

VOLUME 1: CHAPTER 6 – PLANNING AND ENERGY POLICY CONTEXT

6.	PLANNING AND ENERGY POLICY CONTEXT	6-3
6.1	Introduction	6-3
6.2	The Statutory Framework	6-3
6.3	Renewable Energy Policy: Summary	6-4
6.4	National Planning Policy	6-6
6.5	The Local Development Plan and Relevant Policies	6-16
6.6	Conclusions	6-20

Figures (Volume 2 of this EIA Report)

There are no figures associated with this Chapter.

Technical Appendices (Volume 4 of this EIA Report)

There are no appendices associated with this Chapter.

6. PLANNING AND ENERGY POLICY CONTEXT

6.1 Introduction

6.1.1 This Chapter of the EIA Report 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 Report to ensure that it provides the appropriate information for the consideration of the s.37 application.

6.1.2 This Chapter does not include an assessment of the accordancy 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.

6.2 The Statutory Framework

The Electricity Act 1989

6.2.1 The Proposed Development requires 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.

6.2.2 In an application under s.37 of the Electricity Act, the Development Plan does not have primacy in the decision-making process. The provisions of Schedule 9 to the Electricity Act are relevant to the assessment of the Proposed Development.

6.2.3 When considering the proposals, Scottish Ministers are required by sub-paragraph 3(2) of Schedule 9 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.”

6.2.4 The matters and duty upon the Applicant are set out in sub-paragraph 3(1) as follows:

“(a)... 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;

(b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.”

6.2.5 At sub-paragraph 3(3), in exercising any relevant functions the Applicant and Scottish Ministers shall “avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.”

6.2.6 This EIA Report demonstrates the careful consideration given by the Applicant to the various environmental issues identified within Schedule 9 and allows the Scottish Ministers to have regard to the matters set out at sub-paragraph 3(2) above.

The Town & Country Planning (Scotland) Act 1997

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

6.2.8 Section 57(2) of the Planning Act provides:

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

6.2.9 Section 25 of the Planning Act states that:

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

6.2.10 Section 57(2) of the Planning Act makes no reference to the provisions of section 25 which requires regard to be had to the provisions of the Development Plan. The Courts have confirmed that a deemed planning direction pursuant to section 57(2) is not a determination where there is a requirement that regard is to be had to the Development Plan and, therefore, section 25 does not apply to a decision to make a direction to grant deemed planning permission¹.

6.2.11 The Scottish Ministers will determine the application having regard to the statutory duties in Schedule 9 of the Electricity Act, so far as relevant, and any other relevant material considerations, one of which will be relevant aspects of the statutory Development Plan.

6.3 Renewable Energy Policy: Summary

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

6.3.2 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, solar, and other renewable energy generation projects are identified as important technology to achieve these various goals. Supporting grid transmission infrastructure is essential to the transmission of renewable green energy throughout the UK.

6.3.3 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 (2020);
- The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the legally binding net zero target for 2045 and interim targets for 2030 and 2040;
- The Scottish Government's 'Programme for Government' (2022);
- The Onshore Wind Policy Statement (December 2022); and
- The Draft Energy Strategy and Just Transition Plan (January 2023).

6.3.4 The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 requires that *“The Scottish Ministers must ensure that the net Scottish emissions account for the net-zero emissions target year is at least 100%*

¹ William Grant & Sons Distillers Limited, Court of Session [2012] CSOH 98.

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.”

6.3.5 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.

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

6.3.7 The Ministerial Foreword states:

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

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

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

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

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

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

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

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

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

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

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

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

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

6.3.11 The Proposed Development relates to the provision of a transmission connection for the Coire Glas Pumped Storage Scheme to the national grid. The consented pumped storage scheme forms a significant role in balancing and optimising electricity generation and maintaining operability of the electricity system as part of the drive to net zero and as a result of the increase in renewable energy, which in turn comes as a direct response to national planning and energy policy objectives.

6.3.12 The Proposed Development would therefore enable a growing contribution to the attainment of emissions reduction, renewable energy and electricity targets at both the Scottish and UK levels. Detailed reference to the renewable energy policy context and the need case is provided in the Planning Statement (see also Chapter 1 of the EIA Report)

6.4 National Planning Policy

National Planning Framework 4 (NPF4)

6.4.1 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 8 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 9am on 13 February 2023.

Section 13, of the 2019 Planning Act amends Section 24 of the 1997 Planning 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).

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

6.4.3 Section 13 of the 2019 Planning Act amends Section 24 of the 1997 Planning 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”.

6.4.4 As explained, for the purposes of Section 37 decision making, Section 25 of the 1997 Planning 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

6.4.5 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.”

6.4.6 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.

6.4.7 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”.

6.4.8 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.”

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

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

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

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

6.4.10 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”.

6.4.11 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.”

6.4.12 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

6.4.13 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'.

6.4.14 Page 97 of NPF4 sets out that 18 National Developments (ND) 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"*.

6.4.15 It adds that:

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

6.4.16 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".

6.4.17 Page 102 of NPF4 describes ND2 and states:

"This national development will play a significant role in balancing and optimising electricity generation and maintaining the operability of the electricity system as part of our transition to net zero. This is necessary as we continue to move towards a decarbonised system with much more renewable generation, the output from which is defined by weather conditions.

The national development supports additional capacity at existing sites as well as new sites..."

6.4.18 The location for ND2 is set out as being all of Scotland and in terms of need it is described as:

"This national development supports pumped hydro storage capacity within the electricity network through significant new or expanded sites. This supports the transition to a net zero economy through the ability of pumped hydro storage schemes to optimised electricity generated from renewables by storing and releasing it when it is required".

6.4.19 Reference is made to the designation and classes of development which would qualify as ND2, and it states in this regard:

"A development contributing to 'Pumped Hydro Storage' 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 as national development:

- a) *New and / or expanded and / or upgraded water holding reservoir and dam;*
- b) *New and/ or upgraded electricity generating plant structures of buildings;*
- c) *New and/or upgraded pump plant structures or buildings;*
- d) *New and/or expanded and/or upgraded water inlet and outlet pipework;*

- e) *New and/or upgraded substations and/or transformers; and*
- f) *New and/or replacement transmission cables”.*

6.4.20 The Proposed Development consists of a new 400kV OHL to connect the consented Coire Glas Pumped Storage Scheme to the transmission grid and subsection f) is therefore applicable and it has national development status under ND2.

6.4.21 Page 103 of NPF4 describes ND3 and it states:

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

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

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

6.4.22 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.”

6.4.23 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.”

6.4.24 The Proposed Development, being a new onshore high voltage electricity transmission line of 400 kV means it would have national development status under ND3 as well as ND2 as per these provisions of NPF4. The Proposed Development is of national importance for the delivery of the national Spatial Strategy.

6.4.25 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

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

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

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

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

6.4.30 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.

6.4.31 **Policy 11, Energy** states:

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

- Wind farms including repowering, extending, expanding and extending the life of existing wind farms.*
- Enabling works such as grid transmission and distribution infrastructure;*
- Energy storage such as battery storage and pumped storage hydro;*
- Small scale renewable energy generation technology;*
- Solar arrays;*
- Proposals associated with negative emissions technologies and carbon capture; and*
- Proposals including co-location of these technologies.*

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

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

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

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

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

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

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

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

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

- vi. impacts on road traffic and on adjacent trunk roads, including during construction;*
- vii. impacts on historic environment;*
- viii effects on hydrology, the water environment and flood risk;*
- ix biodiversity including impacts on birds;*
- x impacts on trees, woods and forests;*
- xi proposals for the decommissioning of developments, including ancillary infrastructure, and site restoration;*
- xii the quality of site restoration plans including the measures in place to safeguard or guarantee availability of finances to effectively implement those plans; and*
- xiii cumulative impacts.*

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

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

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

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

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

6.4.33 **Policy 3 – Biodiversity** seeks to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks with an outcome of ensuring biodiversity is 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”.

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

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

Policy 4

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

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

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

- i. The objectives of designation and the overall integrity of the areas will not be compromised;*
or
- ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance. All Ramsar sites are also European sites and/or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.*

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

- i. Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or
- ii. Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.

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

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

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

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

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

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

Policy 5

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

- i. In accordance with the mitigation hierarchy by first avoiding and then minimising the amount of disturbance to soils on undeveloped land; and
- ii. In a manner that protects soil from damage including from compaction and erosion, and that minimises soil sealing.

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

- i. Essential infrastructure and there is a specific locational need and no other suitable site;
- ii. Small-scale development directly linked to a rural business, farm or croft or for essential workers for the rural business to be able to live onsite;
- iii. The development of production and processing facilities associated with the land produce where no other local site is suitable;

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

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

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

- i. Essential infrastructure and there is a specific locational need and no other suitable site;*
- ii. The generation of energy from renewable sources that optimises the contribution of the area to greenhouse gas emissions reductions targets;*
- iii. Small-scale development directly linked to a rural business, farm or croft;*
- iv. Supporting a fragile community in a rural or island area; or*
- v. Restoration of peatland habitats.*

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

- i. the baseline depth, habitat condition, quality and stability of carbon rich soils;*
- ii. the likely effects of the development on peatland, including on soil disturbance; and*
- iii. the likely net effects of the development on climate emissions and loss of carbon. This assessment should inform careful project design and ensure, in accordance with relevant guidance and the mitigation hierarchy, that adverse impacts are first avoided and then minimised through best practice.*

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

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

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

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

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

Policy 6

- 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;*
 - iv. *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 sites which include an areas of existing woodland or land identified in the Forestry or Woodland Strategy as being suitable for woodland creation will only be supported where the enhancement and improvement in the woodlands and the planting of new trees on the site (in accordance with the Forestry and Woodland Strategy) are integrated into the design”.*

6.4.37 **Policy 7 – Historic Assets and Places** seeks to protect and enhance the historic environment and states (as relevant to the Proposed Development):

LDPs, including through their spatial strategies, should support the sustainable management of the historic environment. They should identify, protect and enhance valued historic assets and places.

Policy 7

- 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.*

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

National Planning Advice

6.4.38 Planning Advice Notes (PANs) and Specific Advice Sheets set out detailed advice from the Scottish Government in relation to a number of planning issues. Relevant PANs and Specific Advice Sheets relevant to the Proposed Development are summarised in **Table 6.1** below.

Table 6.1: Relevant PANs

Title	Summary of Content
PAN 1/2013 Environmental Impact Assessment	Provides information on the role local authorities and consultees play as part of the EIA process, and how the EIA can inform development management.

Title	Summary of Content
PAN 60 (2000) Planning for Natural Heritage	Advises developers on the importance of discussing their proposals with the planning authority and NatureScot and use of the EIA process to identify the environmental effects of development proposals and seek to prevent, reduce and offset any adverse effects in ecology and biodiversity.
PAN 61 (2001) Sustainable Urban Drainage Systems	Good practice drainage guidance.
PAN 68 (2003) Design Statements	This PAN covers the importance of design statements, and provides flexible guidance on their preparation, structure, and content. The PAN also outlines the principles underpinning the production of design statements, as expected by the Scottish Government.
PAN 75 (2005) Planning for Transport	The objective of PAN 75 is to integrate development plans and transport strategies to optimise opportunities for sustainable development and create successful transport outcomes.
PAN 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.

6.5 The Local Development Plan and Relevant Policies

6.5.1 The Local Development Plan for the area comprises:

- The Highland Wide Local Development Plan (HwLDP) (2012); and
- The Inner Moray Firth Local Development Plan (IMFLDP) (2015).

6.5.2 The IMFLDP focuses largely on regional and settlement strategies and specific site allocations, rather than planning policies of relevance for the Proposed Development.

Development Plan Policies

6.5.3 **Policy 69** is the lead policy in relation to the Proposed Development. The policies of most relevance in the HwLDP are as follows:

- Policy 69 – Electricity Transmission Infrastructure;
- Policy 57 – Natural, Built, and Cultural Heritage;

- Policy 61 – Landscape;
- Policy 55 – Peat and Soils;
- Policy 58 – Protected Species;
- Policy 59 – Other Important Species; and
- Policy 60 – Other Important Habitats and Article 10 Features.

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

6.5.5 Other relevant HwLDP policies which need to be taken into consideration include the following:

- Policy 28 – Sustainable Design;
- Policy 30 – Physical Constraints;
- Policy 31 – Developer Contributions;
- Policy 51 – Trees and Development;
- Policy 52 - Principle of Development in Woodland;
- Policy 56 – Travel;
- Policy 63 – Water Environment;
- Policy 66 – Surface Water Drainage;
- Policy 72 – Pollution;
- Policy 74 – Green Networks;
- Policy 77 – Public Access;
- Policy 78 – Long Distance Routes.

6.5.6 **Policy 69 – ‘Electricity Transmission Infrastructure’** states:

“Proposals for overground, underground or sub-sea electricity infrastructure (including lines and cables, pylons, poles and vaults, transformers, switches and other plant) will be considered having regard to their level of strategic significance in transmitting electricity from areas of generation to areas of consumption. Subject to balancing with this consideration, and taking into account any proposed mitigation measures, the Council will support proposals which are assessed as not having an unacceptable significant impact on the environment, including natural, built and cultural heritage features. In locations that are sensitive, mitigation may help to address concerns and should be considered as part of the preparation of proposals. This may include, where appropriate, underground or sub-sea alternatives to overground route proposals. Where new infrastructure provision will result in existing infrastructure becoming redundant, the Council will seek the removal of the redundant infrastructure as a requirement of the development”.

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

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

- 1. For features of local/regional importance we will allow developments if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource.*
- 2. For features of national importance we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource. Where there may be any significant adverse effects, these must be clearly outweighed by social or economic benefits of national importance. It must also be shown that the development will support communities in fragile areas who are having difficulties in keeping their population and services.*

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

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

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

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

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

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

6.5.10 **Policy 61 – ‘Landscape’** states:

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

6.5.11 **Policy 55 – ‘Peat and Soils’** states:

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

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

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

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

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

6.5.12 Policy 58 – 'Protected Species' states:

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

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

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

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

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

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

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

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

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

6.5.13 Policy 59 – 'Other Important Species' states:

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

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

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

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

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

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

Supplementary Guidance

6.5.15 The Highland Council has various Supplementary Guidance documents in force. Those which have been taken into account in the preparation of this EIA Report include the following:

- Flood risk and drainage;
- Trees and woodland;
- Protected species;
- Managing waste and new developments;
- Sustainable design;
- Physical constraints, e.g. railway lines and gas pipelines;
- Roads and transport;
- Health and safety;
- Countryside and the environment;
- Forest and woodland strategy.

6.6 Conclusions

6.6.1 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 this EIA Report in order to ensure that it provides the appropriate information for the consideration of the s.37 application.

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