

Agenda Item	7.1
Report No	PLN/079/24

## HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee  
**Date:** 29 October 2024  
**Report Title:** 24/02094/S36: Energiekontor UK Ltd.  
Land 1150M SW Of Tigh An Alt, Acheilidh, Rogart  
**Report By:** Area Planning Manager - South

### Purpose/Executive Summary

**Description:** Acheilidh Wind Farm - Erection and operation of a wind farm for a period of 35 years, comprising of 12 wind turbines with a maximum blade tip height of between 200m and 230m, battery energy storage system (BESS), access tracks, borrow pits, substation, control building, and ancillary infrastructure

**Ward:** 04 – East Sutherland And Edderton

**Development category:** National Development (Application under Section 36 of the Electricity Act 1989)

**Reason referred to Committee:** National Development

All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is not acceptable in terms of all other applicable material considerations.

### Recommendation

Members are asked to agree the recommendation to **Raise an Objection** to the application as set out in section 10 of the report.

## **1. Introduction**

- 1.1 The Highland Council was consulted by the Scottish Government's Energy Consents Unit (ECU) on 16 May 2024 on an application made under Section 36 of the Electricity Act 1989 (as amended) for Acheilidh Wind Farm, formerly known as Lairg III Wind Farm.
- 1.2 The application is for the erection and 35 year operation of a wind farm comprising 12 turbines of which six are proposed with maximum 200m blade tip height and six with a maximum 230m blade tip height. The proposal includes a battery energy storage system (BESS) with a 5MW capacity along with wind farm associated infrastructure including new turbine foundations and hardstanding areas, a substation compound, up to three borrow pits as well as upgraded and new access track.
- 1.3 Due to the scheme's expected generating capacity of 79.2MW plus 5MW of energy storage, this proposal falls under the provisions of The Electricity Act 1989 and is classed as National Development by National Planning Framework 4 (NPF4).
- 1.4 As such, The Council is a statutory consultee on this application which is to be determined by Scottish Ministers. In such circumstances, the Council is invited to provide a consultation response and confirm whether it raises no objection or raises an objection. The Council has been granted an extension of time to respond to the ECU by 05 November 2024, in line with the timescales that allow Officers to present the application to the North Planning Applications Committee's October 2024 Meeting.
- 1.5 Officers have undertaken an assessment of the application as currently proposed and intend to present the Report on Handling to a future North Planning Applications Committee for ratification. In the interim, this report seeks members' authority to raise a timeous objection to the application.

## **2. SITE DESCRIPTION**

- 2.1 The proposal site extends over approximately 2,078ha of southeast Sutherland on the rounded hills south of Strath Fleet, south and southeast of the township of Acheilidh. The site is approximately 7.6km southeast of Lairg and 8km west of Pittenrail and Rogart railway Station and would be accessed from the A839 at Acheilidh, and the A836 (main site access point) at Achimore near Lairg railway station. Settlement is largely located within the straths and farmland to the west and north of the application site although there is very limited number of properties between the eastern extent of Lairg at Tomich and Acheilidh along Strath Fleet.
- 2.2 The site boundary encompasses some of the northern portion of the Strath Carnaig and Strath Fleet Moors Special Protection Area (SPA) and adjoins the northern boundary of the SPA's southern portion, meaning the turbines are proposed to be sited between the two divisions of the SPA. The proposal site is not covered by any other statutorily protected environmental or landscape designation but is in connectivity distance and proximity of other SPAs and Sites

of Scientific Special Interest (SSSIs). The Dornoch Firth National Scenic Area (NSA) is to the site's south, and the Loch Fleet, Loch Brora and Glen Loth Special Landscape Area (SLA) to its east. The site is located mostly within Landscape Character Type (LCT) 135 Rounded Hills – Caithness and Sutherland, which would host all of the turbines, while the northernmost areas are within LCT 142 Strath – Caithness and Sutherland.

### **3. PLANNING HISTORY**

3.1 Full details to follow in Report on Handling.

### **4. PUBLIC PARTICIPATION AND CONSULTATIONS**

4.1 Full details of consultations undertaken by the Energy Consents Unit and the Council will be presented within the Report on Handling. This will include details of public adverts, and a summary of public representations and consultation responses received. All letters of representation and consultee responses received by the Council are available for inspection via the Council's eplanning portal which can be accessed through the internet [www.wam.highland.gov.uk/wam](http://www.wam.highland.gov.uk/wam). Those representations received by the Scottish Government's Energy Consents Unit can be accessed via [www.energyconsents.scot](http://www.energyconsents.scot) It should be noted that some responses may have been submitted to both The Highland Council and Energy Consents Unit.

### **5. DEVELOPMENT PLAN POLICY AND OTHER MATERIAL POLICY CONSIDERATIONS**

5.1 This application has been submitted to the Scottish Government under Section 36 of the Electricity Act 1989 (as amended). Should Ministers approve the development, it will receive deemed planning permission under Section 57(2) of the Town and Country Planning (Scotland) Act 1997 (as amended). Although not a planning application, the Council processes Section 36 applications in a similar manner given that planning permission may be deemed to be granted.

5.2 Schedule 9 of The Electricity Act 1989 contains considerations in relation to the impact of proposals on amenity and fisheries. These considerations mean the developer requires to:

- 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,
- reasonably 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.

5.3 It should be noted that for applications under the Electricity Act 1989 that the Development Plan is just one of several considerations, and therefore Section 25 of the Town and Country Planning (Scotland) Act 1997 which requires planning applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise, is not engaged. That

said, the application still requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

- 5.4 Appendix 2 of this report provides details of the documents which comprise the adopted Development Plan, including details of pertinent planning policies as well as adopted supplementary guidance, and other material policy considerations which are relevant to the assessment of the application.

## **6. PLANNING APPRAISAL**

- 6.1 The key considerations in this case are:

- a) Compliance with the Development Plan / Other Planning Policy
- b) Energy and Economic Benefits
- c) Design, Landscape and Visual Impacts including cumulative.
- d) Construction
- e) Roads, Transport and Access
- f) Water, Flood Risk, Drainage and Peat
- g) Natural Heritage (including ornithology)
- h) Built and Cultural Heritage
- i) Noise and Shadow Flicker
- j) Telecommunications
- k) Aviation
- l) Other Material Considerations

## **7. Assessment of the Application**

- 7.1 Detailed assessment of the application will be presented within the Report on Handling at a later NPAC meeting. From undertaking a site visit and completing a review of the application, including the information contained within the Environmental Impact Assessment, it is considered that the proposal gives rise to unacceptable landscape and visual effects, including cumulative effects, for landscape and visual receptors in the surrounding and wider area, and significantly detrimental effects on Special Qualities of the Dornoch Firth NSA, particularly as experienced from the Struie Viewpoint and travellers along the B9176. It is not considered these effects are sufficiently localised or mitigated by design. The nature and extent of these effects will be explained in full within the Report on Handling.

- 7.2 Officers are of the opinion that the proposal is not supportable by virtue of the scale and location of the development. In light of the concerns raised by The Highland Council the applicant may decide to: i) make amendments to the proposal; ii) proceed to Public Local Inquiry; or iii) withdraw the application. Discussions with the applicant to date have indicated that they would likely

proceed to Public Inquiry however, this will be reported back to committee due course.

- 7.3 At this stage, in order for the Council to reserve its position of maintaining the ability for a mandatory Public Local Inquiry, Officers request that NPAC members agree to raise a timeous objection to the application, as presented in Section 10 of this report and set out for the Energy Consents Unit in Appendix 1.
- 7.4 Members are also requested to note that adopting this position at this stage does not preclude the Council's right to withdraw its objection at a later date pending further detailed review of the proposal, whether as submitted, or, potentially as revised. The detailed Report of Handling will be presented to the Committee in due course thereafter and made available to the Energy Consents Unit by no later than seven days following the Committee review.

## 8. Conclusion

- 8.1 Members are asked to agree to the recommendation to **Raise an Objection** to the application as proposed as the development will result in unacceptable significant adverse effects on the environment, principally, but not limited or exclusive to landscape and visual effects, and effects on Special Qualities of the Dornoch Firth National Scenic Area, including cumulative impacts with other existing, consented, as well as proposed wind farms. By responding timeously to the consultation, the Council's right to a mandatory Public Local Inquiry would be preserved.

## 9. IMPLICATIONS

- 9.1 Resource: Not applicable
- 9.2 Legal: If an objection is raised to the proposal, the application may be subject to a Public Local Inquiry.
- 9.3 Community (Equality, Poverty and Rural): Not applicable
- 9.4 Climate Change/Carbon Clever: The proposal can make a meaningful contribution toward the production of renewable energy.
- 9.5 Risk: Not applicable
- 9.6 Gaelic: Not applicable

## 10. RECOMMENDATION

### Action required before decision issued: N

It is recommended that Members **Raise an Objection** to the application subject to A. and for the reasons set out below at B:

- A. Members granting delegated authority to the Area Planning Manager – North to respond to the Scottish Government's Energy Consents Unit / Scottish Minsters, regarding any future Further / Supplementary

Environmental Information, where that information does not materially reduce the scale of the proposed development.

## **B. Reasons for Objection**

1. The application does not accord with the provisions of Section 36 of the Electricity Act 1989 by virtue of not demonstrating sufficient regard to the desirability of, and failing to reasonably mitigate effects detrimental to, preserving natural beauty and conserving flora and physiographical features of special interest. The development will result in unacceptable significant adverse effects on the environment, principally, but not limited or exclusive to landscape and visual effects, and effects on Special Qualities of the Dornoch Firth National Scenic Area, including cumulative impacts with other existing, consented, as well as proposed wind farms, with the development being contrary to National Planning Framework 4 Policy 11 Energy, Highland-wide Local Development Plan Policies 28 Sustainable Design, and 67 Renewable Energy Developments, and the Council's Onshore Wind Energy Supplementary Guidance amongst other Policies.

Signature: Dafydd Jones

Designation: Area Planning Manager – North

Author: Mark Fitzpatrick

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 - Figure 1.1 Site Boundary

Plan 2 - Figure 4.6 Application Layout

Plan 3 - Figure 3.2a Typical Wind Turbine Elevation (200m)

Plan 4 - Figure 3.2b Typical Wind Turbine Elevation (230m)

## **Appendix 1 – Letter to the Energy Consents Unit**

## **Appendix 2 – Development Plan and Other Material Policy Considerations**

### **Development Plan**

#### **National Planning Framework 4 (2023)**

- A2.1 The proposal is National Development 3 (NAD3) - Strategic Renewable Electricity Generation and Transmission Infrastructure
- A2.2 NPF4 policies relevant to this proposal include:
- 1 - Tackling the climate and nature crisis.
  - 2 - Climate mitigation and adaptation
  - 3 - Biodiversity
  - 4 - Natural places
  - 5 - Soils
  - 6 - Forestry, Woodland and Trees
  - 7 - Historic assets and places
  - 11 - Energy
  - 13 - Sustainable transport
  - 22 - Flood risk and water management
  - 23 - Health and safety
  - 25 - Community wealth benefits
  - 33 - Minerals

#### **Highland Wide Local Development Plan 2012**

- A2.3
- 28 - Sustainable Design
  - 29 - Design Quality and Place-making
  - 30 - Physical Constraints
  - 31 - Developer Contributions
  - 51 - Trees and Development
  - 52 - Principle of Development in Woodland
  - 53 - Minerals
  - 55 - Peat and Soils
  - 56 - Travel
  - 57 - Natural, Built and Cultural Heritage
  - 58 - Protected Species
  - 59 - Other important Species
  - 60 - Other Importance Habitats



- 61 - Landscape
- 62 - Geodiversity
- 63 - Water Environment
- 64 - Flood Risk
- 66 - Surface Water Drainage
- 67 - Renewable Energy Developments
- 68 - Community Renewable Energy Developments
- 69 - Electricity Transmission Infrastructure
- 72 - Pollution
- 73 - Air Quality
- 74 - Green Networks
- 77 - Public Access
- 78 - Long Distance Routes

**Caithness and Sutherland Local Development Plan 2019 (CaSPlan).**

- A2.4 There are no site-specific policies covering the application site therefore the application requires to be assessed against the general policies of NPF4 and the Highland-wide Local Development Plan referred to above. It is noted, however, that the CaSPlan does identify Special Landscape Areas (SLA) within the plan area. In this instance, the development has potential to impact the Loch Fleet, Loch Brora and Glen Loth SLA, which did not undergo any boundary refinements through the preparation of CaSPlan.

**Onshore Wind Energy Supplementary Guidance, Nov 2016 (OWESG)**

- A2.5 The Onshore Wind Energy Supplementary Guidance (OWESG) provides additional guidance on the principles set out in HwLDP Policy 67 for renewable energy developments. The Guidance sets out the Council's agreed position on onshore wind energy matters, and, although reflective of Scottish Planning Policy at the time of its adoption prior to the adoption of NPF4, the document remains an extant part of the Development Plan and is therefore a material consideration in the determination of onshore wind energy planning applications. Nevertheless, the Spatial Framework included in the document is no longer relevant to the assessment of applications as in effect, the policies of NPF4, specifically Policy 11 Energy, removes Group 2 Areas of significant protection from consideration by effectively making all land in Scotland either Group 1 Areas where wind farms will not be acceptable, or Group 3, Areas with potential for wind farm development.

**Other Highland Council Supplementary Guidance**

- A2.6 Biodiversity Enhancement Planning Guidance (May 2024)  
 Developer Contributions (Mar 2018)  
 Flood Risk and Drainage Impact Assessment (Jan 2013)  
 Green Networks (Jan 2013)

Highland Historic Environment Strategy (Jan 2013)  
Highland's Statutorily Protected Species (Mar 2013)  
Highland Renewable Energy Strategy and Planning Guidelines (May 2006)  
Physical Constraints (Mar 2013)  
Roads and Transport Guidelines for New Developments (May 2013)  
Special Landscape Area Citations (Jun 2011)  
Sustainable Design Guide (Jan 2013)

### **Other Material Policy Considerations**

- A2.7 Emerging Highland Council Development Plan Documents and Planning Guidance.
- A2.8 The Highland-wide Local Development Plan is currently under review and is at Main Issues Report Stage. It is anticipated the Proposed Plan will be published following publication of secondary legislation post National Planning Framework 4.
- A2.9 The Highland Council also has further advice on the delivery of major developments in several documents, which include the Construction Environmental Management Process for Large Scale Projects; and The Highland Council Visualisation Standards for Wind Energy Developments.

### **West Highlands and Islands Local Development Plan 2019 (WestPlan)**

- A2.10 The West Highlands and Islands Local Development Plan 2019 provides the local plan for the area.

### **Other National Guidance**

- A2.11 Onshore Wind Energy Policy Statement (2022)  
Draft Energy Strategy and Just Transition Plan (2023)  
Scottish Energy Strategy (2017)  
2020 Route map for Renewable Energy (2011)  
Energy Efficient Scotland Route Map, Scottish Government (2018)  
Siting and Designing Wind Farms in the Landscape, SNH (2017)  
Assessing Impacts on Wild Land Areas, Technical Guidance, NatureScot (2020)  
Wind Farm Developments on Peat Lands, Scottish Government (2011)  
Historic Environment Policy for Scotland, HES (2019)  
PAN 1/2011 - Planning and Noise (2011)  
PAN 60 – Planning for Natural Heritage (2008)  
Circular 1/2017: Environmental Impact Assessment Regulations (2017)