



Wind Power North Two Limited

# Balblair Wind Farm

Environmental Impact Assessment Report (Volume 2)

Chapter 5 – Planning Policy and Legislation

663896



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## 5 PLANNING POLICY AND LEGISLATION

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### 5.1 Introduction

- 5.1.1 This chapter of the Balblair Windfarm (hereafter the proposed Development) Environmental Impact Assessment (EIA) Report provides an overview of the legal, renewable energy and planning policy context considered relevant to the assessment of the proposed Development.
- 5.1.2 It sets out at a high level the climate change legislation at an international, national, and local level, as well as relevant UK and Scottish Government energy policy, the Development Plan, and relevant Scottish planning guidance. Legislation, planning policy and guidance specific to each technical discipline are considered in the Technical chapters (**Chapters 5-15**).
- 5.1.3 A more detailed assessment of the development against policy is provided in the Planning Statement, which is a standalone document and does not form part of the EIA Report.

### 5.2 The Statutory Framework

- 5.2.1 As the proposed Development exceeds 50 megawatts (MW), an application under Section 36 of the Electricity Act 1989 (the Electricity Act) is being made to the Scottish Government's Energy Consents Unit (ECU) for consent to develop and operate a renewable energy development. Deemed planning permission is also sought under Section 57 (2) of the Town and Country Planning (Scotland) Act 1997, as amended.
- 5.2.2 The provisions of Schedule 9 of the Electricity Act are relevant to the assessment of the proposed Development.
- 5.2.3 Scottish Ministers are required under Schedule 9, Sub-paragraph 3(2), 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 Paragraph 3(1) states:
- "In formulating any relevant proposals, a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity*
- (a) shall have regard to 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; and*
- (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects."*

5.2.5 Paragraph 3(3) states:

*“Without prejudice to sub-paragraphs (1) and (2) above, in exercising any relevant functions each of the following, namely, a licence holder, a person authorised by an exemption to generate or supply electricity, and the Secretary of State shall avoid, so far as possible, causing injuries to fisheries or to the stock of fish in any waters.”*

5.2.6 The Applicant is not an electricity generation licence holder, and therefore, the duties set out in Schedule 9 do not apply. However, the requirements set out under Schedule 9 of the Electricity Act have been fully considered and accounted for throughout the design and EIA assessment processes.

### **5.3 Climate Change, Renewable Energy and Climate Emergency Policy**

5.3.1 The climate change legislation and renewable energy policy framework are important, relevant considerations in determining a Section 36 application from an international to a local level.

5.3.2 The Paris Agreement was adopted at the UN Climate Change Conference (COP21). It is a legally binding international treaty, and its goal is:

*“Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;”*

5.3.3 The UK Government reinforced the need to tackle the climate crisis at COP29 when, on 12 November 2024, Prime Minister Keir Starmer remarked that the *“government recognises that the world stands at a critical juncture in the climate crisis. and the United Kingdom not only has a critical role to play but also, an opportunity to grasp the chance to maximise opportunities for Britain and make us more secure in the here and now.”*

5.3.4 At the UK Government level, The Climate Change Act 2008 sets out the requirement for greenhouse gas (GHG) emissions to be reduced by 100% of 1990 levels by 2050. In Scotland, The Climate Change (Scotland) Act 2009, as amended by The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, has a legally binding target date of 2045 for Net Zero emissions. It also sets yearly and interim targets, which will be amended by the Climate Change (Emissions Reduction Targets) Scotland Bill. The Bill was passed on 05 November 2024 and will replace annual emissions targets with five-year carbon budgets from 2026-2045. Energy policies and strategies prepared by the Scottish Government and UK Government set out how they are going to achieve the delivery of Net Zero by 2045 and 2050, respectively, as well as onshore wind targets in Scotland. The Onshore Wind Policy Statement sets an overall ambition of 20 GW of installed onshore wind by 2030, enabling up to 12 GW of onshore wind to be developed. The renewable energy capacity for onshore wind in June 2024 is 9.756 GW (Scottish Government, Energy Statistics for Scotland – Q2 2024).

5.3.5 Additionally, the climate and energy policies below are considered relevant to the proposed Development at international, national, and regional levels and provide an overall framework for the proposed Development with respect to climate change and renewable energy generation:

### *International Context*

- The United Nations Emissions Gap Report 2023 (November 2023); and
- The IPCC's AR6 Synthesis Report: Climate Change 2023 (March 2023)

### *United Kingdom (UK) Government Climate Change Context*

- The Sixth Carbon Budget: The UK's Path to Net Zero (December 2020);
- Net Zero Strategy: Build Back Greener (October 2021); and
- Progress in reducing emissions 2024 Report to Parliament Climate Change Committee (July 2024).

### *UK Energy Context*

- The Energy White Paper (December 2020);
- British Energy Security Strategy (April 2022);
- Powering up Britain: Energy Security Plan (March 2023); and
- Powering Up Britain: Net Zero Growth Plan – Updated (April 2023).

### *Scottish Climate Change Context*

- Securing a Green Recovery on a Path to Net Zero: Climate Change Plan Update (December 2020).

### *Scottish Energy Context*

- The Scottish Energy Strategy (December 2017);
- Onshore Wind Policy Statement (December 2022);
- Draft Energy Strategy and Just Transition Plan (January 2023);
- Onshore Wind Sector Deal (September 2023); and
- Green Industrial Strategy (September 2024).

## **5.4 The Statutory Development Plan**

### 5.4.1 The Statutory Development Plan for the Site comprises:

- National Planning Framework 4 (NPF4) which was adopted in February 2023 and provides a national spatial strategy for development in Scotland;
- The Highland-wide Local Development Plan (HwLDP) (April 2012), and relevant Supplementary Guidance, including the Onshore Wind Energy Supplementary Guidance (OWESG) (November 2016, Addendum published December 2017); and

- Caithness and Sutherland Local Development Plan (CaSPlan) (August 2018).

5.4.2 Section 24(3) of the Town and Country Planning (Scotland) Act 1997 states:

*“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.”*

5.4.3 The Chief Planner letter published on 08 February 2023 confirmed that:

*“Provisions that are contradictory or in conflict would be likely to be considered incompatible”*

5.4.4 Therefore, at present, if there is an incompatibility, the NPF4 would prevail.

#### **NPF4**

5.4.5 NPF4 has identified eighteen national developments of national importance, which states that:

*“...Their designation means that the principle of the development does not need to be agreed in later consenting processes, providing more certainty for communities, business and investors.”*

5.4.6 Therefore, whilst national developments will need to apply for consent, the principle of the development has been accepted, and the national need for such developments has been explicitly recognised.

5.4.7 The proposed Development is classed as a National Development as part of National Development 3. Strategic Renewable Electricity Generation and Transmission Infrastructure as the proposed combined installed capacity will exceed 50 MW. The NPF4 states in relation to this National Development:

*“A large and rapid increase in electricity generation from renewable sources will be essential for Scotland to meet its net zero emissions targets. ”*

5.4.8 The Need for the National Development outlines:

*“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.”*

5.4.9 It is considered the lead NPF4 policy in respect of the proposed Development is Policy 11 Energy, which states that:

*“Development proposals for all forms of renewable, low carbon and zero emissions technologies will be supported.”*

5.4.10 Part a) of Policy 11 confirms this includes wind farms and energy storage, such as battery storage.

5.4.11 Part b) outlines:

*“Development proposals for wind farms in National Parks and National Scenic Areas will not be supported.”*

5.4.12 Part c) states that:

*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.”*

5.4.13 Part d) outlines that where development proposals impact on international or national designations they will be assessed in relation to NPF4 Policy 4.

5.4.14 Part e) Energy includes a number of impacts which are to be addressed as part of the project design and mitigation and the policy states:

*“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.”*

5.4.15 It is considered that the following policies are also relevant to the proposed Development:

- Policy 1: Tackling the Climate and Nature Crisis;
- Policy 3: Biodiversity;
- Policy 4: Natural Places;
- Policy 5: Soils;
- Policy 6: Forestry, Woodland and Trees; and
- Policy 7: Historic Assets and Places.

*LDP*

5.4.16 In relation to Section 24(3) of the TCPSA, NPF4 would presently prevail if there are incompatibilities in provisions. The Planning Statement will outline whether the Applicant considers there are incompatibilities in provisions and this is not detailed in this chapter.

## 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 include:

- PAN 50 Planning Advice Note 50: controlling the environmental effects of surface mineral workings (1996);
- PAN 60 Planning for Natural Heritage (2000, paragraph 47 updated 14 January 2008);
- PAN 61 Sustainable Urban Drainage Systems (2001);
- PAN 75 Planning for Transport (2005);
- PAN 51 Planning, Environmental Protection and Regulation (Revised 2006);
- PAN 79 Water and Drainage (2006);
- PAN 1/2011 Planning and Noise (2011);
- PAN 2/2011 Planning and Archaeology (2011);
- PAN 1/2013 Environmental Impact Assessment (as amended) (2013);
- Onshore Wind Turbines: Planning Advice (2014);
- Flood Risk: Planning Advice (2015); and
- Biodiversity: Draft Planning Guidance (2023).

## 5.6 Conclusions

- 5.6.1 This chapter provides a summary of the legislative background, along with an overview of the international, national, and regional context of the climate change and renewable energy framework relevant to the proposed Development.

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