

TA3.1 Energy & Planning Policy Framework



Glenshero Wind Farm

EIA Report

Technical Appendix 3.1: Energy & Planning Policy Framework

prepared for
RES Ltd on behalf of SIMEC Wind One Ltd

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1 Energy & Planning Policy Framework

1.1 Introduction

- 1.1.1 This Technical Appendix describes the legislative and policy background to the application. It sets out the legislative basis for a decision by Scottish Ministers and refers to national energy policy and planning policy at a national and local level. It also identifies other matters that would be material to the decision by Scottish Ministers. This Appendix does not assess 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.

1.2 Legislation

The Electricity Act 1989

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

The Town and Country Planning (Scotland) Act 1997

- 1.2.7 The principal planning statute in Scotland is the Town and Country Planning Act (Scotland) 1997 (the Planning Act) as amended by The Planning etc. (Scotland) Act 2006.
- 1.2.8 Section 57 of the Planning Act addresses development with Government authorisation. Section 57(2) states that: *"On granting or varying a consent under section 36 or 37 of the Electricity Act 1989, the Scottish Ministers may give a direction for planning permission to be deemed to be granted, subject to such conditions (if any) as may be specified in the direction, for – (a) so much of the operation or change of use to which the consent relates as constitutes development; (b) any development ancillary to the operational change of use to which the consent relates"*.
- 1.2.9 As an application under the Electricity Act, the duty under Section 25 of the Planning Act, is to determine the application in accordance with the provisions of the development plan unless material

considerations indicate otherwise, does not apply. The development plan is however a relevant and important consideration.

1.3 Renewable Energy Policy – Summary

- 1.3.1 In recent years, European, 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 these targets.
- 1.3.2 The targets set for the UK by the European Commission under the EU Renewables Directive (2009/28/EC) include a 16% reduction in UK greenhouse gas emissions by 2020 and for 15% of all energy consumed in the UK to come from renewable resources by 2020.
- 1.3.3 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 the European targets can be achieved. Onshore wind generation, located in Scotland, is identified as an important component to achieve these various goals.
- 1.3.4 The Scottish Government has published a number of policy documents and its own targets. The Climate Change (Scotland) Act 2009 provides the statutory framework for greenhouse gas emissions reductions in Scotland. The 2009 Act requires reductions in greenhouse gas emissions of 42% by 2020 and 80% by 2050, and also provides for annual targets to be set.
- 1.3.5 The most relevant policy documents published by the Scottish Government include:
 - The 2020 Routemap for Renewable Energy in Scotland (2011) and as updated in 2013 and in 2015; and the
 - The Electricity Generation Policy Statement 2013.
- 1.3.6 In December 2017 the Scottish Government published two energy policy documents following a period of consultation, namely:
 - the Scottish Energy Strategy 'The Future of Energy in Scotland'; and
 - the Onshore Wind Policy Statement.
- 1.3.7 The Climate Change Plan was published in February 2018 and updated Scotland's greenhouse gas emission targets. Together, these policy documents represent the Government's intended energy and climate change strategy for the period to 2050. Detailed reference to the renewable energy policy context is provided in the Planning Statement.

1.4 National Planning Policy & Guidance

The National Planning Framework (NPF3)

- 1.4.1 NPF3 is a long-term strategy for Scotland. It is the spatial expression of the Scottish Government's Economic Strategy, and of plans for development and investment in infrastructure.
- 1.4.2 Part of the vision is of Scotland as a low carbon place, where the opportunities arising from the ambition to be a world leader in low carbon energy generation have been seized. NPF3 is informed by, and aims to help achieve, the Scottish Government's climate change and renewable energy targets.
- 1.4.3 NPF3 acknowledges that the energy sector accounts for a significant share of the country's greenhouse gas emissions, and that addressing this requires capitalising on Scotland's outstanding natural advantages, including its significant wind resource. NPF3 makes it clear that onshore wind will continue to play a significant role in de-carbonising the energy sector and diversifying energy supply.

Scottish Planning Policy (SPP)

- 1.4.4 SPP is Scottish Government policy on how nationally important land use planning matters should be addressed.
- 1.4.5 It introduces a presumption in favour of development which contributes to sustainable development. Decisions are to be guided by a number of listed principles. These include making efficient use of existing infrastructure, supporting the delivery of new energy infrastructure, supporting climate change mitigation and protecting natural heritage, landscape and the wider environment.
- 1.4.6 In support of the outcome of making Scotland a low carbon place, the planning system should support the change to a low carbon economy, including deriving the equivalent of 100% of electricity demand from renewable sources by 2020. It should support the development of electricity generation from a diverse range of renewable sources. It should guide development to appropriate locations and advise on the issues that would be taken into account when specific proposals are being assessed.
- 1.4.7 SPP requires Planning Authorities to set out in their development plan a Spatial Framework identifying those areas that are likely to be the most appropriate for wind farms. Table 1 of SPP shows the approach to be followed. Group 1 applies to areas where wind farms will not be acceptable. Group 2 applies to areas of significant protection. Group 3 applies to areas with potential for wind farm development, where it is likely to be acceptable subject to detailed consideration against identified policy criteria. A list of likely considerations for development proposals is provided at paragraph 169. Wind farms should be sited and designed so that impacts are minimised and to protect an acceptable level of amenity for adjacent communities.
- 1.4.8 More generally, the siting and design of development should take account of local landscape character. Decisions should take account of potential effects on landscapes and the natural and water environment, including cumulative effects. Applicants should seek to minimise adverse impacts through careful planning and design. Planning permission should be refused where the nature or scale of a development would have an unacceptable impact on the natural environment.

Scottish Government Guidance for Onshore Wind Turbines

- 1.4.9 The Government's 'Onshore Wind Turbines' guidance is part of a suite of web-based advice on renewable energy. The list of 'Typical Planning Considerations in Determining Planning Applications for Onshore Wind Turbines' is similar to that in SPP. The Guidance is dated May 2014.
- 1.4.10 In December 2014, the Scottish Government released a document answering questions in relation to the SPP and Onshore Wind. The answers provided relate to the following topics: landscape capacity assessment; Spatial Frameworks; separation distances; areas of strategic capacity; cumulative impacts; the life span of wind farms; wild land; scenic routes; and the carbon calculator.

1.5 The Development Plan & Relevant Policies

- 1.5.1 The statutory development plan covering the application site comprises the following:-
- The Highland Wide Local Development Plan (HwLDP) (2012);
 - The West Highland and Islands Local Plan (as continued in force, 2012); and
 - Relevant supplementary guidance, particularly the onshore wind energy supplementary guidance (2016).
- 1.5.2 The Inner Moray Firth Local Development (2015) covers the area immediately to the north of the site.
- 1.5.3 The Council has progressed consultation on a new HwLDP: the consultation period ended on 24 December 2015 and was progressed by way of a Main Issues Report (MIR) which included a series of questions on the main

issues affecting people across Highland. It is understood that the Council is suspending progress on a new Highland wide LDP until there is clarity on a new development planning approach as a result of the Planning Bill.

- 1.5.4 In terms of emerging Development Plan documents, the West Highlands and Islands Local Development Plan (WestPlan) is in preparation and upon adoption will replace the West Highlands and Islands Local Plan (as continued in force, 2012). WestPlan was published in May 2017 as a proposed plan and the period for representations is now closed. The proposed plan was submitted for Examination in July 2018, with a target date for Examination completion of 7 May 2019.
- 1.5.5 No part of the application site falls within the Cairngorms National Park (CNP). However the Cairngorms National Park Partnership Plan 2017 – 2022 (NPPP) is a relevant consideration although it does not form part of the Development Plan applicable to the site. Relevant policies from the NPPP are referenced below.

Development Plan Policies of Relevance

- 1.5.6 The policies of most relevance in the HwLDP are as follows:-
- Policy 67 – Renewable Energy Developments;
 - Policy 57 – Natural, Built, and Cultural Heritage;
 - Policy 61 – Landscape;
 - Policy 55 – Peat and Soils;
 - Policy 58 – Protected Species;
 - Policy 59 – Other Important Species;
 - Policy 60 – Other Important Habitats.
- 1.5.7 These most relevance policies are set out in full below. Other relevant HwLDP policies which need to be taken into consideration include the following:
- Policy 28 – Sustainable Design;
 - Policy 30 – Physical Constraints;
 - Policy 31 – Developer Contributions;
 - Policy 55 – Peat and soils;
 - Policy 56 – Travel;
 - Policy 58 – Protected Species;
 - Policy 59 – Other Important Species;
 - Policy 60 – Other Important Habitats;
 - Policy 63 – Water Environment;
 - Policy 66 – Surface Water Drainage;
 - Policy 69 – Electricity Transmission Infrastructure; and
 - Policy 70 – Public Access.

1.5.8 Policy 67 – ‘Renewable Energy Developments’ states:

“Renewable energy development proposals should be well related to the source of the primary renewable resources that are needed for their operation. The Council will also consider:

- *the contribution of the proposed development towards meeting renewable energy generation targets; and*
- *any positive or negative effects it is likely to have on the local and national economy;*
- *and will assess proposals against other policies of the development plan, the Highland Renewable Energy Strategy and Planning Guidelines and have regard to any other material considerations, including proposals able to demonstrate significant benefits including by making effective use of existing and proposed infrastructure or facilities.*

Subject to balancing with these considerations and taking into account any mitigation measures to be included, the Council will support proposals where it is satisfied that they are located, sited and designed such that they will not be significantly detrimental overall, either individually or cumulatively with other developments (see Glossary), having regard in particular to any significant effects on the following:

- *natural, built and cultural heritage features;*
- *species and habitats;*
- *visual impact and impact on the landscape character of the surrounding area (the design and location of the proposal should reflect the scale and character of the landscape and seek to minimise landscape and visual impact, subject to any other considerations);*
- *amenity at sensitive locations, including residential properties, work places and recognised visitor sites (in or out with a settlement boundary);*
- *the safety and amenity of any regularly occupied buildings and the grounds that they occupy- having regard to visual intrusion or the likely effect of noise generation and, in the case of wind energy proposals, ice throw in winter conditions, shadow flicker or shadow throw;*
- *ground water, surface water (including water supply), aquatic ecosystems and fisheries;*
- *the safe use of airport, defence or emergency service operations, including flight activity, navigation and surveillance systems and associated infrastructure, or on aircraft flight paths or MoD low-flying areas;*
- *other communications installations or the quality of radio or TV reception;*
- *the amenity of users of any Core Path or other established public access for walking, cycling or horse riding;*
- *tourism and recreation interests; and*
- *land and water based traffic and transport interests.*

Proposals for the extension of existing renewable energy facilities will be assessed against the same criteria and material considerations as apply to proposals for new facilities.

In all cases, if consent is granted, the Council will approve appropriate conditions (along with a legal agreement/obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, as amended, where necessary), relating to the removal of the development and associated equipment and to the restoration of the site, whenever the consent expires, other than in circumstances where fresh consent has been secured to extend the life of the project, or the project ceases to operate for a specific period.

The Onshore Wind Energy Supplementary Guidance will replace parts of the Highland Renewable Energy Strategy. It will identify: areas to be afforded protection from wind farms; other areas with constraints; and broad areas of search for wind farms. It will set out criteria for the consideration of proposals. It will ensure that

developers are aware of the key constraints to such development and encourage them to take those constraints into account at the outset of the preparation of proposals. It will seek to steer proposals, especially those for larger wind farms, away from the most constrained areas and ideally towards the least constrained areas and areas of particular opportunity. It will also set out criteria which will apply to the consideration of proposals irrespective of size and where they are located, enabling proposals to be considered on their merits. It will seek submission as part of the planning application of key information required for the assessment of proposals and provide certainty for all concerned about how applications will be considered by the Council."

1.5.9 Policy 57 – 'Natural, Built and Cultural Heritage' states:

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

1. For features of local/regional importance we will allow developments if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource.

2. For features of national importance we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource. Where there may be any significant adverse effects, these must be clearly outweighed by social or economic benefits of national importance. It must also be shown that the development will support communities in fragile areas who are having difficulties in keeping their population and services.

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

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

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

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

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

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

1.5.10 Policy 61 – ‘Landscape’ states:

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

1.5.11 Policy 55 – ‘Peat and Soils’ states:

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

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

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

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

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

1.5.12 Policy 58 – ‘Protected Species’ states:

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

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

- *There is no satisfactory alternative; and*

- *The development is required for preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; and*
- *The development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.*
- *Development that is likely to have an adverse effect, individually and/or cumulatively, on protected bird species (see Glossary) will only be permitted where:*
 - *There is no other satisfactory solution; and*
 - *The development is required in the interests of public health or public safety.*
- *This will include but is not limited to avoiding adverse effects, individually and/or cumulatively, on the populations of the following priority protected bird species:*
 - *Species listed in Annex 1 of the EC Birds Directive;*
 - *Regularly occurring migratory species listed in Annex II of the Birds Directive;*
 - *Species listed in Schedule 1 of the Wildlife and Countryside Act 1981 as amended; and*
 - *Birds of conservation concern.*
- *Development that is likely to have an adverse effect, individually and/or cumulatively (see glossary), on other protected animals and plants (see Glossary) will only be permitted where the development is required for preserving public health or public safety.*
- *Development proposals should avoid adverse disturbance, including cumulatively, to badgers and badger setts, protected under the Protection of Badgers Act 1992 (as amended by the Nature Conservation (Scotland) Act 2004.)"*

1.5.13 Policy 59 – ‘Other Important Species’ states:

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

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

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

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

- *habitats listed in Annex I of the EC Habitats Directive;*
- *habitats of priority and protected bird species (see Glossary);*

- priority habitats listed in the UK and Local Biodiversity Action Plans; and
- habitats included on the Scottish Biodiversity List.

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

1.6 Onshore Wind Supplementary Guidance

- 1.6.1 The Council adopted its Supplementary Guidance (SG) on wind energy in November 2016 and this now forms part of the statutory Development Plan.
- 1.6.2 Section 1 'Introduction' states: *"The advice that follows provides a fuller interpretation of HwLDP policies as they relate to onshore wind energy development. The Council will balance these considerations with wider strategic and environmental and economic objectives including sustainable economic growth in the Highlands, and our contribution to renewable energy targets and tackling climate change...."*
- 1.6.3 Section 2 of the SG includes a Spatial Framework, following the approach of Table 1 in SPP. The application site would fall within the Spatial Framework plan covering the West Highlands and Islands LDP area and a mix of Group 2 and 3 categories apply to it. The application site is illustrated on the Spatial Framework plan in Figure 3.2 in the EIA Report.
- 1.6.4 Section 4 of the SG sets out *"key development plan considerations"* and the topic headings broadly follow those as set out within policy 67 of the HwLDP.
- 1.6.5 At paragraph 4.16 the SG sets out that *"the following criteria set out key landscape and visual aspects that the Council will use as a framework and focus for assessing proposals, including discussions with applicants"*.
- 1.6.6 Paragraph 4.17 adds that the criteria do not set absolute requirements, but rather seek to ensure developers are aware of key potential constraints to development. Following paragraph 4.17 there is a list of 10 criteria, together with associated thresholds and measures for development.
- 1.6.7 Part 4 of the SG addresses various considerations namely:
 - Siting and Design of Wind Farms;
 - Landscape and visual effects;
 - Safety and amenity at sensitive locations;
 - Safety of Airport, Defence and Emergency Service Operations;
 - Operational efficiency of other Communications;
 - Operational efficiency of Wind Energy developments;
 - The Natural and Historic Environment;
 - The Water Environment;
 - Peat;
 - Trees and Woodland;
 - Tourism and Recreation;
 - Public Access;

- Traffic and Transport interests
- Electricity and Gas Infrastructure;
- Noise Assessment;
- Borrow Pits;
- Mitigation;
- Construction Environmental Management Plans;
- Restoration Bonds; and
- Repowering.

1.7 The Cairngorms National Park – Relevant Policy

- 1.7.1 As noted above, the application site and all proposed development is not within the CNP, but because of the proximity of the application site to the CNP, the Cairngorms National Park Partnership Plan 2017 – 2022 is a relevant material consideration. The NPPP is a management plan for the CNP, approved by the Scottish Ministers. It states (page 8) that *"it sets out how all those with a responsibility for the Park will coordinate their work to tackle the most important issues"*.
- 1.7.2 There are two policies of relevance within the NPPP: policies 1.3 and 3.3 and they are as follows:-

NPPP - Policy 1.3

"Conserve and enhance the special landscape qualities with a particular focus on:

- a. Conserving and enhancing wildness qualities;*
- b. Maintaining and promoting dark skies;*
- c. Enhancements that also delivery habitat improvements;*
- d. Enhancing opportunities to enjoy and experience the landscape of the Park;*
- e. Applying a presumption against new constructed tracks in open moorland."*

NPPP - Policy 3.3

"Support development of a low carbon economy, with a particular focus on:

- a. Increasing renewable energy generation, especially biomass and hydro, that is compatible with conserving the special qualities of the National Park and maintaining the integrity of designated sites. Large-scale wind turbines are not compatible with the landscape character or special landscape qualities of the National Park. They are inappropriate within the National Park or where outside the Park they significantly adversely affect its landscape character or special landscape qualities."*

1.8 Conclusions

- 1.8.1 This Technical Appendix sets out the legislative background, the national energy policy, and the national and local planning policies and guidance relevant to the consideration of the Section 36 application for consent and the deemed planning permission. 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.
- 1.8.2 As noted, the policy appraisal for the proposed development is contained in a separate Planning Statement.



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