

# Chapter 5 Statutory and Policy Framework

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## 5 Statutory and Policy Framework

### 5.1 Introduction

- 5.1.1 This chapter of the Environmental Impact Assessment (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 in order to ensure that it provides the appropriate information for the consideration of the Application.
- 5.1.2 This chapter does not include an assessment of the accordance of the Proposed Development against planning policy: a separate Planning Statement has been prepared to support the application and should be referred to for a detailed planning policy appraisal.

### 5.2 The Statutory Framework

#### The Electricity Act 1989

- 5.2.1 The Proposed Development will have an installed capacity of over 50 megawatts (MW). In Scotland, onshore renewable energy developments that have capacity to generate over 50 MW require consent from the Scottish Ministers under the Electricity Act 1989 (the ‘Electricity Act’). In such cases, the Planning Authority is a statutory consultee in the development management process and procedures.
- 5.2.2 In an application under Section 36 of the Electricity Act, the Development Plan does not have primacy in the decision-making process. The provisions of Schedule 9 of the Electricity Act are relevant to the assessment of the Proposed Development.
- 5.2.3 Schedule 9, Sub-paragraph 3(2), requires the Scottish Ministers to have regard to:
- “(a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and (b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of the sub-paragraph.”*
- 5.2.4 The duties referred to in Schedule 9 sub-paragraph 3 (1) (a) and (b) of the Electricity Act do not apply to the Applicant, but the matters set out in Sub paragraph 3(1)(a) to which the Scottish Ministers must have regard are:

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

- 5.2.5 At sub-paragraph 3(3), the Scottish Ministers [are required to...] *“avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.”*
- 5.2.6 The provisions of Schedule 9 of the Electricity Act set out a number of features to which regard must be had by the Scottish Ministers and such features have been fully taken into account in the iterative design process and assessed in terms of the EIA process.

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

- 5.2.7 The principal planning statute in Scotland is the Town and Country Planning Act (Scotland) 1997 (the 1997 Act) as amended by The Planning etc. (Scotland) Act 2006 and by the Planning (Scotland) Act 2019 (the 2019 Act).
- 5.2.8 Section 57(2) of the 1997 Act provides:
 

*“On granting a consent under section 36 or 37 of the Electricity Act 1989 in respect of any operation or change of use that constitutes development, the Scottish Ministers may direct that planning permission for that development and any ancillary development shall be deemed to be granted, subject to any conditions (if any) as may be specified in the direction”.*
- 5.2.9 Section 25 of the 1997 Act states that:
 

*“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.*
- 5.2.10 Section 57(2) of the 1997 Act makes no reference to the provisions of section 25 which requires regard to be had to the provisions of the Development Plan. The Courts have confirmed that section 57(3) does not apply section 25 to a decision to make a direction to grant deemed planning permission pursuant to section 57(2).
- 5.2.11 The Scottish Ministers will determine the application having considered the statutory duties in Schedules 8 and 9 of the Electricity Act, so far as relevant, and all relevant considerations or matters, one of which will be relevant aspects of the statutory Development Plan.

## 5.3 Renewable Energy Policy: Summary

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

5.3.2 The UK Government retains responsibility for the overall direction of energy policy, although some elements are devolved to the Scottish Government. The UK Government has published a series of policy documents setting out how targets can be achieved. Onshore wind generation, located in Scotland, is identified as an important technology to achieve these various goals.

5.3.3 The Scottish Government has published a number of policy documents and its own targets. The most relevant policy, legislative documents and more recent statements published by the Scottish Government include:

- The Scottish Energy Strategy (December 2017);
- The Scottish Government's declaration of a Climate Emergency (April 2019);
- The Scottish Climate Change Plan Update (December 2020);
- The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the legally binding net zero target for 2045 and interim targets for 2030 and 2040;
- The Scottish Government's 'Programme for Government' (September 2022);
- The Onshore Wind Policy Statement (December 2022); and
- The Draft Energy Strategy and Just Transition Plan (January 2023).

5.3.4 The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 amends the Climate Change (Scotland) Act 2009 and requires that “The Scottish Ministers must ensure that the net Scottish emissions account for the net-zero emissions target year is at least 100% lower than the baseline (the target is known as the “net-zero emissions target”). The target year is 2045 and the Act also sets out challenging interim targets. It requires that:

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

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

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

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

- 5.3.5 It is important to note that these targets are minimum targets, they are not maximums or aspirations. The targets legally bind the Scottish Ministers and have largely been legislated to set the framework for Scotland’s response to the Climate Emergency.
- 5.3.6 The Proposed Development relates to the generation of electricity from renewable energy sources and comes as a direct response to national planning and energy policy objectives.
- 5.3.7 The Proposed Development would make a contribution to the attainment of emissions reduction, renewable energy and electricity targets at both the Scottish and UK levels. Detailed reference to the renewable energy policy framework is provided in the Planning Statement.

## 5.4 National Planning Framework 4

### Introduction

- 5.4.1 National Planning Framework 4 (NPF4) was subject to consultation and Parliamentary Scrutiny before being first laid before Parliament in November 2021. The Revised Draft NPF4 was then laid before Parliament on 8th 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 11th January 2023. NPF4 came into force at 9am on 13 February 2023.
- 5.4.2 Section 13, of the 2019 Act amends Section 24 of the 1997 Act regarding the meaning of the statutory Development Plan, such that for the purposes of the 1997 Act, the Development Plan for an area is taken to consist of the provisions of:
  - The National Planning Framework; and
  - Any Local Development Plan (LDP).
- 5.4.3 Strategic Development Plans no longer form part of the Development Plan.
- 5.4.4 NPF4 therefore now forms part of the statutory Development Plan. A key provision of the 2019 Act is that in the event of any incompatibility between the provisions of NPF4 and a provision of an LDP then whichever of them is the later in date will prevail. That will include where a LDP is silent on an issue that is now provided for in NPF4.

5.4.5 Section 13 of the 2019 Act amends Section 24 of the 1997 Act to provide that:

*“In the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail”.*

5.4.6 As explained, for the purposes of Section 36 decision making, Section 25 of the 1997 Act is not engaged, however NPF4 forms a significant material consideration in the overall decision-making process.

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

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

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

5.4.8 The principles are stated as playing a key role in delivering the United Nations Sustainable Development Goals and the Scottish Government's National Performance Framework.

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

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

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

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

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

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

*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."*

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

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

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

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

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

## National Developments

- 5.4.15 NPF4 sets the approach to planning and development to help achieve a net zero, sustainable Scotland by 2045. It continues the planning policy approach of identifying ‘national developments’ which refers to the

allocation of national development status to certain classes of development. There are three categories of national development proposed namely ‘liveable places, productive places and sustainable places’.

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

5.4.17 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"*.

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

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

5.4.19 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."*

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

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

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

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

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

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

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

### National Planning Policy

5.4.24 The relevant national planning policies set out in NPF4 are:

- Policy 1 (Tackling the Climate and Nature Crisis);
- Policy 3 (Biodiversity);
- Policy 4 (Natural Places);
- Policy 5 (Soils);
- Policy 6 (Forestry, Woodland and Trees);

- Policy 7 (Historic Assets and Places); and
- Policy 11 (Energy).

### Policy 1 (Tackling the Climate and Nature Crisis)

5.4.25 Policy 1 states that: *“when considering all development proposals significant weight will be given to the global climate and nature crisis”.*

### Policy 3 (Biodiversity)

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

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

- a) *Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.*
- b) *Development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management. To inform this, best practice assessment methods should be used. Proposals within these categories will demonstrate how they have met all of the following criteria:*
  - i. *the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;*
  - ii. *wherever feasible, nature-based solutions have been integrated and made best use of;*

- iii. *an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;*
  - iv. *significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate; and*
  - v. *local community benefits of the biodiversity and/or nature networks have been considered.*
- c) *Proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development. Applications for individual householder development, or which fall within scope of (b) above, are excluded from this requirement.*
- d) *Any potential adverse impacts, including cumulative impacts, of development proposals on biodiversity, nature networks and the natural environment will be minimised through careful planning and design. This will take into account the need to reverse biodiversity loss, safeguard the ecosystem services that the natural environment provides, and build resilience by enhancing nature networks and maximising the potential for restoration”.*

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

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

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

- a) *Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.*
- b) *Development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an “appropriate assessment” of the implications for the conservation objectives.*
- c) *Development proposals that will affect a National Park, National Scenic Area, Site of Special Scientific Interest or a National Nature Reserve will only be supported where:*
  - i. *The objectives of designation and the overall integrity of the areas will not be compromised; or*
  - ii. *Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance. All Ramsar sites are also European sites and/or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.*
- d) *Development proposals that affect a site designated as a local nature conservation site or landscape area in the LDP will only be supported where:*
  - i. *Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or*
  - ii. *Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.*
- e) *The precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance.*
- f) *Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation*

*must be factored into the planning and design of development, and potential impacts must be fully considered prior to the determination of any application.*

- g) Development proposals in areas identified as wild land in the Nature Scot Wild Land Areas map will only be supported where the proposal:
 
  - i. will support meeting renewable energy targets; or,*
  - ii. is for small scale development directly linked to a rural business or croft or is required to support a fragile community in a rural area.**

*All such proposals must be accompanied by a wild land impact assessment which sets out how design, siting, or other mitigation measures have been and will be used to minimise significant impacts on the qualities of the wild land, as well as any management and monitoring arrangements where appropriate. Buffer zones around wild land will not be applied, and effects of development outwith wild land areas will not be a significant consideration”.*

## **Policy 5 (Soils)**

5.4.28 Policy 5 ‘Soils’ seeks to protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development and states:

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

- a) Development proposals will only be supported if they are designed and constructed:
 
  - i. In accordance with the mitigation hierarchy by first avoiding and then minimising the amount of disturbance to soils on undeveloped land; and*
  - ii. In a manner that protects soil from damage including from compaction and erosion, and that minimises soil sealing.**
- b) Development proposals on prime agricultural land, or land of lesser quality that is culturally or locally important for primary use, as identified by the LDP, will only be supported where it is for:
 
  - i. Essential infrastructure and there is a specific locational need and no other suitable site;**

- ii. *Small-scale development directly linked to a rural business, farm or croft or for essential workers for the rural business to be able to live onsite;*
- iii. *The development of production and processing facilities associated with the land produce where no other local site is suitable;*
- iv. *The generation of energy from renewable sources or the extraction of minerals and there is secure provision for restoration; and*

*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”.*

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

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

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

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

- iii. *Fragmenting or severing woodland habitats, unless appropriate mitigation measures are identified and implemented in line with the mitigation hierarchy;*
- vi. *Conflict with Restocking Direction, Remedial Notice or Registered Notice to Comply issued by Scottish Forestry.*
- c) *Development proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal. Where woodland is removed, compensatory planting will most likely be expected to be delivered.*
- d) *Development proposals on site which include an area of existing woodland or land identified in the Forestry and Woodland Strategy as being suitable for woodland creation will only be supported where the enhancement and improvement of woodlands and the planting of new trees on the site (in accordance with the Forestry and Woodland Strategy) are integrated into the design”.*

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

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

- “a) *Development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change. Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within the Historic Environment Records.*
- d) *Development proposals in or affecting Conservation Areas will only be supported where the character and appearance of the Conservation Area and its setting is preserved or enhanced.*
- h) *Development proposals affecting Scheduled Monuments will only be supported where:*
  - i. *direct impacts on the Scheduled Monument are avoided;*
  - ii. *significant adverse impacts on the integrity of the setting of a Scheduled Monument are avoided; or*

- iii. exceptional circumstances have been demonstrated to justify the impact on a Scheduled Monument and its setting and impacts on the monument or its setting have been minimised.*
- i) Development proposals affecting nationally important Gardens and Designed Landscapes will be supported where they protect, preserve or enhance their cultural significance, character and integrity and where proposals will not significantly impact on important views to, from and within the site, or its setting.*
- l) Development proposals affecting a World Heritage Site or its setting will only be supported where their Outstanding Universal Value is protected and preserved.*
- o) Non-designated historic environment assets, places and their setting should be protected and preserved in situ wherever feasible. Where there is potential for non-designated buried archaeological remains to exist below a site, developers will provide an evaluation of the archaeological resource at an early stage so that planning authorities can assess impacts. Historic buildings may also have archaeological significance which is not understood and may require assessment.*

*Where impacts cannot be avoided, they should be minimised. Where it has been demonstrated that avoidance or retention is not possible, excavation, recording, analysis, archiving, publication and activities to provide public benefit may be required through the use of conditions or legal/planning obligations.*

*When new archaeological discoveries are made during the course of development works, they must be reported to the planning authority to enable agreement on appropriate inspection, recording and mitigation measures.”*

## **Policy 11 (Energy)**

**5.4.31** Policy 11 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).*

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

5.4.32 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.

5.4.33 Policy 11 ‘Energy’ states:

*“a) development proposals for all forms of renewable, low carbon and zero emissions technologies will be supported. These include:*

*i. Wind farms including repowering, extending, expanding and extending the life of existing wind farms.*

*ii. Enabling works such as grid transmission and distribution infrastructure;*

*iii. Energy storage such as battery storage and pumped storage hydro;*

*vi. Small scale renewable energy generation technology;*

*v. Solar arrays;*

*vi. Proposals associated with negative emissions technologies and carbon capture; and*

*vii. Proposals including co-location of these technologies.*

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

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

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

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

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

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

- iii. *public access, including impact on long distance walking and cycling routes and scenic routes;*
- iv. *impacts on aviation and defence interests including seismological recording;*
- v. *impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;*
- vi. *impacts on road traffic and on adjacent trunk roads, including during construction;*
- vii. *impacts on historic environment;*
- vii *effects on hydrology, the water environment and flood risk;*
- ix *biodiversity including impacts on birds;*
- x *impacts on trees, woods and forests;*
- xi *proposals for the decommissioning of developments, including ancillary infrastructure, and site restoration;*
- xii *the quality of site restoration plans including the measures in place to safeguard or guarantee availability of finances to effectively implement those plans; and*
- xiii *cumulative impacts.*

*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.”*

## 5.5 National Planning Guidance

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

**Table 5.1: Relevant PANs**

Title	Summary content of Document
PAN 1/2013 Environmental Impact Assessment (as amended)	Provides information on the role local authorities and consultees play as part of the EIA process, and how the EIA can inform development management.
PAN 60 (2000) Planning for Natural Heritage	Advises developers on the importance of discussing their proposals with the planning authority and Scottish Natural Heritage (SNH) (now NatureScot) and use of the EIA process to identify the environmental effects of development proposals and seek to prevent, reduce and offset any adverse effects in ecology and biodiversity.
PAN 75 (2005) Planning for Transport	The objective of PAN 75 is to integrate development plans and transport strategies to optimise opportunities for sustainable development and create successful transport outcomes.
PAN 1/2011 Planning and Noise	This PAN provides advice on the role of the planning system in helping to prevent and/ or mitigate any potential adverse effects of noise. It promotes the principles of good acoustic design and promotes a sensitive approach to the location of new development.
PAN 2/2011 Planning and Archaeology	The PAN is intended to inform local authorities and other organisations of how to process any archaeological scope of works within the planning process.
PAN 51 Planning, Environmental Protection and Regulation (Revised 2006)	Details the role of the planning system in relation to the environmental protection regimes.

## 5.6 The Local Development Plan & Relevant Policies

5.6.1 The Local Development Plan for Midlothian is the Midlothian Local Development Plan which was adopted on 7 November 2017. Relevant policies are set out below:

### Policy RD1: Development in the Countryside

*“Development in the countryside will only be permitted if:*

- a) It is required for the furtherance of agricultural (including farm-related diversification, horticulture, forestry, countryside recreation or tourism); or*
- b) It accords with Policies RD2, MIN1, NRG1 or NRG2; or*
- c) It accords with the Council’s supplementary guidance on development in the countryside and Green Belt.*

*All such development will need to be:*

- a) *Of a scale and character appropriate to the rural area and well integrated into the rural landscape; and*
- b) *Capable of being serviced with an adequate and appropriate access; and*
- c) *Capable of being provided with a drainage and public water supply at reasonable cost.”*

5.6.2 *Development must “protect and, where appropriate, improve the water environment, avoiding unacceptable and unnecessary surface and foul water discharges to water courses”.*

**Policy ENV5: Peat and Carbon Rich Soils**

*“Within, or adjacent to, ecologically significant areas protected in this plan, peat extraction for development is likely to have an unacceptable effect on peatland and/or carbon rich soils will not be supported.*

*Elsewhere, commercial peat extraction and other developments likely to have an adverse effect on peatland and/or carbon rich soils, will only be permitted in areas suffering historic, significant damage through human activity and where the conservation value is low and restoration is impossible.*

*Where peat and other carbon rich soils may be affected by a proposal, an assessment of the development’s effect on CO2 emissions will be required.”*

**Policy ENV6: Special Landscape Areas**

*“Development proposals affecting Special Landscape Areas will only be permitted where they incorporate high standards of siting and design and where they will not have an unacceptable impact on the special landscape qualities of the area”.*

**Policy EN7: Landscape Character**

*“Development will not be permitted where it may have an unacceptable effect on local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New developments will normally be required to incorporate proposals to maintain the diversity and distinctiveness of local landscapes and to enhance landscape characteristics where they have been weakened.*

*Where the locational requirement has been established (or within the urban envelopes) development must demonstrate that it will not have an adverse impact, either on the landscape and conservation value of the*

valleys or impede potential public access; and it is not in conflict with the other relevant policies of this plan.”

#### **Policy ENV9: Flooding**

*“Proposals for development will be assessed in relation to the flood risk framework and flood risk policy as set out in Scottish planning policy, using the SEPA Flood Maps to delineate the zones of little or no risk, low to medium risk and medium to high risk. Development will not be permitted which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. Flood Risk Assessments would be required for most forms of development in areas of medium to high risk, but may also be required in other locations, depending on the circumstances of the proposed development.”*

#### **Policy ENV10: Water Environment**

*“New development should pass surface water through a sustainable drainage system (SuDS), which ameliorates the water to an acceptable quality prior to release to the wider water environment. The design of the system should meet best current practice.*

*There is a presumption against development which may cause a deterioration in water quality.*

*Where development adjoins a watercourse, buffer strips of a minimum of 6m in width, from the top of the bank, should be provided, to enable access for maintenance, promote diversity and improve public amenity.”*

#### **Policy ENV11: Woodland, Trees and Hedges**

*“Development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural or historical value, or are of other importance.*

*Where an exception to this policy is agreed, any woodland, trees or hedges lost will be replaced with an equivalent. Removal of woodland, trees and hedges will only be permitted where it will achieve significant and clearly defined additional public benefits. If a development would result in the severing or impairment of connectivity between important woodland habitats, workable mitigation measures should be identified and implemented, preferably linked to a wider green network.”*

## Policy ENV12: Internationally Important Nature Conservation Sites

*“Development that would have an adverse effect on the integrity of a nature conservation site of international importance (Natura 2000 and RAMSAR sites), or any site which is proposed or designated as of international importance during the lifetime of the plan, as assessed against the conservation objectives of the site, will not be permitted unless it can be demonstrated that:*

- a) There are no alternative solutions.*
- b) There are imperative reasons of overriding public interest, including those of a social or economic nature; and*
- c) Compensatory measures are provided to ensure that the overall coherence of the site and Natura network is protected.*

*Current sites of international nature conservation interest in Midlothian are Special Areas of Conservation and Special Protection Areas (Natura 2000 and RAMSAR sites).”*

## Policy ENV13: Nationally Important Nature Conservation Sites

*“Development which would affect a Nature Conservation Site of national importance, or any site which is proposed or designated as of national importance during the lifetime of the plan, will not be permitted unless it can be demonstrated that:*

- a) The objectives of the designation and the overall integrity the area will not be compromised; or*
- b) Any significant adverse effect on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance arising from the development.*

*Current designated Sites of National Importance in Midlothian are the Sites of Special Scientific Interest.”*

## Policy ENV14: Regionally and Locally Important Nature Conservation Sites

*“Development which could affect the nature conservation interests of any sites or wildlife corridors of regional or local conservation importance, or any other site which is proposed or designated as of regional or local importance during the lifetime of the plan, will not be permitted unless the applicant can show that:*

- a) *The development has been sited and designed to minimise damage to the value of the site and includes measures that will appropriately compensate for any damage which cannot be avoided; or*
- b) *The public interest (including those of a social or economic nature) to be gained from the proposed development can be demonstrated to clearly outweigh the nature conservation interests of the site.*

*Sites of regional or local importance at Midlothian are detailed in the planning guidance on nature conservation.”*

#### **Policy ENV15: Species and Habitat Protection and Enhancement**

*“Development that would affect a species protected by European or UK law will not be permitted unless:*

- a) *There is an overriding public need and there is no satisfactory alternative.*
- b) *A Species Protection Plan has been submitted, which is based on survey results and includes detail of the status of protected species on site and possible adverse impacts of development;*
- c) *Appropriate and effective mitigations are proposed and agreed*

*And if European Protected Species are present:*

- d) *The development is not detrimental to the maintenance of European Protected Species at a favourable conservation status.*

*In the assessment of planning applications for development that would affect habitats of conservation value (although insufficient to justify a formal Natural Heritage designation) effects on the habitat, including the expected results of mitigation measures, will also be taken into account.*

*Development proposals will be expected to demonstrate compatibility with the aims and objectives of the Midlothian Local Biodiversity Action Plan and related plans, by identifying appropriate measures to protect, enhance and promote existing habitats and/or the creation of new ones and, provide for the effective management of these habitats.”*

#### **Policy ENV18: Noise**

*“The Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or required to be modified so that no unacceptable impact on sensitive receptors is generated. Applicants may be required to*

*carry out a Noise Impact Assessment, either as part of an Environmental Impact Assessment or separately. Where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.”*

#### **Policy ENV19: Conservation Areas**

*“Within or adjacent to a Conservation Area, development will not be permitted which would have any adverse effect on its character and appearance. In assessing proposals, regard will be had to any relevant Conservation Area Character Appraisal.”*

#### **Policy ENV20: Nationally Important Gardens and Designed Landscapes**

*“Development should protect, and where appropriate, enhance gardens and designed landscapes. Development will not be permitted which would harm the character, appearance and/or setting of a garden or designed landscape as identified in the Inventory of Historic Gardens and Designed Landscapes.”*

#### **Policy ENV22: Listed Buildings**

*“Development will not be permitted which would adversely affect the character or appearance of a Listed Building, its setting, or any feature of special architectural or historic interest.*

*Development within the curtilage of a Listed Building or its setting will only be permitted where it complements its special architectural or historical character.”*

#### **Policy ENV23: Scheduled Monuments**

*“Development which would have an adverse effect on a Scheduled Monument, or the integrity of its setting, will not be permitted.”*

#### **Policy ENV24: Other Important Archaeological or Historic Sites**

*“Development will not be permitted where it could adversely affect an identified regionally or locally important archaeological or historic site, or its setting, unless the applicant can show that:*

- a) There is a public interest to be gained from the proposed development which outweighs the archaeological or historic importance of the site; and*
- b) There is no alternative location for the proposal; and*

- c) *The proposal has been sited and designed to minimise damage to archaeological and historic interest.”*

#### **Policy ENV25: Site Assessment, Evaluation and Recording**

*“Where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.*

*Unless the Council are satisfied to the contrary, such an assessment will require a field evaluation of the site to determine:*

- a) *The character and extent of the archaeological remains;*
- b) *The likely impact of the proposed development on the features of archaeological interest; and*
- c) *Ways in which the proposed development can be designed to preserve the archaeological interest.*

*Where the development is considered to be acceptable and it is not possible to preserve the archaeological resource in situ, the developer will be required to make arrangements for an archaeological investigation. The scope of this will be appropriate to the physical character of the site and proportionate to the importance of the information expected to be recoverable. Except for sites of minor local interest, this investigation would normally include excavation and recording prior to the start of the development, followed by analysis and publication of field data.”*

#### **Policy NRG2: Wind Energy**

*“All wind energy proposals will be assessed against the requirements of Policy NRG1 and, in addition to these requirements, will be permitted provided they will not:*

- a) *Increase the risk of shadow flicker or driver distraction;*
- b) *Adversely affect civil and defence aviation interests and seismological recording; or*
- c) *Cause interference to qualifying species of Special Protection Areas.*

*Proposals for turbines above 30m in height to the blade tips should take account of the spatial framework for windfarms.*

*The supplementary guidance on wind energy development in Midlothian should be consulted in the formulation and assessment of all wind energy proposals regardless of scale.”*

## Policy NRG1: Renewable and Low Carbon Energy Projects

*“Renewable and low carbon energy projects will be permitted provided any proposal will not:*

- a) Cause an unacceptable significant adverse effect on the historic environment including the following designations/features and, where relevant, their settings: Inventory of Gardens and Designed Landscapes; Conservation Areas; Listed buildings; Scheduled Monuments and other significant archaeological sites, or historic battlefields;*
- b) Cause an unacceptable significant adverse effect upon natural heritage, including the nature conservation interests and degree of protection afforded these interests, defined by Policies ENV12 - ENV15;*
- c) Cause an unacceptable significant adverse effect upon Green Belt, the Pentland Hills Regional Park or its setting, or the Special Landscape Areas;*
- d) Cause an unacceptable significant adverse effect on peat/carbon rich soils or prime agricultural farmland (reference should be made the relevant Scottish Government Carbon Calculator and any updated information in relation to known peat/carbon rich soil in the development and assessment of proposals);*
- e) Have an unacceptable effect on the amenity of nearby communities or residential properties including noise and impact on telecommunications;*
- f) Cause or increase pollution or flood risk, or have an unacceptable effect on the water environment or water catchment areas;*
- g) Require infrastructure for access or power transmission, which itself has a significantly unacceptable environmental impact;*
- h) Cause an unacceptable significant adverse effect upon landscape or visual impact;*
- i) Result in unacceptable cumulative impacts;*
- j) Lead to the loss of public access routes and, if routes require diversion, alternatives acceptable to the Council must be provided;*
- k) Comprise telecommunications and broadcasting installations and transmission links;*

- l) Lead to unacceptable impact on the road network, including traffic generation and road safety; and/or*
- m) Demonstrably damage the local economy in terms of tourism or recreation.*

*Any proposal must:*

- 1) Include a robust mechanism for decommissioning to ensure operators and/or site owners achieve site restoration to a standard satisfactory to the Council, including the removal of all related equipment;*
- 2) Accord with any other relevant Local Development Plan policies or proposals and;*
- 3) Consider the potential to connect new projects to off-grid areas.*

*In assessing all renewable energy and low carbon technology proposals, the following will be important considerations, net economic impact, including at the local and community scale; the scale of contribution from the development to renewable energy generation targets; and the effect on greenhouse gas and carbon emissions. However, these considerations will not necessarily carry more weight where there may be likely significant environmental effects arising from a development. Where there are potentially significant environmental effects from a development, the Council will require full justification that the economic benefits, contribution to renewable energy targets and carbon reduction outweigh the environmental consequences.*

*The LDP refers to the Council's supplementary guidance at Section 7.2. Of particular relevance is the Wind Energy Development in Midlothian guidance. The scope and content of this, as described within the LDP, is that it "sets out national planning policy on wind energy; the operation and application of the spatial framework, including mapped areas of significant protection and locations with possible landscape capacity for wind energy; the application of policies NRG1 and NRG2 to the development and assessment of proposals; the siting of wind turbines in Midlothian; and guidance and information on the cumulative effect of wind energy development in Midlothian."*

## 5.7 Conclusions

- 5.7.1 This chapter has set out the legislative background, a summary of the national energy policy framework, and the national and local planning policies and guidance relevant to the consideration of the Proposed

Development. It provides an objective summary of the energy and planning policy considerations that have been taken into account in the preparation of the EIA Report in order to ensure that it provides the appropriate information for the consideration of the application for consent.

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

## 5.8 References

The Climate Change (Emissions reduction targets) (Scotland) Act 2019. Available at Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (legislation.gov.uk)

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

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

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

Midlothian Council, Local Development Plan (2017) [The current development plan for Midlothian | Development plans and policies | Midlothian Council](#)