition Plan (January 2023).
- 5.3.4 The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 amends the Climate Change (Scotland) Act 2009 and requires that “The Scottish Ministers must ensure that the net Scottish emissions account for the net-zero emissions target year is at least 100% lower than the baseline (the target is known as the “net-zero emissions target”). The target year is 2045 and the Act also sets out challenging interim targets. It requires that:
- “The Scottish Ministers must ensure that the net Scottish emissions account for the year—
- (a) 2020 is at least 56% lower than the baseline,
  - (b) 2030 is at least 75% lower than the baseline, and
  - (c) 2040 is at least 90% lower than the baseline.”
- 5.3.5 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.

- 5.3.6 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.
- 5.3.7 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 framework is provided in the Planning Statement.

## 5.4 National Planning Framework 4 (NPF4)

### Introduction

- 5.4.1 NPF4 has been subject to consultation and Parliamentary Scrutiny over the last year since it was first laid before Parliament in November 2021. The Revised Draft NPF4 was laid before Parliament on 08 November 2022, accompanied by an Explanatory Report setting out how the Scottish Government considered responses to the initial draft and explaining responses to scrutiny and consultation thereof. Revised Draft NPF4 was approved by the Scottish Parliament, without amendments, following a vote on 11 January 2023. NPF4 came into force at 9 am on 13 February 2023.
- 5.4.2 Section 13, of the 2019 Act amends Section 24 of the 1997 Act regarding the meaning of the statutory Development Plan, such that for the purposes of the 1997 Act, the Development Plan for an area is taken to consist of the provisions of:
- The National Planning Framework; and
  - Any Local Development Plan (LDP).
- 5.4.3 Strategic Development Plans no longer form part of the Development Plan.
- 5.4.4 Therefore, NPF4 now forms part of the statutory Development Plan. A key provision of the 2019 Act is that in the event of any incompatibility between the provisions of NPF4 and a provision of an LDP then whichever of them is the later in date will prevail. That will include where an LDP is silent on an issue that is now provided for in NPF4.
- 5.4.5 Section 13 of the 2019 Act amends Section 24 of the 1997 Act to provide that:
- “In the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail”.
- 5.4.6 As explained, for the purposes of Section 36 decision making, Section 25 of the 1997 Act is not engaged, however NPF4 forms a significant material consideration in the overall decision-making process.

### The National Spatial Strategy: Delivery of Sustainable Places

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

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

5.4.8 The principles are stated as playing a key role in delivering the United Nations Sustainable Development Goals and the Scottish Government’s National Performance Framework<sup>2</sup>.

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

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

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

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

5.4.11 The National Spatial Strategy in relation to ‘sustainable places’ is described (page 7) as follows:

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

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

5.4.13 Every decision on our future development must contribute to making Scotland a more sustainable place. We will encourage low and zero carbon design and energy

efficiency, development that is accessible by sustainable travel, and expansion of renewable energy generation.”

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

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

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

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

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

### National Developments

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

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

5.4.19 It adds that:

<sup>2</sup> The Scottish Government National Performance Framework sets out ‘National Outcomes’ and measures progress against a range of economic, social and environmental ‘National Indicators’.

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

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

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

5.4.21 Page 103 of NPF4 describes ND3 'Strategic Renewable Electricity Generation and Transmission Infrastructure' and it states:

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

5.4.22 A large and rapid increase in electricity generation from renewable sources will be essential for Scotland to meet its net zero emissions targets. Certain types of renewable electricity generation will also be required, which will include energy storage technology and capacity, to provide the vital services, including flexible response, that a zero carbon network will require. Generation is for domestic consumption as well as for export to the UK and beyond, with new capacity helping to decarbonise heat, transport and industrial energy demand. This has the potential to support jobs and business investment, with wider economic benefits.

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

5.4.24 The location for ND3 is set out as being all of Scotland and in terms of need it is described as:

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

5.4.25 Reference is made to the designation and classes of development which would qualify as ND3, and it states in this regard:

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

- (a) on and off-shore electricity generation, including electricity storage, from renewables exceeding 50 megawatts capacity;
- (b) new and/or replacement upgraded on and offshore high voltage electricity transmission lines, cables and interconnectors of 132kv or more; and
- (c) new and/or upgraded Infrastructure directly supporting on and offshore high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations."

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

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

### National Planning Policy

5.4.28 The relevant national planning policies are:

- Policy 1 (Tackling the climate and nature crisis)
- Policy 3 (Biodiversity)
- Policy 4 (Natural Places)
- Policy 5 (Soils)
- Policy 6 (Forestry, Woodland and Trees)
- Policy 7 (Historic Assets and Places)
- Policy 11 (Energy)

#### ***Policy 1 (Tackling the climate and nature crisis)***

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

#### ***Policy 3 (Biodiversity)***

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

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

- a) Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.
- b) Development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management. To inform this, best practice assessment methods should be used. Proposals within these categories will demonstrate how they have met all of the following criteria:
  - i. the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;
  - ii. wherever feasible, nature-based solutions have been integrated and made best use of;
  - iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;
  - iv. significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate; and
  - v. local community benefits of the biodiversity and/or nature networks have been considered.
- c) Proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of

development. Applications for individual householder development, or which fall within scope of (b) above, are excluded from this requirement.

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

#### ***Policy 4 (Natural Places)***

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

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

- a) Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.
- b) Development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an “appropriate assessment” of the implications for the conservation objectives.
- c) Development proposals that will affect a National Park, National Scenic Area, Site of Special Scientific Interest or a National Nature Reserve will only be supported where:
  - i. The objectives of designation and the overall integrity of the areas will not be compromised; or
  - ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance. All Ramsar sites are also European sites and/or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.

- d) Development proposals that affect a site designated as a local nature conservation site or landscape area in the LDP will only be supported where:
- i. Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or
  - ii. Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.
- e) The precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance.
- f) Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation must be factored into the planning and design of development, and potential impacts must be fully considered prior to the determination of any application.
- g) Development proposals in areas identified as wild land in the Nature Scot Wild Land Areas map will only be supported where the proposal:
- i. will support meeting renewable energy targets; or,
  - ii. is for small scale development directly linked to a rural business or croft, or is required to support a fragile community in a rural area.
- 5.4.31 All such proposals must be accompanied by a wild land impact assessment which sets out how design, siting, or other mitigation measures have been and will be used to minimise significant impacts on the qualities of the wild land, as well as any management and monitoring arrangements where appropriate. Buffer zones around wild land will not be applied, and effects of development outwith wild land areas will not be a significant consideration”.
- Policy 5 (Soils)**
- 5.4.32 Policy 5 ‘Soils’ seeks to protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development and states:
- “LDPs should protect locally, regionally, nationally and internationally valued soils, including land of lesser quality that is culturally or locally important for primary use.
- a) Development proposals will only be supported if they are designed and constructed:
    - i. In accordance with the mitigation hierarchy by first avoiding and then minimising the amount of disturbance to soils on undeveloped land; and
    - ii. In a manner that protects soil from damage including from compaction and erosion, and that minimises soil sealing.
  - b) Development proposals on prime agricultural land, or land of lesser quality that is culturally or locally important for primary use, as identified by the LDP, will only be supported where it is for:
    - i. Essential infrastructure and there is a specific locational need and no other suitable site;
    - ii. Small-scale development directly linked to a rural business, farm or croft or for essential workers for the rural business to be able to live onsite;
    - iii. The development of production and processing facilities associated with the land produce where no other local site is suitable;
    - iv. The generation of energy from renewable sources or the extraction of minerals and there is secure provision for restoration; and
- 5.4.33 In all of the above exceptions, the layout and design of the proposal minimises the amount of protected land that is required.
- c) Development proposals on peatland, carbon rich soils and priority peatland habitat will only be supported for:
    - i. Essential infrastructure and there is a specific locational need and no other suitable site;
    - ii. The generation of energy from renewable sources that optimises the contribution of the area to greenhouse gas emissions reductions targets;
    - iii. Small-scale development directly linked to a rural business, farm or croft;
    - iv. Supporting a fragile community in a rural or island area; or
    - v. Restoration of peatland habitats.
  - d) Where development on peatland, carbon-rich soils or priority peatland habitat is proposed, a detailed site specific assessment will be required to identify:
    - i. the baseline depth, habitat condition, quality and stability of carbon rich soils;
    - ii. the likely effects of the development on peatland, including on soil disturbance; and
    - iii. the likely net effects of the development on climate emissions and loss of carbon.

5.4.34 This assessment should inform careful project design and ensure, in accordance with relevant guidance and the mitigation hierarchy, that adverse impacts are first avoided and then minimised through best practice. A peat management plan will be required to demonstrate that this approach has been followed, alongside other appropriate plans required for restoring and/ or enhancing the site into a functioning peatland system capable of achieving carbon sequestration.

- e) Development proposals for new commercial peat extraction, including extensions to existing sites, will only be supported where:
- i. the extracted peat is supporting the Scottish whisky industry;
  - ii. there is no reasonable substitute;
  - iii. the area of extraction is the minimum necessary and the proposal retains an in-situ residual depth of part of at least 1 metre across the whole site, including drainage features;
  - iv. the time period for extraction is the minimum necessary; and
  - v. there is an agreed comprehensive site restoration plan which will progressively restore, over a reasonable timescale, the area of extraction to a functioning peatland system capable of achieving carbon sequestration”.

**Policy 6 (Forestry, Woodland and Trees)**

5.4.35 Policy 6 seeks to protect and expand forests, woodland and trees and states:

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

- a) Development proposals that enhance, expand and improve woodland and tree cover will be supported.
- b) Development proposals will not be supported where they will result in:
  - i. Any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition;
  - ii. Adverse impacts on native woodlands, hedgerow and individual trees of high biodiversity value, or identified for protection in the Forestry and Woodland Strategy;

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

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

- c) Development proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal. Where woodland is removed, compensatory planting will most likely be expected to be delivered.
- d) Development proposals on site which include an area of existing woodland or land identified in the Forestry and Woodland Strategy as being suitable for woodland creation will only be supported where the enhancement and improvement of woodlands and the planting of new trees on the site (in accordance with the Forestry and Woodland Strategy) are integrated into the design”.

**Policy 7 (Historic Assets and Places)**

5.4.36 Policy 7 has a stated intent to protect and enhance historic assets and places. It states:

“a) Development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change.

5.4.37 Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within the Historic Environment Records.

d) Development proposals in or affecting Conservation Areas will only be supported where the character and appearance of the Conservation Area and its setting is preserved or enhanced.

h) Development proposals affecting Scheduled Monuments will only be supported where:

- i. direct impacts on the Scheduled Monument are avoided;
- ii. significant adverse impacts on the integrity of the setting of a Scheduled Monument are avoided; or

- iii. exceptional circumstances have been demonstrated to justify the impact on a Scheduled Monument and its setting and impacts on the monument or its setting have been minimised.
- i) Development proposals affecting nationally important Gardens and Designed Landscapes will be supported where they protect, preserve or enhance their cultural significance, character and integrity and where proposals will not significantly impact on important views to, from and within the site, or its setting.
- l) Development proposals affecting a World Heritage Site or its setting will only be supported where their Outstanding Universal Value is protected and preserved.
- o) Non-designated historic environment assets, places and their setting should be protected and preserved in situ wherever feasible. Where there is potential for non-designated buried archaeological remains to exist below a site, developers will provide an evaluation of the archaeological resource at an early stage so that planning authorities can assess impacts. Historic buildings may also have archaeological significance which is not understood and may require assessment.
- 5.4.38 Where impacts cannot be avoided they should be minimised. Where it has been demonstrated that avoidance or retention is not possible, excavation, recording, analysis, archiving, publication and activities to provide public benefit may be required through the use of conditions or legal/planning obligations.
- 5.4.39 When new archaeological discoveries are made during the course of development works, they must be reported to the planning authority to enable agreement on appropriate inspection, recording and mitigation measures.”
- Policy 11 (Energy)**
- 5.4.40 Policy 11 has a stated intent: “To encourage, promote and facilitate all forms of renewable energy development onshore and offshore.
- 5.4.41 This includes energy generation, storage, new and replacement transmission and distribution infrastructure and emerging low-carbon and zero emissions technologies including hydrogen and carbon capture utilisations and storage (CCUS)”.
- 5.4.42 The desired outcome of this policy is stated as an “Expansion of renewable, low carbon and zero emissions technologies”.
- 5.4.43 LDPs are directed to seek to realise their area’s full potential for electricity and heat from renewable, low carbon and zero emissions sources by identifying a range of opportunities for energy development.
- Policy 11 ‘Energy’ states:
- “a) development proposals for all forms of renewable, low carbon and zero emissions technologies will be supported. These include:
- i. Wind farms including repowering, extending, expanding and extending the life of existing wind farms.
  - ii. Enabling works such as grid transmission and distribution infrastructure;
  - iii. Energy storage such as battery storage and pumped storage hydro;
  - vi. Small scale renewable energy generation technology;
  - v. Solar arrays;
  - vi. Proposals associated with negative emissions technologies and carbon capture; and
  - vii. Proposals including co-location of these technologies.
- b) development proposals for wind farms in National Park and National Scenic Areas will not be supported.
- c) development proposals will only be supported where they maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities.
- d) development proposals that impact on international or national designations will be assessed in relation to Policy 4.
- e) in addition, project design and mitigation will demonstrate how the following impacts are addressed:
- i. impacts on communities and individual dwellings, including, residential amenity, visual impact, noise and shadow flicker;
  - ii. significant landscape and visual impacts, recognising that some impacts are to be expected from some forms of renewable energy. Where impacts are localised and /or appropriate design mitigation has been applied, they will generally be considered to be acceptable.
  - iii. public access, including impact on long distance walking and cycling routes and scenic routes;
  - iv. impacts on aviation and defence interests including seismological recording;
  - v. impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;
  - vi. impacts on road traffic and on adjacent trunk roads, including during construction;
  - vii. impacts on historic environment;
  - vii effects on hydrology, the water environment and flood risk;



- ix biodiversity including impacts on birds;
- x impacts on trees, woods and forests;
- xi proposals for the decommissioning of developments, including ancillary infrastructure, and site restoration;
- xii the quality of site restoration plans including the measures in place to safeguard or guarantee availability of finances to effectively implement those plans; and
- xiii cumulative impacts.

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

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

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

## 5.5 National Planning Guidance

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

**Table 5.1: Relevant PANs**

Title	Summary content of Document
PAN 1/2013 Environmental Impact Assessment (as amended)	Provides information on the role local authorities and consultees play as part of the EIA process, and how the EIA can inform development management.
PAN 60 (2000) Planning for Natural Heritage	Advises developers on the importance of discussing their proposals with the planning authority and Scottish Natural Heritage (SNH) (now NatureScot) and use of the EIA process to identify the environmental effects of development proposals and seek to prevent, reduce and offset any adverse effects in ecology and biodiversity.
PAN 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.

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

## 5.6 The Local Development Plan & Relevant Policies

5.6.1 The LDP covering the site is the Aberdeenshire LDP adopted in January 2023. The relevant policies are as follows:

- Policy R2 Development Proposals elsewhere in the Countryside;
- Policy P4 Hazardous and Potentially Polluting Developments and Contaminated Land;
- Policy E1 Natural Heritage;
- Policy E2 Landscape;
- Policy E3 Forestry and Woodland;
- Policy HE1 Protecting Listed Buildings, Scheduled Monuments and Archaeological Sites (including other historic buildings);
- Policy HE2 Protecting Historic, Cultural and Conservation Areas;
- Policy PR1 Protecting Important Resources;
- Policy C2 Renewable Energy;
- Policy C3 Carbon Sinks and Stores;
- Policy C4 Flooding; and
- Policy RD1 Providing Suitable Services.

5.6.2 Each of these policies is set out below.

### Policy R2 Development Proposals elsewhere in the Countryside

5.6.3 Policy R2 applies to countryside beyond the green belt and coastal zone as referred to in Policy R1 (Special Rural Areas). Policy R2 states:

“Siting and design of any new development will be a primary consideration as well as compliance with other relevant policies. The reuse of brownfield land will always be preferred over greenfield land.

5.6.4 In the accessible and remote rural areas out with the green belt and coastal zone we will permit small-scale development that would be compatible with the location being in the green belt as listed under R1.2”.

### **Policy P4 Hazardous and Potentially Polluting Developments and Contaminated Land**

5.6.5 “We will refuse development, even infill development, if there is a risk that it could cause significant nuisance (for example through impacts on air quality or noise) or present an unacceptable danger to the public or the environment”.

### **Policy E1 Natural Heritage**

#### ***Nature Conservation Sites***

5.6.6 “We will not allow new development where it may have an unacceptable adverse effect on a nature conservation site designated for its biodiversity, species, habitat, or geodiversity importance, except where the following circumstances apply.

5.6.7 In the case of an existing or proposed Special Protection Area (SPA), existing, proposed or candidate Special Area of Conservation (SAC) or Ramsar Site, if it cannot be ascertained that the development would not adversely affect the integrity of the site, development will only be permitted where:

- There are no alternative solutions;
- There are imperative reasons for overriding public interest, that may, for sites not hosting a priority habitat type and/or priority species, be of a social or economic nature; and
- Compensatory measures have been identified and agreed to ensure that the overall coherence of the European site network is protected.

5.6.8 Development that affects Sites of Special Scientific Interest (SSSIs), National Nature Reserves (NNRs) or the Cairngorms National Park will only be permitted where a thorough assessment demonstrates that the objectives of designation and the overall integrity of the site will not be compromised, or any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance. In all cases, any impacts should be minimised through careful design and mitigation measures.

5.6.9 For other recognised nature conservation sites (such as Local Nature Conservation Sites, nature reserves, designated wetlands, woodland in the Scottish Natural Heritage Ancient Woodland Inventory and the Native Woodland Survey or Scotland) the proposal’s public benefits must clearly outweigh the nature conservation value

of the site. In all cases, impacts must be minimised through careful design and mitigation measures.

5.6.10 There will be a strong presumption against removing ancient semi-natural woodland or Plantations on Ancient Woodland Sites (PAWS). Where such woodland is present on or beside a development site, proposals should be designed to seek to accommodate and protect the woodland rather than remove it in part or entirely.

#### ***Protected Species***

5.6.11 Development must seek to avoid any unacceptable detrimental impact on protected species. A Protected Species Survey to inform the assessment of impacts will be required where there is reason to believe protected species may exist on or adjacent to the site. The submission of Species Protection Plans detailing appropriate avoidance and mitigation measures may be required. Development affecting any protected species will only be permitted when it can be justified in accordance with the relevant protected species legislation.

#### ***Wider Biodiversity and Geodiversity***

5.6.12 A baseline ecological or geological survey must be prepared for all developments and other proposals where there is evidence to suggest that a habitat, geological feature or species of importance may exist on or adjacent to the site. This baseline survey must be provided by a suitably qualified ecologist or geologist, as appropriate.

5.6.13 A number of criteria will be used to consider the biodiversity impacts of a development, including whether it will affect habitats or species listed in: Schedule 2 or 4 of the Habitats Regulations; or the Scottish Biodiversity List; or North East Scotland Biodiversity Partnership Local Important Species; or other species or habitats of importance to biodiversity; or Groundwater Dependant Terrestrial Ecosystems (GWDTE). We will only approve development proposals:

- when a baseline ecological survey has been carried out;
- when the development has been designed to avoid impacts where possible;
- where impacts cannot be avoided the public benefits clearly outweigh the ecological or geological value of the site; and
- where an ecological or geological management plan is provided that includes necessary mitigation and compensation measures to result in ecological net gain.

5.6.14 Development will not be allowed if it fragments habitats or is not designed to minimise any adverse impact on the site’s environmental quality, ecological status, or viability.

5.6.15 Policy P1 also says that all developments should identify measures that will be taken to enhance biodiversity (including woodlands) in proportion to the potential opportunities available and the scale of the development. In circumstances when it is not practical to deliver positive effects for biodiversity within a development site, we may require off-site contributions towards biodiversity enhancement within the settlement. Such measures may be secured by planning obligations or conditions”.

### Policy E2 Landscape

5.6.16 “We will refuse development that causes unacceptable effects through its scale, location or design on key characteristics, natural landscape elements, features or the composition or quality of the landscape character as defined in the Landscape Character Assessments produced by NatureScot. These impacts can be either alone or cumulatively with other recent developments. A Landscape and Visual Impact Assessment (LVIA) may be required to assess the effects of change on a landscape that could be experienced should a development proposal be approved. Appropriate mitigation should be identified.

5.6.17 Development that has a significant adverse impact on the qualifying interests of a Special Landscape Area will not be permitted unless it is adequately demonstrated that these effects are clearly outweighed by social, environmental or economic benefits of at least local importance. Appendix 13 on Special Landscape Areas is also intended to be used as a guide by prospective developers in assessing potential impact. Development, in terms of its location, scale, design, materials and landscaping, should be of a high standard and enhance the special qualities and character of the Special Landscape Area”.

### Policy E3 Forestry and Woodland

5.6.18 “Aberdeenshire’s forests and native and semi-natural woodland areas are valued and enjoyed by both residents and visitors and must continue to be resilient to the effects of climate change. They must be protected and, where appropriate, enhanced to safeguard the environment, habitats, species and local culture, whilst benefitting and supporting the local and national economy.

5.6.19 We will promote and support the forestry industry while strongly protecting and enhancing trees and woodlands in the planning and construction of built development. To achieve this, there will be a presumption against the removal of safe and healthy trees, non-commercial woodlands and hedgerows. Criteria in the Scottish Government’s policy on Control of Woodland Removal will be used to determine the acceptability of woodland removal. Development is also required to

continue to ensure that opportunities are taken to promote the role of woodlands in providing opportunities for community development, education and recreational access, protecting and enhancing environmental quality and biodiversity, landscape and historic assets.

5.6.20 Working with partners a Forestry and Woodland Strategy has been prepared as Planning Advice that sets out key issues and opportunities for forests and woodlands”.

### Policy HE1 Protecting Listed Buildings, Scheduled Monuments and Archaeological Sites (including other historic buildings)

5.6.21 “We will resist development that would have an adverse impact on the character, integrity or setting of listed buildings, or scheduled monuments, or other archaeological sites. If adverse impact is unavoidable, it should be minimised and justified.

5.6.22 We will protect all listed buildings contained on the statutory list of Buildings of Special Architectural or Historic Interest for Aberdeenshire, all scheduled monuments contained on the statutory schedule of Monuments for Aberdeenshire and undesignated archaeological sites in Aberdeenshire. We will encourage their protection, maintenance, enhancement, and appropriate active use and conservation.

#### *Scheduled Monuments and Archaeological Sites*

5.6.23 Development on nationally or locally important monuments or archaeological sites or having an adverse impact on the integrity of their setting, will only be allowed if there are exceptional circumstances, including those of a social or economic nature, and there is no alternative site. It is the developer’s responsibility to provide information on the nature and location of the archaeological features, including details of any mitigation measures proposed, prior to determination of the planning application.

5.6.24 Where preservation of the site in its original location is not possible, the developer must arrange for the full excavation and recording of the site in advance of development to satisfy Aberdeenshire Council that the impacts from development have been fully mitigated.”

## Policy HE2 Protecting Historic, Cultural and Conservation Areas

### *Conservation Areas*

- 5.6.25 “We will resist development, including change of use or demolition, which would fail to preserve or enhance the character or appearance of a conservation area. This applies both to developments within the conservation area and proposals outwith that would affect its character or appearance.

### *Battlefields, Inventory Gardens and Designed Landscapes*

- 5.6.26 Development affecting an inventory battlefield or inventory garden and designed landscape will only be permitted if:
- the proposal would not have an adverse impact that compromises the objectives of the designation of an inventory garden or designed landscape, or the key landscape characteristics and special qualities of an inventory battlefield; or,
  - any significant adverse effects are outweighed by long-term social or economic benefits of overriding public importance and there is no alternative site for the development.
- 5.6.27 These conditions may also apply to developments outwith the designated sites. In either case, measures and mitigation must be taken to conserve and enhance the essential characteristics of the site as appropriate.
- 5.6.28 All development affecting the character and/or the appearance of an inventory battlefield or inventory garden and designed landscape must be justified through a Design Statement and/or Landscape Management Plan.”

## Policy PR1 Protecting Important Resources

- 5.6.29 “We will not approve developments that have a negative effect on important environmental resources associated with air quality, the water environment, important mineral deposits, prime agricultural land, peat and other carbon rich soils, open space, and important trees and woodland. In all cases development which impacts on any of these features will only be permitted when public economic or social benefits clearly outweigh any negative effects on the protected resource, and there are no reasonable alternative sites.

### *Air Quality*

- 5.6.30 New developments should not have a significant adverse impact on air quality. An Air Quality Assessment may be required to demonstrate that the development has no significant adverse impact on air quality, and that appropriate mitigation to minimise any adverse effects can be provided and implemented.

### *Water Environment*

- 5.6.31 New development, including aquatic engineering works, which will generate discharges or other impacts on water bodies (including wetlands), or which could affect the water quality, quantity, flow rate, botanical richness, ecological status, riparian habitat, protected species or flood plains of water bodies (including their catchment area) must not prejudice water quality or flow rates, or their ability to achieve or maintain good ecological status.
- 5.6.32 Opportunities for the improvement of water quality, physical enhancement of waterbodies and for the creation, enhancement and management of habitats shall be required where feasible to contribute to the improvement of the overall status of the water body.
- 5.6.33 Adequate buffer strips will be required adjacent to waterbodies in order to protect and enhance all waterbodies within or adjacent to development sites, and these should be integrated positively into the green-blue infrastructure of the site and surrounding area.
- 5.6.34 Wetlands are specifically protected under the Water Framework Directive. Phase 1 Habitat Surveys should be used to identify if wetlands are present. If present, then the more detailed National Vegetation Classification Survey should be completed to identify if there are Ground Water Dependent Terrestrial Ecosystems (GWDTE) present. If GWDTE are present, the developer should avoid them (with a buffer), or further assessment and appropriate mitigation will be required.

### *Trees and Woodlands*

- 5.6.35 This policy establishes a strong presumption in favour of retaining woodland on development sites. Development resulting in the loss of, or serious damage to, trees and woodlands of significant ecological, recreational, historical, landscape or shelter value will not normally be permitted. In order to determine whether there are significant public benefits that would outweigh any loss or damage to trees and woodlands, the developer must submit a Tree Survey to BS 5837. Where necessary an Ecological Survey and assessment by a suitably qualified professional of the biodiversity and amenity value of the woodland and habitat, including both its current and potential future benefits, should be submitted. For any proposals involving the removal of trees or woodland, the Scottish Government Control of Woodland Removal Policy will apply.
- 5.6.36 Where development is considered appropriate, damage to existing trees must be minimised and there must be no unnecessary fragmentation of existing or potential woodlands networks. Compensatory planting must also be undertaken to an agreed standard in order to mitigate the impact of the removal on landscape, sequestered carbon, character, amenity and ecological diversity. New planting should be located

to enhance connectivity with existing and proposed green infrastructure. Woodland Management Plans are required for all new woodlands.

#### **Peat and Carbon Rich Soils**

- 5.6.37 Commercial extraction of peat will only be permitted in those areas suffering historic, significant damage through human activity and where the conservation value is low and restoration is impossible. This resource is protected under Policy C3 Carbon Sinks and Stores which refers to soils defined by Scottish Natural Heritage's Carbon and Peatland map 2016 as Classes 1, 2 and 5 and greater than 0.5m deep.
- 5.6.38 We will protect and not allow alternative development on sites that may reasonably be needed in the future for:
- delivering improvements to transportation including projects identified in the Settlement Statements, routes recognised in the Core Paths Plan network;
  - generating and providing energy.”

#### **Policy C2 Renewable Energy**

- 5.6.39 “We will support renewable energy developments, including solar, wind, biomass and hydroelectricity projects, as well as energy storage projects, which are in appropriate sites and of the appropriate design. Assessment of the acceptability of such developments will take account of any effects on: socio-economic aspects; renewable energy targets; greenhouse gas emissions; communities; landscape and visual aspects; natural heritage; carbon rich soils; the historic environment; tourism and recreation; aviation, defence, telecommunications and broadcasting interests; road traffic; hydrology; and opportunities for energy storage.
- 5.6.40 This support is not at the expense of other policies regarding Natural Heritage, the Historic Environment and Protecting Resources.

#### **Wind Energy**

- 5.6.41 We will approve wind energy developments in appropriate locations taking into account the spatial framework mapping at the end of this section. Detailed guidance is set out in the Strategic Landscape Capacity Assessment for Wind Energy in Aberdeenshire Final Report 2014. This guidance remains relevant but is not a substitute for detailed assessment of the landscape impact of specific development proposals.
- 5.6.42 All wind farms must be appropriately sited and designed and avoid unacceptable environmental effects, taking into account the cumulative effects of existing and approved wind turbines. All wind turbines sites must be appropriate for use in

perpetuity at the scale being proposed. Amendments to include larger blades or towers are likely to require a new application. Full repowering, where the wind turbines are dismantled and new wind turbines are installed, is likely to require revision of environmental information and a new planning application. Lifetime extension, where new technology is installed, or components are upgraded and replaced but the overall external layout of a wind farm remains unchanged (e.g. hub height, siting, size), may not require a new application provided the scale and predicted impacts are no greater than those anticipated from the original proposal. Existing infrastructure, including turbine bases, should be reused where possible. The existence of a planning permission for a wind turbine will be a material consideration for proposals for repowering existing wind turbines.

- 5.6.43 Turbines must not compromise health and safety or adversely affect aircraft or airfields (including radar and air traffic control systems, flight paths and Ministry of Defence low flying areas) and/or telecommunications. Unacceptable significant adverse effects on the amenity of dwellinghouses, such as from noise, or on tourism and recreation interests including core paths and other established routes used for public walking, riding or cycling, or to protected species should also be avoided.”

#### **Policy C3 Carbon Sinks and Stores**

- 5.6.44 “We will protect carbon sinks and stores, such as woodland and high-carbon peat rich soils (defined by Scottish Natural Heritage's Carbon and Peatland map 2016 as Class 1, 2 and 5, and greater than 0.5m depth), from disturbance or destruction. Development proposals that may result in the loss of, or disturbance to, peat will only be permitted if tools such as the “Carbon Calculator” demonstrate that the development will, within its lifetime, have no net effect on CO2. Removal of woodland will only be permitted if an equal area is replanted, preferably as part of the open space requirement and as part of the green-blue network in the settlement, so as to maintain the carbon balance.”

#### **Policy C4 Flooding**

- 5.6.45 “Flood Risk Assessments should be undertaken in accordance with SEPA Technical Flood Risk Guidance and will be required for development in the indicative medium to high category of flood risk of 0.5% or greater annual probability (1 in 200 years or more frequent).
- 5.6.46 We will not approve development that may contribute to flooding issues elsewhere. Sustainable Urban Drainage principles apply to all sites.

5.6.47 We are opposed to the enclosed culverting of watercourses for land gain and will actively seek to discourage such proposals.”

### Policy RD1 Providing Suitable Services

#### Access to New Development

5.6.48 “We will support new development if it is well related to existing developments, is in accordance with the national policy ‘Designing Streets’ and the Aberdeenshire Standards for Road Construction Consent and Adoption.

5.6.49 New accesses should also cause minimal impact on the character of the site and surrounding area and satisfactory arrangements for future maintenance of these access facilities should also be made.

#### Water and Wastewater

5.6.50 We will support development when the developer satisfactorily meets the required standards for water, wastewater and surface-water drainage servicing in the new development.”

## 5.7 Summary

5.7.1 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 EIAR in order to ensure that it provides the appropriate information for the consideration of the application for consent.

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

## 5.8 References

The Climate Change (Emissions reduction targets) (Scotland) Act 2019. Available at <https://www.legislation.gov.uk/asp/2019/15/enacted>

Scottish Government (2023), The Draft Energy Strategy and Just Transition Plan. Available at Draft Energy Strategy and Just Transition Plan - gov.scot ([www.gov.scot](http://www.gov.scot))

Scottish Government (2022), The Onshore Wind Policy Statement. Available at Onshore wind: policy statement 2022 - gov.scot ([www.gov.scot](http://www.gov.scot))

Scottish Government (2022), National Planning Framework 4. Available at National Planning Framework 4: revised draft - gov.scot ([www.gov.scot](http://www.gov.scot))

Aberdeenshire Council (2023), Local Development Plan. Available at: <https://www.aberdeenshire.gov.uk/planning/Plans-and-Policies/>