

Agenda Item	6
Report No	HC/37/24

The Highland Council

Committee: The Highland Council

Date: 31 October 2024

Report Title: Council Motion on Renewables – Follow Up Report

Report By: Assistant Chief Executive – Place

1 Purpose/Executive Summary

- 1.1 At the Council meeting on 30th September 2024, a motion was agreed to shape the way that the Council provides information to communities regarding the planning process for major energy related developments, which are planned across the Council area.
- 1.2 The motion was written in a number of parts and was agreed, subject to a financial assessment being conducted. Information on the plans to implement this motion and on the work carried out to assess the financial implication of the motion is contained in this report.
- 1.3 Whilst this decision was approved by Members, it should be understood that officer's ability to implement this will be subject to the availability of resources to meet the expected requirements and the timelines that would be expected to bring some of these resources on board, especially where there are knock on consequences for staffing and other areas of business.
- 1.4 In addition, the report makes clear that, notwithstanding The Highland Council's decision, there are a number of legal and procedural issues associated with the measures proposed.
- 1.5 Under the terms of the motion, officers were required to bring a paper to the next Council meeting to share more details of the financial implications and to chart a pathway to implementation. Financial implications are assessed as £278,000 of additional unbudgeted costs on a full year basis, with a likely part-year cost in 2024/25, with the funding of these costs requiring consideration by Council.

2 Recommendations

2.1 Members are asked to:-

- i. **Note** the commitment to expand the real time live mapping to include all types of energy generating applications and for this to be updated on a monthly basis;
- ii. **Agree** to the funding of this mapping as an in-year budget pressure funded from reserves, with a need to consider the provision of longer term funding as part of the 2025/26 budget setting process;
- iii. **Note** the difference in what community engagement can be undertaken by the Council, depending on who is the determining authority for the application;
- iv. **Agree** to the funding of further community engagement resources separate from the Planning Service as an in-year budget pressure funded from reserves, with a need to consider the longer term funding as part of the 2025/26 budget setting process;
- v. **Agree** that additional community council training be progressed with reference to electricity generation and renewable proposals, with the cost pressures arising met from reserves as an in-year pressure, and the need to consider longer term funding as part of the 2025/26 budget setting process; and
- vi. **Note** that the Leader will write to the Scottish Government to ensure that the full cumulative aspect of developments, including the potential grid connection, is considered within the submission of an application under section 36 of the Electricity Act for an energy generation station, and for all Battery Energy Storage System (BESS) applications of whatever scale.

3 Implications

3.1 Resource

There are some aspects of the motion that require additional resources to be fully implemented. This was the basis for the Section 95 officer's judgement to this effect attached to the motion to Council.

Prior to the Council motion, there was limited opportunity to quantify this resource requirement. Subsequently, there has had to be an element of discovery of the quantum of resource required.

Real Time Mapping

In order to manage the expectations with regard to how effectively the requirement to provide real time mapping can be achieved, the service has considered how it can provide accurate and properly sense checked information to members of the public, whilst managing concerns around due diligence and quality assurance. It is expected that with additional resources, the Council can update information on to a live system on a monthly basis.

Resource Required

To facilitate this, it is proposed that one Geographic Information Systems Officer (HC7) and one Professional Support Officer (HC6) be appointed. This would come at a cost of £90,000 per annum.

Approach to Applications

The measures outlined in the motion will not result in a direct financial implication. However, additional resources (likely to involve external consultants) may be required to supplement the work of the Development Plans team in the updating of renewable energy guidance as part of the Highland Local Development Plan. The cost for this work is not quantified at present and will be the subject of further reports in due course.

Community Council Training

On-line planning training already exists, and it is intended to engage with providers to provide specific training on renewable energy developments. This will be arranged as soon as possible, and this is currently being progressed. The cost of the training utilising an external provider is estimated circa £10,000, which will form an in-year budget pressure.

Community Engagement

There is a legislative requirement for developers to undertake public consultation and engagement for all major applications. Additionally, for all national applications and major applications that are contrary to the development plan, pre-determination hearings will be required. This approach allows stakeholders the opportunity to present their views directly to the Committee before a decision is made. There is also provision within the legislation for discretionary pre-determination hearings for applications to be determined by The Highland Council as Planning Authority, which is discussed in further detail below. There are no statutory pre-application consultation procedures for section 36 and section 37 applications under the Electricity Act 1989.

If it is proposed that additional community engagement is to be undertaken, in order to safeguard the quasi-judicial role of the Council as a Planning Authority this should be undertaken independently of the planning service itself. To this end it is considered that 3 professional members of staff at HC9 level be appointed with the Community Place Plan team who would be responsible in the provision of assistance and support for communities in their engagement with transmission companies and energy generators. The specific roles and responsibilities of these staff members will require further consideration to ensure they are aligned with the needs of the communities and the objectives of the Council. An update on the detailed scope of their responsibilities and how they will support community engagement will be provided to Members in due course. The resource implication of the above is likely to be £178,000 p.a.

As set out in the report, if the Scottish Government were to provide for the use of hearings or other mechanisms in the context of Section 36 and Section 37 application, this will have additional resource implications for the Council. It is not possible to quantify these at present either in terms of additional resourcing or finance.

In Summary

Should Members agree the additional resources set out in this report, there is a known full year budget pressure of £278,000 p.a. Depending on the speed of implementation this will result in an in-year budget pressure, assuming a start date of

January 2025 for new posts and full provision for training costs, the in-year 2024/25 pressure could be £77,000.

Given no budget provision has been made for these additional costs, and at this stage in the year there is no current indication of other funding sources, the use of reserves would be a necessary mechanism to provide for 2024/25 costs. This would reduce reserves from the levels they would otherwise be at and would reduce the level of reserves available for investment, change and transformation. Current reserve forecasts indicate this sum could however be provided from reserves based on current commitments. The longer-term sustainable funding position for these posts will need addressed as reserves are not a recurring or sustainable funding source. The full year cost pressure would need considered in the Council's budget setting process for 2025/26.

3.2 **Legal**

The Council operates as a Planning Authority, as part of a quasi-judicial process. It is therefore essential that each proposal is considered on its own merits. The Council is the Planning Authority in all cases which are for local, major or national developments. Where the proposals entail section 36 and section 37 applications The Council's role is as a statutory consultee rather than the determining authority.

There are a number of legal and regulatory issues for Members to be aware of that would potentially enable some aspects of the motion but limit the powers of the Council to implement other sections. These relate to the opportunity to schedule planning hearings and are dealt with in more detail below.

There is currently provision within the legislation for discretionary pre-determination hearings to be undertaken, when appropriate, and where The Council is the Planning Authority for determining major or national developments which are planning applications.

Resource considerations have to be given to the following if further use of hearings are implemented:-

- meeting statutory timescales for determining planning applications;
- additional Committee time and possibly additional dates for Committees; and
- officer time for revising the Council's planning hearings procedure and potential further planning guidance

In relation to section 36 and section 37 proposals, The Council is a consultee in this process with the ultimate decision lying with the Energy Consents Unit of the Scottish Government. Accordingly, there is no provision for pre-determination hearings to be conducted in such instances.

Consideration must also be given to any costs associated with any potential appeal or judicial review challenge should the Council's actions in relation to community engagement be considered to be *ultra vires* or incompatible with the quasi-judicial process.

3.3 **Risk** – Potential legal challenges if the Council acted outwith their remit as the Planning Authority or as a statutory consultee for section 36 or 37 applications.

3.4 **Health and Safety (risks arising from changes to plant, equipment, process, or people)** - There are no implications.

3.5 **Gaelic** – There are no direct implications.

4 Impacts

4.1 In Highland, all policies, strategies or service changes are subject to an integrated screening for impact for Equalities, Poverty and Human Rights, Children’s Rights and Wellbeing, Climate Change, Islands and Mainland Rural Communities, and Data Protection. Where identified as required, a full impact assessment will be undertaken.

4.2 Considering impacts is a core part of the decision-making process and needs to inform the decision-making process. When taking any decision, Members must give due regard to the findings of any assessment.

4.3 An Integrated Impact Assessment (IIA) was undertaken on 16 October 2024. The conclusions have been subject to the relevant Manager Review and Approval. The Screening process has concluded that there are no impacts.

5 Implementation of the Council Motion

5.1 The Motion, as agreed at the Council meeting has four substantive actions associated with it. This section of the report details the proposed implementation of these four elements for agreement by Members. The full text of the Motion as agreed was as follows:

Major Electricity Development Applications & Community Engagement

This Council:-

NOTES there are a number of major proposed electricity generation, storage and transmission developments, which have been or are likely to be presented to The Highland Council for planning permission, or for a response as a Consultee, in the near future.

ACKNOWLEDGES that, without prejudice to future determinations, such major infrastructure developments are very likely to have significant scheme specific and cumulative environmental and socio-economic impacts upon communities and landscapes within the Highlands.

RECOGNISES it is desirable that communities across Highland are fully engaged in the consultation and planning process and are suitably empowered to respond on an equal basis given the resources deployed by the developers, SSEN and statutory consultees.

NOTES that currently these major development applications are not considered in a Highland wide context, rather they are lodged individually in a piecemeal, fragmented fashion and therefore considered individually, without reference to the effects from the entirety of developments across Highland being considered and therefore with a lack of understanding as to what the totality will mean for our communities and our environment.

THEREFORE, this Council **AGREES**:

- i. **REAL TIME MAPPING** - To produce a real time map, publicly available online, showing all the major renewable energy related developments within Council's knowledge, existing and proposed, including those which are or will come to Council for planning and or the Energy Consents Unit, be they operational, permitted developments or otherwise. In so far as legally permissible, the map will also include an indication of anonymised approaches made to The Highland Council for pre-planning advice.

This map will therefore present a holistic overview of the applications that are currently in the pipeline, including but not limited to, all proposed electricity generation, storage and transmission developments, grid connection, energy generation stations, BESS, and wind farms.

S95 Officer Financial Assessment: regarding proposal (1) above, there are anticipated to be financial implications associated with the establishment of a real-time mapping tool, as well as ongoing staffing/support/maintenance of the tool. Further detailed investigation would be required to establish what potential solutions would need to be acquired or developed, and the costs or range of costs which may arise.

- ii. **THE APPROACH TO APPLICATIONS**

- (i) The Leader will continue dialogue with the Scottish Government to ensure that the full cumulative aspect of developments, including the potential grid connection, is considered within the submission of an application under S36 of the Electricity Act for an energy generation station, and for all BESS applications of whatever scale, and the Leader to report regularly to Group Leaders regarding progress, and
- (ii) If an increase in the MW threshold for applications under S36 of the Electricity Act is implemented so that some additional generating stations would fall within the Town and Country Planning Acts, the Council will update its Planning Guidance for such developments to ensure that the cumulative impacts are considered in full, including the grid connection aspects of a development.

S95 Officer Financial Assessment: the proposals as detailed in (2)(i) and (ii) above are assessed as having the potential for additional member and officer time impact but are not anticipated to result in a financial implication.

- iii. **COMMUNITY COUNCIL MAJOR APPLICATION PLANNING TRAINING**

To take urgent action to better equip communities regarding the planning process and how to present their case, by providing planning training to Community Councils by the Planning Advisory Service and external experts specifically regarding such major applications.

S95 Officer Financial Assessment: the proposal as detailed in (3) above is assessed as having a potential financial implication. There would be expected to be additional costs associated with the proposed training. Actual costs would depend on the nature, frequency and delivery method of training, once established.

- iv. **COMMUNITY ENGAGEMENT**

Without ever expressing a prior opinion on the determination of any application, to engage with our communities regarding the anticipated environmental and socio-economic impacts, given that some within our communities are concerned about a wide range of issues, and to review what actions the Council can legally take to further ensure that local community views are considered in the planning process and for Officers to present a paper to the next Full Council for consideration.

5.2 Real Time Mapping

The Council has for many years provided interactive mapping for wind generating applications. This is available publicly on the Council website. It has been updated regularly, at least six monthly, offering a snapshot of time for planning and related Section 36 consultations and decisions. It does not currently cover all types of energy generation such as Battery Energy Storage Schemes (BESS), photo voltaic solar panel, hydrogen or transmission schemes. A separate hydro related mapping system also exists but has been updated on a less regular basis – the information contained within it will be used to inform the new approach.

Officers are in the processes of undertaking a review of this mapping system, the information requirements and the necessary processes for updating this database more frequently. This will include transmission projects. Members should note that there will be a cost implication of developing, implementing and maintaining the proposed project, as set out in the Resources section of this report. It is proposed that the database would be aimed at recording commercial developments and not domestic schemes. It would be necessary to retrospectively include those schemes that fall outwith the current scope of the database. It is intended that each type of energy generation would be stored on separate mapping layers. This will require an additional Geographic Information Systems Officer and Professional Support Officer. This would come at a cost of £90,000 per annum.

It is anticipated that following agreement of the resources required, this will take a further six months to implement. Thereafter once loaded, it will be necessary to monitor and update all types of commercial energy developments and the various stages they may be at to allow a comprehensive overview.

It should be noted that pre-application enquiries will not form part of any real time mapping. These enquiries do not constitute part of the statutory planning process defined in the 1997 Act. Therefore, the information received during these enquiries are treated as confidential and should only be disclosed when there is a legitimate legal basis for doing so. However, Proposal of Application Notices (PANs), which do form part of the statutory planning process, will be mapped on submission. Members will be aware that these PANs are already reported to the Planning Application Committees on a regular basis. In addition, all screening and scoping applications will also be plotted (this usually precedes the formal PAN process).

5.3 The Approach to Applications (i)

Officers, when considering proposals, take into consideration the cumulative impact of similar development types. This is one of the requirements of the Environmental Impact Assessment Regulations which apply to large infrastructure projects. This is particularly the case with regard to the Landscape and Visual Impact of development proposals. Applicants are required to consider the impact of their proposals in combination with other similar developments that either have consent or are still

within the planning process. Officers are aware of these schemes and may require assessments to be updated where new proposals come forward within an area so that a full cumulative picture is realised at the point in time that a recommendation/consultation response is given.

Cumulative impact is defined in NPF4 as impact in combination with other development. This includes existing developments as appropriate, those which have permission, and valid applications which have not been determined. The weight attached to undetermined applications should reflect their position in the application process.

NPF4 confirms that in considering cumulative 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 connections for generating, or storage, stations are dealt with through separate consents and are therefore considered separately. For most energy development proposals, potential grid connections will be outlined within application submissions albeit that flexibility may be required since, at the point of submission, grid connection agreements may yet need to be applied for/secured from the grid network operator. This makes it difficult to know for certain the likely cumulative impact of the energy generator and its grid connection. Some estimation may however be possible.

As spatial planning for electricity networks develops in the future, more information on grid capacity and reinforcement requirements will be within the public domain and may assist with predictions on cumulative impact.

Work is ongoing, under the auspices of the Onshore Wind Sector Deal, to refine the Environmental Impact Assessment process for energy development. The Council's Area Planning Manager (South) chairs the Heads of Planning Scotland (HOPS) Climate Change, Energy and Resources sub-committee and is in regular discussion with Scottish Government on this cumulative assessment issue. Although no changes are proposed at the present time, efforts will continue to bring forward changes relating to cumulative assessment, including grid connection matters. In addition to the work undertaken by Officers, the Leader, with assistance from officials and their representation on Heads of Planning Scotland, will write to Scottish Government, to propose that the matter of cumulative assessment, particularly in relation to grid connection, is considered as part of this ongoing work.

5.4 The Approach to Applications (ii)

Our current Onshore Wind Energy Supplementary Guidance was prepared to accord with Scottish Planning Policy 3 that has now been superseded by National Planning Framework 4. However, some of that guidance remains relevant, in particular aspects relating to siting/design and visual impact. The design aspects of grid connections are considered in this document. Depending on the outcomes from the ongoing work discussed above there might be an opportunity to consider revised guidance. In any event, the Highland Local Development Plan is being prepared at present and renewable energy guidance will be reviewed as part of that process. Regular reports will be made to Economy and Infrastructure (E&I) Committee on progress with the preparation of the Local Development Plan. Members should note that this is a significant exercise, and external resources will be required to supplement our in-house Development Plans team on a number of policy topics (including renewable energy) in the preparation of the new plan.

5.5 **Community Council Major Application Planning Training**

As previously committed to, Officers are discussing additional training that can be made available to Community Councils. On-line training for planning already exists, and it is intended to engage with providers to provide specific training on renewable energy developments and transmission proposals. This will be provided as soon as possible.

5.6 **Community Engagement**

The Council's role in public engagement for planning applications differs significantly when compared to applications submitted to the Energy Consents Unit for determination by Scottish Ministers. For major applications submitted to the Council as Planning Authority under the Town and Country Planning (Scotland) Act 1997, the Council ensures that developers facilitate public engagement through consultations, consider representations and objections submitted as part of the application process, as well as providing pre-determination hearings for all national developments or major developments which are significantly contrary to the development plan. Where appropriate, the Council as Planning Authority, also seek to encourage additional consultation methods for public consultation and engagement such as the provision of website hosting of all information relating to in-person events or notifying all properties within 10km of a site in relation to wind farm applications. This allows the Council as Planning Authority to incorporate community views into their decision-making process.

However, when applications are submitted to the Energy Consents Unit of the Scottish Government, such as section 36 and section 37 applications (over 50MW), the Council's role is more limited. In these cases, the Council acts as a statutory consultee, providing recommendations, but it does not have the power to determine the outcome. Public engagement and consultation in these instances are primarily managed by Scottish Government. The Council can support local involvement, but final decisions on public engagement processes and the application itself rest with the Energy Consents Unit on behalf of Scottish Ministers and fall out with the remit of the Council as Planning Authority.

Therefore, if the Council seeks to engage in public consultation or engagement for applications determined by the Energy Consents Unit for Scottish Government, several risks may arise. Primarily, there is the risk of misrepresentation among the public regarding the Council's role, as those who wish to be involved, may perceive the Council as having decision-making authority when, in fact, the final determination lies with the Energy Consents Unit of Scottish Government. This can lead to heightened public expectations and potential dissatisfaction if their concerns are not addressed in the final outcome. In addition, engaging in public consultation that goes beyond the process overseen by the Energy Consents Unit of behalf of Scottish Ministers could expose the Council to legal challenge if stakeholders are of the view that their input has not been adequately considered.

It is incumbent on Members, in accordance with the Councillors' Code of Conduct to act in the public interest and make decisions based on sound judgement taking into account all relevant information, including potential risks. Members are expected to act with care and diligence when carrying out their decision-making duties, which

includes minimising risks associated with decision making, to safeguard the integrity of the Council and promote good governance.

As indicated above, developers have a statutory duty to carry out pre-application consultation, and to demonstrate the outcomes of that within the submission of any planning application. It is not the role of planning officers to carry out that consultation. When applications are submitted, the views of all those who have made representations are reported to Members at point of determination.

The Development Plan is the appropriate point to engage in matters of spatial strategy and policy. As Members will be aware, the preparation of the new Highland Local Development Plan, which will supplement the guidance set out nationally within National Planning Framework 4 (which also forms part of the Development Plan), is now underway. Evidence reports on topics, including Renewable Energy, will be reported to the Economy and Infrastructure (E&I) Committee and will be the subject of wide engagement with communities. It is also worthy of note that the Development Plan must also go through a number of “gate-checks” overseen by an independent Reporter from the Department of Planning and Environmental Appeals.

If Members wish to put in place a more separate community engagement role in respect of Renewable Energy developments, which must be separate from the role of Planning Officers, this will require new resource, given that capacity does not exist elsewhere within the Council. It is anticipated that this additional resource will be based within the Council’s community engagement team, separate from the planning process, and can also be used to supplement the Council’s approach to Community Wealth Building.

There is currently provision for Hearings to be held as part of a planning applications committee where this relates to major or national developments. As set out above, there is no such provision for Section 36 or Section 37 applications, as the Council is not the determining authority. The Council may wish to consider writing to Scottish Ministers to include the option of such a provision. If such a provision were put in place, there will be significant resource implications for the Council in terms of preparation, governance and management of hearings which will need to be considered at the appropriate time.

6 Conclusions

- 6.1 The public perception of the planning process is critical to sustain. There is also the need for the Council to balance competing views in a fair and transparent way taking into account national and Council policy. In relation to the planned implementation of the Council decision, as per the motion agreed by Council in September, these considerations have been central to the proposals brought forward by Officers in this report.

There are two key areas in which an increased resource is required to service motion – these being the servicing of a real time mapping system (we currently update on a six monthly basis and plan to bring that to monthly); and the community engagement, which we recommend should be put in place to ensure a clear separation between the actions of the planning authority and those who undertake engagement to enable community responses to planned developments.

The additional resource required is an annual recurring cost is estimated in total to be **£278,000**. With a part year cost estimated as £77,000 for 2024/25. Members are asked to agree an in-year budget pressure met from reserves to provide for 2024/25 costs and consider the implications of the additional resource requirement as part of the 2025/26 budget setting process in 2025 (a separate report to this Council on medium term financial planning covers the budget setting process).

There is an on-going challenge of recruitment to key posts in Highland Council, with planning services notably affected. Therefore, in managing public expectations as to the timescales for bringing additional resource into the team, it should be understood that we can only move to real time mapping once the team is in place.

Designation: Assistant Chief Executive - Place

Date: 16 October 2024

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Background Papers: Town and Country Planning (Scotland) Act 1997 Electricity Act 1989
Highland Wide Local Development Plan
Onshore Wind Energy Supplementary Guidance
National Planning Framework 4

Appendices: None