



Vale of Leven Wind Farm Limited

# Vale of Leven Wind Farm

Environmental Impact Assessment Report (Volume 1)

Chapter 4 – Statutory & Policy Framework

663510 – 3 (00)



OCTOBER 2023



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## 4 STATUTORY & POLICY FRAMEWORK

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### 4.1 Introduction

- 4.1.1 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 that has been considered in the preparation of the EIA Report to ensure that it provides the appropriate information for the consideration of the Section 36 application.
- 4.1.2 This chapter does not include an assessment of the accordance of the Proposed Development against planning policy. A separate Planning and Sustainable Place Statement has been prepared to support the application and should be referred to for a detailed planning policy appraisal.

### 4.2 The Statutory Framework

#### The Electricity Act 1989

- 4.2.1 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 50MW require consent from the Scottish Ministers under the Electricity Act 1989 (the Electricity Act). In such cases the Planning Authority is a statutory consultee in the development management process and procedures.
- 4.2.2 In an application under Section 36 of the Electricity Act, the Development Plan does not have primacy in the decision-making process. The provisions of Schedule 9 of the Electricity Act are relevant to the assessment of the proposed development.
- 4.2.3 Schedule 9, Sub-paragraph 3(2), requires the Scottish Ministers to have regard to:  
*“(a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and (b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of the sub-paragraph.”*
- 4.2.4 When formulating proposals for consent under section 36 of the Electricity Act, the matters referred to in Schedule 9 sub-paragraph 3(1)(a) and (b) of the Electricity Act do not apply to the applicant on the basis that the applicant does not hold a generation licence. Through the EIA process, the applicant has however had full regard to the matters set out in sub-paragraph 3(1)(a) of Schedule 9. The matters set out in sub-paragraph 3(1)(a) to which the Scottish Ministers must have regard are:  
*“... the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings, and objects of architectural, historic, or archaeological interest;“*
- 4.2.5 At sub-paragraph 3(3), the Scottish Ministers [are required to...]  
*“avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.”*

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

that the obligations under Schedule 9 are met and that suitable mitigation has been identified.

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

- 4.2.6 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).
- 4.2.7 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”.*
- 4.2.8 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”.*
- 4.2.9 Section 57(2) of the 1997 Act makes no reference to the provisions of section 25 which requires regard to be had to the provisions of the Development Plan. The Courts have confirmed that section 57(3) does not apply section 25 to a decision to make a direction to grant deemed planning permission pursuant to section 57(2)<sup>1</sup>. Section 25 of the 1997 Act does not apply to the determination of applications under section 36 of the Electricity Act.
- 4.2.10 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 the statutory Development Plan.

## **4.3 Renewable Energy Policy: Summary**

- 4.3.1 In recent years United Kingdom (UK) and Scottish Government policies have focussed increasingly on concerns about climate change. Each tier of Government has developed targets, policies, and actions to achieve targets to deal with the climate crisis and generate more renewable energy and electricity.
- 4.3.2 The UK Government retains responsibility for the overall direction of energy policy, although some elements are devolved to the Scottish Government. The UK Government has published a series of policy documents setting out how targets can be achieved. Onshore wind generation, located in Scotland, is identified as an important technology to achieve these various goals.
- 4.3.3 The Scottish Government has published a number of policy documents and its own targets. The most relevant policy, legislative documents and more recent statements published by the Scottish Government include:

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

- 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 (OWPS) (December 2022); and
- The Draft Energy Strategy and Just Transition Plan (January 2023).

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

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

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

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

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

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

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

4.3.7 The proposed development would contribute 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 and Sustainability Statement.

4.3.8 In terms of the two latest policy documents, namely the OWPS and the Draft Energy Strategy and Just Transition Plan, these are referenced below.

#### **The Onshore Wind Policy Statement (OWPS)**

4.3.9 The Scottish Government published an updated OWPS on 21 December 2022. It replaces the version published in November 2017.

4.3.10 The Ministerial Foreword makes it explicitly clear that seeking greater security of supply and lower cost electricity generation are now key drivers alongside the need to deal with the climate emergency. In this regard, the Cabinet Secretary for Net Zero, Energy and Transport states (page 3):

*“that is why we must accelerate our transition towards a net zero society. Scotland already has some of the most ambitious targets in the world to meet net zero but we must go further and faster to protect future generations from the spectre of irreversible climate damage”.*

- 4.3.11 Scotland has been a frontrunner in onshore wind and, while other renewable technologies are starting to reach commercial maturity, continued deployment of onshore wind will be key to ensuring our 2030 targets are met".
- 4.3.12 The Foreword states that onshore wind has the ability to be deployed quickly, is good value for consumers and is also widely supported by the public. The Minister further states that:
- "This Statement, which is the culmination of an extensive consultative process with industry, our statutory consultees and the public, sets an overall ambition of 20 GW [Gigawatt] of installed onshore wind capacity in Scotland by 2030.*
- While imperative to meet our net zero targets it is also vital that this ambition is delivered in a way that is fully aligned with, and continues to enhance, our rich natural heritage and native flora and fauna, and supports our actions to address the nature crisis and the climate crisis".*
- 4.3.13 The OWPS is structured on the basis of eight chapters which contain a mix of policy guidance and also technical information. Chapter 1 "Ambitions and Aspirations" (page 5) refers to current deployment of onshore wind in Scotland and states:
- "We must now go further and faster than before. We expect the next decade to see a substantial increase in demand for electricity to support net zero delivery across all sectors, including heat, transport, and industrial processes."*
- 4.3.14 Section 1.3 of the OWPS further refers to the new 20GW ambition and acknowledges that the Scottish Government's Programme for Government 2022/2023 committed Government to enabling up to 12GW of onshore wind to be developed and it is stated that:
- "It is vital to send a strong signal and set a clear expectation on what we believe onshore wind capacity will contribute in the coming years. In line with this commitment, and reflecting the natural life cycles of existing wind farms, this statement sets a new ambition for the deployment of onshore wind in Scotland:*
- A minimum installed capacity of 20 GW of onshore wind in Scotland by 2030.*
- This ambition will help support the rapid decarbonisation of our energy system, and the sectors which depend upon it, as well as aligning with a just transition to net zero whilst other technologies reach maturity".*
- 4.3.15 This statement is followed by reference to the "Legislative Context", in particular the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 and the related Net Zero greenhouse gas emissions targets. The OWPS states (paragraph 1.4.1) *"meeting these targets will require decisive and meaningful action across all sectors".*
- 4.3.16 Paragraph 2.4.2 states that *"onshore wind will play a crucial role in delivering our legally binding climate change targets".*
- 4.3.17 Chapter 3 of the OWPS "Environmental Considerations: Achieving Balance and Maximising Benefits" refers to matters relating to specific environmental topics as follows:
- Shared Land Use;
  - Peat and Carbon-Rich Soils;
  - Forestry;

- Biodiversity;
- Landscape and Visual Amenity; and
- Noise.

### **The Draft Energy Strategy and Just Transition Plan**

4.3.18 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 concluded on 4 April 2023. 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 and 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."*

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

- More than 20GW of additional renewable 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; and
- A just transition by maintaining or increasing employment in Scotland's energy production sector against a decline in North Sea production.

4.3.20 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".*

4.3.21 A fundamental part of the draft 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.....”*

- 4.3.22 In terms of policy and onshore wind, the draft Strategy cross refers to National Planning Framework 4 (NPF4) and the OWPS and reiterates the new ambition for a deployment of a minimum further 12GW of onshore wind by 2030.

## **4.4 National Planning Framework 4: Spatial Strategy & National Developments**

### **Introduction**

- 4.4.1 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. The Revised Draft NPF4 was approved by the Scottish Parliament, without amendments, following a vote on 11 January 2023. NPF4 came into force on 13 February 2023.
- 4.4.2 Section 13 of the 2019 Act amended Section 24 of the 1997 Act regarding the meaning of the statutory Development Plan, such that for the purposes of the Planning 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).
- 4.4.3 NPF4 therefore now forms part of the statutory Development Plan and should be afforded substantial weight.
- 4.4.4 A key provision of the 2019 Act is that in the event of any incompatibility between the provisions of NPF4 and a provision of a 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. Section 13 of the 2019 Act amended 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”.*
- 4.4.5 As explained, for the purposes of decision making in respect of a Section 36 application, 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**



4.4.6 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."*

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

4.4.8 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".

4.4.9 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."*

4.4.10 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."*

4.4.11 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".*

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

- 4.4.12 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."*

- 4.4.13 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, key to the outcomes of almost all policies within NPF4.

#### **National Developments**

- 4.4.14 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'.

- 4.4.15 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"*.

- 4.4.16 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"*.

- 4.4.17 Annex B of NPF4 sets out the various National Developments (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"*.

- 4.4.18 Page 103 of NPF4 describes ND No.3 (Strategic Renewable Electricity Generation and Transmission Infrastructure) 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."*

- 4.4.19 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." (page 103)*

- 4.4.20 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." (page 103)*

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.

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

## **4.5 NPF4: National Planning Policies**

- 4.5.1 Part 2 of NPF4 contains proposed new 'National Planning Policy'. The 'lead' policies of relevance to the proposed development are Policies 1 and 11.

### **Policy 1 'Tackling the climate and nature crisis'**

- 4.5.2 Policy 1 states that: "when considering all development proposals significant weight will be given to the global climate and nature crisis". (page 36)

### **Policy 11 'Energy'**

- 4.5.3 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)*". (page 53)

4.5.4 The desired outcome of this policy is stated as an "*Expansion of renewable, low carbon and zero emissions technologies*". (page 53)

4.5.5 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.

4.5.6 Policy 11 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;*
- iv. 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.”*

4.5.7 The other policies of most relevance to the proposed development 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.

### **Policy 3 ‘Biodiversity’**

4.5.8 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 enhance and better connected. Policy 3 states:

*“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". (page 38)

#### **Policy 4 'Natural Places'**

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

*"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". (page 40)*

#### **Policy 5 'Soils'**

4.5.10 Policy 5 seeks to protect carbon-rich soils, restore peatlands, and minimise disturbance to soils from development and states:

*"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*

*v. 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". (page 42)*

## **Policy 6 'Forestry, Woodland, and trees'**

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

*"Development proposals that enhance, expand, and improve woodland and tree cover will be supported;*

*Development proposals will not be supported where they will result in:*

*Any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition;*

*Adverse impacts on native woodlands, hedgerow, and individual trees of high biodiversity value, or identified for protection in the Forestry and Woodland Strategy;*

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

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

*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.*

*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". (page 44)*

#### **Policy 7 'Historic Assets and Places'**

4.5.12 Policy 7 seeks to protect and enhance historic environment 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.”*

## 4.6 National Planning Guidance

4.6.1 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 4.1** below.

**Table 4.1: Relevant PANs**

PAN / Title	Summary of Document
PAN 1/2013 Environmental Impact Assessment	Provides information on the role local authorities and consultees play as part of the EIA process, and how the EIA can inform development management.
PAN 60 (2000) Planning for Natural Heritage	Advises developers on the importance of discussing their proposals with the planning authority and Scottish Natural Heritage (SNH) (now 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 System	Contains good practice drainage guidance.
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.

## **4.7 The Local Development Plan & Relevant Policies**

- 4.7.1 The Local Development Plan (LDP) for West Dunbartonshire is the West Dunbartonshire Local Plan which was adopted in March 2010.
- 4.7.2 The West Dunbartonshire Local Development Plan 2 (LDP2) was submitted to the Scottish Ministers for adoption on 26 August 2020. On 18 December 2020, the Scottish Government issued a Direction that the new plan should not be adopted unless specified modifications relating to housing matters are made. It is understood that the Council is continuing to address that Direction.
- 4.7.3 Therefore, at the present time the adopted Local Plan remains that dated March 2010. Its contents are therefore considerably out of date in light of the provisions of NPF4 which as noted, now makes up part of the statutory Development Plan.
- 4.7.4 Although LDP2 is the Council's most up to date policy position and is afforded significant weight in the assessment and determination of planning applications, its policies have to a large extent now been overtaken by those within NPF4.
- 4.7.5 Relevant policies from the Local Plan include the following. Reference is also made to the renewable energy policy within LDP2.

### **Policy WC1: 'Wider Countryside'**

*"Development in the wider countryside as designated on the proposals map will not be supported unless:*

- It is required for the purposes of agriculture, aquaculture or forestry; or*
- It is a recreation, leisure or tourism proposal which is appropriate for the countryside; or*
- There is a specific locational need; or*
- It entails the reuse of a vacant or derelict building; and*
- It does not have an adverse impact on the landscape character or natural heritage resource."*

### **Policy RSA1: 'Regional Scenic Areas'**

*"The Council will conserve the high quality landscape of the Kilpatrick Hills as indicated on the key policies map as an important scenic area. There will be a general presumption against proposals for development that would have an adverse impact on the landscape quality and character, visual amenity, or nature conservation value of the area."*

### **Policy SUS1: 'Sustainable Development'**

*"The Council will pursue a sustainable approach to development and transportation issues by seeking to maintain and enhance the quality of the environment within the plan area and integrating transportation and land use planning matters. Development proposals which meet social and economic needs will be supported provided they do not compromise the area's future well-being and environment. Within the plan area, all development should therefore seek to conserve and enhance environmental resources and ensure environmental impact is minimised. The Council seeks to encourage provisions for waste minimisation and recycling, building design to minimise energy requirements and small-scale renewable energy generation."*

### **Policy GD1: 'Development Control'**

*“All new development is expected to be of a high quality of design and to respect the character and amenity of the area in which it is located. Proposals will be required to:*

- Be appropriate to the local area in terms of land use, layout, and design;*
- Be energy efficient, including considering options for micro renewable technologies;*
- Ensure that landscaping is integral to the overall design;*
- Ensure that the value of the historic and natural environment is recognised and is not devalued or threatened by the proposal;*
- Ensure that open space standards are met;*
- Assess and address any existing or potential increase in flood risk and/or environmental pollution, provide drainage consistent with sustainable urban drainage systems design guidance;*
- Demonstrate, where appropriate, that the development will not result in a negative impact on the water environment;*
- Ensure that increases in traffic volumes and adverse impacts on their quality are avoided;*
- Meet the roads, parking, and access requirements of the council;*
- Consider the availability of infrastructure and the impact on existing community facilities;*
- Minimise waste;*
- Be consistent with other local plan policies.”*

#### **Policy T4: ‘Accessibility to New Development’**

*“Transport assessments will be required for significant travel generating proposals in order to ensure proposed developments maximise the incorporation of sustainable transport access. New roads, footpaths and cycleways built by developers will normally require to conform to the design and construction standards required by the council.*

*Any new development could have an adverse impact on the A82 and developers may be required to contribute to increasing capacity at junctions with the A82 Trunk Road.”*

#### **Policy E1: ‘Biodiversity Duty’**

*“The Council when exercising its planning function will further the conservation of biodiversity.”*

#### **Policy E2A: ‘International Nature Conservation Sites (Natura 2000)’**

*“Development likely to have a significant effect on a Natura 2000 site will be subject to an appropriate assessment. Where an assessment is unable to conclude that a development will not adversely affect the integrity of the site, development will be only permitted where:*

- There are no alternative solutions; and*
- There are imperative reasons of overriding public interest.”*

#### **Policy E2B: ‘National Nature Conservation Site (Sites of Special Scientific Interest)’**

*“Development that affects a Site of Special Scientific Interest will only be permitted where an appraisal was demonstrated:*

- The objectives of the designated area and the overall integrity of the area would not be compromised; or*

- Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social or economic benefits of national importance.

**Policy E3A: ‘Local Nature Conservation Sites’**

*“The Council will seek to maintain and enhance the environmental resources of the plan area by the protection of habitats, species and natural features which are vulnerable and/or specifically protected. This includes natural heritage sites and features important to local biodiversity and/or duo-diversity including the following:*

- *Local Nature Conservation Sites (LNCS) shown on the proposals map;*
- *Wildlife corridors defined in the technical supplement; and*
- *Ancient and semi-natural and long-established woodlands.*

*Proposals should not have an adverse effect on the integrity or character of a local nature conservation site. Satisfactory arrangements for habitat creation/site enhancement elsewhere should be made to compensate where development would cause the total or partial loss of a nature conservation site. The creation of new habitats will also be encouraged. In considering proposals for development of other sites which may be of importance for nature conservation, but which are not identified by this plan, regard will be had to any available survey material.”*

**Policy EB: ‘Local Nature Reserves’**

*“The Council will seek to identify, propose for designation, designate, and actively manage as local nature reserves, areas of considerable nature conservation interest which provide for education and recreation. There will be a presumption against any development or change of use likely to have an adverse effect either directly or indirectly on a local nature reserve.”*

**Policy E5: ‘Development Affecting Trees’**

*“New developments proposed on sites, with, or adjacent to, existing trees or woodland will be assessed in accordance with best practice. Development proposals should take account of trees at the beginning of the design process.”*

**Policy BE1: ‘Conservation Areas and Article 4 Directions’**

*“The Council will seek to ensure that no works adversely affect the appearance and character of the Conservation Areas as shown on the proposals map. Any development proposals within these designated areas will require a particularly high standard of design.”*

**Policy BE2: ‘Listed Buildings’**

*“The Council will aim to ensure that in relation to any works affecting a listed building or its setting, its appearance, character, and setting is not adversely affected. Proposals for alterations or extensions that detract will not be supported.”*

**Policy BE5: ‘Scheduled Ancient Monuments and other Archaeological Sites’**

*“The Council will resist any development proposals that would have an adverse impact on or affect the setting of a Scheduled Ancient Monument, or upon other nationally or*

*locally important archaeological sites. Development which would affect features of archaeological importance or their setting will be considered against the following:*

- *That the benefits of the development outweigh the archaeological interest;*
- *Where the preservation of archaeological interest is not possible or feasible, approval of development will be conditional upon provision being made for the recording of the features prior to and during development; and*
- *Where the presence of archaeology becomes apparent once development has commenced, adequate opportunity must be afforded by the developer for an archaeological investigation.”*

**Policy BE6A: ‘Antonine Wall’**

*“There will be a presumption against development which would have an adverse impact on the Frontiers of the Roman Empire (Antonine) Wall (World Heritage Site) as defined on the proposals map.”*

**Policy BE6B: ‘Antonine Wall Buffer Zones’**

*“There will be a presumption against development within the Frontiers of the Roman Empire (Antonine) Wall (World Heritage Site buffer zones) which would have an adverse impact on the site and its setting unless:*

- *Mitigation action to the satisfaction of the council in consultation with Historic Scotland can be taken to redress the adverse impact; and*
- *There is no conflict with other Local Plan policies.”*

**Policy BE7: ‘Gardens and Design Landscapes’**

*“Development affecting gardens and design landscapes shall protect, preserve and enhance such places and shall not impact adversely upon their character, upon important views to, from and within them, or upon the site or setting of component features which contribute to their value.”*

**Policy DC3: ‘Aircraft Safeguarding Zone’**

*“Within the Safeguarding Zone around Glasgow Airport, development which adversely affects the operational integrity or safety of the airport will not normally be permitted.”*

**Policy DC6: ‘Renewable Energy’**

*“Proposals for renewable energy development will be permitted where it can be established without unacceptable detriment to the landscape, natural and built heritage, support and recreation interests and local amenity. Development will be considered against the following criteria:*

- *Visual impact and affect on landscape character, including the landscape quality of the Kilpatrick Hills Regional Scenic Area and role and function of the greenbelt;*
- *Nature conservation interests, including statutory designated areas, species, and habitats;*
- *The historic environment and its setting, including Scheduled Ancient Monuments, conservation area and listed buildings;*
- *Noise, odour, traffic, broadcast interference and other impacts upon the amenity of local communities;*
- *The cumulative impact of the proposed development along with any other similar existing and approved developments upon the environment and amenity; and*

- *Other relevant Local Plan policies.”*

### **Policy F1: ‘Flood Prevention’**

*“The Council will resist developments that:*

- *Are likely to increase the risk of flooding locally or elsewhere in the catchment; or*
- *Are located in a functional flood plain and/or are likely to adversely affect an existing or potential flood attenuation area.”*

### **LDP2: Policy RE1 ‘Renewable Energy Development’**

- 4.7.6 As explained above, LDP2 (August 2020) is not yet the adopted LDP for the area however it does contain a more up to date renewable energy policy compared to that contained within the adopted Local Plan of 2010. Policy RE1 ‘Renewable Energy Development’: states:

*“Renewable energy development in the form of new build development, infrastructure or retrofit projects will be supported in stand-alone locations and as integral parts of new and existing developments, where it can be demonstrated that there will be no unacceptable significant adverse impacts on all of the development management criteria set out in paragraph 169 of Scottish Planning Policy, but the scale of its proposal and its compatibility with the surrounding area are appropriate, and that all other relevant policies are met.”*

## **4.8 Conclusions**

- 4.8.1 This chapter has set out the legislative background, a summary of relevant statutory provisions, 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 considered in the preparation of the EIA Report to ensure that it provides the appropriate information for the consideration of the application for consent.
- 4.8.2 As noted, the policy appraisal for the proposed development is contained in a separate Planning and Sustainability Statement.

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