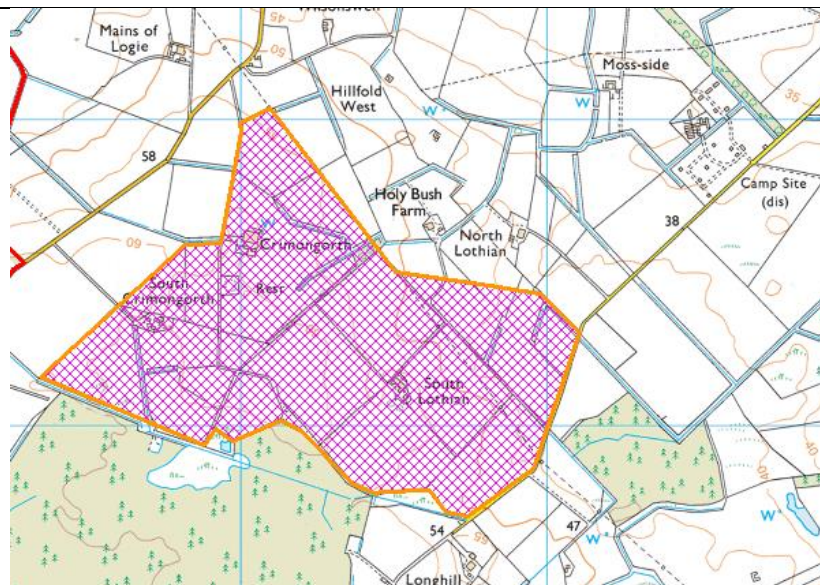


## Buchan Area Committee Report – 6 September 2022

Reference No: APP/2022/1168

**Consultation under Section 36 of the Electricity Act 1989 for the Consultation under Section 36 for Erection of a Solar SV Park and Battery Storage Including Inverter Housings, CCTV, Security Fencing, Soft Landscaping, Access Tracks, Substation and Ancillary Works on Land At Frodo Farm, Crimond, Aberdeenshire**

<b>Applicant:</b>	<b>Green Energy International Ltd, Trinity House, Newby Road, Stockport, SK7 5DA</b>
Grid Ref:	E: 404226 N: 855373
Ward No. and Name:	W05 – Peterhead North and Rattray
Application Type:	S36 Consultation
Representations	None. Representations are made directly to the Scottish Government.
Consultations	7 (internal) 9 (External)
Relevant Proposals Map Designations:	Aberdeenshire Local Development Plan
Complies with Development Plans:	No
Main Recommendation	Comments for ISC



**NOT TO SCALE**

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## 1. Reason for Report

- 1.1 The Scottish Government has consulted Aberdeenshire Council in respect of an application under Section 36 of the Electricity Act 1989. The Head of Planning and Economy Service has the power under Section F.4.6 of Part 2B List of Officer Powers in the Scheme of Governance to respond to consultations from the Scottish Government on applications. He has decided not to exercise the delegated power in this particular case due to the scale and nature of the proposed development and instead shall refer the application to the Buchan Area Committee in order to seek views that will subsequently be reported to Infrastructure Services Committee to agree a response to the consultation. The Buchan Area Committee is able to consider this matter in terms of Section B.8.1 of Part 2A List of Committee Powers and Section C.5.2 of Part 2C Planning Delegations of the Scheme of Governance as it is a consultation to an application to be determined by another public body.
- 1.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and have no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

## 2. Background and Proposal

- 2.1 This is an application that has been submitted to the Scottish Government's Energy Consents Unit (Determining Authority) under Section 36 (S36) of the Electricity Act 1989 (*the Electricity Act*) for the erection of a Solar PV Park and Battery Storage Including Inverter Housings, CCTV, Security Fencing, Soft Landscaping, Access Tracks, Substation and Ancillary Works. The development would have a generation capacity of 60.1MW and a Battery Storage capacity of 50MW. The development comprises an area of land measuring 113ha and located 816m south west of the Crimond Settlement Boundary.
- 2.2 The Application has been submitted by Green Energy International Ltd.

### Description

- 2.3 The current use of the development site is predominantly agricultural in nature, with a mature tree belt bisecting the northern third of the site. In terms of topography the site is largely flat, with minor changes in elevation from 59.0m AOD (South East) to 62.0m AOD (North East) – which represent the lowest and highest points of the site respectively. This type of topography is generally favoured for Solar developments, which seek to track the movement of the sun from east to west.
- 2.4 The development site is bounded by the public road (U36B) to the south east, an expanse of woodland to the southwest to the west and agricultural land in all other directions.

- 2.5 The development site contains three residential properties (Crimongorth, South Crimongorth and South Lothian). Outwith the development site, the nearest properties are Holy Bush Farm (164m North East), North Lothian (143m North) and Longhill (114m South).
- 2.6 The development site contains no statutory designations or other cultural or natural heritage designations. The land is not recorded to be prime agricultural land. However, it should be noted that the development site lies 2.85km southwest of the Loch of Strathbeg (RAMSAR, SPA, SAC) designation boundary. These are international designations, which have arisen due to the Ornithological and Hydrological interest
- 2.7 The proposed development would comprise of several elements, which includes the following:
- Ground-mounted solar PV panels (60.1MW (megawatt)) on steel frames.
    - The panels are fixed (non-moving)
    - The panels would be 2.6m tall
    - The panels would be spaced at intervals of 3.5m and 8.5m, dependent upon terrain
  - Access tracks throughout the development site;
  - 2 substation buildings (12.0m (l), 6.0m (w), 4.0m (h)) located within the battery storage compound area;
  - 48 battery storage containers (measuring 12m (l), 2.4m (w) and 2.9m (h)) and 8 STS units
  - 7 transformer units (measuring 4.0m (l), 2.5m (w) and 2.5m (h))
  - Agricultural deer fencing (2.1m (h)) and gateways
- 2.8 The measurements as stated above are presented as a worst-case scenario in order to permit a 'worst case scenario' assessment to be undertaken. It is not uncommon for the exact specification of the elements within a scheme to be amended throughout the procurement process. For the avoidance of doubt, in the event that consent was to be granted, the plans as currently presented would be the approved detail. Any changes that may arise throughout procurement would need authorisation.

#### Electricity Act 1989

- 2.9 Applications are made under Section 36 of the Electricity Act 1989 when the generating capacity exceeds 50 megawatts (MW). For the purposes of determining the generation capacity of this proposal and specifically in the context of the Electricity Act 1989, the storage capacity of the battery element must also be added in (as per the Chief Planners Letter dated August 2020).
- 2.10 Applications made under Section 36 of the Electricity Act (ECU) are determined by the Scottish Governments Energy Consents Unit, after consultation with relevant bodies which include the local Planning Authority. For the avoidance of doubt, Aberdeenshire Council as Planning Authority are a consultee within this process as opposed to our more usual role as the determining authority for planning applications.

- 2.11 In terms of process, the views of the Buchan Area Committee (BAC) would feed into a report to the Infrastructure Services Committee (ISC), the decision of which would form the Aberdeenshire Council consultation response to the Scottish Government.
- 2.12 As a consultee, the Council may respond with either an Objection or No Objection to the proposal and can suggest conditions which are considered appropriate and necessary.
- 2.13 Should Aberdeenshire Council object to the proposed development, a Public Local Inquiry (PLI) would be triggered under Schedule 8 of the Electricity Act 1989. A Reporter from the Directorate of Planning and Environmental Appeals (DPEA) would be appointed to head the PLI and would ultimately determine the nature and scope of proceedings, after which they would produce a report detailing their recommendation to Scottish Ministers on the proposal.
- 2.14 The Scottish Government have consulted Aberdeenshire Council alongside other stakeholders including Historic Environment Scotland, NatureScot, RSPB, SEPA and Transport Scotland amongst others detailed in Section 4 below. Once the Scottish Government have received the consultation responses, an assessment and decision would be made taking these into account.
- 2.15 It must be noted that the Development Plan does not have primacy in the determination of a S36 Application. In effect the Development Plan (Strategic and Local Development Plans) acts a local reflection of national planning policy and details the ways and means by which said policy is to be interpreted and applied locally. The Strategic Development Plan (SDP) remains within its plan period (or lifespan). The Local Development Plan (LDP) is now out with its plan period (the period having ended on 18 April 2022). The implication of this is addressed within paragraph 5.4 of this report, but in summary the LDP was drafted and examined under the current national planning regime and therefore continues to reflect national priorities within land-use planning. The lack of primacy does not prohibit the use of the development plan, but rather requires any assessment to take cognisance of National Policy (planning, energy, climate change and any other aspect as may be relevant) and any other relevant material considerations. For clarity, the same approach must be reflected in any reason for a decision, which should go beyond adherence to, or failure to comply with specific policies of the Development Plan.

#### Relevant Planning History

- 2.16 ENQ/2022/0509 – Consultation on Screening / Scoping for the Installation of Solar PV Array -& Battery Energy Storage System and Associated Works, Advised No EIA required
- 2.17 APP/2019/0296 – Full Planning Permission for the Installation of 36.6Mw Solar SV Park and Associated Infrastructure, Approved (not implemented)

(this Application was determined as a Major Application by Buchan Area Committee on 17 September 2019)

### Environmental Impact Assessment

- 2.18 As Aberdeenshire Council are not the determining authority, it is not for the Council to provide a Screening response but rather is a matter for the consenting authority. Nonetheless, Aberdeenshire Council was asked to provide a view on the need for an Environmental Impact Assessment ('screening') at the outset of this consultation. The proposal was screened under The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, and it was determined that the proposal would be unlikely (through scale, location or siting) to have significant effects to warrant the submission of a full Environmental Impact Assessment Report (EIAR). Notwithstanding this advice, it remains reasonable to expect that appropriate and sufficient supporting information is provided in order to completely identify potential impacts associated with the development. The assessment of potential environmental impacts in the context of screening is made without prejudice to the eventual planning assessment.

### Supporting Information

- 2.19 The application has been supported through the submission of the following documents:
- Non-Technical Summary, Green Energy International, submitted Feb 2022;
  - Supporting Planning Statement, Green Energy International, submitted Feb 2022;
  - Design and Access Statement Green Energy International, submitted Feb 2022;
  - Heritage Assessment, RPS Group, dated Oct 2021;
  - Glint and Glare Study, Pager Power, dated Oct 2021;
  - Flood Risk Assessment, Ambiental Environmental Assessment, dated Sept 2021;
  - Construction Traffic Management Plan, ADL Traffic, dated Feb 2022;
  - Extended Phase 1 Habitat Survey, Atmos Consulting, dated Oct 2021;
  - Habitats Regulations Appraisal Appropriate Assessment, Atmos Consulting, dated Dec 2021;
  - Bilbo and Frodo Solare Farms Peat Survey, Botanaeco, Dated Feb 2021;
  - Landscape and Visual Impact Assessment, hepla, submitted Feb 2022;
  - Statement of Community Involvement, Green Energy International, Dated Feb 2022.

### Pre-Application Consultation

- 2.20 Pre-application consultation was undertaken by the applicants in September 2021. The consultation exercise was undertaken during restrictions related to

COVID-19 and therefore it was not possible to undertake an in-person event. The following alternative methods were utilised:

- Letter drop (all properties within 2.0km, approximately 450 properties);
- Project website;
- Manned contact number w/c 13 September 2021;
- Newspaper advert;
- Contact with Buchan East Community Council.

2.21 2 responses were received to the 2021 consultation. Concerns raised included continuity of access and screening. Other concerns were raised in relation to the potential for wind developments, however an assurance was given that no wind development had been proposed. General queries were raised in relation to the scale of the development.

2.22 No variations or amendments have been made throughout the assessment of the proposal.

2.23 The following appendices have been included with this report:

- Appendix 1: Location Plan
- Appendix 2: Site Plan

### 3. Representations

3.1 As Aberdeenshire Council is not the determining authority, the Council does not accept letters of representation in respect S36 applications. Representations are made to and considered by the Energy Consents Unit.

### 4. Consultations

#### Internal

4.1 **Environment and Infrastructure Services (Archaeology)** hold no objection to the proposed development, subject to a condition requiring a programme of archaeological works. The request for the condition has arisen through the identification of four known archaeological sites within the application boundary.

4.2 **Environment and Infrastructure Services (Contaminated Land)** hold no objection to the proposed development. There is no indication of a past use of the site which might indicate contamination of the site.

4.3 **Environment and Infrastructure Services (Environmental Health)** has placed a holding objection on the proposal and requested the submission of further noise information which is referred to within the 'Planning Statement' submitted alongside this application. However, it is noted that the response states that the noise levels within habitable rooms within nearby properties would need to adhere to Noise Rating Curve 20. The request for additional information is being actioned by the applicant.

- 4.4 **Environment and Infrastructure Services (Flood Risk and Coastal Protection)** has reviewed the submission and confirmed that the service has no comment to make on the proposal.
- 4.5 **Environment and Infrastructure Services (Roads Development)** has placed a holding objection on the proposal and requested further detail in relation to proposed passing places.
- 4.6 **Environment and Infrastructure Services (Transportation)** has confirmed that the Roads Development response would cover their interests
- 4.7 **Environment and Infrastructure Services (Environment Team – Natural Heritage)** hold no objection to the proposed development, subject to measures to ensure continued access for foraging badgers and a breeding birds informative. Advice has been offered in relation to protected species (bats, badgers and breeding birds). Biodiversity enhancement measures are proposed in the form of wildflower meadow planting and additional woodland planting, both of which are to be welcomed.

#### External

- 4.8 External consultations have been undertaken by the Energy Consents Unit. A summary of the responses available from the ECU website is found below.
- 4.9 **Defence Infrastructure Organisation (DIO)** holds no objection to the proposed development, noting that the proposal falls out with MoD safeguarding areas.
- 4.10 **Historic Environment Scotland (HES)** has reviewed the information and has confirmed that the organisation has no comment to make on the proposal.
- 4.11 **Marine Scotland** holds no objection to the proposed development. The organisation has been consulted in respect of freshwater and diadromous fish and fisheries. It has advised that the development site is located away from major watercourses and mitigation measures are proposed in order to avoid or minimise any risk to smaller watercourses. The role of SEPA in regulating pollution prevention is highlighted.
- 4.12 **National Air Traffic Service (NATS)** holds no objection to the proposal in respect of aviation safeguarding
- 4.13 **Scottish Environment Protection Agency (SEPA)** holds no objection to the proposed development and has recommended the attachment of a decommissioning condition. Regulatory advice has been offered for the benefit of the applicant.
- 4.14 **NatureScot** holds no objection to the proposed development and has recommended that conditions be attached in order to ensure all mitigation proposed within the application is ultimately delivered.

Advice has been offered in respect of the Loch of Strathbeg Special Protection Area (SPA) designation, which requires the decision maker to undertake an Appropriate Assessment under the Conservation (Natural Habitats, &c.) Regulations 1994 of the likely impact of the development upon the qualifying interests of the designation. This is ultimately a matter for the Scottish Government when determining the application.

NatureScot has offered commentary on the use of survey work dating to 2016. The organisation advises that whilst it would normally expect survey work to be no more than 12 months old, in this circumstance the development is unlikely to cause such a degree of loss of feeding ground as impact the qualifying interests of the Loch of Strathbeg. This view reflects the availability of suitable foraging habitat in the area.

In respect of peat, NatureScot are satisfied that the development would have no impact upon peatland.

In respect of Landscape and Visual Impact, NatureScot note that a localised impact is likely to occur however, the proposed landscaping would soften the impact.

- 4.15 **Royal Society for the Protection of Birds (RSPB)** has objected to the proposed development on the basis of a lack of information in order to carry out an Appropriate Assessment of the effect of the development on the Loch of Strathbeg SPA.

This objection primarily relates to the age of the survey work which is relied upon in respect of pink footed geese (dating to 2016). The response highlights the likely impacts of the development to be displacement and disruption to the qualifying interests of the site.

Whilst the response objects to the development, it does conclude by recommending that should permission be granted, measures should be put in place to report any collisions with solar panels to NatureScot. Said measures should be included in any habitat management plans.

- 4.16 **Transport Scotland** has reviewed the submission and is satisfied that the level of traffic generated by the construction of the development is acceptable. However, further information in the form of a more detailed junction plan (with the A90) is requested.

## 5. Relevant Planning Policies

### 5.1 National Planning Framework for Scotland 3 (NPF 3)

NPF 3 sets out to provide a spatial framework of how Scotland will develop over a 20 to 30-year period. The document aims to provide a high-level framework and considers the priorities within each region. The document highlights a number of projects, which are considered National Developments.



In respect of Aberdeen and the North East, the document notes:

*‘Aberdeen and its wider city region is well-placed to take advantage of continued exploitation of North Sea oil and gas reserves and to develop its expertise in serving this sector, **and the growing renewable energy sector around the world.**’* [Emphasis added]

Further to this, NPF 3 highlights the important role of renewable energy developments in enabling Scotland to meet net-zero targets. Whilst no specific mention is made of Solar development, this reflects a shift within the renewable sector, as opposed to any prohibition on said development.

## 5.2 Scottish Planning Policy

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long-term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

## 5.3 Aberdeen City and Shire Strategic Development Plan 2020

The Strategic Development Plan (SDP) was approved on 12 August 2020.

The purpose of this Plan is to set a clear direction for the future development of the City Region. It sets the strategic framework for investment in jobs, homes and infrastructure over the next 20 years. All parts of the Strategic Development Plan area will fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as regeneration priority areas. There are also general objectives identified. In summary, these cover promoting economic growth, promoting sustainable economic development which will reduce carbon dioxide production, adapt to the effects of climate change and limit the amount of non-renewable resources used, encouraging population growth, maintaining and improving

the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility in developments.

The Aberdeenshire Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Aberdeen City & Shire SDP 2020 as approved forms part of the Development Plan.

#### 5.4 Aberdeenshire Local Development Plan 2017

Policy C2 Renewable energy

Policy C4 Flooding

Policy E1 Natural heritage

Policy E2 Landscape Supplementary guidance 9c Special Landscape Areas

Policy HE1 Protecting historic buildings, sites and monuments

Policy P4 Hazardous and potentially polluting developments and contaminated land

#### 5.5 Proposed Aberdeenshire Local Development Plan 2020

Aberdeenshire Council on 5 March 2020 resolved to agree the Proposed Aberdeenshire Local Development Plan (LDP) 2020 as the "settled view of the Council" on what the final adopted content of the LDP 2022 should be. The Proposed LDP 2020 is a material consideration in the determination of planning applications. The Planning Authority must therefore assess what weight it should have in the context of this particular application. The Reporter's report of Examination of the Proposed LDP 2020 has now been published (24 June 2022). Notwithstanding, there is currently no authority to use the Proposed Local Development plan as a substitute for the Local Development Plan 2017. The weight that can be given to the phrase "settled view of the Council" can only be interpreted in the context of the publication of the Proposed Local Development Plan 2020 (March 2020). Even with the certainty associated with the Reporters' Report it still remains only a material consideration in determining planning applications. However, consideration will be given on a case-by-case basis where the weight of the Reporter's Report should be given overwhelming significant weight when it is most advantageous to the applicant's proposals. SPP Paragraph 34 is of associated relevance.

The Scheme of Governance reserves determination of planning policy to Full Council for resolution. As such until the Proposed Local Development Plan 2020 has been formally adopted by Full Council (as LDP 2022) can this be considered as the Council's "settled view".

It should be borne in mind that the LDP has been written to be implemented as a whole and not the selective use of agreeable parts.

On the 18 April with reference to the legislation the LDP 2017 becomes technically 'out of date'. Notwithstanding the Aberdeenshire LDP 2017 remains the primary document against which planning applications should be determined until such time as a new LDP for the area is adopted. Currently

Scottish Planning Policy (SPP) deals with this circumstance at Paragraphs 32 to 34. The policies of the LDP 2017 are reflective of the policy position within SPP. Both SPP and the National Planning Framework 3 are confirmed as significant influences on the content of the plan, as confirmed within Section 2 – ‘Influences of the Plan’. In summary, when a development plan is more than five years old the presumption in favour of sustainable development is a significant material consideration, this must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits. All of these matters however are already embedded within the policies of the Local Development Plan 2017 and deemed robust in their consideration.

## 5.6 Other Material Considerations

### Draft National Planning Framework for Scotland 4

Draft NPF4 was laid before the Scottish Parliament on 10 November 2021. The document details the Scottish Government’s long-term plan for what Scotland could be in 2045 and sets out measures to achieve this. Draft NPF4 is intended to replace both NPF3 and SPP in due course.

NPF4 is out for consultation until 31 March 2021. Limited weight can be applied to the document in its consultative form, as the contents could change significantly prior to adoption by the Scottish Parliament.

Notwithstanding the limitations on the materiality of the document, NPF4 as currently drafted seeks to consolidate and converge disparate strands of land use and energy policy. With the Climate Emergency constituting one of the ‘universal policies’. The fundamental approach of enabling the ‘right development in the right place, not development at any cost’ remains threaded through the document.

### Scottish Energy Strategy 2017

The Scottish Energy Strategy seeks to outline a vision of Scotland’s future energy system. Whilst the document is not aimed at land-use planning, it nonetheless provides insight of wider Government priorities within the energy sector.

The document makes few references to Solar or Battery Storage (of commercial scale), which reflects the rapid evolution of this type of technology. It is notable that the document states:

*‘No-one can be certain what that future system will look like. However, we should be confident and ambitious about what we can achieve and deliver over the short to medium term, and focus on the areas where we know there are likely to be low or no regrets options’*

## 6. Discussion

### 6.1 Overview

- 6.1.1 This is an application that has been submitted to the Scottish Government's Energy Consents Unit (Determining Authority) under Section 36 (S36) of the Electricity Act 1989 (*the Electricity Act*) for the erection of a Solar PV Park Including Battery Storage Inverter Housings, CCTV, Security Fencing, Soft Landscaping, Access Tracks, Substation and Ancillary Works. The development would have a generation capacity of 60.1MW and a Battery Storage capacity of 50MW. The development comprises an area of land measuring 113ha and located 816m south west of the Crimond Settlement Boundary, as described in section 2 of this report.
- 6.1.2 The proceeding paragraphs address the primary considerations in respect of this proposal. Namely the principle of development and the likely environmental impacts (landscape and visual; ecology; ornithology; cultural heritage; hydrology; noise; glint and glare; and access) which may be associated with the proposal.
- 6.1.3 As stated in paragraph 2.15 the Development Plan (Local and Strategic) does not have primacy in the assessment of S36 applications, however, retains a significant degree of materiality. The following assessment relates heavily to the Local Development Plan, as this document effectively serves as the most localised expression of Scottish Planning Policy. Other policy documents shall be addressed where appropriate.

### 6.2 Principle of Development

- 6.2.1 As outlined in Paragraph 2.1 above, the application is made under Section 36 of the Electricity Act 1989 and the Scottish Government is the determining authority. In considering an application under Section 36, Ministers are required to give due regard to criteria outlined in Schedule 9 of the Act, which includes the desirability of preserving natural beauty, conserving flora, fauna and geological or physiological features of special interest and to protect sites, buildings and objects of architectural, historical or archaeological interest, and to the mitigation of any impacts the proposal has on these. The basis of these requirements, along with being set out within the Electricity Act, are also incorporated into the body of national planning policies.
- 6.2.2 The considerations of the Electricity Act, national planning policy (including NPF3 and SPP) along with national energy policy (Scottish Energy Strategy) requires to be considered alongside the Development Plan. Despite not having primacy, the Development Plan does remain an important material consideration in the overall decision making, whilst forming the basis of the Council's assessment.
- 6.2.3 In terms of national planning policy, both NPF3 and SPP are supportive of solar energy development for Scotland to transition into a low carbon economy. A presumption in favour of development that contributes to

sustainable development is set out within SPP. However, SPP (para 28) also cites the importance of the siting of such developments in appropriate locations considering important features such as the historic and natural environment. SPP, in Paragraph 169, identifies the considerations to be made. This includes that “considerations will vary relative to the scale of the proposals and area characteristics but are likely to include a number of matters”.

- 6.2.4 With regard to regional/strategic policy, the Aberdeen City and Shire Strategic Development Plan (SDP) supports the vision of SPP to reduce carbon emissions through renewable energy sources. Whilst the document makes few references to solar development, the ‘Sustainable development and climate change’ objective within the SDP identifies that ‘We will also need to tackle the supply of energy during the Plan period’ and includes solar as a potential contributor.
- 6.2.5 The Aberdeenshire Local Development Plan (LDP) adopts the vision and aims of the SDP and offers broad support for renewable energy development if the impacts upon the environment and amenity of the surrounding area can be mitigated. The supporting information submitted alongside this application offers a detailed assessment of the environmental and visual impacts predicted by virtue of the proposed development – this is discussed later in this report.
- 6.2.6 Policy C2 of the Aberdeenshire Local Development Plan is key in establishing the principle of development for renewable schemes. This policy states that Aberdeenshire Council will support solar developments which are on appropriate sites and of the right design. In respect of Solar developments, the policy states that we will approve applications for Solar Arrays above 50kW where cumulative impact is assessed and can be dismissed, account has been taken of glint and glare (with significant impacts demonstrated to have an impact of under 5mins) and there are no objections in respect of aviation or the Ministry of Defence (MOD).
- 6.2.7 The appropriateness of the proposed design will be examined in more detail in subsequent parts of this report (Sections 6.3 and 6.13). However, at this stage, the constituent components of the proposal (as outlined in paragraph 2.7) represent those found in a typical solar layout, particularly with regard to scale. The proposed construction of the Solar Arrays as ground mounted on steel frames would reduce the need for significant groundworks and disturbance of the underlying land and therefore is welcomed.
- 6.2.8 Policy C2 makes specific reference to aviation and the MOD and requires that there should be no objections in respect of these matters. Whilst the Council would ordinarily consult with NATS, the Civil Aviation Authority and any appropriate aviation interests (such as Aberdeen International Airport) on Planning Applications for development of this nature, in this instance the Council is a consultee on a S36 application. Therefore, the Council does not consult with external bodies as this would be for the consenting authority to undertake (and consider any responses). Based upon the publicly available

information on the ECU website, it is noted that both NATS and DIO (part of the MoD) have raised no objections to the development, and therefore it is likely that the proposal would have no significant impact upon aviation and would comply with this aspect of Policy C2.

6.2.9 The preceding paragraphs highlight the range and depth of policy which exists in relation to renewable energy. A review of said documents clearly demonstrates a largely supportive policy environment, provided environmental constraints are suitably assessed and addressed. This approach is drawn through to the Local Development Plan, and therefore it would be appropriate to utilise Policy C2 as the primary consideration in respect of the establishment of the principle of development. At a high level and not withstanding technical matters, the proposed design would be appropriate. A further statement on whether the proposal is in compliance with Policy C2 can be found within the conclusion (Section 6.13) of this report, which shall draw upon the assessment of technical matters.

### 6.3 Landscape and Visual Impact

6.3.1 The application has been supported through the submission of a Landscape and Visual Impact Assessment (LVIA) which considers the landscape impact; visual impact; and cumulative impact of the proposal. The LVIA has been scoped and covers a study area of 1.5km.

6.3.2 The methodology of the assessment is outlined within section 1.5 of the LVIA which confirms that the assessment has been compiled by a Chartered Landscape Architect in accordance with the guidance issued by the Landscape Institute, and peer-reviewed by a second Chartered Landscape Architect. The full approach in terms of identification of receptors, assessment of significance/ magnitude of change and use of a significance of effects matrix is detailed within the LVIA. This approach is considered to be appropriate and orthodox for a development of this nature.

6.3.3 In considering the matters of landscape and visual impacts, it is important to distinguish the difference between said issues. Landscapes Impacts primarily concern the underlying features, composition and quality of the landscape and as such are best assessed through the prism of NatureScot's Landscape Character Types (LCTs) which provide a description of the key landscape characteristics. Visual Impacts primarily relate to the effects upon identified receptors (such as properties, landmarks or routes). As such visual impacts are best assessed through the use of viewpoints.

#### Landscape

6.3.4 With regard to Landscape the LVIA has identified three main designations:

- Crimonmogate (Garden and Designed Landscape)
- North East Aberdeenshire Coast Special Landscape Area
- LCT 17 – Coastal Agricultural Plain (Host LCT)

- 6.3.5 The proceeding paragraphs shall consider each of the above designations in kind and shall summarise the findings of the LVIA in respect of predicted landscape impacts.
- 6.3.6 Crimonmogate is a designated Garden and Designed Landscape, located 1.46km north of the development site. The LVIA concludes that no magnitude of change is likely due to the absence of visibility from within the designation. It notes that mature tree belts curtail views, and views beyond would be limited and heavily filtered. No Significant effects are predicted.
- 6.3.7 In respect of Landscape impact, the Planning Service agrees with the conclusions of the LVIA in relation to Crimonmogate. The interior of the designation benefits from established tree belts around the perimeter, beyond which intervisibility with the development is unlikely to occur due to intervening development which would act as a screen.
- 6.3.8 LCT 17 was designated by SNH (now NatureScot) and forms part of an effort to categorise and understand key landscape features across the country. The LCT is described by NatureScot as:
- ‘...an extensive Landscape Character Type comprising a low-lying and often very open sweep of exposed farmland in eastern Aberdeenshire where the influence of the sea is particularly strong. It is characterised by its gently undulating landform, relatively large scale, extensive mosses and the influence of development including transmission masts, electricity transmission lines, the A90 and A953, and the gas terminal at St Fergus on its eastern edge. The transition between the Beaches Dunes and Links Landscape Character Type in the east and the hinterland formed by this landscape is very gradual’*
- 6.3.9 The description from NatureScot emphasises the agricultural nature of this area, whilst also noting the presence of energy / industrial development in some locations. The relatively large scale of the area is also noted.
- 6.3.10 The LVIA considers both the local (within 500m) and wider (entirety of the LCT) impact of the development within this LCT. And also considers the cumulative impact of this development alongside the consented (but not yet constructed) Bilbo Solar Farm.
- 6.3.11 The LVIA concludes that a localised moderate effect is likely to occur (due to a medium / low sensitivity and locally substantial magnitude of change). The wider impact upon the LCT is predicted to be slight, due to limited visibility within the wider LCT. The combination of landscape impacts upon the integrity of the LCT are stated within the LVIA to be not significant.
- 6.3.12 The Planning Service considers the findings of the LVIA to be accurate in respect of a differential effect within the LCT and agrees that a moderate effect is likely to occur within 500m of the proposed development. In reaching this conclusion consideration has been given to the importance of landscaping

in order to mitigate long-term views of the development. Therefore, it would be appropriate to attach a condition in order to secure the proposed landscaping.

6.3.13 The North East Aberdeenshire Coast SLA is a local designation. The SLA is a strip of coastal farmland with a strong sense of place. The unifying feature of this designation is the east facing orientation towards the North Sea, wide sandy beaches and dynamic dune systems.

6.3.14 The LVIA discounts any impact upon the SLA due to the distance from the designation and presence of intervening landscaping and structures.

6.3.15 The Planning Service concurs with the findings of the LVIA in respect of the SLA.

6.3.16 In policy terms, Policy E2: Landscape of the Local Development Plan seeks to prevent development which causes unacceptable effects through scale, location or design on key natural landscape elements, historic features, composition or character. Whilst it is accepted that the proposed development would have localised impacts upon the landscape character, these would not be so severe as to undermine the wider LCT, SLA or Designed Garden and Landscape designation. Therefore, the proposal would comply with Policy E2 in respect of Landscape impact.

### Visual

6.3.17 With regard to visual impact the LVIA has identified several viewpoints, which represent a range of receptors. The Viewpoints have been identified with cognisance of the ZTV (which identifies theoretical visibility of the site) and in discussion with the Planning Service. Table 1 (below) identifies the viewpoints

<b>Viewpoint (VP)</b>	<b>Location</b>	<b>Receptor Type (and sensitivity)</b>	<b>Magnitude of Change</b>	<b>Effect</b>	<b>Significance</b>
1	View East from the minor road at the entrance to the property at Ridinghill.	Residents (High) Road Users (Medium)	Slight	Moderate  Moderate/Minor  Reducing through mitigation to Minor / None	Not Significant
2	View South from adjacent to the reservoir south of the property at Crimongorth	Residents (High)	Substantial	Major	Significant



3	View West from the minor road to the north east of the property at Longhill beside the newly built house at Three Acres	Residents (High) Road Users (Medium)	Substantial	Major Major / Moderate Reducing through mitigation to Moderate and Moderate/Minor	Significant  Not Significant
4	View North from the minor road north west of the property at Longhill	Residents (High) Road Users (Medium)	Moderate	Major / Moderate Moderate	Significant Not Significant
5	View south from the southern edge of the village of Crimon	Residents (high) Road Users (Medium)	None	None	Not Significant

Table 1: Summary of Viewpoints and predicted effects as contained in the LVIA (Significant effects shaded)

- 6.3.18 The choice of receptors is considered to appropriate to the location of the proposed development, with both residents and road users reflected.
- 6.3.19 The findings of the LVIA in respect of visual impact are largely accepted, and therefore discussion within this report shall focus upon those viewpoints which are likely to suffer from significant effects (VP 2, VP 3 and VP 4).
- 6.3.20 Viewpoint 2 (View South from adjacent to the reservoir south of the property at Crimongorth) is located within the redline boundary of the development site and seeks to provide an indicative visualisation of what local residents may experience. The LVIA concludes that a significant impact is likely to occur due to the magnitude of change and high receptor sensitivity. The Planning Service concurs with the assessment contained within the LVIA.
- 6.3.21 Viewpoint 3 (View West from the minor road to the north east of the property at Longhill beside the newly built house at Three Acres) is located on the eastern boundary of the development site and represents views from the Public Road. The receptors which are identified for this location are Residents and Road Users. The LVIA considers the likely effects of the development (without screening) to be significant in relation to residents, however not

significant with the introduction and establishment of landscaping. The Planning Service concurs with the assessment within the LVIA.

- 6.3.22 Viewpoint 4 (View North from the minor road north west of the property at Longhill) is located south of the proposed development. The receptors identified in respect of this location are Residents and Road Users. The LVIA considers there to be a differential impact for each receptor type, with a significant effect predicted for residents and no significant impact predicted for road users. The difference occurs due to the sensitivity of each receptor. The Planning Service concurs with the assessment within the LVIA.
- 6.3.23 Viewpoints 1 and 5 are not predicted to have significant impacts due to the distance from the development site and intervening landscaping, which would limit visibility. In the case of Viewpoint 1, additional landscaping is proposed.
- 6.3.24 In policy terms, Policy E2: Landscape of the Local Development Plan seeks to prevent development which causes unacceptable effects through scale, location or design on key natural landscape elements, historic features, composition or character. It must be noted that significant impacts do not automatically equate to unacceptable effects, however often there may be a degree of crossover. An analysis of the LVIA demonstrates that the proposal is likely to have some localised significant effects, primarily associated with the magnitude of change (VP 2, VP 3 and VP 4). The Planning Service consider that the scale of the proposed development (in terms of area to be developed) is a significant contributor to the magnitude of change for the locality.
- 6.3.25 Mitigation has been proposed in the form of Landscaping. Viewpoints 2, 3 and 4 demonstrate that this may be effective in reducing the visual prominence of the development, however, it is important to note that this mitigation would require a period of time in order to become established and effective. Landscaping would be required to be secured via a Planning Condition, and the choice of appropriate species would need balance the scale of candidate species with the appropriateness of said species to this location.

### Summary

- 6.3.26 It is considered that the landscape impacts of the proposed development would be acceptable when considered against Policy E2 of the Aberdeenshire Local Development Plan 2017. Whilst this is not to suggest that no landscape impact would occur, but rather that the impacts would not be so widespread as to diminish the wider landscape unit (LCT 17). A localised impact is likely to occur due to the scale of the development and the magnitude of change which would occur.
- 6.3.27 It is considered that the visual impacts of the development are likely to be more severe than the predicted landscape impacts. This differentiation would

arise as visual impacts are receptor based and therefore more closely tied to the vicinity of the development. The same issues of scale and magnitude of change would be magnified when viewed within a local context. It is considered that the proposal would have a negative impact on the visual amenity of the area, however the acceptableness of this impact requires a balancing exercise to be undertaken, with cognisance of the full assessment of the application. Therefore, this will be undertaken in the conclusion of this report.

#### 6.4 Ecology

- 6.4.1 In considering the impact of the development upon natural heritage, Policy E1 is the most crucial consideration. ALDP Policy E1 requires designated sites, features, species, biodiversity and geodiversity to be protected with surveys required to inform appropriate mitigation.
- 6.4.2 With regard to designated sites, it is confirmed that there are no statutory nature conservation designations within the site. Whilst the Loch of Strathbeg (SPA, RAMSAR, SSSI) is located 2.85km north east of the development site, the designations relate primarily to ornithology and therefore are dealt with in the relevant section of this report.
- 6.4.3 An extended phase 1 habitat survey has been undertaken and submitted in support of the application. This considered the potential for Water Vole, Otter, Badgers and Bat Roost potential across the development site. This document has been reviewed by Environment and Infrastructure Services (Environment Team – Natural Heritage) and no objection has been raised in respect of content, approach or findings.
- 6.4.4 The survey work has indicated the presence of badgers within the vicinity of the development site and proposes mitigation through avoidance, which is to say that all construction activities will occur at least 30.0m from any identified sett. The Environment Team has recommended that provision should be made for badger access across the development site in order to permit continued foraging. In practice this is likely to require some targeted modification to boundary fencing but could be secured via a suspensive condition which requires such detail to be submitted, agreed and implemented.
- 6.4.5 In respect of bats, the survey work indicates a low potential for roosts across the development site with the exception of two elm trees along the northern boundary and some potential within the nearby dwellinghouses. Avoidance is proposed as the primary means of mitigation with all construction to occur at least 30.0m from potential roost sites. The supporting information indicates that should this prove impossible, a bat survey would be required as would licensing from NatureScot. The Environment Team holds no objection to the development on the basis of the described mitigation.
- 6.4.6 No evidence was found of other terrestrial protected species.

6.4.7 It is considered that sufficient information has been provided in respect of terrestrial ecology in order to assess the likely impact of the development as required by Policy E1. It has been demonstrated that the proposed development could be constructed without significant disturbance to protected species, although, appropriate mitigation would be required via condition.

6.4.8 A stipulation within the landscaping condition would require full details of the boundary fencing to include measures to permit continued badger access to the development site. A species protection plan would be required in respect of Badgers and Bats, which would detail measures to be utilised throughout construction in the event of said species presence. This would require the employment of an Ecological or Environmental Clerk of Works throughout the construction period and would be secured as part of a Construction Environment Management Plan (CEMP) Condition.

## 6.5 Ornithology

6.5.1 In considering the impact of the development upon natural heritage, Policy E1 is the most crucial consideration. ALDP Policy E1 requires designated sites, features, species, biodiversity and geodiversity to be protected with surveys required to inform appropriate mitigation. This section focuses specifically on ornithology and can be broken down into two main categories; Breeding Birds and Designated Sites.

6.5.2 Breeding Birds are considered within the Phase 1 Habitat Survey, which concludes that the development site is frequented by a variety of species and contains suitable nesting locations for several species. This document has been reviewed by Environment and Infrastructure Services (Environment Team – Natural Heritage) and no objection has been raised in respect of content, approach or findings and has recommended that a Breeding Birds informative be attached to any decision.

6.5.3 The breeding birds informative seeks to highlight the responsibilities of the developer, as it is a crime under the Wildlife and Countryside Act 1981 (as amended) to disturb or destroy nests during the nesting period. The supporting information indicates that the nesting period will be avoided.

6.5.4 It is considered that the development would comply with Policy E1 in respect of breeding birds, and that other legislation is in place in order to ensure appropriate protection is in place. Nonetheless an informative should be attached in order to highlight the developers responsibilities.

6.5.5 With regard to designated sites, the primary issues concern the Loch of Strathbeg. The Loch of Strathbeg lies 2.85km North East of the development site and is covered by three separate designations.

- Loch of Strathbeg SPA (designated primarily for Waterfowl Assemblages)
- Loch of Strathbeg RAMSAR (designated for hydrological and ornithological interest)

- Loch of Strathbeg SSSI (designated for hydrological and ornithological interest)

6.5.6 The Loch of Strathbeg Special Protection Area (SPA) designation highlights the assemblage of waterfowl as a qualifying interest. The conservation objectives are:

- to avoid the deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and
- To ensure for the qualifying species that the following are maintained in the long-term:
  - Population of the species as a viable component of the site;
  - Distribution of the species within the site;
  - Distribution and extent of habitats supporting the species;
  - Structure, function and supporting processes of habitats supporting the species;
  - No significant disturbance to the species.

6.5.7 In respect of this application, the primary consideration in relation to qualifying species are Pink Footed Goose, Barnacle Goose, Goldeneye, Whooper Swan and Waterfowl Assemblage. Whilst the development site does not fall within the SPA designation, land in the vicinity of the designation is utilised by foraging geese. The geese consume a mixture of grasses, grains and leafy parts of vegetables and therefore are suited to this largely agricultural location. The primary concern in relation to this species would therefore be the loss of foraging ground.

6.5.8 As this development may impact upon the qualifying interests of an SPA designation, the decision maker must carry out an Appropriate Assessment of the proposal in order to understand the likely impact of the development and identify any further mitigation which may be required. This assessment is required by the Habitat Regulations 1994 and is commonly referred to as an 'Appropriate Assessment'. The assessor in this instance would be the Scottish Government.

6.5.9 No comment has been made by Environment and Infrastructure Services (Environment Team – Natural Heritage) in relation to designated sites, and therefore the Planning Service has deferred to the advice of NatureScot (in their response to the ECU) on this matter. Cognisance has also been taken of the RSPB response (to the ECU).

6.5.10 NatureScot has provided commentary on direct and indirect impacts of the development. Direct impacts are likely to be associate with hydrological linkage, with the potential for pollution from the site or construction activities to feed into the Loch through small waterways or drains. However, NatureScot note that mitigations such as construction practices and cleaning panels with distilled water have been proposed. As such NatureScot have raised no objection in relation to direct impacts on the basis such measures can be secured via condition or other regulation. It is considered that construction

measures can be secured as part of a CEMP condition, and SEPA regulations provide guidance on appropriate pollution prevention measures.

- 6.5.11 Indirect impacts are likely to be associated with the loss of foraging ground. In order to address this, the applicant has produced an Appropriate Assessment document which utilises available literature and survey work dating from 2016 in order to identify the likely impact in relation to the conservation objectives. The document concludes that the development site is not ideal foraging habitat (based on the lack of records of geese within the development site, and one record (5 individuals or 2% of the population) within 500m).
- 6.5.12 NatureScot has provided commentary on the age of the survey work, which was relied upon, noting that survey work must normally be less than 12 months old. However, NatureScot then advises that even if there was additional use of this site by the SPA species, the loss of foraging habitat would not be significant in relation to the available suitable foraging land in the vicinity.
- 6.5.13 The RSPB has also reviewed the submission and provided commentary on the proposal. The RSPB has objected on the basis of a lack of suitable information in order to permit an Appropriate Assessment to be undertaken. This is due to the age of the survey work relied upon being more than 12 months old (c2016).
- 6.5.14 In considering the acceptability of the development against Policy E1, one must consider whether sufficient information has been provided in order to understand the likely impact of the development and in order to inform any required mitigation measures. Based upon the advice of NatureScot and the RSPB, it is clear that up-to-date survey work has not been carried out in respect of geese. However, NatureScot have advised that a significant impact is unlikely to occur due to the extent of the available goose foraging areas,
- 6.5.15 In balancing the competing responses, one must consider the remit of each body and the outcome of requesting further information. NatureScot is the statutory body with responsibility for Scotland's Natural Environment and as such have a remit which covers nationally and internationally designated sites. The RSPB are the body with operational responsibility for the management of the Loch of Strathbeg and are well placed to comment on the day-to-day management of the site. The views of each body are relevant and important to the consideration of this application.
- 6.5.16 The Planning Service consider the survey work utilised to be out of date, in line with the advice of the consultees. Whilst additional survey work could be requested, in light of the advice from NatureScot, it is unclear as to how this may demonstrate an effect so significant as materially change the outcome of the application. This is due to the wide availability of potentially suitable foraging sites within the vicinity of the Loch of Strathbeg. As such the Planning Service recommend adherence to the advice of NatureScot in respect of this matter.

- 6.5.17 The above stance does not set out to diminish the importance of the advice from the RSPB, which is likely to retain a high degree of relevance for the decision maker when undertaking the Appropriate Assessment, and indeed when considering whether they have sufficient information in order to undertake said assessment.
- 6.5.18 The RAMSAR and SSSI designations are related to both Ornithological and Hydrological interest. As such many of the comments in relation to the SPA designation are relevant and shall not be repeated. NatureScot has provided a short amount of commentary in relation to these designation, and similarly considers the SPA commentary to cover the same interests. As such previous mentioned measures such as a CEMP would suitably protect the hydrological aspect of the designations. No specific concerns are raised in relation to general ornithology.
- 6.5.19 In light of the above discussion, it is considered that the proposal constitutes an acceptable departure from Policy E1 of the Aberdeenshire Local Development Plan 2017, subject to the inclusion of a condition in relation to a CEMP (including the employment of an ECoW and measures to prevent pollution) and a breeding birds informative. Whilst the shortfall in terms of up-to-date survey work is of concern, the advice from NatureScot provides a degree of comfort that a significant impact is unlikely. The concerns raised by the RSPB are noted and should be considered by the decision maker when undertaking an Appropriate Assessment.

## 6.6 Cultural Heritage

- 6.6.1 Built and Cultural Heritage is addressed within the Archaeological Desk-Based Assessment (or 'Heritage Assessment') submitted in support of this application.
- 6.6.2 In Policy terms, Policy HE1 considers impacts upon heritage assets (including archaeological remains, historic buildings and scheduled monuments). This policy seeks to protect such assets, noting that we will not approve development which has a negative impact upon their character, integrity or setting. However, the Policy continues by saying such development will only be allowed in the event of overriding public interest.
- 6.6.3 The heritage assessment draws together the available archaeological, historic, topographic and land-use information in order to clarify the heritage significance and archaeological potential of the development site.
- 6.6.4 No designated heritage assets are located within the development site or within 1.0km of the development site. Therefore, the proposal is considered unlikely to impact upon heritage designations.
- 6.6.5 Recorded (undesigned) heritage assets are present within the development site in the form of:



































