

5 Policy Context

Introduction

- 5.1 This chapter considers the legislative and policy context against which the application for consent for the Development will be assessed and determined by Scottish Ministers. The chapter considers national energy policy and planning policy at a national and local level. The chapter also identifies other matters that will be material to the decision by Scottish Ministers. This chapter does not assess the accordance of the Development against planning policy; instead a separate Planning Statement has been prepared to support the application and should be referred to for a detailed planning policy appraisal.

Legislation

The Electricity Act 1989

- 5.2 Section 36 of the Electricity Act 1989ⁱ provides that a generating station with a capacity in excess of 50MW shall not be constructed, extended or operated except in accordance with a consent granted by the Scottish Ministers.
- 5.3 Schedule 8 (2) to the Act requires the Scottish Ministers to serve notice of any Section 36 application on the relevant planning authority.
- 5.4 Paragraph 3(2) of Schedule 9 of the Act requires the Scottish Ministers, in considering any relevant proposals for which their consent is required under Section 36, to have regard to:
- the desirability of the matters mentioned in paragraph 3(1)(a) of the Schedule; and
 - the extent to which the person by whom the proposals were formulated has complied with his duty.
- 5.5 The matters mentioned in paragraph 3(1)(a) are: the desirability of preserving natural beauty, conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historical or archaeological interest.
- 5.6 The duty under paragraph 3(1)(b) requires the person who formulated the proposals to do what he reasonably can to mitigate any effect that the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects. Sub-paragraph 1 can be relevant to an Applicant if they hold a License at the date a s.36 application is made.
- 5.7 Paragraph 3(3) of Schedule 9 stipulates a further requirement to seek to avoid as far as possible, causing injuries to fisheries or to the stock of fish in any waters.
- 5.8 The Act does not say that these are the only matters to be taken into account. Scottish Ministers will take into account other matters which would be material to their decision. These will include: national energy policy, national and local planning policy as well as the full scope of the environmental information submitted with the application

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended)ⁱⁱ

- 5.9 Regulation 3 states that the Scottish Ministers shall not grant a Section 36 consent that relates to environmental impact assessment development unless the requirements of Regulation 4 have been satisfied. Regulation 4(1) requires an applicant to submit an Environmental Statement (ES). Regulation 4(2) provides that the Ministers shall not grant consent unless an ES has been provided, that they have taken into consideration the environmental information and stated in their decision that they have done so, and that the appropriate procedures for publicity have been followed.

The Town and Country Planning (Scotland) Act 1997ⁱⁱⁱ

- 5.10 The main planning law in Scotland is the Town and Country Planning Act (Scotland) 1997 (The Planning Act) as amended by The Planning etc. (Scotland) Act 2006^{iv}.

- 5.11 Section 57 of the Planning Act addresses development with government authorisation. Section 57 (2) states that: "On granting or varying a consent under section 36 or 37 of the Electricity Act 1989, the Scottish Ministers may give a direction for planning permission to be deemed to be granted, subject to such conditions (if any) as may be specified in the direction, for – (a) so much of the operation or change of use to which the consent relates as constitutes development; (b) any development ancillary to the operational change of use to which the consent relates".
- 5.12 As an application under the Electricity Act, the duty under Section 25 of the Planning Act, to determine the application in accordance with the provisions of the Development Plan unless material considerations indicate otherwise, does not apply. The Development Plan is however a relevant and important consideration.

Policy Background

National Energy Policy

- 5.13 In recent years, European, United Kingdom and Scottish Government policies have focussed increasingly on concerns about climate change. Each tier of government has developed targets, policies and actions to achieve these targets.
- 5.14 The targets set for the United Kingdom by the European Commission under the EU Renewables Directive (2009/28/EC)^v include a 16% reduction in United Kingdom greenhouse gas emissions by 2020 and for 15% of all energy consumed in the United Kingdom to come from renewable resources by 2020.
- 5.15 The United Kingdom Government retains responsibility for the overall direction of energy policy, although some elements are devolved to the Scottish Government. The United Kingdom Government has published a series of policy documents setting out how the European targets can be achieved. Onshore wind generation, located in Scotland, is identified as an important component to achieve these various goals.
- 5.16 The Scottish Government has published a number of policy documents and its own targets. The Climate Change (Scotland) Act 2009^{vi} provides the statutory framework for greenhouse gas emissions reductions in Scotland. The 2009 Act requires reductions in greenhouse gas emissions of 42% by 2020 and 80% by 2050, and also provides for annual targets to be set.
- 5.17 The most relevant policy documents published by the Scottish Government include:
- The 2020 Routemap for Renewable Energy in Scotland^{vii} was launched in June 2011, and was updated in 2013 and in 2015. It updates the Renewables Action Plan 2009^{viii} and reflects the Scottish Government's target of meeting an equivalent of 100% of demand for electricity from renewable energy by 2020. Onshore wind is expected to provide the majority of capacity for the 2020 target which is uncapped.
 - The Electricity Generation Policy Statement 2013^{ix} states that "Achieving the 100% target will require Scottish installed generation capacity to almost double over the 10 year period to 2020 – with wind (offshore and onshore) playing a critical role". This will require around 14-16 GigaWatts of capacity to be deployed.
 - In June 2013, the Scottish Government published 'Low Carbon Scotland Meeting the Emissions Reduction Targets 2013-2027: The Second Report on Proposals and Policies'^x ('RPP2'). This sets out a vision for a largely decarbonised electricity generation sector and a target of 50g CO₂/kWh of electricity generated by 2030. This was updated by the draft Climate Change Plan published in January 2017.
 - In April 2014, The Scottish Government published 'UK energy policy and Scotland's contribution to security of supply'^{xi}. This report highlights the importance of Scotland's contribution to energy security in the UK, and its suitability for renewable energy.
- 5.18 The Committee on Climate Change published its fifth report in September 2016^{xii} and advised that Scotland is leading the UK in greenhouse gas emissions reductions but has stated that more needs to be done to ensure that targets are met. The Scottish Government has stated that there is a need for stronger policies.
- 5.19 Against this background, on 19 and 24 January 2017, the Scottish Government published three draft energy policy documents, namely:

- the draft Climate Change Plan;
- the draft Scottish Energy Strategy 'The Future of Energy in Scotland'; and
- the draft Onshore Wind Policy Statement.

5.20 Together, these three policy documents represent the Government's intended energy and climate change strategy for the period to 2050. The documents have been issued for consultation purposes with a closing date set as 30 May 2017. Detailed reference to the renewable energy policy context is provided in the Planning Statement.

National Planning Policy

Scotland's Third National Planning Framework (NPF3)^{xiii}

- 5.21 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.
- 5.22 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.
- 5.23 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. There is much to be gained from focussing on existing energy infrastructure. Onshore wind will continue to play a significant role in de-carbonising the energy sector and diversifying energy supply.

Scottish Planning Policy (SPP)^{xiv}

- 5.24 SPP is Scottish Government policy on how nationally important land use planning matters should be addressed.
- 5.25 It introduces a presumption in favour of development which contributes to sustainable development. Decisions are to be guided by a number of listed principles. These include making efficient use of existing infrastructure, supporting the delivery of new energy infrastructure, supporting climate change mitigation and protecting natural heritage, landscape and the wider environment.
- 5.26 In support of 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 will be taken into account when specific proposals are being assessed.
- 5.27 SPP requires planning authorities to set out in their Development Plan a spatial framework identifying those areas that are likely to be the most appropriate for windfarms. Table 1 of SPP shows the approach to be followed. Group 1 is areas where windfarms will not be acceptable. Group 2 is areas of significant protection. Group 3 is areas with potential for windfarm development, where it is likely to be acceptable subject to detailed consideration against identified policy criteria. A list of likely considerations for development proposals is provided. Windfarms should be sited and designed so that impacts are minimised and to protect an acceptable level of amenity for adjacent communities.
- 5.28 More generally, 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. Developers 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. Development should aim to minimise the release of CO₂ as a result of disturbance on peatland.

Scottish Government web-based guidance for onshore wind turbines^{xv}

- 5.29 The 'Onshore Wind Turbines' guidance is part of a suite of web-based advice on renewable energy. The list of 'Typical Planning Considerations in Determining Planning Applications for Onshore Wind Turbines' is similar to that in SPP.

The Development Plan

- 5.30 The statutory Development Plan which applies to the Development is the Dumfries and Galloway Local Development Plan^{xvi} (hereafter referred to as the 'LDP'), adopted on 26 September 2014.

Review of the Development Plan Policy

Introduction

- 5.31 The LDP policies against which the application will be assessed are detailed below on a topic basis reflecting chapter divisions within the ES. The full wording of certain policies is given to provide the basis for a comprehensive assessment against the LDP which is provided within the Planning Statement.

General Considerations

- 5.32 The LDP includes overarching policies that set out the key considerations that need to be taken into account when assessing development proposals. The aim of the overarching policies is to deliver a high standard of development on the ground.
- 5.33 **Policy OP1: Development Considerations^{xvii}** states that: "*Development will be assessed against the following considerations where relevant to the scale, nature and location of the proposal:*

- General amenity,*
- Historic environment,*
- Landscape,*
- Biodiversity and geodiversity,*
- Transport and travel,*
- Sustainability, and*
- Water environment."*

With specific reference to landscape, Policy OP1 provides that development proposals should respect, protect and/or enhance the region's rich landscape character, scenic qualities and features and sites designed for their landscape quality at any level. Development proposals are also to reflect the scale and local distinctiveness of the landscape.

- 5.34 Policy OP1 further provides, at part (C), that principles established in the European Landscape Convention and the Dumfries and Galloway Landscape Assessment, and any subsequent revised or amended document will be a material consideration in the assessment of proposals.
- 5.35 **Policy OP2: Design Quality of New Development^{xviii}** states that: "*Development proposals should achieve high quality design in terms of their contribution to the existing built and natural contributing positively to a sense of place and local distinctiveness*".
- 5.36 **Policy OP3: Development Contribution^{xix}** requires that developer contributions will be sought where a development proposal creates an identified need: to secure the mitigation required to address an adverse environmental impact; or to provide for new, extended or upgraded public infrastructure facilities or services.
- 5.37 The Council published Supplementary Guidance (SG) on Wind Energy Development, in March 2015^{xx}. The SG notes that details of Dumfries and Galloway Council's approach to securing community benefits from wind energy developments for the region are available on the Council's website. The SG notes: "*that the process of securing community benefit from such (wind energy) developments is out with and separate from the planning process and is mentioned (here) for the purposes of providing clarity and comprehensiveness of the entire wind energy development process for developers and the public alike.*" The SG is considered more fully later in this chapter.

Renewable Energy

- 5.38 **Policy IN1: Renewable Energy^{xxi}** states that: "*The Council will support development proposals for all renewable energy provided they do not individually or in combination have an unacceptable * significant adverse impact on:*
- *landscape;*
 - *the cultural and natural heritage;*

- areas and routes important for tourism or recreational use in the countryside;
- water and fishing interests;
- air quality; and
- the amenity of the surrounding area.

To enable this assessment, sufficient detail should be submitted, to include the following as relevant to the scale and nature of the proposals:

- any associated infrastructure requirements including road and grid connections (where subject to planning consent)
- environmental and other impacts associated with the construction and operational phases of the development including details of any visual impacts, noise and odour issues
- relevant provisions for the restoration of the site
- the extent to which the proposal helps to meet the current government targets for energy generation and consumption.

** (Acceptability will be determined through an assessment of the details of the proposal including its benefits and the extent to which its environmental and cumulative impacts can be satisfactorily addressed.)"*

- 5.39 Under the heading of **Wind Energy** it is noted that the Council has developed a spatial framework, taking into account the SPP and online guidance, which satisfies areas of search where there are no significant constraints to development. It is stated that the purpose of the spatial framework is to guide wind turbine developments to the most appropriate locations, to maximise renewable energy potential and to minimise wasted effort and resources on inappropriately located proposals.
- 5.40 The LDP notes that further information is provided in the SG to provide clarity on the issues that will be taken into account when specific proposals are assessed.
- 5.41 The LDP further notes that the spatial framework is supported by the Dumfries and Galloway Wind Farm Landscape Capacity Study^{xxii} (DGWLCS) which is an appendix to the SG. The DGWLCS assesses landscape sensitivity, the capacity of individual landscape units to accommodate change and provides advice on how the scale, siting and design of development should be informed by local landscape character.
- 5.42 The LDP notes that in the examination of the LDP, some refinement of the mapping in the spatial framework was required to address compliance with SPP, in relation to:
- "Areas of Greatest Potential: The spatial framework currently removes areas of high and medium local landscape sensitivity from inclusion. This approach should be revised in accordance with SPP.
 - Areas of Significant Protection: These should be revised in accordance with SPP to include sites designated for their national or international landscape or natural heritage value and areas where the cumulative impact of existing and consented windfarms limits further development.
 - Cumulative Sensitivity Zones: These should be redefined as a potential constraint with revised mapping to focus on cumulative impact considerations with regard to preventing further coalescence between clusters of windfarms and the maintenance of an acceptable and coherent pattern of windfarm development.
 - Other Areas: Retained but with amendments to reflect all the revisions outlined above."
- 5.43 The LDP is clear that whilst the original spatial framework is retained, it is to be labelled "interim spatial framework guidance". A review of the interim spatial framework mapping is required to ensure consistency with SPP. The interim guidance is to be replaced, initially with the approval of new supplementary guidance and brought into the LDP at the earliest opportunity.
- 5.44 **Policy IN2: Wind Energy**^{xxiii} is presented in 2 parts. Part 1 relates to the assessment of all windfarm proposals. Part 2 sets out the approach with regard to the interim spatial framework. As Policy IN2 is a key policy in the assessment of wind energy proposals, it is set out in full below:

"Part 1: Assessment of all windfarm proposals:

The Council will assess the acceptability of any proposed wind energy development against the following considerations (1):*

Landscape and visual impact:

- The extent to which the proposal addresses the guidance contained in the Dumfries and Galloway Windfarm Landscape Capacity Study.
- The extent to which the landscape is capable of accommodating the development without significant detrimental impact on landscape character or visual amenity.
- That the design and scale of the proposal is appropriate to the scale and character of its setting, respecting the main features of the site and the wider environment and that it fully addresses the potential for mitigation.

Cumulative Impact

The extent of any detrimental landscape or visual impact from two or more wind energy developments and the potential for mitigation.

Impact on local communities

The extent of any detrimental impact on communities and local amenity including assessment of the impacts of noise, shadow flicker, visual dominance and the potential for associated mitigation.

Impact on Aviation and Defence Interests

The extent to which the proposal addresses any impacts arising from location within an area subject to potential aviation and defence constraints including the Eskdalemuir Safeguard Area.

Other Impacts and Considerations

- The extent to which the proposal avoids or adequately resolves any other significant adverse impact including:- on the natural and historic environment, cultural heritage, biodiversity; forest and woodlands; and tourism and recreational interests.*
 - The extent to which the proposal addresses any physical site constraints and appropriate provision for decommissioning and restoration.*
- (1) *Further details on this assessment process including its application to smaller capacity windfarms are to be provided through Supplementary Guidance on Wind Energy Development: This will also include mapping of the constraints relevant to the considerations above.*

**Acceptability will be determined through an assessment of the details of the proposal including its benefits and the extent to which its environmental and cumulative impacts can be satisfactorily addressed.*

Part 2: Spatial Framework

The considerations in Part 1 above will be applied in the context of the following Spatial Framework:*

- **Areas of Greatest Potential (1):** areas free from significant constraint where proposals for large and medium turbine typologies will be supported subject to detailed assessment.
- **Areas of Significant Protection (2):** Areas where a presumption against development applies due to significant constraints. These include:
 1. Sites designated for their natural or international landscape or natural heritage value where Policies NE1, NE3, NE4 and NE5 also apply.
 2. Areas where the cumulative impact of existing and consented windfarms limit further development.
- **Cumulative Sensitivity Zones (3):** Areas where cumulative impact is a potential constraint. In these areas proposals should: address potential future cumulative impact and avoid unacceptable coalescence between clusters of windfarms to retain an acceptable and coherent pattern of windfarm development.
- **All other areas (4):** Areas where potential constraints apply but with potential for mitigation. Wind energy proposals will be assessed against all the considerations set out above in Part 1. For Regional Scenic Areas the proposal should assess the potential impact on the objectives of the designation and demonstrate the extent to which these can be addressed.

(1) – (4) *The relevant mapping of these areas including an updated and consolidated spatial framework map is to be included within supplementary guidance.*

** The following Interim Spatial Framework Maps provide some strategic guidance on the relevant areas but must be read in conjunction with paragraphs 4.94 and 4.95 above [of the LDP] and the relevant*

detailed mapping to be included in supplementary guidance. This mapping will be consolidated and revised to provide an updated spatial framework within the LDP at the earliest possible opportunity."

- 5.45 It is important to note that paragraph 4.95 of the LDP states that the Spatial Framework approach set out in Part 2 of Policy IN2 and as expressed in the Council's 'Interim Spatial Framework Guidance' is not consistent with SPP and will be replaced by revised mapping to be addressed through Supplementary Guidance.
- 5.46 Policies IN1 and IN2 provide a comprehensive set of criteria against which proposed wind energy development will be assessed. A number of other policies in the LDP that are relevant on specific issues, are addressed below.

Landscape and Visual Amenity

- 5.47 The LDP recognises that the region's rich and diverse landscapes make an important contribution to quality of life, contributing to a strong sense of place and local distinctiveness. It is noted that the landscape supports a wide range of habitats, recreational interests and different land uses.
- 5.48 Especially valued landscapes within the region are identified through designation at a national level as National Scenic Areas (NSAs) and at a regional level as Regional Scenic Areas (RSAs).
- 5.49 Policy NE2: Regional Scenic Areas states that:
- "The siting and design of development within a Regional Scenic Area should respect the special qualities of the area. Development within, or which affects Regional Scenic Areas (RSAs), may be supported where the local Council is satisfied that:*
- The landscape character and scenic interest for which the area has been designated would not be significantly adversely affected; or*
 - There is a specific need for the development at that location which could not be located in a less sensitive area.*

Boundaries of RSAs are shown on the proposals maps."

Hydrology, Hydrogeology, Geology and Soils

- 5.50 The LDP states that the 'water environment' comprises inland, coastal and transitional waters, ground waters and wetlands. Management of the water environment falls under the Water Environment and Water Service (Scotland) Act 2003. The overall objective is to protect and where appropriate improve the quality, or 'status', of the water bodies that make up the water environment.
- 5.51 **Policy NE11: Supporting the Water Environment** states that: *"The Council will not permit development which would result in deterioration in the status of a waterbody or which would likely impede the improvement in waterbody status as set out in the Solway Tweed River Basin Management Plan (2009) or any update or approved review of it, unless there are exceptional justifying circumstances."*
- 5.52 An aspect of Policy NE11 is that development proposals should not normally include the culverting of any waterbody. If culverting would be the only way to enable a proposed development, then permission could be granted if the Council is satisfied that there would be acceptable mitigation measures to protect habitats, passage of fauna, and river form and flow.
- 5.53 **Policy NE12: Protection of Water Margins** states that the water margins of adjacent water basins will be protected unless there are compelling reasons to justify why this should not be done.

Ecology and Ornithology

- 5.54 The LDP recognises that the region's biodiversity and geodiversity are critical components of ecosystems and represent an economic asset and a community resource, as well as being of historic importance. Maintaining and enhancing biodiversity and geodiversity, habitats and wildlife which occurs within them is an important aim of the LDP.
- 5.55 Large areas of the region are afforded statutory protection at the international and national level through a number of designations (Natura sites, SSSIs, Ramsar Sites, NNRs etc).

- 5.56 The LDP records that a number of species receive statutory protection through international and national legislation, whether or not they are found within protected sites. The LDP states that all proposals will be assessed for their impact on European Protected Species and other nationally protected species.

- 5.57 The LDP notes that a number of Local Nature Conservation Sites have been identified and assessed as being of known local importance for biodiversity or geodiversity.
- 5.58 **Policy NE3: Sites of International Importance for Biodiversity^{xxiv}** states that: *"Development proposals likely to have a significant effect on an existing or potential Special Protection Area (SPA), existing or candidate Special Area of Conservation (SAC) or Ramsar Site, including developments outside the site, will require an appropriate assessment and will only be permitted where:*

- the development does not adversely affect the integrity of the site; or*
- there are no alternative solutions and there are imperative reasons of overriding public interest including those of a socio-economic nature."*

- 5.59 **Policy NE4: Species of International Importance^{xxv}** states that: *"Development proposals that would be likely to have an adverse effect on a European Protected Species will not be permitted unless it can be shown that:*

- there is no satisfactory alternative; and*
- the development is required for preserving public health or public safety or the 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 would not be detrimental to the maintenance of the population of the species at a favourable conservation status in its natural range."*

- 5.60 **Policy NE5: Sites of National Importance for Biodiversity and Geodiversity^{xxvi}** states that: *"Development that affects Sites of Special Scientific Interest, not designated as International Sites, and other national nature conservation designations will only be permitted where:*

- it will not adversely affect the integrity of the area or the qualities for which it has been designated, or*
- any such adverse effects are clearly outweighed by social, environmental or economic benefits of national importance."*

Cultural Heritage

- 5.61 The LDP confirms that the Council is committed to supporting the conservation and management of the rich and diverse historic environment in the region.
- 5.62 The LDP policies on listed buildings (**Policy HE1**) and conservation areas (**Policy HE2**) are concerned that developments have regard to the character and appearance of the listed building and conservation areas.
- 5.63 In determining planning applications that may impact on historic environment assets or their setting the balance of the benefits of the development against the importance of the features will be considered.
- 5.64 **Policy HE3: Archaeology^{xxvii}** states that: *"The Council will support development that protects significant archaeological and historic assets, and the wider historic environment from adverse effects"*.
- 5.65 The LDP notes that in some parts of Dumfries and Galloway, the archaeological interest is not confined to a particular site but extends over a large area. The LDP further states that in order to highlight to potential developers of large scale projects, such as windfarms, mineral extraction or forestry, that there is a particular need to consider these extensive archaeological interests and issues that might arise from their proposals at an early stage. Archaeological Sensitive Areas have been designated by the Council. A technical paper is produced alongside the LDP which explains this designation and shows boundaries.
- 5.66 **Policy HE4: Archaeological Sensitive Areas^{xxviii}** states that: *"The Council will support development that safeguards the character, archaeological interest and setting of Archaeological Sensitive Areas (ASAs) as designated by the Council"*.
- 5.67 The Inventory of Gardens and Designated Landscapes in Scotland identifies sites of national importance for a range of designated or ornamental landscapes which can be of artistic, historical, horticultural, scenic, architectural, nature conservation or archaeological importance. Where development may affect such a site or its setting there is a statutory obligation for the Council to consult Historic Scotland.

5.68 The Garden History Society, supported by the Council and SNH, produced a list of Non –Inventory sites of regional and local significance, identifying their key features.

5.69 **Policy HE6: Gardens and Designated Landscape^{xxix}** states that:

“a) The Council will support development that protects or enhances the significant elements, specific qualities, character, integrity and setting, including key views to and from, gardens and designated landscapes included in the Inventory of Gardens and Designated Landscapes or the Non-Inventory List.

In considering development proposals the Council will need to be satisfied that:

- the development protects or enhances the significant elements of the garden or landscape in-situ; and*
 - due consideration has been given to the significance and value of the asset in relation to the long-term benefit and specific need for the development in the location proposed.*
- b) Developers will be required to submit the results of an assessment of the impact of their proposals on the sites and their settings plus details of any potential mitigation measures.*
- c) Proposals that would have a detrimental effect on specific quality, character or integrity of a garden or designated landscape will not be approved unless it is demonstrated that the proposal has benefits of overriding public interest.*

Boundaries are shown on the proposals maps.”

Noise

5.70 The only policy that specifically refers to noise as an issue is **Policy IN2: Wind Energy** under the heading of **“Impact on local communities”**. The policy states that the Council will assess the acceptability of any proposed wind energy development against a number of considerations, including the assessment of the impact of noise on communities and local amenity, and the potential for associated mitigation.

Access, Traffic and Transport

5.71 The LDP identifies that given the policy significance of the links between land use and transport, the likely transport impacts of development proposals need to be identified and dealt with as early as possible in the planning process.

5.72 **Policy T2: Location of Development/ Accessibility^{xxx}** states that: *“All development proposals will be expected to:*

- consider accessibility issues early on and ensure street layout and design are part of the design and planning process from the beginning, taking account of statutory equal opportunities obligations relating to accessibility and be designed for the safety and convenience of all potential users;*
- prioritise personal travel by mode in the following order: walking, cycling, public transport and lastly car and other motorised vehicles;*
- be well served by the most sustainable modes of travel available and provide opportunities for a modal shift from private car use to more sustainable transport, including active travel, wherever possible.*
- incorporate appropriate on and/or off site mitigation measures, where required, which might include: improvements, enhancements or additions to the walking/ cycling network (connecting into existing local pedestrian or cycle networks or wider green networks) and public transport services, as well as road improvements and new roads;*
- incorporate an appropriate level of parking provision to the maximum standards as outlined in SPP (having regard to the travel modes and services which will be available) and also include adequate cycle parking;*
- fit with the policies and recommendations of the Local Transport Strategy.*

In certain circumstances developers may be required to:

- prepare and implement travel plans to support a development proposal that will result in significant travel generation, by virtue of its size, nature, or location (as determined by the Council);*
- prepare a Transport Assessment and implement appropriate mitigation measures where required.*

This policy is supported by supplementary guidance.”

5.73 Access routes are considered by the LDP to provide recreational opportunities, help reduce car use and can improve people’s health through physical activity and contact with outdoors. The LDP states that access issues and the protection of core and other important routes and access rights therefore need to be considered when making decisions on planning applications and access rights will be a material consideration in considering planning applications.

5.74 **Policy CF4: Access Routes^{xxxi}** states that:

“a) Development Affecting Existing Access Routes

The Council as Access Authority will assert, protect and keep open and free from obstruction any route, waterway or other means by which access rights may reasonably be exercised. Development proposals should not impact adversely on any of the aforementioned access routes and Core Paths.

The Council will not grant planning permission to development proposals which would result in the loss of such access routes unless a satisfactory alternative route or mitigating measures can be secured. In such cases, future access provision, including any changes to existing access, must be shown in an Access Route Plan.

b) Provision of New Access Routes

New development should consider access issues at an early stage of the design process and, where appropriate, incorporate new and enhanced access opportunities, linked to wider access networks and green networks. For small scale developments these considerations can be demonstrated in an Access Route Statement but for all residential development of 5 units or above and other major developments, an Access Route Plan demonstrating how access routes will be incorporated is required.

New or alternative access routes and enhancements to existing routes will be supported, especially if these can form part of green networks.

The Council will seek reasonable opportunities from developers to create, manage, maintain and improve access through planning conditions or legal agreements.

This policy is supported by supplementary guidance.”

Socio-Economics, Recreation and Tourism

5.75 Tourism is identified in the LDP as a key sector within the Dumfries and Galloway’s economy. The LDP states that Planning has an important role of supporting the tourism economy throughout Dumfries and Galloway, whilst safeguarding the tourism assets of the region.

5.76 **Policy IN2: Wind Energy** includes, under the heading of **Other Impacts and Considerations:** *“a) the extent to which the proposal avoids or adequately resolves any other significant adverse impact including: (inter alia) tourism and recreational interests.”*

Forestry

5.77 Forestry and associated activities are identified in the LDP as a significant land use with woodland cover being approximately 28% of the region. It also provides a major source of employment within the region.

5.78 **Policy NE6: Forestry and Woodland^{xxxii}** requires that proposals should seek to ensure that ancient and semi-natural woodlands and other woodlands with high nature conservation value are protected and enhanced.

5.79 Policy NE6 also states that: *“In determining its response to individual forestry felling, planting and replanting consultations where Forestry Commission Scotland are the determining authority, the Council will:*

- take into account environmental and other interests identified in the Forestry and Woodland Strategy;*
- consider the scheme’s location as set out in the Forestry and Woodland Strategy;*
- seek to ensure an appropriate balance between both afforested and un-afforested areas in the locality;*
- encourage planting of a type, scale, design, age, composition and species mix that is appropriate to the locality;*

- actively encourage proposals to have a positive effect on nature conservation and/or natural and historic environment interest;
- encourage proposals to take account of possible recreational use in the design of any planting schemes and indicate how such recreational uses have been investigated; and
- ensure that proposals do not have an adverse impact on the road network.”

5.80 On the subject of “trees and development”, the LDP notes that developers are expected to give priority to the retention of trees and hedgerows on development sites in accordance with British Standard “BS5837:2012 – Trees in relation to design, demolition and construction”.

5.81 **Policy NE7: Trees and Development**^{xxxiii} states that: “In assessing development proposals the Council will support proposals that promote additional tree planting and also:

- Maintain trees, woodlands (in particular ancient and semi-natural woodlands), and hedgerows (hereafter referred to as the ‘woodland resource’) and require developers to incorporate, wherever feasible, the existing woodland resource into their schemes;
- Appropriately incorporate the woodland resource into the overall design of the scheme;
- Show how existing trees will be appropriately protected during the construction period.

If it is demonstrated to the satisfaction of the Local Council that it is not possible to retain the woodland resource then an appropriate replacement planting will be required and agreed by the Council. Any such replacement planting scheme should be located where possible within the region and follow guidance contained within the Forestry and Woodland Strategy. This strategy is a relevant consideration for all proposals likely to impact on the woodland resource.

The process and recommendations contained in BS5837:2012, and any subsequent revised or amended document, should be taken into account in designing and implementing development proposals.

This policy is supported by supplementary guidance.”

Supplementary Guidance

5.82 Many of the LDP policies referred to above indicate that the policies are supported by supplementary guidance (SG). The SG is specific to the individual policy issues, for example: trees and accessibility. The SG of most relevance is referred to in **Policy IN2: Wind Energy**, where it is noted that further details on the process for assessing the acceptability of any proposed wind energy development is provided through “supplementary Guidance on Wind Energy Development”.

5.83 The SG entitled: “**Part 1 Wind Energy Development: Development Management Considerations**”^{xxxiv} was adopted by the Council on 6 March 2015.

5.84 The purpose of this SG is to provide further detail on the criteria contained in Part 1 of Policy IN2: Wind Energy. The document provides all interested parties with a statement of the main factors that will be taken into account in reaching planning decisions.

5.85 As noted above, LDP Policy IN2 is split into two parts; Part 1 deals with development management considerations that apply to all wind energy proposals whilst Part 2 deals with the Spatial Framework. The SG provides additional guidance in support of Part 1 of the policy only. Part 2 of the Policy IN2, as noted above, does not meet the requirements for the content of Spatial Frameworks now outlined in SPP. The Council has to produce supplementary guidance for Part 2 of the policy that would be consistent with SPP. The Council approved updated Part 1 Supplementary Guidance on 13 September 2016, to be published for public consultation for 6 weeks. The update relates to an update of the DGWLCS.

5.86 The SG recognises that applications for windfarms of over 50MW generating capacity within the region will be determined by the Scottish Ministers under the terms of Section 36 of the Electricity (Scotland) Act 1989. The Council are consulted as the relevant planning authority and the LDP, SG and background documents will be used to inform the Council’s position in any consultation response.

5.87 The SG sets out, in accordance with SPP, the criteria that will be considered in deciding all applications for windfarms of different scales. The SG cautions that the list of criteria is not exhaustive, since other additional site specific issues may require assessment in considering individual proposals.

5.88 The SG states that in considering proposals the planning authority will make an assessment by balancing all applicable factors outlines below and considering against all relevant policies contained within the LDP. The SG accepts that: “although a proposal may be detrimental in terms of one or more of these

factors this does not automatically result in a proposal being recommended for refusal. The factors listed in the SG are as follows:

A. Landscape and Visual Amenity

All proposals will be assessed for potential impacts on landscape and visual amenity. Particular attention will be given to proposals within or affecting areas designated for their landscape qualities and to how the proposals will impact on the special qualities and for reasons for such designations.

B. Cumulative Impacts on Landscape and Visual Amenity

All proposals will be assessed for their cumulative impact on landscape and visual amenity.

C. Design of Proposals (in terms of siting, design, layout, form and colour)

All proposals will be assessed for their impact on the landscape and visual amenity in relation to their design in terms of siting, layout, turbine form, colour, lighting and ancillary works.

D. Effects on Local Amenity and Communities

All proposals will be assessed for their impact on local amenity and communications in relation, but not restricted, to the effects of noise, shadow flicker and visual dominance relative to all affected properties, considered in conjunction with any measures proposed.

E. Aviation and Defence

All proposals will be assessed for their impact on aviation and defence interests. Applicants must consult in detail with aviation and defence stakeholders such as Ministry of Defence, Civil Aviation Authority, NATS (National Air Traffic Services) and Airport Operators Association to ascertain the degree of constraint relevant to the development proposal. Applicants should also ensure that these bodies are satisfied with the proposal, that no material impact will occur or that a technical solution will be used to mitigate any issue that is deemed satisfactory to all interested parties.

Suspensive conditions may be utilised to address navigation, radar or other aviation/ MoD concerns in appropriate circumstances.

F. Historic Environment and Cultural Heritage

All proposals will be assessed for their impact on the historic environment and cultural heritage. Site specific assessments will be required to identify potential issues and effects. Proposals should identify mitigation for identified effects.

G. Biodiversity

All proposals will be assessed for their impact on biodiversity, including protected species, ornithology and habitats. Site-specific assessments will be required to identify the biodiversity risks together with any onsite mitigations or offsite compensatory measures. An assessment of any cumulative impacts will be required.

H. Forests and Woodlands

All proposals will be assessed for their impact on forestry operations and where appropriate replanting schemes will be required to replace trees and woodland lost as a result of construction and the operational requirements of the windfarm/ wind turbine subject to other considerations.

I. Tourism and Recreational Interests

All proposals will be assessed for their impact on the interests of tourism and recreation. Developers should identify any significant adverse effects on tourism and recreational interests and on the underlying factors which contribute to the appeal of such destinations to visitors and recreational users.

J. Broadcasting Installations.

All proposals will be assessed for their impact on broadcasting installations. Applicants should consult with network owners and Ofcom to ascertain the location of radio and television broadcasting installations within the region and ensure that they are satisfied with the proposal, that no material

impact will occur or that a technical solution will be used to mitigate any issue of broadcast interference that is deemed satisfactory to all interested parties.

K. Ancillary Developments

All proposals relating to ancillary developments will be assessed for their impact on the locality. Detailed consideration of all the ancillary elements of a scheme will be taken into account in the application process.

L. Physical Site Constraints

All proposals will be assessed for their impact on physical constraints in relation to the site including such aspects as soil and ground stability the effect on water resources, how waste from excavations will be addressed and geodiversity.

M. Decommissioning and Restoration

All proposals will be assessed in relation to the reinstatement of the site at the end of development along with any ancillary works. Reinstatement details must be submitted with any development proposals.”

Dumfries and Galloway Wind Farm Landscape Capacity Study

- 5.89 The Dumfries and Galloway Wind Farm Landscape Capacity Study, January 2011 (DGWLCS) is an appendix to the SG on Wind Energy Development. The DGWLCS assesses landscape sensitivity, the capacity of individual landscape units to accommodate change and provides advice on how the scale, siting and design of development should be informed by local landscape character. The DGWLCS is used to assist development management decisions on planning applications along with consideration of other material considerations that require to be addressed. Where proposals are located close to the region's boundaries applicants are expected to consider landscape capacity studies prepared by neighbouring authorities, in order to identify sensitivities within the surrounding landscape and assesses any impact that may be generated as a result of development proposals. The DGWLCS has been updated and a version dated September 2016 was the subject of consultation in late 2016.

Conclusion

- 5.90 This chapter sets out the legislative background, the national energy policy, and the national and local planning policies and guidance relevant to the consideration of the Section 36 application for consent under the Electricity Act 1989 and the deemed planning permission under Section 57(2) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- 5.91 It provides the legislative position and the renewable energy and planning policy context for the Development, and an objective summary of the energy and planning policy considerations to be taken into account in assessing the application.
- 5.92 This chapter does not assess the acceptability of the Development against the identified policies or the weight to be given to the material considerations which is undertaken in the Planning Statement which accompanies this ES.

ⁱ The Electricity Act 1989 [Online] Available at: <http://www.legislation.gov.uk/ukpga/1989/29/contents> [Accessed 23 September 2016]

ⁱⁱ The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended) [Online] Available at: <http://www.hmso.gov.uk/legislation/scotland/ssi2000/20000320.htm> [Accessed 23 September 2016]

ⁱⁱⁱ Town and Country Planning (Scotland) Act 1997 [Online] Available at: <http://www.legislation.gov.uk/ukpga/1997/8/contents> [Accessed 23 September 2016]

^{iv} The Planning etc. (Scotland) Act 2006 [Online] Available at: <http://www.legislation.gov.uk/asp/2006/17/contents> [Accessed 28 September 2016]

^v The EU Directive (2009/28/EC) [Online] Available at: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0028> [Accessed 28 September 2016]

^{vi} Climate Change (Scotland) Act 2009 [Online] Available at: <http://www.gov.scot/Topics/Environment/climatechange/scotlands-action/climatechangeact> [Accessed 23 September 2016]

^{vii} 2020 Routemap for Renewable Energy in Scotland [Online] Available at: <http://www.gov.scot/Publications/2011/08/04110353/0> [Access 23 September 2016]

^{viii} Renewables Action Plan 2009 [Online] Available at: <http://www.gov.scot/Publications/2009/07/06095830/0> [Accessed 23 September 2016]

^{ix} The Electricity Generation Policy Statement 2013 [Online] Available at: <http://www.gov.scot/Publications/2013/06/5757> [Accessed 23 September 2016]

^x Low Carbon Scotland Meeting the Emissions Reduction Targets 2013-2027: The Second Report on Proposals and Policies [Online] Available at: <http://www.gov.scot/Topics/Environment/climatechange/scotlands-action/lowcarbon/meetingthetargets> [Accessed 23 September 2016]

^{xi} UK Energy Policy and Scotland's contribution to security of supply [Online] Available at: <http://www.gov.scot/resource/0044/00447981.pdf> [Accessed 28 September 2016]

^{xii} Committee on Climate Change [2016], 'Reducing Emissions in Scotland 2016 Progress Report', Available [online] at: <https://www.theccc.org.uk/publication/reducing-emissions-in-scotland-2016-progress-report/>

^{xiii} Scotland's Third National Planning Framework [Online] Available at: <http://www.gov.scot/Topics/Built-Environment/planning/National-Planning-Framework> [Accessed 28 September 2016]

^{xiv} Scottish Planning Policy [Online] Available at: <http://www.gov.scot/Topics/Built-Environment/planning/Policy> [Accessed 28 September 2016]

^{xv} Scottish Government web-based guidance for onshore wind turbines [Online] Available at: <http://www.gov.scot/Resource/0044/00440315.pdf> [Accessed 28 September 2016]

^{xvi} Dumfries and Galloway LDP [Online] Available at: <http://www.dumgal.gov.uk/ldp> [Accessed 28 September 2016]

^{xvii} Policy OP1: Development Considerations [Online] Available at: <http://egenda.dumgal.gov.uk/aksdumgal/images/att35835.pdf> [Accessed 23 September 2016]

^{xviii} Policy OP2: Design Quality of New Development [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17418&p=0> [Accessed 28 September 2016]

^{xix} Policy OP3: Development Contribution [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17419&p=0> [Accessed 23 September 2016]

^{xx} Dumfries and Galloway Council [2015], Part 1 Wind Energy: Development Management Considerations

^{xxi} Policy IN1: Renewable Energy [Online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47871/25-nat-ren-energy-action-plan.pdf [Accessed 23 September 2016]

^{xxii} Dumfries and Galloway Wind Farm Landscape Capacity Study [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=18595&p=0> [Accessed 23 September 2016]

^{xxiii} Policy IN2: Wind Energy [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxiv} Policy NE3: Sites of International Importance for Biodiversity [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxv} Policy NE4: Species of International Importance [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxvi} Policy NE5: Sites of National Importance for Biodiversity and Geodiversity [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxvii} Policy HE3: Archaeology [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxviii} Policy HE4: Archaeological Sensitive Areas [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxix} Policy HE6: Gardens and Designated Landscape [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxx} Policy T2: Location of Development/ Accessibility [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxxi} Policy CF4: Access Routes [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxxii} Policy NE6: Forestry and Woodland [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 23 September 2016]

^{xxxiv} Part 1 Wind Energy Development: Development Management Considerations [Online] Available at: <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17607&p=0> [Accessed 28 September 2016]