
Proposed Two No. Borrow Pits within the Site of the Consented but Unbuilt Berry Burn Wind Farm Extension

Planning Statement

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1. Introduction

1.1. Background

- 1.1.1. This Planning Statement has been prepared by Savills UK Limited on behalf of BB2 Wind Farm Ltd (hereafter referred to as 'the Applicant') in support of a planning application submitted to Moray Council ('MC' or 'the Council') for the winning and working of aggregate from two borrow pits (the Proposed Development) to support the construction of the consented but unbuilt Berry Burn Wind Farm Extension.
- 1.1.2. The combined site area of the two borrow pits (collectively referred to as 'the site') extends to 14.08 hectares (ha) and is situated approximately 12 kilometres (km) south of the nearest settlement of Forres. The locations of the two borrow pits are located within the site of the consented but unbuilt Berry Burn Wind Farm Extension (hereafter referred to as the consented wind farm).
- 1.1.3. Section 36 consent and deemed planning permission was granted for the consented wind farm by Scottish Ministers on 8 December 2021. The Section 36 consent and deemed planning permission includes two borrow pit search areas, as shown on the approved site layout plan which is reproduced as Figure 1 below.
- 1.1.4. Recent site investigation works undertaken by the Applicant have confirmed that there is an insufficient amount of suitable construction material within the boundaries of the two consented borrow pit areas required to construct the consented wind farm. The Applicant therefore wishes to increase the size of borrow pit one (BP1) and seek planning permission for an entirely new borrow pit referred to as borrow pit 2a (BP2a), located to the east of the consented wind farm boundary. The Applicant does not intend to undertake any excavations within the consented borrow pit 2 area.
- 1.1.5. The principle of excavating aggregate from within borrow pits to construct the consented wind farm has been established through the aforementioned Section 36 consent and deemed planning permission, with excavated material required to construct access tracks and foundations for wind turbines. The winning and working of aggregate from onsite borrow pits reduces the need to import aggregate from offsite quarries to construct the consented wind farm, thereby significantly reducing traffic numbers on the local road network during the construction phase.

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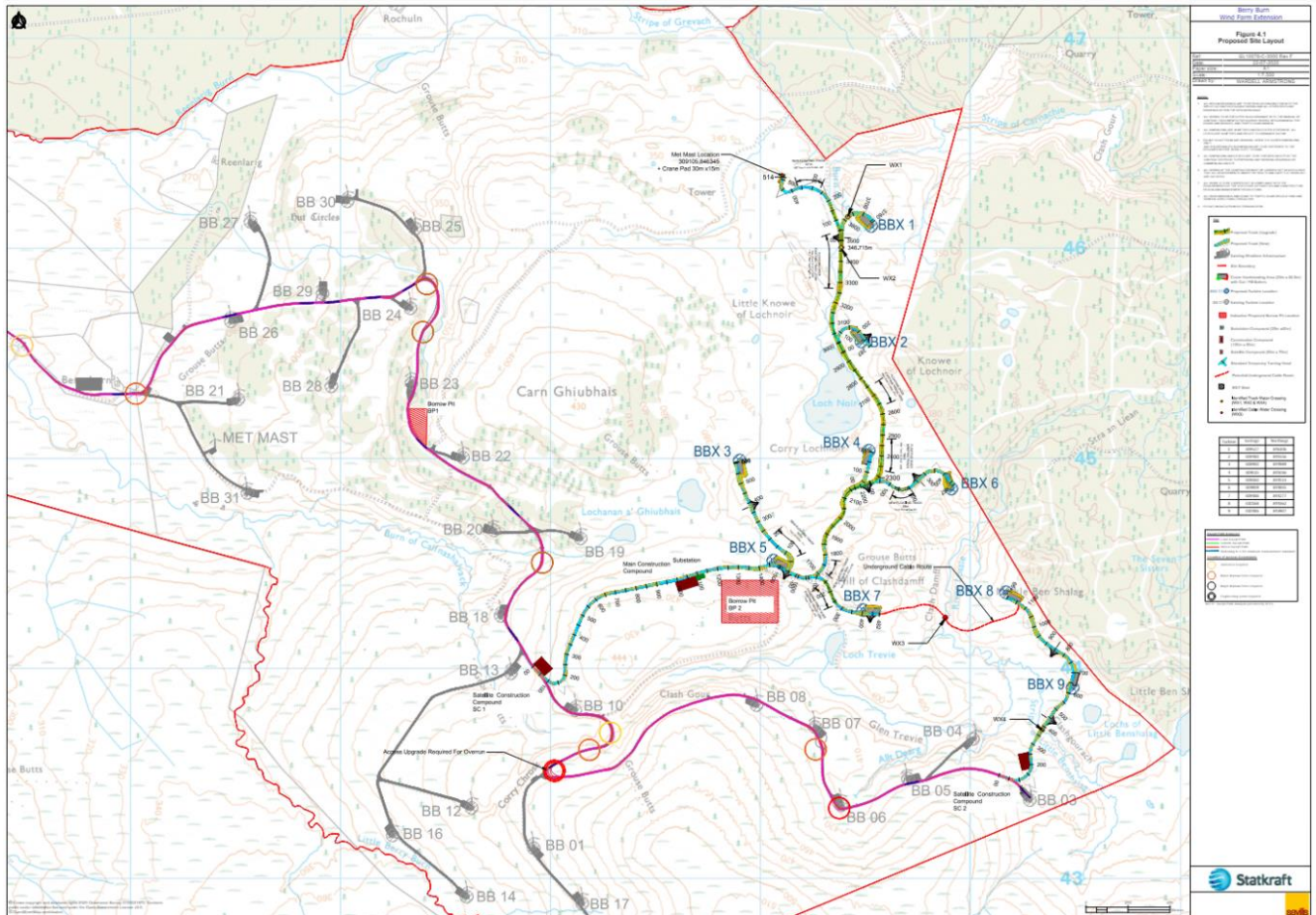


Figure 1 - Approved Berry Burn Wind Farm Extension Site Layout Plan

- 1.1.6. The excavation of materials would run during the construction phase only. Once construction works have ceased, it is anticipated that the voids left in each of the borrow pits would be backfilled with suitable material arising from wind farm construction works and then be subject to an appropriate period of aftercare. Designs for the two borrow pits are submitted with the planning application showing working areas, temporary material storage areas, cross sections through the voids and proposed restoration profiles – see drawings ED13835/009 and ED1385/010.
- 1.1.7. BP1 which extends to 9.04 ha in area was partially used as a source of aggregate during construction of the operational Berry Burn Wind Farm and offers scope for further suitable construction material, although it is necessary to expand the size of the consented BP1 to gain the required volume of aggregate.
- 1.1.8. Recent site investigation works have confirmed that the consented BP2 as shown on Figure 1, does not contain suitable aggregate necessary for the construction works. As such, the Proposed Development

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identifies a new borrow pit location, referred to as BP2a, within the wider consented wind farm site boundary located to the south of the consented location of turbine (T6). BP2a extends to 5.04ha in area. Material extracted from the two borrow pits would be transported to construction activities via the network of existing or new access tracks associated with the consented wind farm.

1.1.9. The location of the proposed borrow pits are shown within Figure 2 below.

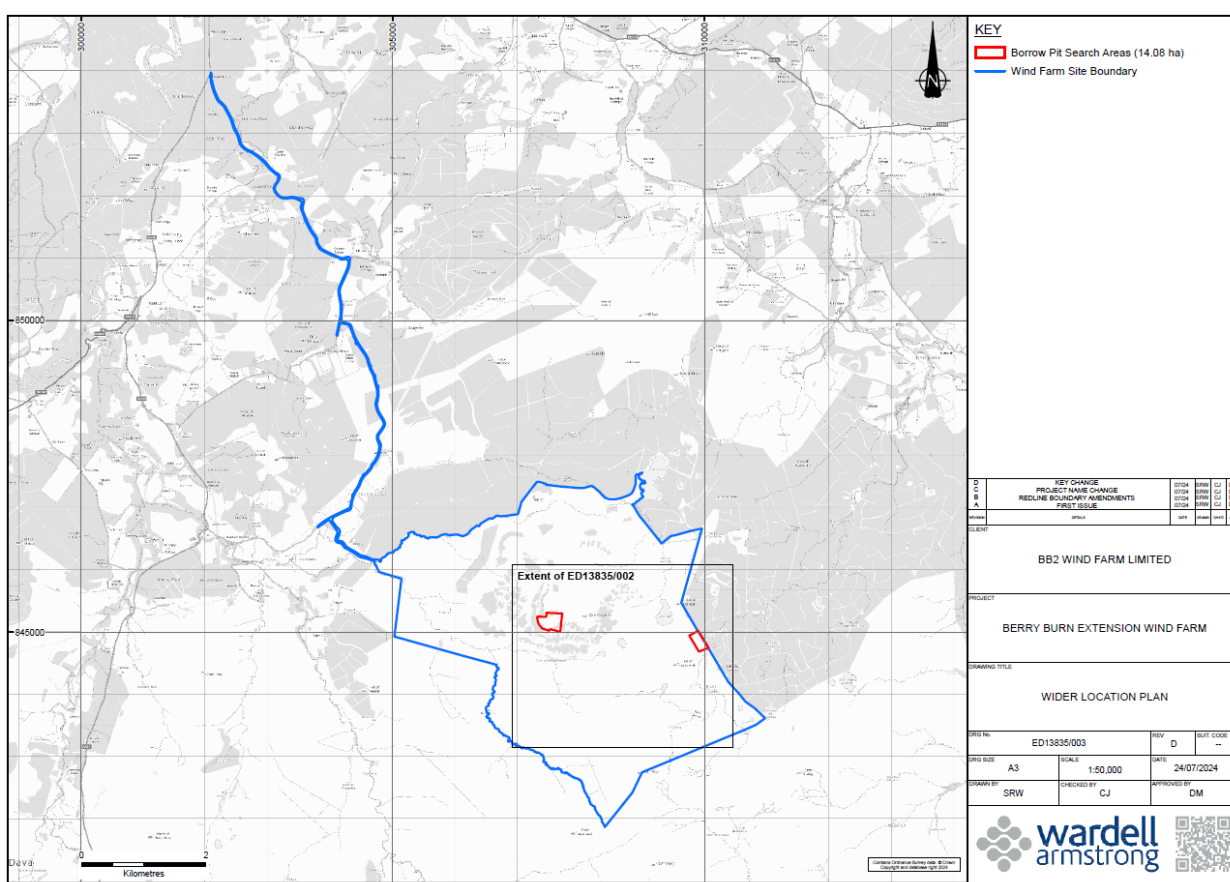


Figure 2 - Borrow Pits Wider Location Plan

1.1.10. The Council confirmed in a letter dated 28th August 2024 that the Proposed Development did not require to be accompanied by an Environmental Impact Assessment (Ref. 24/01216/SCN). Nevertheless, informed by advice within the Council’s Screening Opinion, a suite of documentation has been produced in support of the application and should be read in conjunction with this Statement. The supporting documentation includes:

- Borrow Pit Design Drawings;

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- Borrow Pit Scheme of Works (submitted also pursuant to condition 30 of the consented wind farm permission);
- Water Environment Appraisal;
- Ecology Appraisal;
- Soils and Peat Appraisal;
- Archaeological Technical Advice Note; and
- Pre-Application Consultation (PAC) Report.

1.2. Structure of the Statement

1.2.1. Following this introductory section, subsequent sections are set out as follows:

- Section 2 provides a description of the Proposed Development;
- Section 3 assesses the Proposed Development against the relevant policies of the Development Plan; and
- Section 4 weighs up the planning case for the Proposed Development providing concluding remarks on the overall acceptability of the Proposed Development.

1.3. Benefits of the Proposed Development

1.3.1. A key benefit of the Proposed Development is that it will provide a source of construction materials which can be won from within the site of the consented wind farm, thus avoiding the need to import materials from quarries further afield. This reduces road traffic miles with associated environmental benefits in terms of air pollution reduction and benefiting local residents by significantly reducing the number of Heavy Goods Vehicles (HGVs) that would otherwise travel to and from the consented wind farm during construction works.

1.3.2. While the extraction of aggregate from within the borrow pits will not in itself contribute to efforts to combat the climate emergency and nature crisis, sourcing such materials from within the site of the consented wind farm will assist in the timely delivery of that project, which will help to meet the legally binding net zero greenhouse gas emission targets.

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2. The Proposal

2.1.1. Borrow Pit BP1 covers an area of 9.04 ha and is located close to an operational wind turbine. The Proposed Development involves expanding the consented BP1 to gain the required volume of aggregate. The accompanying ‘BP1 Design Drawing’ sets out the indicative design of the BP1 and is shown within Figure 3 below.

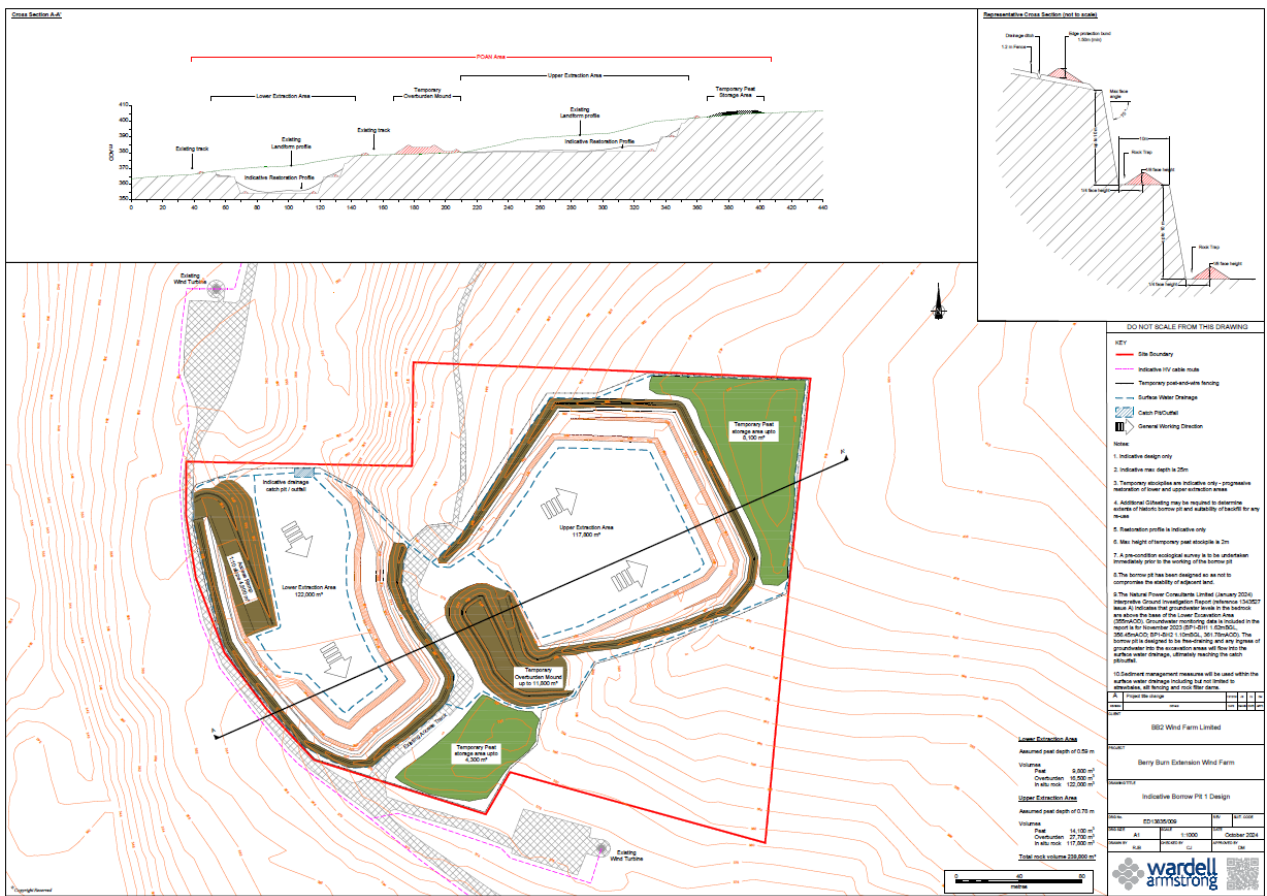


Figure 3 - BP1 Borrow Pit Design

2.1.2. Borrow Pit BP1 will incorporate an upper and lower extraction area with an estimated total extracted rock volume of 239,800m³. The upper extraction area will provide a rock volume of approximately 117,800m³ while the lower extraction area will provide a rock volume of approximately 122,000m³. The proposed BP1 design will also incorporate a 1:10 access ramp and two temporary peat storage areas of up to 12,400m³

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in volume. A temporary overburden mound will be located adjacent to the upper extraction area with a capacity of up to 11,800m³.

- 2.1.3. It is anticipated that the estimated extraction volumes provided by BP1 will provide the main volume of material required to support construction of the consented wind farm. Both BP1 and BP2a have been designed so as not to compromise the stability of adjacent land.
- 2.1.4. Borrow Pit BP2a covers an area of 5.04 ha and is located on open moorland immediately south of the consented T6 location. The accompanying 'BP2a Design Plan' (shown in Figure 4 below) highlights BP2a will have an estimated total extracted rock volume of 44,000m³. The design will also include a temporary peat storage area of up to 6,700m³ and a temporary overburden mound of up to 8,600m³.
- 2.1.5. Blasting of the proposed borrow pits would be controlled through the instructions of Condition 31 of the consented wind farm permission. Edge protection bunds of a minimum of 1.5m in height will be placed at each level to provide rock traps. A 1.2m agricultural fence will run around both borrow pits for health and safety purposes.
- 2.1.6. The accompanying borrow pit design drawings provide detail on the restoration profiles and cross sections of the Proposed Development. These drawings show that both borrow pits would be worked to a maximum depth of 25m. Indicative restoration profiles are also provided.

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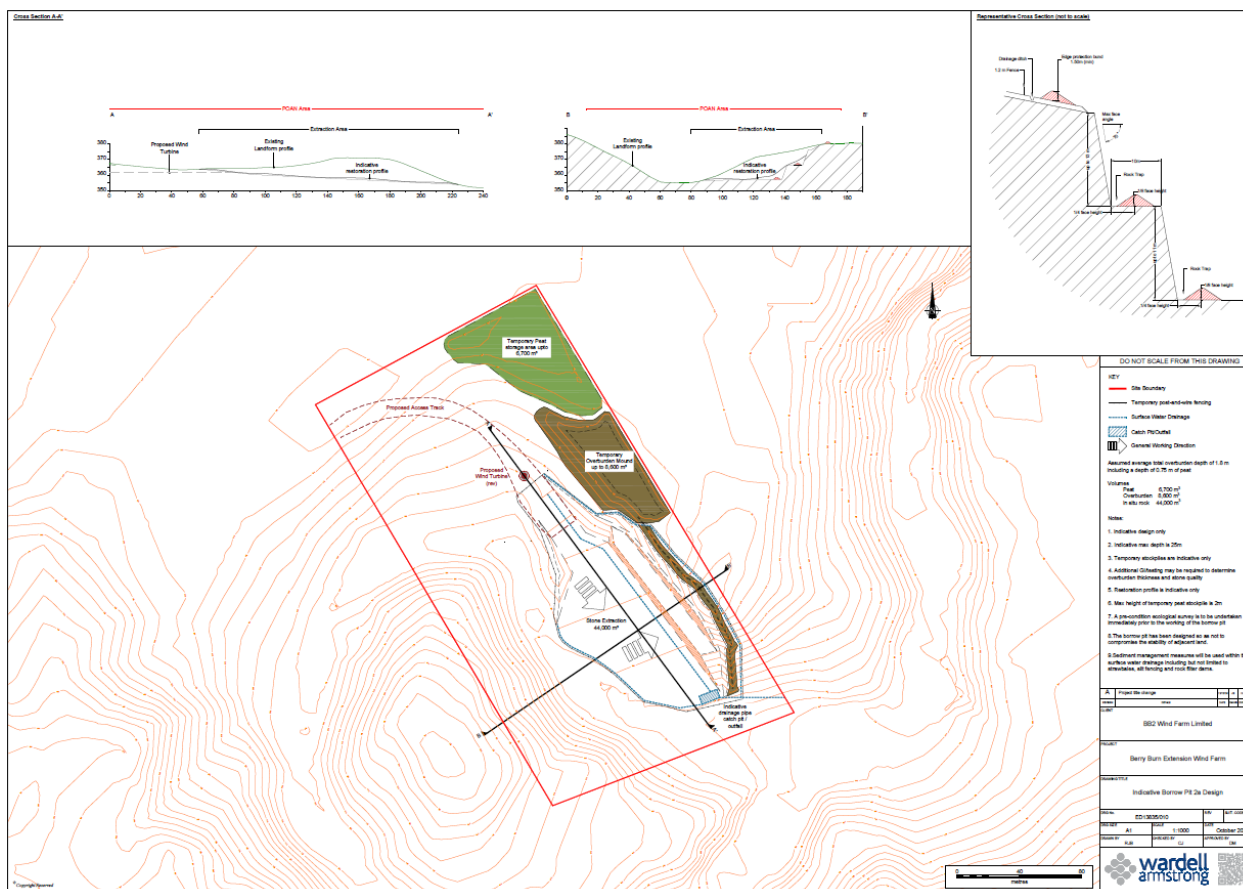


Figure 4 - BP2a Borrow Pit Design

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3. Development Plan Assessment

3.1. Introduction

3.1.1. Section 25 of the Town & Country Planning (Scotland) Act 1997 (as amended) states:-

'Where in making any determination under the Planning Act, regard is to be had to the Development Plan that determination shall be made in accordance with the Development Plan unless material considerations indicate otherwise'.

3.1.2. Section 37 states that *"in dealing with an application, the Planning Authority shall have regard to the provisions of the Development Plan so far as material to the application and to any other material considerations'.*

3.1.3. This section considers the Proposed Development against the relevant provisions of the Development Plan, which now comprises:-

- National Planning Framework 4 (NPF4), adopted in 2023; and
- Moray Council Local Development Plan (LDP), adopted in 2020.

3.1.4. The Scottish Government's Chief Planner issued a letter on 8th February 2023 relating to 'Transitional Arrangements'¹ and to provide advice on NPF4 becoming part of the statutory Development Plan. The letter reiterates that, as per Section 13(2)(3) of the Planning (Scotland) Act 2019, in the event of any incompatibility (which is not defined) between a NPF4 provision and a LDP provision, whichever of them is later in date shall prevail. In the case of the Proposed Development therefore, in the event of any policy incompatibility, NPF4 carries greater weight in the planning balance as the more recent document.

3.1.5. In relation to the application of NPF4, the Chief Planner's letter also states:-

'It is important to bear in mind NPF4 must be read and applied as a whole. The intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making. Conflicts between policies are to be

¹ <https://www.gov.scot/publications/chief-planner-letter-transitional-arrangements-for-national-planning-framework-4/>

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expected. Factors for and against development will be weighed up in the balance of planning judgement' (emphasis added).

- 3.1.6. The application of NPF4 in assessing the acceptability of individual development proposals is not therefore simply a 'check box' exercise. It's aims and objectives need to be considered 'in the round' in the planning balance.
- 3.1.7. In relation to the primacy of the Development Plan and material considerations, the Chief Planner's letter reaffirms that the '*application of planning judgement to the circumstances of an individual situation remains essential to all decision making, informed by principles of proportionality and reasonableness*'.

3.2. National Planning Framework 4 (NPF4) (2023)

Introduction

- 3.2.1. NPF4 was adopted on 13th February 2023 and now comprises the national element of the statutory Development Plan. NPF4 sets out the long-term vision for development and investment across Scotland and replaces Scottish Planning Policy (SPP) and National Planning Framework 3 (NPF3) in their entirety. This marks a significant change from the status of the now replaced NPF3 and SPP, which did not form part of the statutory Development Plan. Not only has the status of the document changed, but the wording of key national planning policies has materially altered too, as discussed below.
- 3.2.2. In his closing remarks to the Scottish Parliament on 11th January 2023, the minister for Public Finance, Planning and Community Wealth stated:-
- 'It has been suggested that the fourth national planning framework represents the biggest change to our approach to planning in Scotland in 75 years. Indeed, NPF4 marks a turning point for planning: it is not a general policy update; it is about change and planning with courage and determination to make some of the difficult decisions that may lie ahead'* (emphasis added).
- 3.2.3. NPF4 therefore marks a major change in the tone and status of Scotland's national planning policy. This must be reflected in the weight that decision makers give to the document when making decisions on individual developments.

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3.2.4. NPF4 sets out a list of national planning policies to assess applications, alongside national developments and spatial priorities for different regions within Scotland. NPF4 is an Outcome focused document, with each of the 33 planning policies accompanied by statements on 'Policy Intent' and 'Policy Outcomes'.

3.2.5. There are two central themes running through NPF4 namely addressing i) the climate emergency and ii) the nature crisis. These key themes are reflected in the detailed wording of many policies, as well as their stated Intent and Outcomes. As the Ministerial Foreword notes:-

'Putting the twin global climate and nature crises at the heart of our vision for a future Scotland will ensure the decisions we make today will be in the long-term interest of our country'.

3.2.6. The Ministerial Foreword also notes that delivering net zero greenhouse gas (GHG) emissions is one of three 'strategic priorities' alongside addressing child poverty and delivering a wellbeing economy.

3.2.7. The following commentary starts with Part 1 of NPF4, working through the document in chronological order, and considering the Proposed Development against specific planning policies and wider stated outcomes and spatial priorities.

NPF4 Part 1 – A National Spatial Strategy for Scotland 2045

3.2.8. Part 1 of NPF4 sets out the national spatial strategy and regional spatial priorities for different parts of Scotland. Six spatial principles are identified which will influence all plans and decisions as follows:-

- Just Transition;
- Conserving and Recycling Assets;
- Local Living;
- Compact Urban Growth;
- Rebalanced Development; and
- Rural Revitalisation.

3.2.9. Application of these spatial principles will support the planning and delivery of:-

- Sustainable Places – where we reduce emissions, restore and better connect biodiversity;

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- Liveable Places – where we can all live better, healthier lives; and
- Productive Places – where we have a greener, fairer and more inclusive wellbeing economy.

3.2.10. Page 7 states that '*every decision on our future development must contribute to make Scotland a more sustainable place*' and there is encouragement for the expansion of renewable energy generation. In this context, it is recognised that the Proposed Development will not generate renewable electricity. Rather, it will provide a source of locally won construction materials to support the construction of the Berry Burn Wind Farm Extension which will contribute to both the climate emergency and nature crisis through the generation of a significant amount of renewable energy and delivery of habitat enhancements which are stipulated as conditions of the consented wind farm permission which the Applicant must comply with (see comments in Section 1).

3.2.11. Those NPF4 policies of most relevance to the Proposed Development are discussed in the section below on NPF4 Part 2.

NPF4 Part 2 – National Planning Policy

3.2.12. Part 2 of NPF4 sets out the national planning policies. There are 33 national planning policies in total, set out under the three headings of:-

- Sustainable Places;
- Liveable Places; and
- Productive Places.

3.2.13. For each policy, NPF4 provides commentary on Policy Intent, Policy Outcomes and then discusses implications of the policy for Local Development Plans. Following the policy wording, NPF4 then sets out statements on Policy Impact and cross references to other Key Policy Connections.

3.2.14. Those policies considered to be of relevance to the Proposed Development are discussed in the following paragraphs, starting with Policy 33 'Minerals', being the most relevant in this case. Thereafter, commentary on policies follows in numerical order.

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Policy 33: Minerals

3.2.15. This policy is the most relevant to the Proposed Development. The Policy Intent is *'to support the sustainable management of resources and minimise the impacts of the extraction of minerals on communities and the environment'*.

3.2.16. The Policy Outcomes are to ensure:

- *'Sufficient resources are available to meet industry demands, making essential contribution to the Scottish economy';*
- *'Important raw materials for manufacturing, construction, agriculture, and other industries are available';*
- *'Important workable mineral resources are protected from sterilisation by other developments'; and*
- *'Communities and the environment are protected from the impacts of mineral extraction.'*

3.2.17. Policy 33 part (d) sets out a list of factors to be considered the assessment of proposals relating to the extraction of minerals. Part (d) states development proposals for the sustainable extraction of minerals will only be supported where they are align with the factors set out in Table 1 below.

Table 1: Commentary on NPF4 Policy 33 Part (d)

Policy Criteria	Commentary
Policy 33(d)(i) <i>Proposals 'will not result in significant adverse impacts on biodiversity, geodiversity and the natural environment, sensitive habitats and the historic environment, as well as landscape and visual impacts.'</i>	<p>It is important to note that the principle of working two borrow pits within the site of the consented wind farm has already been established as acceptable through the consent granted in December 2021. The EIA Report submitted with the application for the now consented wind farm found no significant effects upon any of these receptors that were attributed to working of those two borrow pits and none are anticipated as part of the Proposed Development.</p> <p>The Applicant submitted an EIA Screening Request to Moray Council on 1st August 2024 (Ref. 24/01216/SCN) which assessed the Proposed Development against the factors listed in the</p>

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Policy Criteria	Commentary
	<p>screening criteria in Schedule 3 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. While not identical to the matters set out in Policy 33(d)(i) Schedule 3 covers a similar range of topic areas. A Screening Opinion received on 28th August 2024 and concluded an EIA was not required, noting that <i>‘there will be no significant adverse environmental effects’</i>. In addition, the following points are relevant.</p> <p>There are no cultural heritage assets within the vicinity of BP1 and BP2a or within 2 km of the site. As such, the Proposed Development will have no direct or indirect impacts upon any historic environment assets as a result of excavations. This is supported by the accompanying ‘Archaeological Technical Advice Note’ which states the archaeological potential of the borrow pits footprint is negligible, and no impacts to buried archaeological remains are anticipated as a result of the Proposed Development.</p> <p>The Proposed Development site is not located in any local or national landscape designations. Given the location of the two borrow pits in a rural, sparsely populated area and within the surroundings of an operational wind farm, no significant landscape and visual effects will occur as a result of the proposal, as shown by the Council’s EIA Screening Opinion.</p> <p>The accompanying ‘Ecological Appraisal’ notes that through the successful application of mitigations such as a Construction Environment Management Plan (CEMP), Extension Habitat Management Plan (EHMP), and Species Protection Plan (SPP), the Proposed Development will not result in a significant residual effect on any sensitive ecology and nature conservation receptors. These mitigations will be provided through compliance with the existing conditions of the consented wind farm extension.</p>

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Policy Criteria	Commentary
	<p>The Proposed Development's impact on the natural environment is assessed further under NPF4 Policies 3 and 4 below.</p> <p>In terms of geodiversity, a Peat and Soils Appraisal was conducted to support the Proposed Development. The appraisal notes that the level of effect on peatland is considered to be minor. Following the implementation of mitigation measures, landslide risk is considered negligible and the permanent displacement of peat will be minimal. The proposed borrow pits will be fully restored with peat, up to a maximum 2.0m depth in alignment with Condition 19 of the consented wind farm extension permission. The Proposed Development's impact on soils is assessed further under NPF4 Policy 5 below.</p>
<p>Policy 33(d)(ii)</p> <p><i>Proposals 'provide an adequate buffer zone between sites and settlements taking account of the specific circumstances of individual proposals, including size, duration, location, method of working, topography, and the characteristics of the various effects likely to arise.'</i></p>	<p>The Proposed Development is situated approximately 12km south of the nearest settlement of Forres. As stated above, the site is in a rural, sparsely populated location and within the surroundings of an operational wind farm.</p> <p>Working of the borrow pits will not introduce tall structures into the landscape and as such site activities will not be widely visible across the landscape. Both borrow pits will be restored at the end of the construction period of the consented wind farm.</p> <p>Taking account of these site specific factors and the development characteristics, it is considered an adequate buffer zone is provided between BP1 and BP2a and the nearest settlement.</p>
<p>Policy 33(d)(iii)</p> <p><i>Proposals 'can demonstrate that there are no significant adverse impacts (including cumulative impact) on nearby homes, local communities and known'</i></p>	<p>There are no properties located within the wind farm site boundary or within the site of the Proposed Development, with the closest residential property located c. 4.5km to the north east of the nearest borrow pit search area (BP2a).</p> <p>The nearest designation is the River Spey Special Area of Conservation (SAC) approximately 3.3km south-east of BP2a.</p>

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Policy Criteria	Commentary
<p><i>sensitive receptors and designations.'</i></p>	<p>Again, in consideration of these factors, the Proposed Development will not have significant adverse on nearby receptors and designations given the separation distance between each borrow pit and relevant receptors.</p>
<p>Policy 33(d)(iv)</p> <p><i>Proposals 'demonstrate acceptable levels (including cumulative impact) of noise, dust, vibration and potential pollution of land, air and water.'</i></p>	<p>Noise is likely to arise while excavations works are taking place for example from general vehicle and mechanical noise, potentially blasting of rock and transportation of material from the borrow pits to construction areas. Such impacts were previously considered as part of the consented wind farm application and none were found to be significant. Based upon these previous findings and given the broadly similar locations of the now proposed borrow pits, noise impacts are again not considered to be significant. There are also restriction on construction activities attached to the consented wind farm permission that will further limit the potential for such impacts to arise, e.g. through restriction on works hours and blasting.</p> <p>The excavation works will inevitably create dust, however, it is likely these impacts will be limited to immediate surroundings of the borrow pits and will therefore have no significant spatial extent. Further mitigation measures to cover day to day site activities will be set out in the CEMP to be submitted pursuant to condition 14 of the consented wind farm permission and significant adverse impacts upon air quality as a result of the Proposed Development are highly unlikely.</p> <p>The use of borrow pits will also reduce traffic on the local road network, as there will be limited need to use HGV's to import materials to site from off-site quarries. This will reduce the potential creation of air emissions from these vehicles, benefiting the surrounding environment and local residents.</p>

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Policy Criteria	Commentary
	<p>The accompanying 'Water Environment Appraisal' notes the Proposed Development will have no significant impacts on the water environment that could arise as a result of changes to the hydrological regime and the pollution and degradation of water quality. Mitigation measures have been incorporated into the design of the Proposed Development and will be set out within the CEMP, which will be produced in response to Condition 14 of the consented wind farm extension permission.</p>
<p>Policy 33(d)(v)</p> <p><i>Proposals 'minimise transport impacts through the number and length of lorry trips and by using rail or water transport where practical.'</i></p>	<p>A key benefit of the Proposed Development will be to significantly reduce or avoid entirely (subject to suitability of material within the borrow pits) the need to import aggregate to construct the consented wind farm.</p> <p>Once excavation vehicles and other plant and machinery are delivered to site, there would be no additional HGV vehicles associated with the day to day working of the two borrow pits, the only additional traffic being construction workers. These vehicle movements have already been accounted for in the consented wind farm application.</p> <p>As such, the Proposed development is aligned with Policy 33(d)(v).</p>
<p>Policy 33(d)(vi)</p> <p><i>Proposals 'have appropriate mitigation plans in place for any adverse impacts.'</i></p>	<p>Some environmental impacts will inevitably arise as a result of the Proposed Development. There is likely to be an impact associated with increased noise and ground disturbance from general construction activities initially, however once completed these impacts will cease at the end of the construction period, following site restoration. The restoration of the borrow pits will limit any long term adverse impacts.</p>

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Policy Criteria	Commentary
	<p>The Proposed Development has been designed to mitigate any significant environmental impacts, supported by the submission of supplementary environmental documents. In addition a range of further mitigation measures including best practice construction techniques will be applied to construction works, and these will be secured by adherence to documents to be submitted in compliance with the consented wind farm permission, including:</p> <ul style="list-style-type: none"> ▪ Peat Management Plan; ▪ Construction Environment Management Plan; ▪ Extension Habitat Management Plan; ▪ Species Protection Plan; ▪ Construction Breeding Bird Protection Plan; ▪ Operational Breeding Bird Protection Plan; ▪ Traffic Management Plan; ▪ Archaeological Written Scheme of Investigation; and ▪ Woodland Creation and Replanting Plan. <p>These documents will ensure appropriate mitigation measures are in place throughout the duration of construction works.</p>
<p>Policy 33(d)(vii)</p> <p><i>Proposals 'include schemes for a high standard of restoration and aftercare and commitment that such work is undertaken at the earliest opportunity.'</i></p>	<p>As mentioned previously, the Proposed Development will be temporary and take place during the construction phase of the consented wind farm extension only. Following this phase, the borrow pits will be restored.</p> <p>The restoration profile of the Proposed Development is shown within the accompanying 'Borrow Pit Design' drawings.</p>

3.2.18. As this commentary demonstrates the Proposed Development can be positively considered against the Policy 33 part (d) criteria.

3.2.19. Part (e) of Policy 33 states development proposals for borrow pits will only be supported where:

- (i) the proposal is tied to a specific project and is time-limited;

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- (ii) the proposal complies with the above mineral extraction criteria taking into account the temporary nature of the development; and
- (iii) appropriate restoration proposals are enforceable.

3.2.20. The Proposed Development is for the winning and working of aggregate from two borrow pits to support the construction of the consented wind farm only. At the end of these works, the two borrow pits will be restored and as such, the Proposed Development is clearly tied to a specific project and is time-limited.

3.2.21. The Proposed Development's alignment with the criteria of Policy 33 (d) is set out above in Table 1, which clearly demonstrates that the Proposed Development complies with this mineral extraction criteria. Indicative restoration profiles for both borrow pits are set out in the accompanying 'Borrow Pit Designs', which propose a combination of backfilling (to levels stipulated in the consented wind farm permission) and leaving rock faces exposed. Compliance with these restoration proposals can be secured through planning conditions.

Policy 1: Tackling the Climate and Nature Crises

3.2.22. Policy 1 states in full that:-

'When considering all development proposals significant weight will be given to the global climate and nature crises'.

3.2.23. The Policy Intent is to *'encourage, promote and facilitate development that addresses the global climate emergency and nature crises'*. The Policy Outcomes are *'zero carbon, nature positive places'*.

3.2.24. The Chief Planner letter of February 2023 states that this policy should be applied together with the other policies of NPF4 and as such the analysis of other NPF4 planning policies applies back to this policy to show how the Proposed Development can proportionally meet the aims of Policy 1.

3.2.25. While the extraction of aggregate will not in itself contribute to efforts to combat the climate emergency and nature crisis, sourcing such materials from within the site of the consented wind farm will assist in the timely delivery of that project, which will help to meet the legally binding net zero greenhouse gas emission targets.

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3.2.26. The use of borrow pits within the site of the consented wind farm will also reduce traffic volumes and reduce air emissions from these vehicles, benefiting the surrounding environment.

3.2.27. Given the nature of the Proposed Development it is considered that there is limited scope for biodiversity enhancement works through this proposal alone. However, the Proposed Development will facilitate construction of the consented wind farm which has, as condition of the permission, the requirement for habitat management plans which will deliver tree planting and peatland restoration which will deliver biodiversity benefits.

3.2.28. Within the parameters of what is proposed, it is considered that the Proposed Development complies with Policy 1.

Policy 2: Climate Mitigation and Adaptation

3.2.29. The intent of Policy 2 is *'to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.'*

3.2.30. The Proposed Development will support the construction of the consented wind farm which will in turn, lead to the generation of low carbon energy from renewable sources (wind turbines). Winning construction aggregate from within the site avoids the need to import such material from off-site quarries, with associated environmental benefits.

Policy 3: Biodiversity

3.2.31. The intent of Policy 3 is *'to protect biodiversity, reverse biodiversity loss, deliver positive benefits from development and strengthen nature networks.'* The Policy Outcomes are that *'biodiversity is enhanced and better connected including through strengthened nature networks and nature-based solutions.'*

3.2.32. Policy 3 sets out a range of criteria that vary depending upon the scale and type of development proposed. Part (a) applies to all scales of development and states that proposals will contribute to the enhancement of biodiversity including, *inter alia*, restoring degraded habitats and building and strengthening nature networks and the connections between them. Part (b) relates to *'national or major development or for development that requires an Environmental Impact Assessment'*. This part of Policy 3 states that proposals

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will only be supported where they will conserve, restore and enhance biodiversity '*so that they are in a demonstrably better state than without intervention*'.

- 3.2.33. Before commenting on Policy 3(b), it is worth noting that the Scottish Government's Chief Planner issued a letter on 8th February 2023 relating to 'Transitional Arrangements for National Planning Framework 4'ⁱ to provide advice on NPF4 becoming part of the statutory Development Plan. This letter included commentary on certain NPF4 policies, including Policy 3. The letter recognises that there are '*some proposals which will not give rise to opportunities to contribute to the enhancement of biodiversity, and it will be for the decision maker to take into account the policies in NPF4 as a whole, together with material considerations in each case*'.
- 3.2.34. It is relevant to note that even non-compliance with Policy 3 is not necessarily a barrier to the grant of consent given the established need for low carbon technologies to mitigate climate change. In the Section 36 decision letter for the Devilla battery energy storage scheme (BESS) (November 2023²) at paragraph 63 Ministers noted:
- 3.2.35. '*Climate change will increase the risk of flooding and drought, impacting biodiversity - including not just the Devilla Forest but Scotland as a whole. Climate change is the single greatest threat to Scotland's habitats. The Scottish Ministers consider this justifies giving greater weight to NPP [sic] policies 1 and 11 than policy 3 when weighing up the support for the proposed Development*'.
- 3.2.36. As stated under Policy 1, given the nature of the Proposed Development it is considered that there is limited scope for biodiversity enhancement through the Proposed Development alone. However, it will facilitate construction of the consented wind farm which will itself bring forward significant works for biodiversity improvements, as well as allow construction of a National Development scale wind farm project with the significant renewable energy benefits that will bring.
- 3.2.37. While it is recognised that the Proposed Development will not in itself give rise to biodiversity enhancements, no significant adverse environmental effects will arise.
- 3.2.38. Policy 3(d) states any potential adverse impacts, including cumulative impacts, of development proposals

² <https://www.energyconsents.scot/ApplicationDetails.aspx?cr=ECU00003469>

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on biodiversity, nature networks and the natural environment will be minimised through careful planning and design.

- 3.2.39. The supporting 'Ecological Appraisal' notes that through the successful application of embedded and industry-standard mitigations (including a CEMP and SPPs), and additional (secondary) mitigations the Proposed Development would not result in a residual negative effect on any sensitive ecology and nature conservation receptors, consistent with this aspect of Policy 3.

Policy 4: Natural Places

- 3.2.40. This policy sets the basis for assessing applications that affect European natural heritage designations, as well as proposals affecting National Parks and NSAs, and also local level natural heritage and landscape designations. The intent of the policy is to *'protect, restore and enhance natural heritage assets making the best use of nature-based solutions'*. There are two Policy Outcomes namely (i) *'natural places are protected and restored'* and (ii) *'natural assets are managed in a sustainable way that maintains and grows their essential benefits and services'*.
- 3.2.41. The submitted Ecology Appraisal noted that due to the nature of the excavation works, spatial separation and absence of connectivity, it is considered there is no route to impact to any designated sites or the habitats and species they support as a result of the Proposed Development. As a result, these sites were scoped out of condition in the assessment and there are no potential impacts that would result in a conflict with Policy 4 in terms of nature consideration designations.
- 3.2.42. In terms of landscape designations, the closest Special Landscape Area (SLA) identified within the Moray Council Local Development Plan is c. 5.4km north-west of BP1. The Proposed Development will not give rise to any impact on this designation.
- 3.2.43. Part (f) relates to protected species and states that the level of protection required by legislation must be factored into the planning and design of the development and that potential impacts must be fully considered prior to the determination of any application. The accompanying 'Ecological Appraisal' demonstrates that, subject to mitigation, no significant adverse effects on protected species are identified.

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- 3.2.44. The 'Ecological Appraisal' notes that habitat loss as a result of the Proposed Development will be limited and temporary following the reinstatement of the borrow pits. Any disturbance to foraging and commuting bats is highly unlikely and there were no pine marten, water vole, badgers or red squirrels were identified within 2km of the site by field surveys conducted as part of the Ecological Appraisal. No evidence of otters was identified within 2km of the site, however, it is noted that the River Lossie located to the south of BP2a is conserved to provide foraging and commuting opportunities and provided various otter signs. The 'Ecological Appraisal' notes that mitigation measures detailed within the CEMP and SPP (which are in draft to support the consented wind farm application) will reduce any risk to otters.
- 3.2.45. Overall, the Proposed Development is considered to comply with Policy 4. The only receptor taken forward for detailed assessment in the Ecological Appraisal is 'priority habitats'. This is discussed under LDP Policy EP1: Natural Heritage Designations.

Policy 5: Soils

- 3.2.46. The intent of Policy 5 is to '*protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development*'. One of the Policy Outcomes seeks that '*valued soils are protected and restored*'.
- 3.2.47. Part (b) is concerned around the loss of prime agricultural land. According to the National Scale Land Capability for Agriculture the Proposed Development is primarily within Class 6.3, while there are also smaller areas within Class 7 land, both non-prime categories. The Proposed Development would therefore not lead to the permanent loss of prime quality agricultural land.
- 3.2.48. Part (d) sets out a requirement for a detailed site specific assessment to help understand the presence of peat and carbon-rich soils on site and to enable the likely effects of a development proposal on these resources to be considered.
- 3.2.49. Site surveys were undertaken to inform the design of the borrow pits, with details set out in the Soil and Peat Environment Appraisal. This showed that the majority of the area within the Proposed Development that is considered for stripping of soils e.g. the extraction areas was recorded as shallow peat (less than 1m in depth) or peaty soils (less than 0.5m in depth).

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3.2.50. The 'Peat and Soils Environment Appraisal' notes that combining the characterisations of peat depth and vegetation composition (dry and wet dwarf shrub heath, dry modified bog, and wet modified blanket bog), the site of the Proposed Development is considered to be of low sensitivity in terms of peatland. Any potential impacts on peat and soils will be mitigated through the measures set out within the Peat and Soils Appraisal and the PMP which will be produced pursuant to the consented wind farm permission.

3.2.51. The Proposed Development complies with the Intent and Outcomes of Policy 5.

Policy 7: Historic Assets and Places

3.2.52. This policy sets out the framework for assessing the impact of development proposals on a wide range of cultural heritage receptors. The intent is *'to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places'*. Policy Outcomes include that *'the historic environment is valued, protected, and enhanced, supporting the transition to net zero and ensuring assets are resilient to current and future impacts of climate change'*.

3.2.53. There are no cultural heritage designations within the vicinity of the BP1 or BP2a or within 2km of the site. The accompanying 'Archaeological Technical Advice Note (TAN)' notes that the potential for archaeological remains to be discovered through excavation of BP1 or BP2a is highly unlikely and is not anticipated to have an impact on buried archaeological remains.

3.2.54. As such, the Proposed Development will have no direct or indirect impact upon cultural heritage interests. The Proposed Development can be considered positively in relation to Policy 7.

Policy 12: Zero Waste

3.2.55. Part (a) of this policy requires that development proposals seek to reduce, reuse or recycle materials in line with the waste hierarchy.

3.2.56. It is anticipated that working of the borrow pits will generate some excess material which is unsuitable for construction purposes. Such material will be temporarily stored next to the excavation areas and then used within the site e.g. as part of landscaping, or to backfill the borrow pits following the completion of the construction phase.

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3.2.57. No particularly hazardous waste will be generated that requires specialist management and disposal and there are no conflicts with Policy 12. .

Policy 13: Sustainable Transport

3.2.58. The Intent of Policy 13 is *'to encourage, promote and facilitate developments that, inter alia, reduce the need to travel unsustainably.'*

3.2.59. As stated, the Proposed Development will significantly reduce or avoid entirely (subject to suitability of material within the borrow pits) the need to import aggregate to the site to construct the wind farm. Once excavation vehicles and other plant and machinery are delivered to site, there would be no additional HGV vehicles associated with the day to day working of the two borrow pits, the only additional traffic being construction workers.

3.2.60. As such, traffic numbers on the local road network during the construction phase of the consented wind farm will be significantly reduced. It is therefore considered the Proposed Development is aligned with Policy 13.

Policy 22 Flood Risk and Water Management

3.2.61. The Intent of Policy 22 is *'to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.'*

3.2.62. According to SEPA's flood risk map there are no significant areas of mapped flood risk within the site. The impacts of working borrow pits in terms of flood risk and hydrology was previously assessed within the EIA Report for the consented wind farm. That assessment identified that the excavation of borrow pits would have no significant impact on flooding and hydrology.

3.2.63. A Water Environment Appraisal has been conducted to support the Proposed Development. The Water Environment Appraisal finds that BP1 is at no risk to fluvial, surface water or tidal flooding. The report also finds that BP2a is very unlikely to be affected by surface water flooding or fluvial flooding from the River Loosie.

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3.2.64. The Water Environment Appraisal notes that any potential effects to the water environment caused by the Proposed Development will be minor in terms changes to hydrological flow and pollution and degradation in water. It is also noted that the Proposed Development will have no significant residual effects on the water environment as the mitigation measures such as good practice and other measures to be set out in the CEMP can mitigate these adequately.

3.2.65. The Water Environment Appraisal notes that BP1 and BP2a are located below the recorded groundwater levels and therefore groundwater is likely to be encountered during mineral extraction. The borrow pits have been designed to incorporate groundwater management measures to ensure that groundwater does not interfere with the Proposed Development.

Policy 23: Health and Safety

3.2.66. The intent of Policy 23 is *'to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing'*. There are three Policy Outcomes including that *'safe places protect human health and the environment'*.

3.2.67. Part (d) confirms that *'development proposals that are likely to have significant adverse effects on air quality will not be supported'*, while part (e) states that *'development proposals that are likely to raise unacceptable noise issues will not be supported'*.

3.2.68. As previously stated, noise is likely to arise while excavations works are taking place for example from general vehicle and mechanical noise, potentially blasting of rock and transportation of material from the borrow pits to construction areas. The excavation works will also inevitably create dust, however, these impacts will be limited to immediate surroundings of the borrow pits and will not affect residential properties. Controls attached to the consented wind farm permissions (controls on blasting and hours of operation) will also significant limit the potential for unacceptable noise impacts.

3.2.69. A 1.2m fence will be placed around the borrow pits for health and safety purposes when the borrow pits are being worked to restrict access and help prevent accidents. Indeed, as extraction of materials will take place solely during the construction phase of the consented wind farm extension, any potential healthy safety impacts will be temporary. Overall, the Proposed Development complies with Policy 23.

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3.2.70. Commentary in *NPF4 Part 3 – Annex A ‘Outcomes’*

3.2.71. Part 3, Annex A confirms that NPF4 is required by law to contribute to six Outcomes. These Outcomes are set out in Section 3 of the Town and Country Planning (Scotland) Act 1997 (as amended), having been amended by Section 2 of the Planning (Scotland) Act 2019. The six Outcomes are:-

- (a) meeting the housing needs of people living in Scotland including, in particular, the housing needs for older people and disabled people,
- (b) improving the health and wellbeing of people living in Scotland,
- (c) increasing the population of rural areas of Scotland,
- (d) improving equality and eliminating discrimination,
- (e) meeting any targets relating to the reduction of emissions of GHGs, within the meaning of the Climate Change (Scotland) Act 2009, contained in or set by virtue of that Act, and
- (f) securing positive effects for biodiversity.

3.2.72. These Outcomes differ in status from those set by NPF3 and the accompanying SPP in that they are now enshrined in statute. The Proposed Development can contribute positively to Outcome (e) by providing construction materials to support the timely delivery of the consented wind farm, which will help to meet the legally binding net zero greenhouse gas emission targets. In addition, the Proposed Development can also contribute positively to Outcome (f) by supporting the construction of the consented wind farm, which will in turn see a range of measures undertaken to secure biodiversity benefits across the site and improve habitat connectivity in the surrounding area.

3.3. Moray Local Development Plan (LDP) 2020

3.3.1. The LDP forms the local element of the Development Plan. In the event of any incompatibility (which is not defined) between a NPF4 provision and a LDP provision, whichever is later in date will prevail. Given that the LDP was adopted in 2020, in the event of any incompatibility, NPF4 carries greater weight in the planning balance as the more recent document.

3.3.2. This section considers the LDP policies of most relevance to the Proposed Development. Inevitably there is some overlap between the aims and objectives of some LDP policies and the previously discussed NPF4

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policies. To avoid unnecessary duplication, where LDP policies raise matters already discussed in relation to NPF4, cross reference will be made to the earlier national policy appraisal.

3.3.3. Policy DP10: Minerals is the 'lead' policy for assessing borrow pit proposals. It is acknowledged that the Proposed Development requires to be assessed 'in the round' against all policies in the LDP, however Policy DP10 is the key policy against which to assess the Proposed Development.

3.3.4. The LDP policies considered most relevant to the Proposed Development are:-

- Policy DP10: Minerals;
- Policy DP1: Development Principles;
- Policy EP1: Natural Heritage Designations;
- Policy EP2: Biodiversity;
- Policy EP8: Historic Environment;
- Policy EP12: Management and Enhancement of the Water Environment;
- Policy EP14: Pollution, Contamination and Hazards; and
- Policy EP16: Geodiversity and Soil Resources.

3.3.5. The Council does not have Supplementary Guidance that covers proposals relating to the extraction of minerals.

Policy DP10: Minerals

3.3.6. The Policy aims to ensure that proposals for the extraction of minerals will not have significant adverse effects on the amenity of local communities, natural or cultural heritage interests.

3.3.7. Part b) relates to mineral operations and states proposals for borrow pits will be supported, subject to compliance with other relevant policies, to allow the extraction of minerals near to or on the site of associated development (e.g. wind farm and roads construction, forestry and agriculture) provided it can be demonstrated that the operational, community and environmental benefits of the proposal can be evidenced. These consents will be time limited, tied to the proposal and must be accompanied by full restoration proposals and aftercare.

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- 3.3.8. Part c) relates to restoration and aftercare and states operators must provide details of their proposed programme of restoration. Restoration programmes must reinstate the site at the earliest opportunity when excavation has ceased and must be designed and implemented to the highest standard.
- 3.3.9. These aspects of Policy DP10 align with the criteria and commentary in NPF4 Policy 33.
- 3.3.10. The assessment of the Proposed Development against Policy 33 in Table 1 shows that extraction works can be undertaken in a manner without giving rise to significant environmental effects, that the borrow pits are required solely in connection with the consented wind farm and that they would be time limited to that construction period only, following which they would be restored in accordance with the restoration profiles shown in the 'Borrow Pit Designs.' The Proposed Development can be worked and restored in a manner consistent with Policy 10.

Policy DP1: Development Principles

- 3.3.11. All development proposals are required to meet the overarching criteria set out in Policy DP1, insofar as they are relevant, or otherwise demonstrate their contribution to sustainable development. When assessed against applicable Policy DP1 criteria, the Proposed Development is considered to be compliant as follows:-
- It will be integrated into the surrounding landscape – given the scale and the remote location of the Proposed Development it will not be widely visible across the landscape. It is also relevant to note that borrow pits have been worked in this area previously associated with the operational Berry Burn Wind Farm and permission exists for two borrow pits within the consented wind farm permission;
 - It will not adversely affect natural and built heritage designations;
 - It will not adversely affect the amenity of any residential properties;
 - It will utilise existing access tracks which were previously consented through the wind farm application;
 - It will not adversely affect any watercourses; and
 - It will not create significant air or noise pollution issues.

Policy EP1: Natural Heritage Designations

- 3.3.12. Policy EP1 provides the basis for assessing development proposals in terms of their potential impacts on

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international, national and local natural heritage designations, European Protected Species and other species protected under domestic legislation.

3.3.13. The Proposed Development's effects on these receptors has been considered under NPF4 Policy 4 which is aligned with the criteria of Policy EP1. The accompanying Ecological Appraisal concluded that the Proposed Development will not have a significant adverse impact on any international, national or local natural heritage designations or protected species. As such, these receptors were scoped out of the assessment, see Table 4.2 of the Ecological Appraisal Report.

3.3.14. The only receptor taken forward into the detailed assessment within the Ecological Appraisal Report was 'priority habitats'. Part c) of Policy EP1 states development proposals likely to have a significant adverse effect on, inter alia, valuable local habitats will be refused unless it can be demonstrated that public benefits clearly outweigh the benefits of the site, there is a specific locational requirement for the development and any potential impacts can be satisfactorily mitigated.

3.3.15. The Ecological Appraisal Report notes that the Proposed Development is likely to lead to a temporary loss of 1.6ha of priority habitats (Mire, Wet Heath and Dry Heath). However, these habitats will be reinstated following the completion of construction works in accordance with the CEMP for the consented wind farm and as such, any impact would be a short-term and reversible.

3.3.16. In addition, under the requirement of Condition 11 of the consented wind farm, the Applicant will deliver bog restoration and peatland habitat creation and enhancement in excess of the amount specified in that condition (57 ha). Therefore, any loss of bog habitats as a result of the Proposed Development, although temporary, will also be further mitigated via habitat creation and enhancement detailed in the EHMP.

Policy EP2: Biodiversity

3.3.17. This LDP policy seeks to ensure that where possible development proposals retain, protect and enhance features of biological interest and that development should integrate measures to enhance biodiversity. The policy is similar to NPF4 Policy 3 and the earlier commentary on that policy recognises that there is limited scope to deliver biodiversity enhancement with the Proposed Development in isolation. However, it will facilitate construction of the consented wind farm which will itself bring forward significant works for

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biodiversity improvements.

Policy EP8: Historic Environment

3.3.18. This policy aims to protect Scheduled Monuments and unscheduled archaeological sites of potential national importance from development that would have a direct impact on the asset or an adverse impact on the integrity of their setting. There are no designated heritage assets within 2 km of the borrow pits and the accompanying Archaeological TAN finds that the Proposed Development is highly unlikely to cause disturbance to any archaeological remains.

3.3.19. Mitigation in the form of the Written Scheme of Investigation for the consented wind farm will be applied and there are no conflicts with Policy EP8.

Policy EP12: Management and Enhancement of the Water Environment

3.3.20. Policy EP12 aims to direct development away from areas at risk of flooding and support the protection and enhancement of the water environment.

3.3.21. The accompanying Water Environment Appraisal highlights that both BP1 and BP2a are unlikely to be at risk of fluvial, surface water and tidal flooding. The Water Environment Appraisal also finds that in terms of pollution and degradation of the local water environment, the Proposed Developments impacts are likely to be minor given the mitigation and good practice measures incorporated within the CEMP for the consented wind farm.

Policy EP14: Pollution, Contamination and Hazards

3.3.22. This policy aims to ensure new developments do not create pollution which could adversely affect the environment or local amenity. Part a) states development proposals which may cause significant air, water, soil, light or noise pollution will be refused where significant impacts cannot be mitigated.

3.3.23. As previously stated under the commentary on NPF4 Policy 23 which is largely aligned with Policy EP14, the Proposed Development is unlikely to create pollution which will significantly affect the environment and local amenity.

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3.3.24. Noise is likely to arise while excavations works are taking place for example from general vehicle and mechanical noise, potentially blasting of rock and transportation of material from the borrow pits to construction areas. The excavation works will also inevitably create dust, however, these impacts will be limited to immediate surroundings of the borrow pits and will not affect residential properties. Controls attached to the consented wind farm permission (controls on blasting and hours of operation) will also significantly limit the potential for unacceptable noise impacts.

Policy EP16: Geodiversity and Soil Resources

3.3.25. This policy notes that minerals proposals will only be permitted where it has been demonstrated that unnecessary disturbance of soils, peat and vegetation is avoided; and that best practice in the movement, storage, management and reinstatement of soils is to be adopted. The extent of vegetation removal required will be kept to a minimum to extract construction aggregate and the borrow pits will be used solely during the construction period of the consented wind farm. Following this short period they will be restored.

3.3.26. The Peat and Soils Appraisal submitted with the planning application considers that the Proposed Development is considered to be of low sensitivity in terms of peatland whilst any potential impacts on peat and soils will be mitigated through the measures set out within the Peat and Soils Appraisal and the consented wind farm's PMP and CEMP. Subject to adherence to such mitigation measures no significant adverse effects will arise upon soils or peat and there is no conflict with Policy EP16.

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4. Conclusions

- 4.1.1. This Planning Statement supports a planning application to Moray Council for the winning and working of aggregate from two borrow pits to support the construction of the consented but unbuilt Berry Burn Wind Farm Extension.
- 4.1.2. The overall intention of the Proposed Development is to support the construction of the Berry Burn Wind Farm Extension to minimise the need to import materials from quarries further afield. While the extraction of aggregate will not in itself contribute to efforts to combat the climate emergency and nature crisis, sourcing such materials from within the site of the consented wind farm will assist in the timely delivery of that project, which will help to meet the legally binding net zero greenhouse gas emission targets.
- 4.1.3. The principle of excavating aggregate from within borrow pits to construct the consented wind farm has been established through the Section 36 consent and deemed planning permission for the consented wind farm, with excavated material required to construct access tracks and foundations for wind turbines. This application does not alter this principle but proposes to increase the size of BP1 and introduces a new borrow pit, BP2a, in order to source a sufficient amount of material to construct the consented wind farm.
- 4.1.4. The planning application requires to be determined in accordance with the relevant provisions of the Development Plan unless material considerations indicate otherwise. This Planning Statement has considered the Proposed Development against the relevant policies of the LDP and NPF4. As a matter of principle, it is considered that the Proposed Development complies with the key NPF4 policy, Policy 33: Minerals, and the principle LDP policy, Policy DP10: Minerals. The detailed point by point assessment against the policy criteria in NPF4 Policy 33 which reflects the LDP Policy DP10 criteria demonstrates that the Proposed Development will not give rise to any unacceptable environmental effects.
- 4.1.5. The Proposed Development will result in some localised effects however, given the remote and sparsely populated location of the proposal, it is not considered these effects are significant. The use of borrow pits within the site will reduce the need to import aggregate from elsewhere and thus, will reduce the impact on the surrounding environment in terms of traffic, air emissions and noise. Environmental impacts will be

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mitigated through a range of documents required in association with the consented wind farm such as the CEMP, PMP and SPPs while environmental benefits will arise with the implementation of the EHMP.

- 4.1.6. Overall, it is concluded that the Proposed Development complies with the Development Plan when all relevant policies are considered in the round and it is respectfully requested that planning permission is granted.

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