

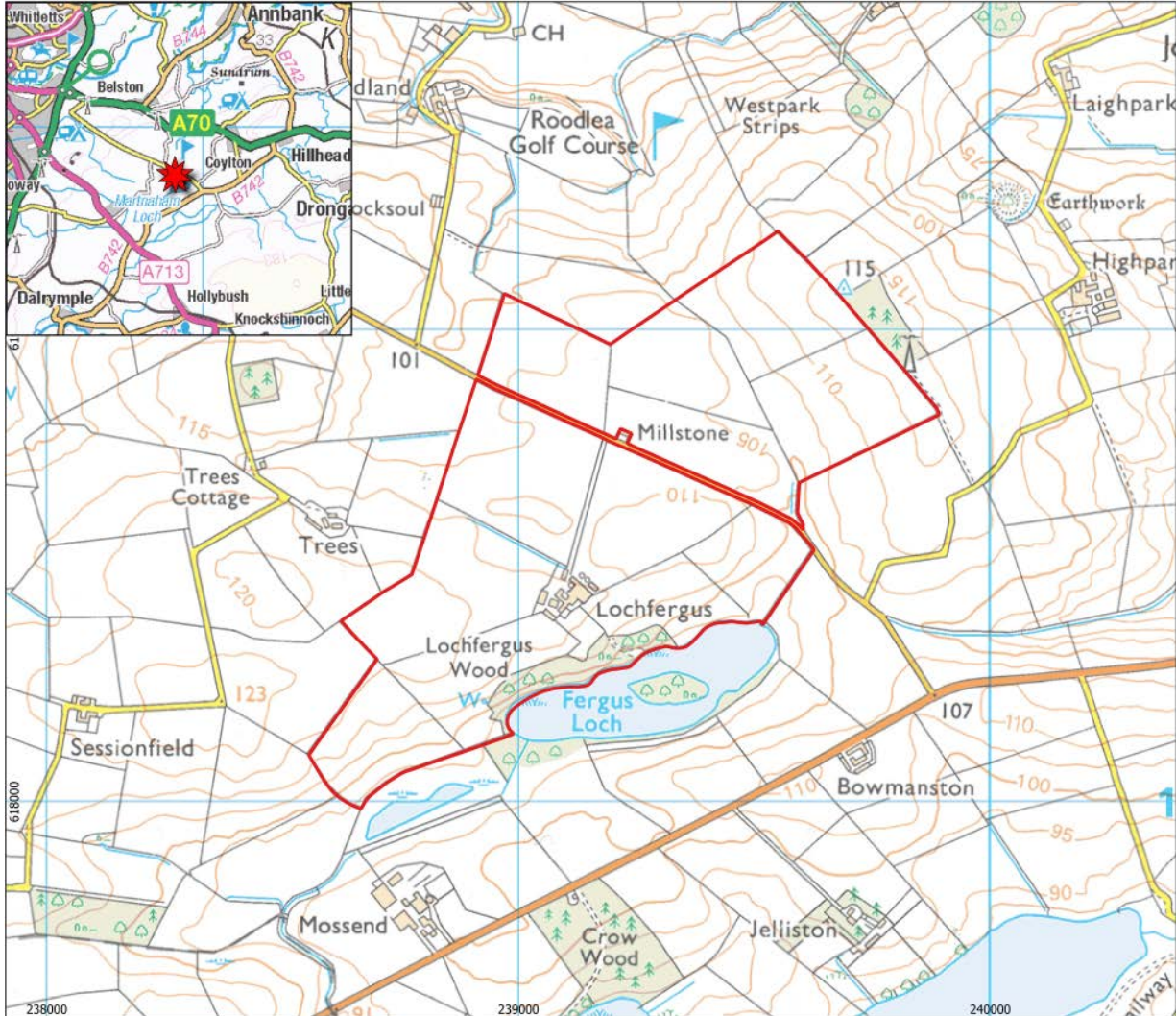
# REGULATORY PANEL: 28 MARCH 2024

## REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT

23/00671/DEEM

LOCH FERGUS C74 FROM B742 NORTH EAST OF BOWMANSTON TO A70 AT OLD TOLL, AYR  
Location Plan

APPLICATION SITE 



### Summary

The proposal under consideration is a consultation from the Scottish Government Energy Consent Unit for a solar generating facility and battery generation station with a combined capacity of around 85MW alongside associated development including solar panels, battery storage containers, security fencing, CCTV cameras, access tracks, cabling, inverters, substations, landscaping and other ancillary development on land at Loch Fergus Farm to the east of Ayr, and southwest of Coylton, South Ayrshire. The Council is not the determining authority for this proposal but instead a statutory consultee to the Section 36 application process.

The site of the proposal is situated approximately 3.3km east of Ayr, and just under 1km west of Coylton. The proposed solar installation encompasses several fields (approximately 58.2ha in total) within the boundaries of the Loch Fergus Farm, situated on both sides of the C74 road which connects the B742 with the A70.

The site is comprised of gently undulating pastoral farmland generally sloping from the north-east from approximately 115m above ordnance datum (AOD) to the south and south-west to some 105m (AOD). The site is currently predominantly used for grazing livestock and the production of silage for feeding dairy cattle and borders more agricultural land to the west, north and east, with Loch Fergus and surrounding woodland located to the south.

The site does not form part of any statutory designated site for nature conservation with qualifying ecological interests. The nearest such designation is the Martnaham Loch and Wood SSSI which is located 0.8km to the south and encompasses the entirety of Martnaham Loch and the surrounding ancient oak woodland.

Upon assessment, the proposal accords with the strategic and overarching policies of National Planning Framework 4 (NPF4) in that it would make a significant contribution to the generation of renewable energy, helping to tackle the climate crisis. Based on NPF4 Policy 1, this would add significant weight in support of the proposal. The proposal is classified as a National Development in NPF4, thereby benefitting from 'in principle' policy support. This in principle support is further reiterated by NPF4 Policy 11 which supports renewable energy projects, subject to consideration of detailed matters.

Having regard to detailed and site-specific matters, any potential effects regarding landscape and visual, transport, ecology, water pollution and residential amenity impacts can be mitigated. When assessed against the provisions of the development plan, there are no significant effects that would warrant the decision-making balance to be shifted away from the significant benefit of the proposals in supporting renewable energy provision and reduction in greenhouse gas emissions.

This proposal aligns with the intent of primary NPF4 policies which seek to address the climate emergency through promoting development that minimises emissions to achieve zero carbon, restore the natural environment and adapts to the current and future impacts of climate change.

Having considered the application submission as a whole and notwithstanding the identified benefits of the scheme, together with the responses received and having balanced the developers' interest against the wider community interest, it is recommended that the Council confirms a position of no objection to this proposed development be submitted to the Scottish Government.

## REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT

**REGULATORY PANEL: 28 MARCH 2024**

<b>SUBJECT:</b>	<b>CONSULTATION UNDER SECTION 36 OF THE ELECTRICITY ACT 1989</b>
<b>COUNCIL REFERENCE:</b>	<b>23/00671/DEEM.</b>
<b>ENERGY CONSENTS UNIT APPLICATION REFERENCE:</b>	<b>ECU00004855</b>
<b>SITE ADDRESS:</b>	<b>LOCH FERGUS C74 FROM B742 NORTH EAST OF BOWMANSTON TO A70 AT OLD TOLL AYR SOUTH AYRSHIRE KA6 6ER</b>
<b>DESCRIPTION:</b>	<b>APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR CONSTRUCTION AND OPERATION OF LOCH FERGUS SOLAR GENERATING FACILITY AND BATTERY GENERATION STATION WITH A GENERATING CAPACITY OF UP TO 85MW ALONGSIDE ASSOCIATED DEVELOPMENT INCLUDING SOLAR PANELS, BATTERY STORAGE CONTAINERS, SECURITY FENCING, CCTV CAMERAS, ACCESS TRACKS, CABLING, INVERTERS, SUBSTATIONS, LANDSCAPING AND OTHER ANCILLARY DEVELOPMENT</b>
<b>RECOMMENDATION:</b>	<b>NO OBJECTION</b>

### 1. Purpose of Report:

- 1.1. South Ayrshire Council (the Council) has been consulted by the Scottish Government Energy Consents Unit (ECU) under Section 36 of The Electricity Act 1989, regarding an application by Loch Fergus Solar Limited (SC734927) for the erection and operation of a solar farm, battery storage and grid connection at Loch Fergus Farm, South Ayrshire, KA6 6ER.
- 1.2. The Council is not the determining authority for this proposal but instead a statutory consultee to the Section 36 application process. This report sets out the Council's proposed consultation response. The ECU consultation request to the Council was issued on 5<sup>th</sup> September 2023 with an initial deadline of the 5<sup>th</sup> January 2024. An extension of time has been agreed with the ECU for the Council to provide its consultation response by 15<sup>th</sup> April 2024.
- 1.3. Under the Council's Scheme of Delegation, all Section 36 consultation responses prepared by the Council require to be referred to the Regulatory Panel.
- 1.4. Under the Electricity Act 1989, Schedule 8, Part 2, Paragraph 2 (a), where the relevant Council as Planning Authority notifies the Scottish Ministers that they object to the application and their objection is not withdrawn, the Scottish Ministers shall cause a public inquiry to be held.
- 1.5. On the basis that the Council were not to respond by the agreed date then there is no mandatory requirement for a public inquiry to be held.

## **2. Recommendation**

2.1 It is recommended that the Regulatory Panel:

- Submits this report to The Scottish Governments Energy Consent Unit as a position of no objection on behalf of the Planning Authority to the Section 36 application (ECU Reference: ECU00004855).

Approves delegated authority to the Director of Housing Operations and Development to conclude planning conditions with The Scottish Governments Energy Consents Unit, should the Scottish Government be minded to grant consent.

## **Background and Procedural Matters**

### **Consenting**

On 3rd July 2023, Loch Fergus Solar Farm Limited submitted an application under Section 36 of the Electricity Act 1989 for consent to construct and operate a solar generating facility with a capacity of up to 45 MW with embedded battery storage of up to 40 MW at Loch Fergus Farm, Ayr in South Ayrshire. The proposal includes solar panels, battery storage containers, security fencing, CCTV cameras, an internal access track, underground cabling, inverters, substations, underground cabling, grid connection, landscaping, environmental enhancement measures and other ancillary development (the Proposal), for determination by the Scottish Ministers.

Current methods for calculating generating capacity result in the combined capacity of the site being in excess of 50MW and as such the proposal requires an application to Scottish Ministers under Section 36 of the Electricity Act 1989.

Under Section 36 of the Electricity Act, if the proposal is approved, the development will also receive deemed planning consent.

### **Environmental Impact Assessment**

Under the Electricity Works (Environment Impact Assessment) (Scotland) Regulations 2017, Scottish Ministers are required to consider whether any proposal for a generating station is likely to have a significant effect on the environment. These Regulations stipulate that Scottish Ministers must consult the Council as the local Planning Authority, NatureScot (formerly 'Scottish Natural Heritage), Scottish Environment Protection Agency (SEPA) and Historic Environment Scotland (HES). The Regulatory Panel are asked to note that in the event that the Council as Planning Authority objects to a Section 36 application, and does not withdraw its objection, a public inquiry must be held, before the Scottish Ministers decide whether to grant consent (Refer Paragraph 2, Schedule 8 of the Electricity Act, 1989).

In reaching their decision, Scottish Ministers have to take into account the environmental information submitted with the application, the representations made by statutory consultative bodies and others in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, Scottish Planning Policy on Renewable Energy (now superseded by NPF4), other relevant Policy, Planning Advice Notes, the relevant local Planning Authority's Development Plans and any relevant supplementary guidance.

It is relevant to note that EIA Screening Opinion Requests have been submitted for two different proposals on the site. This first request was submitted to the ECU as determining authority (given that the proposal exceeded the 50MW threshold) on 20<sup>th</sup> September 2022 for the development of a solar farm and energy storage system with a generating capacity in excess of 50MW (ECU Reference ECU00004622 and Council Consultation Reference 22/00793/EIASCR).

The other EIA Screening Opinion request was submitted directly to the Council as determining authority (given that the proposal was for a development below the 50 MW threshold) on 29<sup>th</sup> November 2022 for the development of a solar farm and energy storage system with a generating capacity of up to 49.9MWMW (Council Reference 22/01011/EIASCR). The details and outcomes of each of these requests are outlined further under the sub-headings below.

### **EIA Screening Opinion - ECU00004622 (ECU Reference) and 22/00793/EIASCR (Council Reference)**

The Council were consulted by the ECU as a statutory consultee and the consultation response issued on 14<sup>th</sup> October 2022 was that the Council did not consider the proposal to constitute an EIA development.

The Council's EIA Screening Opinion Consultation Response to the ECU concluded that subject to the following supporting information being provided (and including all of the requirements as set out by the Council and consultees engaged as part of the separate Pre-application process), it is considered that these will be sufficient to assess the effects of the development upon the environment during both the construction and operational phase:

- Ecological Appraisal;
- Landscape and Visual Assessment;
- Glint and Glare Assessment;
- Archaeology and Cultural Heritage Assessment;
- Flood Risk Assessment;
- Transport Assessment;
- Agricultural Land Classification Assessment; and
- Noise Assessment.

On the 15th of November 2022, the ECU issued their EIA Screening Opinion response as determining authority which confirmed that they considered the proposed development to constitute an EIA development.

1 Within their response they outlined that whilst they agreed with the Council's assessment for the most part, a combination of factors including the scale of the development, the potential consequence for the development to cause wildfires\*, the potential for it lead to pollutants and other material to discharge in Loch Fergus alongside potential impacts on birds of prey, made the development be considered as EIA.

\* The matter of fire safety and risk in terms of its relationship to the land use planning function is considered in Section 11 of this report. i

### **EIA Screening Opinion - 22/01011/EIASCR (Council Reference)**

Following the Screening Opinion issued by the ECU as outlined above, the applicant submitted a separate EIA Screening Opinion request to the Council (Council Reference: 22/01011/EIASCR) for a different proposal which fell below the 50 MW threshold and as a result, would be determined by the Council should it have been progressed to full planning application stage.

On the 13th of December 2022, the Council issued their EIA Screening Opinion, with the position reached that the development proposals subject to the request did not to constitute an EIA development.

### **EIA Screening Opinion - ECU00004622 (ECU Reference) revisited.**

Separately, on the 22nd of December 2022, the ECU contacted the Council to advise that the earlier EIA Screening Opinion issued on the 15th of November 2022 had now been withdrawn. The reason for this was not specified.

A revised EIA Screening Opinion from the ECU was subsequently issued on 19th January 2023 and concluded that the same development proposals as previously considered were now not an EIA development and did not require to be supported by an Environmental Impact Assessment – coming to the same conclusion as the Council. The Council's initial consultation response provided (Council Consultation Reference 22/00793/EIASCR) remained unchanged and unaffected.

## **Development Proposal**

As stated, the Proposal comprises of the construction and operation of Loch Fergus solar generating facility and battery generation station with a combined capacity of around 85 MW alongside associated development including solar panels, battery storage containers, security fencing, CCTV cameras, access tracks, cabling, inverters, substations, landscaping and other ancillary on land at Loch Fergus Farm to the east of Ayr, and southwest of Coylton, South Ayrshire.

Full details of the Proposal and the associated development features can be summarised as follows:

- **Solar PV Panels** – Approximately 93,000 static photovoltaic solar panels installed on metal frames aligned to be south facing to form arrays. Maximum height of solar array will be approximately 3.0m above ground level (AGL).
- **Solar Inverter Stations** – Inverter stations positioned within the array at appropriate locations within enclosures with a maximum height of 3.0m.
- **Battery Storage Units** – Battery storage facility located to the south of the site away from identified noise sensitive receptors whilst also reducing visual impact. Battery storage compound includes up to 40 battery storage containers alongside 10x battery interface cabinets, 10x PCS/inverter units and 5x transformer units. In addition to the battery storage unit the development will also include the installation of an electrical substation, metering unit, comms unit and storage unit.

- **Associated Infrastructure** – The Proposal also requires the installation of supporting infrastructure to facilitate the operation of the solar farm which includes:
  - Transformer enclosures with a max height of 3.2m;
  - Switchgear enclosures with a max height of 3.2m;
  - Customers and DNO substations with a max height of 4.0m;
  - A communication building with a max height of 4.0m; and
  - Storage buildings with a max height of 3.2m.
- **Site Access** – The site is accessed by three separate access tracks from the existing minor road, two of which are in the same locations as existing field access points. The entrance point to the northern part of the site off the public road will need to be created to allow for suitable visibility splays. In addition to the site access points 2.7km of new access track will be formed within the site boundary.
- **Main Entrance Construction Compound** – A hardstanding area is required for the delivery and assembly of the solar array and will comprise a compacted area of hardcore measuring 60m x 60m. Following construction this area will be reduced to 12m x 16m and will be used for occasional maintenance works and visitors during the operation phase of the development.
- **Temporary Construction Compounds** – Installation of temporary hardstanding areas approximately 30m x 40m adjacent to the other entrance points of the public road to facilitate delivery and assembly of components.
- **Fencing** – For site security 2.0m high post and wire deer fencing is to be installed around the full perimeter of the panels with further installation of 3.0m high acoustic fencing surrounding the battery storage area.
- **Security** – Fencing will be supplemented by a number of security and monitoring systems such as infrared motion detection and remote camera surveillance.
- **Grid Connection and Cabling** – The cable connecting the solar array to the proposed grid connection point will be installed underground to minimise visual impacts.
- **Landscaping** - 1.5km (linear) of species rich hedgerows is proposed in addition to maintaining and enhancing the 4km (approximate) linear length of existing hedgerows on the majority of the site perimeter and along the roadside to increase screening.

## Application Site

The site of the Proposal is situated approximately 3.3km east of Ayr, and just under 1km west of Coylton. The solar installation encompasses several fields (approximately 58.2ha in total) within the boundaries of the Loch Fergus Farm on both sides of the C74 road which connects the B742 with the A70.

The site comprises of gently undulating pastoral farmland generally sloping from the north-east from approximately 115m above ordinance datum (AOD) to the south and south-west to some 105m (AOD). The farmland is predominantly used for grazing livestock and the production of silage for feeding dairy cattle. The site borders more agricultural land to the west, north and east, with Loch Fergus and surrounding woodland located to the immediate south. None of the trees or sections of woodland within or immediately adjoining the site are subject to a Tree Preservation Order (TPO) or an ancient woodland inventory.

The application site is classified as non-prime agricultural land by the James Hutton Institute (JHI) scale. Much of the proposed site is Grade 4.2, with around 85% of the site within this category, and 6% of the land being Grade 5.2. There are two small sections of Grade 3.2 to the south and north of the farm which can be seen to equate to around 9% of the total proposed site area.

SEPA's online flood risk mapping indicates that within the site boundary, there is no evident risk of fluvial flooding but there is a high (10% chance of it happening in any one year) to medium (0.5% chance of it happening in any one year) likelihood of surface water (pluvial) flooding located to the northwest to the existing cluster of farm buildings at Loch Fergus Farm.

Surrounding land use is predominantly agricultural in character, with a few dispersed farmsteads, clusters of buildings and individual residential properties located in close proximity to the site. Existing field and road boundaries are clearly defined by established hedgerows and post and wire fencing. The local area is predominantly in use for dairy farming. Other local uses include Crofthead Holiday Park, a Crematorium, a Business Park/Industrial Estate, a Hospital, and equestrian related businesses.

The site does not form part of any statutory designated site for nature conservation with qualifying ecological interests. The nearest such designation is the Martnaham Loch and Wood SSSI which is located approximately 0.8km to the south and encompasses the entirety of Martnaham Loch and the surrounding ancient oak woodland.

## **Consultation**

Consultation on the Section 36 application is primarily led and undertaken by The Scottish Government's Energy Consent Unit (ECU), on behalf of the Scottish Ministers who are the determining authority. The following consultation responses received by the ECU (not including public comments received from any interested parties) are noted for informative purposes.

The Planning Service also undertakes consultation with Council department services, and other relevant stakeholders/statutory consultees, and the responses received are summarised below. These responses are taken into account in the assessment of the Proposal and have informed the Council's overall position as a consultee. Where appropriate and relevant, copies will be forwarded to the Scottish Government as part of the final recommendation.

### **ECU – Statutory Consultees**

**NatureScot (30/11/2023): No objection subject to conditions** – The response acknowledged the hydrological connection between the proposal site and the Martnaham Loch and Wood SSSI and addressed the indirect risks posed to Martnaham Loch. It was however detailed that the upland oak woodland notified feature of the SSSI would not be affected by the Proposal. NatureScot state that they would object to the approval of the proposal unless the consent is subject to conditions including a Construction Environmental Management Plan, a Surface Water Drainage Strategy, a Fire Safety and Management Plan and a Decommissioning Plan. It should be noted that the matter of fire safety and risk in terms of its relationship to the land use planning function is considered in Section 11 of this report.

**Historic Environment Scotland (HES) (14/09/2023): No objection** – Noted that the Proposal does not have a direct physical impact on any assets within their remit but detailed potential impacts on a number of scheduled monuments. They broadly support the methods and outcomes of the archaeological assessment. HES also expressed that vegetation such as trees are subject to environmental and seasonal change and cannot necessarily be relied upon to mitigate adverse impacts of development (upon the setting of several ancient monuments).

The Council also consulted HES.

**Scottish Water (06/09/2023): No objection** - Noted that there is live infrastructure in the proximity of the development area that may impact on Scottish Water assets. Any conflicts must be identified, and asset impact team contacted for an appraisal of the proposals. Any conflicts with identified assets will be subject to restrictions on proximity of construction. Written permission must be obtained before any works start within its area of apparatus. There are no Scottish Water drinking water catchments or abstraction sources in the area that may be affected by the proposal.

**Scottish Environmental Protection Agency (SEPA) (11/09/2023): No objection** – SEPA have indicated no objection to the proposal but referred the applicant to advice documents regarding flood risk, water environment, ecology, and general battery storage guidance.

**Transport Scotland (28/09/2023 and 14/12/2023): No objection** – initially responded requesting further information as the applicant had not provided sufficient information to determine any potential impacts on the trunk road network. Following submission of the additional information, updated consultation comments were submitted to ECU on 14<sup>th</sup> December 2023, confirming that Transport Scotland were satisfied that construction of the proposal would not give rise to any significant traffic impacts or any associated environmental effects on the trunk road (A77).

The Council also consulted Transport Scotland.

### **ECU – Non-Statutory Consultees**

**Glasgow Prestwick Airport (26/09/2023): No objection** – Response confirmed that the Proposal has no effect on the Glasgow Prestwick Airport Surveillance Radar(s), Instrument or Visual Flight Procedures, Obstacle Limitation Surfaces, or other navigational aids. They accept the conclusions of the Glint and Glare Assessment and as such have no objection to the application.

The Council also consulted Glasgow Prestwick Airport.

**British Telecom (BT) (08/09/2023): No objection** – Response provided considered EMC and related problems to BT point-to-point microwave radio links and concluded that the proposal should not cause interference to BT's current and presently planned radio network in the surrounding area.

**National Gas Transmission (07/09/2023) No objection** – Response confirmed that there are no National Gas Transmission assets affected as a consequence of the proposal.

**The Coal Authority (06/09/2023): No objection** – Provided a response which detailed that whilst the development site falls within the coalfield it is located outside the Development High Risk Area as defined by the Coal Authority. As such, there was no comment to be made from the consultee regarding the Proposal.

**Scottish Power Energy Network (05/09/2023): No objection** – Response indicated no objection to the Proposal but advised that SP Distribution Plc have HV overhead lines within the vicinity of the proposal and as such reserve the right to protect and/or deviate our apparatus at the applicant's expense.

**Health and Safety Executive (05/09/2023): No objection** – Responded detailing that despite Section 3C of the Electricity Act 1989 stating that HSE should be consulted about all relevant electricity safety issues, Section 3D states that Section 3C does not apply in relation to function of the Secretary of State under Section 36. As such, HSE did not have to provide a response to the Proposal on this basis. The response stated that if consent is granted, construction and operation will need to be in accordance with health and safety law.

### **South Ayrshire Council Internal Consultees**

**Noise Consultant (ACCON UK Limited) (28/09/2023): No objection** – Response determined that following detailed review of the Noise Assessment provided, there would be no over-riding reason for refusal in respect of noise.

**Council's External Ecology Advisor and Consultant (AECOM) (27/09/2023 and 18/12/2023): No objection subject to conditions** - Detailed response received on the 27<sup>th</sup> of September 2023 reviewing the Preliminary Ecological Appraisal Report, Winter Bird Survey Report and Draft Biodiversity and Land Management Plan. Concluded that the proposal does not present any obvious source of potential impacts to the Martnaham Loch and Wood SSSI but did raise minor concerns over construction runoff and the impacts on Loch Fergus, suggesting a Construction Environmental Management Plan (CEMP) be undertaken and agreed and approved by South Ayrshire Council. AECOM also recommended a condition of consent requiring the preparation of a detailed Habitat Management Plan (HMP) setting out a precise method for creation and maintenance of desired habitats on the development site.

Following submission of additional information requested by AECOM in their initial consultation response, a further consultation response was issued by AECOM on the 18<sup>th</sup> of December 2023 confirming they were satisfied with the proposal, subject to conditions (CEMP and HMP).

**Council's Landscape Architect and Advisor (Carol Anderson Landscape Associates Ltd.) (CALA) (October 2023 and January 2024): Revisions to the proposed design requested** – The October 2023 consultation response outlined concerns in relation to the location, scale and landscape and visual impact of the proposal, requested further photomontages and visualisations, and suggested that additional mitigation measures are secured.

In the January 2024 response, Carol Anderson Landscape Associates Ltd. provided further comments in January 2024 and requested further redesign is undertaken to reduce the extent of the proposed development, and to remove panels on sloping ground close to Fergus Loch. A request was made for broader mitigation and for an enhancement plan of hedgerow and tree planting (and their management) to be provided, covering land within approximately 1km outwith the application site boundary.

**West of Scotland Archaeological Society (29/09/2023) No objection subject to conditions** – Noted the potential for buried remains in landscape and as such recommended that a condition be attached which requires a Written Scheme of Investigation (WSI) ahead of any proposed ground disturbance taking place at the proposal site.

**Glasgow Prestwick Airport (20/09/2023): No objection** – No objection to the Proposal on statutory safeguarding grounds.

**NATS Safeguarding (06/09/2023): No objection** – No anticipated impacts of the Proposal and as such had no comment to make regarding the application.

**Historic Environment Scotland (HES) (14/09/2023): No objection** – Noted that the Proposal does not have a direct physical impact on any assets within their remit but detailed potential impacts on a number of scheduled monuments. They broadly support the methods and outcomes of the archaeological assessment. HES also expressed that vegetation such as trees are subject to environmental and seasonal change and cannot necessarily be relied upon to mitigate adverse impacts of development (upon the setting of several ancient monuments).

**South Ayrshire Council Environmental Health (14/09/2023): No objection** – No objection as the Proposal is predicted to comply with Noise Rating Curve 25. However, did acknowledge the predicted night-time increase and the potential for this to result in noise complaints from surrounding residents. The Environmental Health Enforcement Officer



also confirmed as part of the consultation response provided that there are no Private Water Supplies (PWS) within or near to the boundary of the application site and that PWS in relation to the Proposal did not require to be considered further.

**South Ayrshire Council Ranger Services (19/09/2023): No objection subject to conditions** – Response indicates no objection but requested to review the Construction Environmental Management Plan (CEMP) and associated Species Protection Plans (SPPs) prior to work commencing if permission for development is approved.

**South Ayrshire Council Sustainable Development (Landscape and Design Officer) (06/10/2023 and 12/01/2024) No objection subject to conditions** – Initial response requested submission of a tree survey report. Recommended the applicant submit a detailed planting plan and management regime for the proposed species of rich grassland, wildflower meadow and additional hedge/tree planting, as well as the maintenance and enhancement of the existing hedgerow. Following submission of the tree survey report as requested, this was confirmed as acceptable in an re-consultation response provided by this consultee. The detailed planting plan and management regime for the proposed species rich grassland, wildflower meadow and additional hedge/tree planting, as well as the maintenance and enhancement of the existing hedgerow was suggested as a condition and agreed by the applicant.

### **Ayrshire Roads Alliance (ARA)**

**ARA as Roads Authority (10/01/2024): No objection subject to conditions** – Conditions relate to access construction, junction visibility splays, gates set back / open inwards, discharge of water, off road parking provision (during construction) and a Construction Traffic Management Plan.

**ARA as Flood Authority (20/10/2023): No objection subject to conditions** – No objection providing that the recommendations made in the Kaya Consulting Flood Risk Assessment & Drainage Strategy (July 2023) are implemented including a Drainage Strategy developed and designed in accordance with the principles of the SuDS Manual (CIRIA Report C753, 2015).

### **Community Councils**

**Coylton Community Council (31/10/2023)** – Coylton Community Council's comments to the ECU raised various concerns, including the disruption of local ecosystems and wildlife habitats, resource consumption (extraction of rare earth minerals and water consumption), visual impact, property devaluation, site selection, energy reliability and cost, and health and safety concerns.

## **Supporting Information**

The application submission to Scottish Ministers is accompanied by a range of supporting documentation. This includes a Pre-Application Consultation (PAC) Report, Planning Design and Access Statement, Preliminary Ecological Appraisal, Winter Bird Survey Report, Flood Risk Assessment and Drainage Strategy, Landscape and Visual Appraisal (LVA), Archaeological Assessment, Transport Statement, Glint and Glare Assessment, Socio Economic Assessment, Noise Impact Assessment, Peat Impacts Statement, Tree Survey Report, Biodiversity and Land Management Plan, in addition to a suite of accompanying plans, drawings, visualisations, and photomontages.

A number of additional documents have been submitted in order to address consultation comments, notably including:

- Addendum to the Design and Access Statement which appraises the impact of the Proposal on the Local Development Plan residential allocated site in Coylton, referenced as COY1;
- Response letter to the Council's Landscape Architect and Advisor including three additional viewpoint photomontages;
- LVA addendum including photos and images of the proposal when viewed from residential properties within 500m of the site;
- Tree Survey Report; and
- Letter addressing Transport Scotland Consultation comments in relation to construction traffic impact on the A77 and clarification on Abnormal Loads.

## **Planning History**

The following recent planning history (since January 2000) is applicable to the application site:

- 15/00253/APP: Alterations and extension to dwellinghouse (Millstone, By Ayr, KA6 6ER) – Approved 07 April 2015.
- 18/00759/APP: Erection of replacement slurry store (Loch Fergus, Ayr, KA6 6ER) – Approved 10 September 2018.

- 20/00811/PPP: Planning permission in principle for erection of dwellinghouse (Loch Fergus, Ayr, KA6 6ER) – Refused 09 December 2020.
- 22/00489/APP: Erection of dwellinghouse (C74 From B742 Northeast of Bowmanston to A70 At Old Toll, Ayr, KA6 6ER) – Approved 08 July 2022.

The following applications for similar types of development to that proposed within South Ayrshire are of relevance for context:

- ECU Ref: ECU00004658 and Council Consultee Ref: 22/01029/DEEM: Section 36 application for the Construction and operation of a 350MW Battery Energy Storage System (BESS) with associated infrastructure including access roads, sub-station buildings and supporting equipment, drainage and ponds, fencing and landscaping (Camsiscan Farm 350 MW, Craigie, Kilmarnock South, KA1 5JT) – Approved 26 January 2024. This site is located approximately 13 km to the north east of the Loch Fergus site.
- Council Ref: 23/00176/APPM: Installation of energy storage facility comprised of battery storage enclosures, associated power conversion units and transformers, substations, hardstanding area, vehicular access, grid connection and ancillary works (Land to East of Holmston Roundabout, Ayr) – Approved 30 June 2023. This site is located approximately 3.5 km to the north west of the Loch Fergus site.
- ECU Ref: ECU00002112 and Council Consultee Ref: 20/01085/DEEM: Application under Section 36 of the Electricity Act 1989 (as amended) for the proposed battery energy storage system (BESS) with installed capacity to a maximum of 50MW (Proposed Wind Farm at Dersalloch, Dalmellington Road, Straiton) – Approved 24 June 2021. This site is located approximately 12 km to the south of the Loch Fergus site.
- ECU Ref: ECU00002197 and Council Consultee Ref: 21/00387/DEEM: Application for consent under Section 36 of the electricity act 1989 for the proposed Kilgallioch battery energy storage system (BESS) & associated works including synchronous condenser (Proposed Wind Farm Kilgallioch, Barrhill) - Approved 01 October 2021. This site is located approximately 60 km to the south of the Loch Fergus site.
- Council Ref: 22/00625/APP: Erection of wind turbine with tip height of 99.5m and associated works including access track, crane hard standing, control cabin and temporary construction compound (Ailsa Hospital, Ayr, KA6 6AB) – Validated 29 July 2022 and pending a decision. This site is located approximately 3 km to the west of the Loch Fergus site.

Only development approved under planning application reference 23/00176/APPM and the site subject to planning application reference 22/00625/APP are within 3.5 km of the Loch Fergus site. As such, these are referred to under the cumulative impact assessment section in this report, as required by NPF4 Policy 11 (e xiii).

It is also worth noting that the Council have submitted an EIA Screening Opinion to the ECU (determining Authority) in relation to the following two Section 36 applications, both of which are within approximately 3 km of the Loch Fergus site. Neither are currently subject to a Section 36 application however:

- ECU Ref: ECU00004885 and Council Consultee Ref: 23/00610/EIASCR: Section 36 Environmental Impact Assessment Screening Request for a 250MW battery storage scheme (South of 3 Belston Holdings, Annbank, Ayr, North of A70, South Ayrshire, KA6 5JR) - EIA Screening Opinion issued 23 August 2023.
- ECU Ref: ECU00004995 and Council Consultee Ref: 23/00915/EIASCR: Section 36 Screening request for BESS, Braston New Energy - ECU00004995 (Braston Farm, A713 from A77t Bankfield Roundabout past Ailsa Hospital to Council Boundary, Ayr, KA6 6AA) - Consultation to ECU issued 26 January 2024.

As these proposals are not subject of a Section 36 application, they are not considered under the cumulative impact assessment section of this report.

## Development Plan

As this application is submitted under Section 36 of the Electricity Act 1989, consequently Section 25 of The Town and Country Planning (Scotland) Act 1997 (as amended), which requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise, does not apply in this instance. The Development Plan does however remain a significant material consideration in the determination of the application, as deemed planning permission will be granted if Scottish Ministers approve the development.

Following the implementation of the Planning (Scotland) Act 2019 and the adoption of National Planning Framework 4 (NPF4) on the 13<sup>th</sup> of February 2023, the current Development Plan for South Ayrshire incorporates NPF4 and the South Ayrshire Local Development Plan 2 (LDP2) (2022).

Legislation states that in the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail (Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”));

Section 24(3)). NPF4 was adopted after the adoption of LDP2, therefore NPF4 will prevail in the event of any incompatibility between the policy frameworks.

NPF4 and the policies which apply in the context of the development proposal subject to this application largely overlap with the policy considerations and requirements of LDP2. Whilst there are some differences in specific criteria requirements within certain consistent and overarching policies between NPF4 and LDP2, it is not considered that any of these would constitute an apparent material policy conflict which would require a particular policy of NPF4 to be considered in place of a policy in LDP2. Greater weighting will be given to the assessment criteria for renewable energy within NPF4 than in LDP2 as it is the most up to date policy on this subject.

## **NPF4**

The primary policy consideration against which the proposal will be assessed against is NPF4 **Policy 11 - Energy**.

Other NPF4 policies of relevance are outlined below and can be viewed in full at <https://www.gov.scot/publications/national-planning-framework-4/>.

- Policy 1 – Tackling the climate and nature crises
- Policy 2 – Climate mitigation and adaptation
- Policy 3 – Biodiversity
- Policy 4 – Natural Places
- Policy 5 – Soils
- Policy 6 – Forestry Woodland and Trees
- Policy 22 – Flood Risk and Water Management
- Policy 23 – Health and Safety
- Policy 25 – Community Wealth Building
- Policy 29 – Rural Development

As is set out within the 'Transitional arrangements for NPF4' Chief Planner letter (February 2023, NPF4 is to be read and applied as a whole, and as such no policies should be read in isolation. An assessment of the development proposal against the provisions of NPF4 follows.

It is worthwhile to note that in assessing the Proposal, the Council is not the determining authority and is providing comments as a Statutory Consultee to the Scottish Ministers.

As previously stated, a number of comments from consultees have already been submitted directly to The Scottish Government. Consultation responses received are considered in the Council's assessment of the application, and are incorporated into the recommendation. The full text of the submissions made to the Scottish Government can be found at The Scottish Government [Energy Consents Unit website](#) (ECU Case Reference ECU00004855).

## **NPF4 - National Development**

NPF4 outlines eighteen National Developments which are defined as developments of national importance that will assist in the delivery of the Spatial Strategy for Scotland and support the delivery of:

- Sustainable places, where we reduce emissions, restore, and better connect biodiversity;
- Liveable places, where we can all live better, healthier lives; and
- Productive places, where we have greener, fairer, and more inclusive wellbeing economy.

Under National Development 3 (Strategic Renewable Electricity Generation and Transmission Infrastructure), any onshore electricity generation development, including electricity storage, from renewables exceeding 50 megawatts capacity which would normally be classed as a major application, constitutes a National Development.

This application for a solar generating facility with a capacity of up to 45 MW with embedded battery storage of up to 40MW constitutes a National Development due to exceeding the 50 MW threshold and as such would help to support the overarching aims of NPF4 and the spatial strategies to achieve net-zero targets and provide energy through renewable sources. Despite the classification as a National Development the proposal still must be robustly assessed against relevant national and local policy before any determination can be made.

## South Ayrshire Council Local Development Plan 2 (LDP2)

The following policies of LDP2 are considered relevant to the assessment of the application, and can be viewed in full online at <http://www.south-ayrshire.gov.uk/planning/local-development-plans/local-development-plan.aspx>.

- LDP Policy Spatial Strategy
- Strategic Policy 1: Sustainable Development
- Strategic Policy 2: Development Management
- LDP Policy: Landscape Quality
- LDP Policy: Woodland and forestry
- LDP Policy: Preserving Trees
- LDP Policy: Water Environment
- LDP Policy: Flooding and Development
- LDP Policy: Agricultural Land
- LDP Policy: Air, Noise and Light Pollution
- LDP Policy: Renewable Energy
- LDP Policy: Natural Heritage
- LDP Policy: Land Use and Transport
- LDP Policy: Outdoor Public Access and Core Paths

As per NPF4, the provisions of LDP2 must be read and applied as a whole and as such, no single policy should be read in isolation. The application has been considered in this context and alongside NPF4 as the Development Plan.

## Assessment

This report is structured to assess the relevant and comparable policies within NPF4 and LDP2 together and to assess any that are only in one part of the Development Plan separately. As NPF4 is the most recent Development Plan document, its policies are used as the primary considerations and structure for the assessment, with the relevant LDP2 policies also assessed.

Having regard to the Development Plan, the key considerations are identified as follows:

### Sustainable Places

Both NPF4 and LDP2 actively promote sustainable development practice through the creation of sustainable places that respect the environment and are designed to mitigate and adapt to the impacts of climate change.

Tackling the climate and nature crises, through climate mitigation and adaptation, is a fundamental requirement of the Development Plan:

- **NPF4 Policy 1 – Tackling the climate and nature crises:** When considering all development proposals, significant weight will be given to the global climate and nature crises.
- **NPF4 Policy 2 – Climate mitigation and adoption:** Seeks to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.
- **LDP Strategic Policy 1 - Sustainable Development:** Supports the principles of sustainable development by making sure that development meets the following standards (of relevance) set out within the policy:
  - a. Respects, protects and where possible, enhances natural, built and cultural heritage resources.
  - b. Protects and safeguards the integrity of designated sites.
  - c. Protects peat resources and carbon rich soils.
  - d. Does not have a negative effect on air or water quality.
  - e. Respects the character of the landscape and the setting of settlements.
  - f. Respects, and where possible contributes to the Central Scotland Green Network.

- g. Makes efficient use of land and resources.
- h. Helps mitigate and adapt to the effects of climate change.
- i. When considering development proposals, due weight will be given to the consideration of net economic benefit.

Scottish Government policy, commitments and targets for renewable energy are set out in ministerial statements, key policy documents and statutes, namely; The Scottish Governments Declaration of Climate Emergency (2019), the emissions reductions targets set out in the Climate Change (Emission Reduction) (Scotland) Act 2019, The Scottish Energy Strategy (December 2017), and the Scottish Climate Change Plan 2018 to 2032 (2020 updated).

Furthermore, the Draft Energy and Strategy and Just Transition Plan was published in January 2023. This plan proposes a deployment ambition of at least 4GW, but up to 6GW, of solar power by 2030.

There is a clear policy emphasis at all levels towards tackling the climate crisis, with a strong drive towards green energy and reduction of carbon. NPF4 Policy 1 sets out that significant weight must be given to tackling the climate and nature crises and thereby, proposals which support these objectives, would have significant support.

NPF4 Policy 2 also sets out that any development should be sited and constructed in a way to minimise lifecycle greenhouse gases. These aims need also be put in the context of sustainable development which aims to ensure that development is carried out sustainability without significant detrimental impacts which would outweigh the development's positives and carbon reduction benefits. Strategic Policy 1 (Sustainable Development) of the LDP2 sets out criteria in this regard. NPF4 puts forward a presumption in favour of development which will help tackle the climate and nature crises, but this must be balanced against any significant detrimental impacts of a development which may outweigh these positives.

The supporting information submitted with the application sets out that the solar generating facility will have a capacity of up to 45 MW with embedded battery storage of up to 40 MW. This will help meet the Scottish Government's renewable energy generation targets.

Paragraph 3.20 of the applicant's Planning, Design and Access Statement states that the Proposal will have an export capacity of 45MW, and will generate and export approximately 57GWh of locally sourced renewable electricity to the national grid annually. This is equivalent to a typical annual demand of circa 13,600 UK households.

Paragraph 3.20 of the Planning, Design and Access Statement states that the proposal will offset approximately 19,300 tonnes of carbon dioxide in year one, using BEIS's "all fossil fuels" emissions statistic of 432 tonnes per GWh of electricity supplied from fossil fuel generators within the Digest of UK Energy Statistics Annual data for UK, 20202. This represents a significant contribution to the legally binding national and international targets to increase renewable energy generation and reduce carbon emissions, which are discussed in Section 5.2 of the statement.

It is considered that the Proposal would comply with NPF4 Policies 1 and 2 as the proposal would assist in tackling the climate crisis and would have a positive effect in terms of greenhouse gas emission reduction targets.

In terms of LDP2 Strategic Policy 1, it is considered that the Proposal meets the criteria specified within the policy. Detailed assessment against the specific applicable criteria within this policy are set out within other sections of the report. There is a notable overlap between the criteria of LDP Strategic Policy 1 and NPF4 Policy 11 (Energy), therefore these matters will be discussed in appropriate sections below to avoid unnecessary repetition.

## **Renewable Energy**

**NPF4 Policy 11 (Energy)** is the most relevant policy to the consideration of this proposal. The policy highlights a key focus on the encouragement, promotion and facilitation of all forms of renewable energy development in both onshore and offshore environments and provides criteria for the assessment of proposals for renewable development, which, alongside corresponding criteria from LDP2 2022 will form the main structure of the assessment of the proposal presented below.

NPF4 Policy 11 states:

- a) *Development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported. These include:*
  - i. wind farms;*
  - iii. energy storage, such as battery storage;*
  - vii. proposals including co-location of these technologies.*
- b) *Development proposals for wind farms in National Parks and National Scenic Areas will not be supported.*

- c) *Development proposals will only be supported where they maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities.*
- d) *Development proposals that impact on international or national designations will be assessed in relation to Policy 4.*
- e) *In addition, project design and mitigation will demonstrate how the following impacts are addressed:*
- i. impacts on communities and individual dwellings, including, residential amenity, visual impact, noise and shadow flicker;*
  - ii. significant landscape and visual impacts, recognising that such impacts are to be expected for some forms of renewable energy. Where impacts are localised and/or appropriate design mitigation has been applied, they will generally be considered to be acceptable;*
  - iii. public access, including impact on long distance walking and cycling routes and scenic routes;*
  - iv. impacts on aviation and defence interests including seismological recording;*
  - v. impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;*
  - vi. impacts on road traffic and on adjacent trunk roads, including during construction;*
  - vii. impacts on historic environment;*
  - viii. effects on hydrology, the water environment and flood risk;*
  - ix. biodiversity including impacts on birds;*
  - x. impacts on trees, woods and forests;*
  - xi. proposals for the decommissioning of developments, including ancillary infrastructure, and site restoration;*
  - xii. the quality of site restoration plans including the measures in place to safeguard or guarantee availability of finances to effectively implement those plans; and*
  - xiii. cumulative impacts.*
- In considering these impacts, significant weight will be placed on the contribution of the proposal to renewable energy generation targets and on greenhouse gas emissions reduction targets. Grid capacity should not constrain renewable energy development. It is for developers to agree connections to the grid with the relevant network operator. In the case of proposals for grid infrastructure, consideration should be given to underground connections where possible.*
- f) *Consents for development proposals may be time-limited. Areas identified for wind farms are, however, expected to be suitable for use in perpetuity.*

The proposal is assessed against the above criteria below, alongside any other relevant development plan policies.

### **Criteria (a) and (b) – Application type and location**

The Proposal is a solar farm and associated battery storage system and is therefore compliant with Criteria (a).

The Proposal is not for a windfarm and the site is not located within a National Park or National Scenic area. Criteria (b) is therefore not applicable.

### **Criteria (c) – Socio-economic impact**

Criteria (c) details that development is only supported if it maximises net economic impacts, including local and community socio-economic impact benefits.

The other relevant Development Plan policies are:

- NPF4 Policy 25 (Community Wealth Building): proposals which contribute to local or regional community wealth building strategies and are consistent with local economic priorities will be supported. This could include for example improving community resilience and reducing inequalities; increasing spending within communities; ensuring the use of local supply chains and services; local job creation; supporting community led proposals, including creation of new local firms and enabling community led ownership of buildings and assets.
- LDP2 Strategic Policy 1: When considering development proposals, due weight will be given to the consideration of net economic benefit.

The key socio-economic benefits that are associated with the proposal are detailed within the Socio-Economic Impact Assessment submitted in support of the application, and include:

- £431k in pre-development investment and planning fees, benefitting a range of Scottish based companies and organisations;

- Total expected investment of £50 million (in 2023 prices). With opportunities for local businesses to support in terms of groundwork, landscaping, civil engineering, and construction contracts;
- One direct onsite job and operational expenditure of £800k per annum (in 2023 prices), with 50% benefiting firms in the Ayrshire. Over the 40-year project lifespan, this equates to a local benefit of £16 million;
- Using an industry standard proxy for jobs per MW, there is the potential for supporting 315 jobs directly and indirectly across the supply during the construction and operation phases;
- GVA benefit for the UK economy of £64 million (in 2023 prices) over the project lifespan;
- Wider financial benefits linked to community benefit funding, rent, rates, and taxation, including local business rates of £2.77 million (in 2023 prices) and community benefits funding of £720k (2023 prices) over the project lifespan;
- Enough generation capacity to power the equivalent of 13,600 UK homes all year round, based on current estimates (2023); and
- Approximately 19,300 tonnes of annual carbon emission savings.

As is identified above, delivery of the proposed development can result in local and community socio-economic impact benefits and aid the building of community wealth by encouraging local investment, jobs, skills, development, and incomes in the local area, in addition to on a national basis.

Overall, it is considered that the net economic benefits of the Proposal have been maximised as far as reasonably possible, and that the proposal therefore complies with Criteria (c), in addition to the other relevant policies identified.

### **Criteria (d) – International and National Designations**

This states that proposals that impact on international or national designations will be assessed in relation to NPF4 Policy 4 (Natural Places). Although the site is not subject to any such designation, the Martnaham Loch and Wood Site of Special Scientific Interest (SSSI) lies approximately 0.8km to the south of the site and is designated for its botanically rich mesotrophic loch and upland oak woodland. SSSI is a statutory national designation made by NatureScot under the Nature Conservation (Scotland) Act 2004.

The other relevant Development Plan policies include:

- LDP2 Policy: Natural Heritage – This states that Development, either individually or in combination with other plans or projects, which is likely to have a significant effect on a designated or proposed European Sites will be subject to an appropriate assessment of the implications for the site in view of the site's conservation objectives.
- LDP2 Policy: Water Environment – States that development will only be allowed if it meets a number of objectives, including:
  - It will protect, and where possible, improve the water environment; and
  - It will not harm the biodiversity of the water environment.

NPF4 Policy 4 (d) states that development proposals that affect a site designated as a local landscape area in the LDP will only be supported if it does not have significant adverse impacts on the area. In this respect, the site is located approximately 2.2km east of Ayr Valley Local Landscape Area. However, as confirmed in the Council's External Landscape Architect/Advisor's consultation response, the Ayr Valley Local Landscape Area would not be significantly affected by the Proposal due to the distance and limited extent of visibility which reduces intrusion. As such, this criteria is not applicable.

Policy 4 (c) is applicable, stating that development proposals that will affect a Site of Special Scientific Interest will only be supported where:

- i. The objectives of designation and the overall integrity of the areas will not be compromised; or
- ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

The impact of the proposal on the Martnaham Loch and Wood SSSI is assessed below.

#### Water Pollution

In terms of water pollution, the Martnaham Loch and Wood SSSI is hydrologically connected to Loch Fergus. The applicant states within the Planning, Design and Access Statement that when an environmental DNA (eDNA) test was undertaken, there was visible evidence of agricultural runoff and livestock presence within the waterbody and that by

granting consent for the proposal, these impacts will be reduced/removed, resulting in a positive impact on the Loch Fergus waterbody, and theoretically the hydrologically connected SSSI. This incidental impact is acknowledged by NatureScot in their consultation response.

As requested by NatureScot via their consultation comments, a requirement to follow standard best practice pollution prevention methods during the construction phase to avoid adverse impacts on the Martnaham Loch and Wood SSSI will form part of a recommended condition (Secured through a Construction Environmental Management Plan).

As requested by SEPA via their consultation response, a Surface Water Drainage Strategy is also a recommended condition which will detail how, in the event of poor infiltration rates, it will be possible to attenuate and discharge clean water to Loch Fergus and hence the SSSI.

It is therefore considered that subject to the recommended conditions, any water pollution related impact on the SSSI may result in be betterment to the existing water quality, and would not compromise the objectives of the designation and the overall integrity of the area.

For the reasons outlined, the Proposal is considered to comply with NPF4 Policy 4 and the Natural Heritage and Water Environment Policies within LDP2.

### **Criteria (e) – Project Design and Mitigation**

Criteria (e) requires that project design and mitigation demonstrate how a number of potential impacts that will occur due to the Proposal will be addressed. In considering these impacts, significant weight will be placed on the contribution of the proposal to renewable energy generation targets and on greenhouse gas emissions reduction targets.

This aligns with the broader policy intentions of LDP2 which supports renewable energy development provided they do not result in harmful effects on the environment.

It should be noted that the NPF4 policy 11(e) criterion does not specifically state that if any of the detailed impacts are not fully addressed that the Proposal is unacceptable, only that it must be demonstrated how the applicant has sought to address these impacts through design and mitigation.

### **Criteria e (i) – Impacts on communities and individual dwellings**

Criteria e (i) requires demonstration of how impacts on communities and individual dwellings, including residential amenity, visual impact, noise and shadow flicker are addressed.

The following Local Development Plan policies are also applicable:

- NPF4 Policy 23 (Health and Safety) - Development proposals that are likely to have significant adverse effects on air quality or are likely to raise unacceptable noise issues will not be supported.
- LDP Policy: Sustainable Development - We will support the principles of sustainable development by making sure that development meets the following relevant standards: Does not have a negative effect on air or water quality and respects the character of the landscape and the setting of settlements.
- LDP Policy: Air, Noise and Light Pollution - We will not allow development which would expose people to unacceptable levels of air, noise or light pollution.

Due to its scale, nature and means of operation, the Proposal has the potential to generate noise, nuisance, and visual amenity effects on adjacent residential properties.

Compliance with Policy 11 Criteria e (i) is assessed below:

#### Visual Impact (Individual Dwellings)

Specific to residential visual amenity, it is recognised that the Proposal would represent a significant visual change to the current rural, agricultural landscape in which several neighbouring dwellings are sited.

Appendix B of the Landscape and Visual Assessment (LVA) outlines the predicted change to visual amenity in relation to the 10 residential properties within 500 metres of the site, in addition to the mitigation measures proposed. The extent of visibility from these properties varies depending on the location, orientation, and proximity to the development site.

Appendix A of the LVA states that the panel array has been designed by considering the potential visibility within the study area, with the following embedded mitigation measures proposed:



- All elements of the Proposal are contained within the curtilage of the photovoltaic (PV) panels and cables are largely undergrounded in order to contain the development within a visually cohesive whole;
- At the north-eastern boundary of the site, panels were brought down below the ridgeline in order to reduce visibility generally, and specifically in eastern areas and from far views from residential properties to the west;
- Along the southern boundary to the east of Fergus Loch the panels were pulled northwards to create more distance between the B742 and the panels, thus reducing the level of change at this location; and
- A separation distance of at least 100m in all directions from Millstone bungalow was introduced to maintain open views.

A landscape scheme of hedge planting (Plan Reference: 7580-DRW-DES-0026 and Titled 'Existing and Proposed Hedging Version 1.0) has been provided in order to minimise localised visual impacts. A 1.5km (linear) of species rich hedgerows is proposed in addition to maintaining and enhancing the 4km (approximate) linear length of existing hedgerows. The proposed hedge planting would follow existing field boundaries to reinforce the existing field pattern and would comprise mixed species allowed to reach a height of at least 3m in order to provide a degree of screening within the local landscape.

The applicant has advised that the existing hedgerows will take an estimated 2-3 years to grow to 3 metres high, and 7-10 years for the new hedgerows to achieve this height.

These measures will provide a greater level of visual screening to the development as the reinforced landscaping matures and establishes. Over time, this would assist with integrating the built form into the landscape, further reducing views to the site from surrounding properties.

The LVA concludes that the level of change to visual amenity (based on 3m high hedgerows) is as follows for the following properties:

- No impact: Mossend Farmhouse, Highpark, and Sessionfield;
- Low: Knocksoul, Trees Farm and Trees Cottage;
- Low-Medium: Martnaham, Bowmanston (comprising 6 separate plots) and Lochfergus Farmhouse; and
- Medium: Millstone.

Regarding Millstone, it is relevant to note that the applicant has advised the ECU and the Council that this property is now occupied by the owners of Loch Fergus Farm who have a financial interest in the proposal. As such, Millstone is now part of the Loch Fergus farm landholding.

Within the Council's external Landscape Advisor consultation responses, the greatest impact on views are considered to occur within approximately 2km of the Proposal with views from residential properties and roads being principally affected. Baseline photography and visualisations from the 10 residential properties above were provided to address the comments raised in the initial consultation response from Carol Anderson Landscape Associates Ltd, and fully appraise the impact on these dwellings, as it was considered that significant adverse impacts were likely to arise and that the LVA appears to under-estimate the likely effects (notably Millstone, Bowmanston and Loch Fergus Farmhouse).

The supplementary illustrative images and photographs from these properties provided by the applicant, illustrate the predicted change to visual amenity as outlined within Appendix B of the LVA.

The applicant outlines that Loch Fergus Farm Farmhouse would not experience direct views to PV panels from living areas within the dwelling or from the garden space to the south of the house, due to intervening sheds, buildings and/or mature vegetation. This is demonstrated within the visuals submitted.

Regarding Millstone, additional photomontage (Viewpoint B) provides views from the road, representative of views from this property. The additional photomontages of Viewpoint B demonstrates that the proposed mitigation strategy (hedge planting along solar panel fields boundary) would minimise visual impact from both the property and the C74 road as it traverses the site. Furthermore, as shown on the proposed layout plan (Plan Reference: 7580-DRW-DES-0002 and Titled: Layout Plan-v3.0), the solar panels are to be setback by a minimum 100m in each direction from the boundary of the property, therefore reducing the impact.

The visualisation from the B742 (additional Viewpoint A) just west of Bowmanston illustrates the parts of the Proposal is likely to be visible from this location. Given that the height of the PV panels is 3.0m and that these would be visible at a distance of over 350m, a level of change is likely to be experienced by the residents of Bowmanston facing the Proposal. The applicants' submission assesses this level of impact to be 'medium'.

The Residential Visual Amenity Assessment (RVAA) Technical Guidance Note (2019) published by the Landscape Institute provides best practice guidance for assessing private views and private visual amenity. The RVAA threshold is referred to as the effect of the development on Residential Visual Amenity being of such nature or magnitude that it potentially affects living conditions or Residential Amenity. The RVAA Technical Guidance Note states that the threshold at which a residential property's visual amenity becomes an issue of residential amenity has sometimes been described as the point when "the effect(s) of the development on the 'private interest' is so great that it becomes a matter of 'public interest'".

Based on the visuals and photomontages submitted, in addition to observations during the site visit undertaken, it is acknowledged that at the most sensitive receptors, there would be varying degrees of visual impact, as captured in the opinion of the Council's External Landscape Advisor. However, the extent of this impact is not considered to breach the Residential Visual Amenity Threshold, and would not be so significant as to be unacceptable, particularly when weighted against the benefits of renewable energy in tackling the climate crisis.

### Noise

A Noise Impact Assessment (NIA) identifies and describes potential noise effects on key receptors during the operational phase of the Proposal. The operational noise assessment indicates that predicted rating levels at neighbouring receptors will be up to 5 dB above the representative background sound levels during the day. In the context of the low overall and background sound levels, this is not considered to be an indication of adverse impact. During the night, predicted rating levels could be up to 9 dB above the representative background sound levels outside and this would correspond to internal sound levels of up to 24 dB LAeq. The very low predicted internal sound levels are considered to result in a low impact.

The Council's External Noise Consultant; ACCON UK Limited have advised that the methodologies used in the Noise Impact Assessment are in compliance with guidance given in BS 4142:2014+A1:2019 and consider that there would be no over-riding reason for refusal in the respect of noise.

The Council's Environmental Health Service have no objection to the Proposal in relation to noise. It was however acknowledged by this consultee that that predicted night-time increase of 9dB, even though in compliance with the Noise Rating Criteria, is substantially greater and may give rise to noise complaints.

However, based on the findings of the Noise Impact Assessment and the final positions reached in the respective consultation comments from technical consultees, it is considered that noise generated from the Proposal would not result in significant impacts that would compromise the amenity of the surrounding residential properties and environments.

### Shadow Flicker

Shadow flicker is not applicable to the proposal.

### Glint and Glare Assessment

A Solar Photovoltaic Glint and Glare Assessment has been submitted as part of this Section 36 application which assesses the possible impacts in terms of glint and glare on road safety, residential amenity and aviation activity associated with Glasgow Prestwick Airport. The assessment carried out geometric reflection calculations and, where a solar reflection is predicted, took into account the screening (existing and/or proposed) between the receptor and the reflecting solar panels.

The assessment establishes that solar reflections are geometrically possible towards fourteen of the assessed 29 identified dwelling receptors (within the 1km assessment area and have a potential view of the panels). The report concludes that no impact is predicted for eleven dwellings, and a low impact is predicted for two of the dwellings. For the final dwelling, the duration of effects are more than 3 months per year, but less than 60 minutes on any given day. However, screening and mitigating factors reduce significance of impact, and the report concludes that the overall impact is low. Mitigation is not recommended for any of the dwellings assessed.

Within their consultation comments, Glasgow Prestwick Airport accept the conclusions of the Glint and Glare Assessment and as such have no objection to the Section 36 application. Furthermore, the Council's Environmental Health Service did not raise any issues in their consultation response regarding implications of glint and glare for residential properties.

Overall, the evidence submitted suggests that any impact on residential amenity for the identified surrounding residential receptors surrounding the proposal would be within acceptable parameters, and that the Proposal is therefore acceptable in this regard.

### Air and Light Pollution

No permanent lighting is proposed as part of the development. All cameras will utilise infrared technology. Furthermore, the Council's Environmental Health Service did not raise any issues in their consultation response regarding lighting impacts on residential properties.

The Planning Design and Access Statement states that best practice would be followed during the anticipated 12 month construction period to prevent and mitigate potential impacts, and that there would be no air or light pollution during operation. This is to be set out within the CEMP. Given the nature of the proposed use, this position is accepted.

### Conclusion

For the reasons outlined above, the Proposal is considered to accord with the Development Plan in relation to impact on communities and individual dwellings.

### **Criteria e(ii) Landscape and Visual Impact**

Criteria e(ii) requires demonstration of how significant landscape and visual impacts are addressed, recognising that such impacts are to be expected for some forms of renewable energy. The policy also states that where impacts are localised and/ or appropriate design mitigation has been applied, they will generally be considered to be acceptable.

The other relevant policies are:

- NPF4 Policy 4 (Natural Places): Criteria (a) states that development proposals by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.
- NPF4 Policy 29 (Rural Development): Development proposals in rural areas should be suitably scaled, sited and designed to be in keeping with the character of the area.
- LDP2 Strategic Policy 2 (Development Management): States that the Council will ensure that development proposals meet several requirements, including not having an unacceptable impact on the amenity of nearby land uses, or committed development proposals (with Planning Permission or allocated LDP development sites).
- LDP2 Policy Landscape Quality: aims to maintain and improve the quality of South Ayrshire's landscape and its distinctive local characteristics. Proposals for development must conserve features that contribute to local distinctiveness, including:
  - a. *Community settings, including the approaches to settlements, and buildings within the landscape;*
  - b. *Patterns of woodland, fields, hedgerow and tree features;*
  - c. *Special qualities of river, estuaries and coasts;*
  - d. *Historic and cultural landscape;*
  - e. *Geodiversity of the area;*
  - f. *Skylines and hill features, including prominent views.*

It is important to note the applicants considered landscape and visual impact into account in finding the proposed site location. In their pre-application submission to the Council, the principal aim as set out was to find a suitable site close to the connecting substation at Ayr, but importantly, outwith the Ayr Green Belt and avoiding areas of particular landscape sensitivity or designation. The approach is described in detail in section 2.2 of the Planning Design and Access Statement.

The Landscape and Visual Assessment (LVA) uses a 3km study area for assessment, informed by the height of solar panels and their visibility. A 'bare earth' Zone of Theoretical Influence (ZTV) has been provided which scopes the potential receptors. A 'screened' ZTV has also been submitted which takes into account intervening woodland blocks and settlements. Field work was used to identify where visibility maybe further constrained/filtered.

The LVA focuses on the identification of likely 'Major' landscape and visual effects, including those that are, beneficial and adverse, direct, and indirect, as well as cumulative effects (where applicable). This includes the potential effects on local landscape character and landscape designations, as well as the potential effects on views experienced by people (receptors) including (but not limited to); core paths and local paths, tourist destinations and places of interest, settlements, and transportation corridors.

The LVA baseline study demonstrates that there is no potential for effects on the visual amenity of the village of Coylton. As such, this has not been assessed.

Impacts from a landscape and visual perspective are considered under the headings below.

### Landscape Impact

The application site lies within the Agricultural Lowlands - Ayrshire Landscape Character Type (LCT) as defined in NatureScot's online landscape character classification. This LCT is characterised by its gently rolling landform, small to medium sized pastoral field pattern enclosed by hedgerows and fences, dispersed farms and narrow rural roads.

The site is not however subject to any international, national, or local landscape related designation.

Ayr Valley Local Landscape Area is located approximately 2.2km east of the site. Comments in the consultation response provided by Carol Anderson Landscape Associates Ltd. state that the Ayr Valley Local Landscape Area would not be significantly affected, nor would any other LCT's.

In terms of direct landscape effects, the LVA acknowledges that the Proposal would directly alter the appearance of the site from farmland to farmland with PV panels, but states that the land cover and the physical land itself would remain largely unaltered and that therefore, the effect on the physical fabric of the landscape of the site is considered to be 'Minor' adverse. With regard to areas subject to mitigation hedge planting, the LVA states that there is a 'Minor' beneficial effect on the landscape as a result of an improvement to the ecological value of the land.

With regard to indirect landscape impacts, the LVA states that the effect would be 'Major-Moderate' adverse locally (local landscape character) given that the introduction of PV panels would change the appearance of the land which would alter the character of the LCT locally. This would most likely to be experienced from the north where the road is elevated above the site.

The LVA states that the Proposal would not change the key characteristics of the Agricultural Lowlands LCT in the wider area however, resulting in a 'Minor' non-adverse impact.

The consultation response from the Council's external Landscape Advisor/Architect Carol Anderson Landscape Associates Ltd. states that the built infrastructure of the Proposal would introduce an incongruous feature to part of the *Agricultural Lowlands - Ayrshire* LCT 66 and that there would be adverse effects on the fabric and character of the site as currently intact rolling farmland. The response also comments that the scale of the Proposal, together with the increased susceptibility of the landscape within 2-3 km of the site (due to the small scale and diverse landform, waterbodies, woodland and field pattern), would contribute to the significance of these effects. Notwithstanding this, criteria (e) of NPF4 policy 11 states that significant landscape and visual impacts are to be expected for some forms of renewable energy and where impacts are localised and there is suitable design mitigation, as is considered to be the case with the current Proposal, they will generally be acceptable.

The applicant responded to the consultation response as follows:

- The Proposal will not alter the topography of the site area;
- The pile foundations mean that the soil structure and integrity will remain largely intact;
- The soil quality will improve over time, and run off into local water courses/bodies will also be cleaner since agricultural processes would be halted (annual slurry and herbicide/pesticides applications);
- Existing hedgerows will be maintained and enhanced, and new ones planted.

As such, they conclude there would be an equally beneficial and adverse 'Minor' effect on the fabric of the landscape.

In terms of the landscape character of the local area, the Zone of Theoretical Visibility (ZTV) demonstrate that there are large areas within 1km of the Site from which the Proposal would not be visible. Therefore locally, the effect on the landscape character cannot be greater than 'Major-Moderate' adverse, as noted in the LVA.

While the Council's External Landscape Architect/Advisor considers there to be significant impact on the *Agricultural Lowlands - Ayrshire* LCT 66, in this landscape context, adverse effects are deemed to be localised. Widespread significant impacts are not anticipated, or evidenced, due to the degree of visual containment and enclosure provided by the landform combined with the proposed boundary treatment, site design and layout and landscape mitigation. Due weight is also given to the fact that the development is low density and scale in nature, including the solar panels (which make up the primary component of the development). which will be a maximum 3m high. This in turn will limit the visual reach of the Proposal so that it is locally contained.

As noted above, criteria (e) of NPF4 policy 11 states that significant landscape and visual impacts are to be expected for some forms of renewable energy and where impacts are localised and there is suitable design mitigation, as is considered to be the case with the current Proposal, they will generally be acceptable. Furthermore, Policy 11 and the

overarching aims of the NPF4 in promoting renewable energy developments sets out that any landscape and visual impacts need to be weighed up against the positive benefits of energy development such as this. The Planning Service concludes that the context and characteristics of the local landscape including landform lends itself to containing the full extent of visual impacts and in combination with the design and landscape mitigation effects will not be so significant to warrant objecting to the Proposal, particularly when weighted against the positive benefits of this development. In conclusion, it is considered that the adverse effects identified are localised and low and would in their entirety be within the parameters of acceptability.

### Visual Impact

As visual impact on residential properties is assessed under criteria e (i) above and so this section focuses on non-residential property related visual impacts.

The screened Zone of Theoretical Visibility (ZTV), which allows for screening features such as woodland belts and buildings shows that the area of potential visibility is greatly reduced in general, and particularly in the north-eastern portion of the site area due to the various woodland blocks. Where there is theoretical visibility, this is generally of less than 50% of the Proposal. As outlined within the LVA, greater amounts of visibility are limited to the higher slopes between 2km to 3km south-east of the site, and to the areas near the site, within approximately 300m.

Five viewpoints were submitted in support of the LVA, which show existing and proposed (photomontage) views of the development and surrounding area. These have been identified as being representative of the landscape and visual receptors within the study area.

The LVA concludes that there would be no substantial effects on key visual receptors within the study area, given that the undulating topography and woodland cover combine to generally limit visibility of the Proposal.

The initial consultation response from Carol Anderson Landscape Associates Ltd. considered that the LVA underestimates the effects of the Proposal. Contrary to the findings of the LVA, the consultation comments consider that significant adverse effects would arise on views from sections of the B742 and from the more elevated C74 road dissecting the Proposal and immediately surrounding the site.

These same consultation comments state that the greatest impact on views would occur within approximately 2km of the Proposal with views from residential properties and roads being principally affected. Additional photomontages from the following three points were requested as a result:

- From the minor road to the north-east of the site at approximately GR400186 at a point where the road is elevated and where the Proposal would be seen in conjunction with scenic views of Fergus Loch;
- From the minor road near Millhouse and the entrance to Lochfergus Farm at approximately GR393187 where the road is elevated, and the Proposal would appear to surround road users; and
- From the B742 south-west of Bowmanston around GR395180 which is likely to reveal a greater extent of the Proposal than shown in Viewpoint 1 on this road.

It was also recommended that the applicant should put in place further mitigation including reducing the extent of the Proposal, particularly the removal of panels seen close to Fergus Loch on the sloping ground containing this scenic waterbody.

During the site visit, it was observed that Loch Fergus is situated at a low elevation relative to the surrounding landscape and is largely surrounded by mature vegetation. Therefore, the water body is generally not visible from the surrounding landscape except from the higher elevations within the study area. This has been demonstrated via the photomontages submitted.

A mitigation and enhancement plan of hedgerow and tree planting (and their management) within approximately 1km beyond the boundary of the Proposal was also recommended, in order to mitigate visual impacts and enhance landscape character and biodiversity. It is however not possible and is not an option as this land is outside of the applicants' control, and implementation of this request cannot reasonably be fulfilled or insisted by the imposition of a planning condition.

The applicant issued a response to the landscape consultation comments, addressing the various points raised. The applicant outlined that in relation to the viewpoint considered to be subject to a significant adverse impact (Viewpoint 4), the vantage point in question is elevated; therefore, walkers would experience a panoramic view within which the Proposal would not be restricted to the 53.5 degree angle shown in the photomontage, which would result in the Proposal taking up a smaller part of the overall panoramic view. Parts of the Proposal are also screened by woodland within this view.

It is considered that any adverse impacts on this view would not be so significant as to be unacceptable, particularly when weighted against the benefits of renewable energy in tackling the climate crisis. Criteria (e) of NPF4 policy 11 also states that significant landscape and visual impacts are to be expected for some forms of renewable energy and where impacts are localised and there is suitable design mitigation, as is considered to be the case with the current Proposal, they will generally be acceptable.

Regarding the impact on nearby roads, the applicant's response to the landscape consultation comments point out that given the duration and type of visibility likely to be experienced by road users (partially shielded by existing or proposed hedgerows), the visual effects on the minor roads cannot be judged to be major.

Following the applicants response, Carol Anderson Landscape Associates Ltd. provided a follow up consultation response which largely reiterates the stance and views outlined within the initial response with respect to the scale of development and relationship with Loch Fergus and surrounds and that further redesign of the Proposal to reduce its extent and to remove panels seen close to Loch Fergus on the sloping ground containing this waterbody was recommended.

1 Regarding the above landscape consultation comments, Loch Fergus is not a designated environmental asset. As such, it is not afforded any protection under the development plan - NPF4 Policy 11, only requires development proposals that impact on international or national designations to be assessed in relation to Policy 4. On this basis, there would be no justification for the Service to request a redesign for landscape impact purposes in terms of the development relationship with Loch Fergus, this would be deemed unreasonable.

It is also recognised that the Proposal has been reduced in size during the design evolution, including removal of panels closest to residential receptors and setbacks from field boundaries and water features which benefits the development overall.

LDP2 Strategic Policy 2 requires that development proposals do not have an unacceptable impact on allocated LDP development sites. Consideration has therefore been given to the potential impact of the Proposal on the Local Development Plan residential allocated site, referenced 'COY1' (Hole Road West), which is located on the south western edge of Coylton. This site is 6.72 hectares in size with a capacity for approximately 125 dwellings. LDP2 Strategic Policy 2 provides material weight with regard to preserving the future amenity of this site, despite no planning permission being in place.

As requested by the Planning Service, the applicant has submitted an addendum to the Planning, Design and Access Statement which includes an appraisal of the impact on the COY1 allocation. This includes an OS map which shows in contour form that the Proposal is principally located beyond the horizon when viewed from the allocated site location. This evidence confirms that the Proposal will not significantly impact upon the site referenced COY1.

The applicant has outlined that the Proposal has been specifically located and designed with setbacks from the horizon to avoid visibility towards the east and over Coylton.

The screened ZTV demonstrates that the majority of the allocated COY1 site would experience no visibility of the Proposal. A small section within the south eastern edge of the allocated site would experience low visibility according to the screened ZTV.

The addendum concludes that the given the greater distance of circa 1km to the allocated site, any such views would be imperceptible.

It is therefore considered that any impact of the Proposal on the allocated site would be negligible and is therefore acceptable.

#### Conclusion on Landscape and Visual Impact

1 Overall, it is considered that the proposed development will result in some adverse landscape and visual impacts however these are considered to be acceptable considering criteria (e) of Policy 11 of NPF4 which states that significant landscape and visual impacts are to be expected for some forms of renewable energy and where impacts are localised and there is suitable design mitigation, as is considered to be the case with the current Proposal, they will generally be acceptable.

NPF4 sets out a presumption in favour of development which contributes towards tackling the climate crisis and support for green energy development is also set out within Policy 11, with this policy indicating a tilted balance.

It is considered that the context and characteristics of the local landscape including landform lends itself to containing the full extent of visual impacts and in combination with the design and landscape mitigation measures, effects will not be so significant to warrant objecting to the proposal when weighted against the positive benefits of this development and objectives of NPF4 with regard to renewable energy generation development.

In conclusion, it is considered that the adverse effects identified, would, in their entirety be acceptable, and that the Proposal is therefore compliant with the relevant Development Plan policies identified.

### **Criteria e (iii) – Public access including impact on long distance walking and cycling routes and scenic routes**

Criteria e (iii) requires consideration of the impact on long distance walking and cycling routes and scenic routes.

The following Development Plan policies are also relevant:

- NPF4 Policy 13 – Sustainable Transport - Seeks to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably;
- LDP2 Policy: Land use and Transport – Development proposals should link to existing and proposed active travel networks, including walking, cycling and public transport networks; and
- LDP2 Policy: Outdoor Access and Public Paths - We will aim to improve and protect all core paths and other significant access routes - including recognised rights of way, disused railway lines (e.g The Culzean Way), riverside walkways, wind farm access tracks and cycleways and cycle parking facilities.

As outlined within paragraph 2.20 of the Transport Statement, roads in the surrounding area do not currently support any dedicated pedestrian or cycle infrastructure in the vicinity of the proposal site. Footways are generally absent from the local road network (southern end of A713, B742 and road fronting the site), owing to the rural nature of the locality and the absence of any pedestrian demand.

An assessment has been undertaken and the site does not have any core paths or recorded rights of way within or immediately adjacent to it but has stated that is an area of land to which the public right of access, as permitted under the Land Reform (Scotland) Act 2003, applies. Given that the area may currently be used for informal recreational access, the proposal should consider providing a facility for public access, especially as Loch Fergus may be a destination for walkers.

In order to comply with this request and in addition to feedback received during the public consultation events, the Proposal has been set back 20m from the field boundary and Loch in this area to allow accessibility to be maintained via a secure and fenced off route outwith the proposal area to the south, to be taken from the C74 which dissects the site. As such, it is considered that access to Loch Fergus would be at least as good as it is currently.

The applicant has also confirmed that general right to roam access is still available to the Loch as well from the south and southwest of the application site although this area is outwith the application site boundary and control of the applicant.

The proposal therefore complies with NPF4 Policy 11 Part (e)(iii) in addition to the other relevant policies identified.

### **Criteria e (iv) – Impacts on aviation and defence interests including seismological recording**

Criteria e (iv) requires applicants to set out how the project design and mitigation will address impacts on aviation and defence interests including seismological recording.

As previously outlined, a Glint and Glare Assessment has been submitted in support of the Section 36 application. This assessment considers the possible impacts upon road safety, residential amenity and aviation activity specifically associated with Glasgow Prestwick Airport. In relation to the Traffic Control Tower at Glasgow Prestwick Airport, the assessment concludes that solar reflections are not geometrically possible towards this, no impact is predicted, and mitigation is therefore not required.

In relation to the 2-mile approach paths for runway 03/21 and 12/30, the assessment concludes that solar reflections are not geometrically possible, no impact is predicted, and mitigation is not required.

Glasgow Prestwick Airport were consulted, and they confirmed that they do not object to the Proposal following due consideration of the Glint and Glare Assessment

Furthermore, NATS Safeguarding (whose interest relates to safeguarding aerodromes, radar, navigation aid installations and flight procedures/routes) anticipates no impact from the Proposal and had no comments to make in their consultation response to the Council.

The proposal therefore complies with criteria e (iv).

#### **Criteria e (v) – Impacts on telecommunications and broadcasting installations.**

Criteria e (v) states that it should be set out how the project design and mitigation will address impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised.

BT were consulted by the ECU and stated that the Proposal should not cause interference to BT's current and presently planned radio network.

The proposal is therefore considered to comply with criteria e (v).

#### **Criteria e (vi) – impacts on road traffic and on adjacent trunk roads, including during construction.**

Criteria e (vi) requires consideration of the impacts on road traffic and on adjacent trunk roads, including during construction.

The other relevant development plan policies are:

- LDP2 Policy: Land use and Transport part (b) - Take appropriate measures to keep any negative effects of road traffic on the environment to a minimum.

Two following routes are viable for access from the strategic road network:

- A77(T), A713, B742; or
- A77(T), A70, Old Toll

It states within the Planning, Design and Access Statement that when considering site access options, the applicant was keen to avoid the town of Coylton. The applicant's preferred option is to utilise the A70/Old Toll Crossroads route as this minimises impact on the number of permanent settlements, including Coylton. However, during intensive HGV arrivals/departures a combination of both routes can be used to avoid interactions at the severe bend in the road on the Old Toll route.

There will be a 3 access points within the site provided from the C74 which dissects the site. These are to be 4m wide tracks with bell mouth entrances abutting the C74. Visibility splays have been provided in accordance with Design Manual for Roads and Bridges (DMRB) standards and are achievable within land owned by the applicant and/or adopted road.

A traffic and transport assessment has been submitted in support of the Section 36 application. This predicts up to 50 daily two-way vehicle movements during the construction period (12 months) and a negligible amount during the operational period. The percentage impact of the predicted vehicle movements during the construction period is 0-13% and during the operational period is negligible. The traffic and transport statement considers that the impact is immaterial on the local road network and will not result in detriment to existing road users.

Ayrshire Roads Alliance (ARA) as the Council's Roads Authority have been consulted and are satisfied that the Proposal can be safely accommodated on the public road network subject to a number of planning conditions and advisory notes. The ARA are satisfied that matters pertaining to mitigation measures for an agreed access/delivery route, and other associated details can be agreed within a Construction Traffic Management Plan (CTMP). The recommended conditions relate to site access construction requirements, junction visibility splays, discharge of water onto the public road carriageway prevention, off road parking provision (during construction), a CTMP and a requirement that gates are set back and open inwards.

Transport Scotland (TS) have also been consulted by both the ECU and the Council. The initial consultation response issued in mid-September 2023 requested further information given that the applicant had not provided sufficient information to determine any potential impacts on the trunk road network. Following a meeting between TS and the applicant, the additional information was requested:

- % impact of construction traffic on A77 using data from Transport Scotland's database of road;
- Traffic count information (known as NTDS) for both total vehicles and HGV trips; and
- Confirmation that Abnormal Indivisible Loads (AILs) would not be used during construction.



This information was submitted, allowing TS to submit an updated response in December 2023. TS have confirmed that they are now satisfied that the Proposal will have a negligible impact on the A77(T) and, therefore have no objection to the development in terms of environmental impacts on the trunk road network.

### **Conclusions on road traffic and trunk road impact**

The Proposal has the potential to have some adverse effects on the road network with an increase in vehicles including HGVs during the construction phase. However, even at the peak period, construction of the proposal will not have any perceivable impact on the A77(T).

The Proposal will be subject to a number of recommended conditions as outlined above, including a CTMP in order to ensure that measures are agreed in order to avoid any potential adverse impacts.

On the whole, it is considered that the Proposal would meet the intent of LDP2 and NPF4 policies in relation of transport.

### **Criteria e (vii) – impacts on historic environment**

Criteria e (vii) requires demonstration of how any impact on the historic environment will be addressed.

The other relevant policies are:

- NPF4 Policy 7 (Historic Assets and Places) - aims to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.
- LDP2 Policy: Historic Environment - We will protect, preserve and, where appropriate, conserve and / or enhance South Ayrshire's historic environment.
- LDP2 Policy: Archaeology - Development proposals that do not safeguard archaeological sites or resources in situ will not be supported unless it is demonstrated to the satisfaction of the Council that the benefit of the proposal outweighs the archaeological value of the site.

An Archaeological Assessment was submitted, establishing that there are limited surviving remains of local heritage value (low sensitivity) within the application site boundary. These include rig and furrow cultivation remains of at least post-medieval date. These remains would be directly affected to some degree by the Proposal, with the direct impact assessed as being of medium magnitude. The findings of the study indicate that there is a low to moderate potential for previously unrecorded archaeological remains to survive within the application site.

The Archaeological Assessment acknowledges that any mitigation measures to avoid, reduce and offset the effects of the Proposal will need to be agreed with the West of Scotland Archaeology Service (WoSAS), and detailed in a Written Scheme of Investigation and implemented in advance of development. This requirement will be subject to a recommended condition.

West of Scotland Archaeology Service (WoSAS) have been consulted by the Council and they state within their consultation response that this application lies in an area of archaeological sensitivity based on the presence of recorded sites and monuments in the surrounding landscape of prehistoric and medieval date. The consultation response WoSAS provided agrees with the findings of the heritage assessment submitted, subject to the views of Historic Environment Scotland (HES) regarding the impact on setting for designated sites. They agree that there is potential for buried remains in this landscape and that mitigation will be required in this regard should the proposals go ahead, due to both the potential for encountering buried remains and the change of use from agricultural ground to industrial. This will take the form of a large scale evaluation of the application area followed by any other mitigation necessary based on the initial findings. This will be detailed in a Written Scheme of Investigation produced for the following recommended condition:

- Implementation of a programme of archaeological works in accordance with a Written Scheme of Investigation.

HES have been consulted by the ECU and the Council (as recommended by WoSAS) and they do not object to the Development Proposals in either response issued. They are satisfied that the methodology used in the Archaeological Assessment is appropriate and that the impacts on the integrity of the setting of the scheduled monuments in the vicinity would not be significantly adverse and would not raise issues of national interest.

Overall, taking into account the responses from HES and WoSAS it is considered that the historic environment will be preserved, and that the Proposal complies with policy 11 part (e)(vii), in addition to the other relevant policies identified, subject to the imposition of the relevant condition.

### **Criteria e (viii) – Effects on hydrology, the water environment and flood risk**

Criteria e(viii) requires proposals to demonstrate how effects on hydrology, the water environment and flood risk are addressed.

The other relevant development plan policies are:

- NPF4 Policy 22 (Flood risk and water management) - seeks to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.
- LDP2 Policy: Water Environment - We support the objectives of the Water Framework Directive (2000/60/EC). We will only allow development that meets these objectives and shows that:
  - a. It will protect, and where possible, improve the water environment;
  - b. It will not pose an unacceptable risk to the quality of controlled waters (including groundwater and surface water); and
  - c. It will not harm the biodiversity of the water environment.
  - d. It seeks to avoid (or remove) instances of construction works and structures in and around the water environment;
  - e. It provides an appropriately sized buffer strip between the development and a water course.
- LDP2 Policy: Flood and Development - Development should avoid areas which are likely to be affected by flooding or if the development would increase the likelihood of flooding elsewhere. We will assess development proposals against the Scottish Environmental Protection Agency's (SEPA) publication 'Flood Risk and Land use Vulnerability Guidance' (2018), or subsequent updates.

The intent of the relevant development plan policies is to ensure the water environment and ecological features are protected and improved where possible, and that flood risk is understood and managed to accord with SEPA's advice. Furthermore, the policies require that risks to others is not exacerbated as a result of new development in flood prone areas.

A Flood Risk Assessment and Drainage Strategy were submitted in support of this Section 36 application. Regarding flood risk, the report outlines that there are no major watercourses nearby and fluvial flooding is not predicted based on the SEPA indicative flood maps. The site is not predicted to be at risk of flooding from groundwater, based on the SEPA groundwater flood maps. A number of recommendations made within the Flood Risk Assessment and Drainage Strategy (such as finished floor levels including a suitable freeboard) will help to protect the site against groundwater flooding risk.

The proposed surface water drainage strategy for the development seeks to provide a sustainable and integrated surface water management scheme and aims to ensure no increase in downstream flood risk by managing discharges from the development via infiltration.

Ayrshire Roads Alliance as the Council's Flooding Authority have been consulted and have no objection to the proposal on the grounds of flood risk, providing the recommendations made in the Flood Risk Assessment & Drainage Strategy are implemented, including a drainage strategy developed and designed in accordance with the principles of the SuDS Manual (CIRIA Report C753, 2015). This could be covered by an appropriately worded planning condition.

NatureScot have also been consulted and have outlined that the proposed battery storage element of the development is hydrologically connected to Martnaham Loch SSSI via the adjacent Fergus Loch. The potential movement of pollutants, through the connecting watercourses to the SSSI, in both the construction and operational phases, is an indirect risk as identified in the Planning, Design and Access Statement supporting the application. As previously outlined, NatureScot raised concern that a major incident such as a fire during the operating life of the facility has the potential to affect the integrity of both Lochs through release of polluting gases and run-off of dissolved substances from the fire itself or from chemicals used to deal with it. Abstraction of water for cooling or containment may also damage the important freshwater sites linked to the proposal area.

As such, NatureScot have requested that a pre-commencement condition is attached to any decision requiring the submission of both a Fire Safety and Management Plan (to be agreed by the Planning Service in consultation with NatureScot and the Local Fire Service) and a Surface Water Drainage Strategy (to be agreed by the Planning Service in consultation with SEPA and NatureScot). The Surface Water Drainage Strategy document must detail how, in the event of poor infiltration rates, it will be possible to attenuate and discharge clean water to Loch Fergus and hence the SSSI. It should be noted that the matter of fire safety and risk in terms of its relationship to the land use planning function is considered in Section 11 of this report.

As previously outlined, the Planning, Design and Access Statement states that during the Environmental DNA survey of Loch Fergus, there was visible evidence of agricultural runoff and livestock presence within the waterbody, and that these effects would be removed, providing a positive impact to the waterbody and theoretically the hydrologically connected SSSI.

SEPA have been consulted by the ECU and raise no objection and comment that in relation to flooding, energy generation developments of this type are a relatively low risk land use in that they can be designed to remain operational if the land floods and they are unlikely to increase flood risk to other people.

The ECU as the determining authority have also formally consulted Scottish Water. They have no objection to the proposal but noted the presence of live infrastructure within proximity of the development area. Any conflicts with identified assets will be subject to restrictions in proximity of construction. There are no Scottish Water drinking catchments or abstraction sources in the area that may be affected by the proposal.

### **Conclusion on hydrology, water, and flood risk**

Overall, the Proposal would have no significant effects on hydrology or the water environment and the development would not be at significant risk of flooding or increase flood risk elsewhere.

Planning conditions controls via the Surface Water Drainage Strategy will ensure that any significant pollution on the water environment, including Martnaham Loch is avoided. The proposal is therefore considered to comply with Policy 11 Criteria (e)(viii) in addition to the other identified relevant development plan policies.

### **Criteria (e)(ix) biodiversity including impacts on birds**

This criteria requires demonstration of how impacts on biodiversity including birds is addressed.

The other relevant development plan policies are:

- NPF4 Policy 3 (Biodiversity) - highlights the importance of nature protection, restoration and securing biodiversity enhancements to reverse biodiversity loss, deliver positive effects from development and strengthen nature networks. Development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management.
- LDP2 Policy: Natural Heritage - Planning Permission will not be granted for development that would be likely to have an adverse effect on protected species unless it can be justified in accordance with the relevant protected species legislation. Criterion (f) requires development to not have an unacceptably detrimental effect upon natural heritage, including wild land, birds and carbon rich soils.

The development is entirely proposed within highly modified agricultural grassland and primarily consists of adapted grassland habitats for the production of fodder. The land is of very low ecological value with the main areas of interest being restricted to hedgerow and margin habitat.

A Preliminary Ecological Appraisal (PEA) has been submitted in support of this Section 36 application, within which the following seven phase one habitats are identified:

- A1.2.2 Plantation woodland;
- B4 Improved grassland;
- C3.1 Tall ruderal;
- J2.1.2 Intact species-poor hedge;
- J2.4 Fence;
- J3.6 Buildings; and
- J4 Bare ground.

Within the PEA, these habitats are assessed for their level of suitability to support protected species, as well as for their importance within the landscape.

The habitats on site are heavily adapted to suit the site's current agricultural use (commercial dairy), and as such, the largest habitat recorded within the development area is improved grassland (B4) at 69.03ha in the form of silage pasture which offers little true ecological value.

The sites main ecological interest in terms of habitats is restricted to hedgerow habitats. The proposal will retain all hedgerow habitat and include suitable protection buffers.

The PEA outlines that the Proposal, if best practice is followed during the construction phase, is not considered to negatively impact any protected species. Through the improvement of habitat on site, both directly and indirectly, the proposal will likely offer improved opportunities for protected species and therefore a positive impact.

Within the PEA, the following recommendations have been made regarding the habitats and species recorded on site and the potential of those habitats to support protected species and species of conservation concern:

- Badger – Update survey is recommended if more than 12 months passes before works commence.
- Bats – Suitable foraging and roosting habitat present on site. Improved grassland to be subject to further survey in line with BCT guidelines to inform a species protection and enhancement plan.
- Birds – Consultation required: suite of surveys in line with Nature Scot requirements recommended to include wintering, migration and breeding bird surveys – both walking transects and where applicable, vantage point surveys.
- Great Crested Newt – eDNA recommended for all waterbodies within 500m of the site to confirm breeding. Follow up population assessments may be required if breeding is confirmed;
- Brown Hare – Site check prior to works to ensure no dependent young are present.

Furthermore, as outlined within the Planning, Design and Access Statement and Draft Biodiversity and Land Management Plan (BLMP), the applicant has incorporated the following significant habitat enhancement measures into the development:

- Creation of permanent species rich grassland;
- Planting of native species rich hedgerows;
- Enhancement of native species rich hedgerows;
- Wildflower meadow creation;
- Sympathetic ongoing land management to improve biodiversity opportunities;
- Creation of bird nesting habitat; and
- Creation of bat roosting opportunities.

These outcomes will be managed through a proposed detailed BLMP, which is a recommended condition.

The SEPA consultation response acknowledged that the vast majority of the site comprises improved grassland in agricultural use and does not host peatlands. No objection to the proposal was raised.

The initial consultation response issued by the Council's external Ecology Advisor AECOM concluded that whilst the Proposal does not present any obvious source of potential impacts to the Martnaham Loch and Wood SSSI, they did raise minor concerns over construction runoff and the impacts on Loch Fergus. They subsequently recommended a Construction Environmental Management Plan (CEMP) as a conditional requirement. AECOM also recommended a condition requiring a detailed Habitat Management Plan setting out a precise method for creation and maintenance of desired habitats on the development site.

The initial AECOM consultation comments also raised a number of queries and requests for confirmation, primarily in relation to the following points:

- Loch Fergus Provisional Local Wildlife Site: detail of proposed mitigation to protect Loch Fergus should be captured in a suitable document, such as a CEMP;
- Justification that the proposed standoff of 20-25 m is sufficient to protect the ancient woodland;
- Recommendation that a detailed Habitat Management Plan (HMP) is a conditional requirement;
- Request that the non-native *Ribes sanguineum* is removed from final planting proposals and is replaced with a suitable native alternative;
- Request that the applicant commits to the protection measures as outlined in the Winter Bird Survey Report in a CEMP and/or Habitat Management Plan;
- Recommendation for a pre-construction survey in relation to the otter habitat south of the site; and
- Recommended a suitably worded and appropriate planning condition for a species Protection Plan to ensure mitigation measures designed to protect foraging and commuting bats from permanent / temporary lighting.

The applicant provided clarification and additional information where required within a response document. Following this, AECOM issued a re-consultation response and this confirmed that the applicant has provided further clarification on points raised in their initial response and that they have committed to including further detail in a Construction

Environmental Management Plan (CEMP) and revised Habitat Management Plan (HMP) as requested. AECOM raised no further points of clarification or objection, subject to the mitigation being secured through conditions.

The South Ayrshire Ranger Service consultation response states that the Proposals in the draft Biodiversity & Land Management Plan and their subsequent management regimes if implemented would overall have a positive impact on the biodiversity of the site if implemented. They do not object to the proposal subject to conditions relating to the CEMP and the inclusion of Species Protection Plans as part of this.

The Proposal currently provides an additional 1.5km (linear) of species rich hedgerows as well as maintaining and enhancing the 4km (approximate) linear length of existing hedgerows. In addition, turning the fields over to PV panels and allowing a species rich grassland to cover the land underneath and between panels will provide a further biodiversity net gain. As such, the proposal is considered to meet the requirements of NPF4 Policy 3 (Biodiversity).

### Conclusion on Biodiversity

Based on the consultation comments, subject to the recommendations outlined within the PEA and habitat enhancement measures outlined within the Planning, Design and Access Statement, it is considered that adverse impacts on ecological values can be avoided, remedied or mitigated.

In addition, given the low conservation values of the site at present, it is considered that the proposal would contribute to biodiversity enhancement improving the current situation by creating new habitats and offering opportunities for increased biodiversity across the site.

The Proposal is therefore considered to be in accordance with the relevant NPF4 and LDP2 biodiversity related policies identified (subject to the recommended conditions).

### **Criteria e (x) impacts on trees, woods and forests**

Criteria e (x) requires demonstration of how impacts on trees, woods and forests are addressed.

The other relevant Development Plan policies are:

- NPF4 Policy 6 (Forestry, woodland and trees) – aims to protect and expand forests, woodland and trees.
- LDP2 Policy: Preserving Trees - When assessing proposals for development that might involve loss of, or work to trees, we will consider how much it would affect the local area and will take measures to protect trees, especially those covered by a provisional or confirmed Tree Preservation Order. Ancient and veteran trees of high nature conservation and landscape value will be protected.
- LDP2 Policy: Woodland and Forestry - We will support proposals for woodland and forestry that are: a. Consistent with the objectives and main actions of the Ayrshire and Arran Woodland Strategy; and b. Sympathetic to the environmental (including landscape and visual impacts), nature and wildlife interests of the area, and, wherever appropriate, provide recreational opportunities for the public. Relevant advice contained within The Scottish Government's Policy on Control of Woodland Removal will be taken into account when determining planning applications.

Within their consultation comments, the Council's external Ecology Advisor AECOM outlined that it was unclear if the Proposal will directly impact the ancient woodland adjoining Loch Fergus to the south. Justification that the proposed standoff is sufficient to protect the ancient woodland was therefore requested.

The applicant has outlined that NatureScot do not currently have standing guidance on the minimum buffers to protect Ancient Woodland from proposal and that Natural England's and the Forestry Commission's (FC) guidance has been adopted. In accordance with this guidance (recommended 15m buffer for ancient woodland), the minimum standoff zone between the boundary of the adjacent ancient woodland and the closest solar array is 20m from the woodland boundary and 15m from the canopy.

The consultation comments from the Councils Sustainable Development Landscape and Design Officer states that the adjacent Loch Fergus Wood (ancient woodland) area to the south of the Proposal is an important feature in the local landscape, with high nature conservation value. This internal consultee required the submission of a tree survey report with accompanying protective measures for woodland areas.

Following submission of the tree report as requested, confirmation was received by the Landscape and Design Officer that the contents of this in addition to the recommendations are acceptable, and that there was no objection.

The consultation comments also requested submission of a detailed planting plan and management regime for the proposed species rich grassland, wildflower meadow and additional hedge/tree planting, as well as the maintenance

and enhancement of the existing hedgerow. It has been agreed with the consultee and the applicant that this would be addressed as a planning condition.

Based on the consultation comments, subject to the recommendations outlined within the Tree Survey and conditional requirement for a detailed planting plan and habitat management regime, it is considered that adverse impacts on trees can be avoided.

The Proposal is therefore considered to be in accordance with the relevant NPF4 and LDP2 related policies identified.

**Criteria e(xi) – proposals for the decommissioning of developments, including ancillary infrastructure and site restoration; and**

**Criteria (e)(xii) - the quality of site restoration plans including the measures in place to safeguard or guarantee availability of finances to effectively implement those plans.**

Criteria e (xii) relates to the quality of site restoration plans including the measures in place to safeguard or guarantee availability of finances to effectively implement those plans.

It is outlined within the Planning, Design and Access Statement that on reaching the end of its operational life of 40 years, a decommissioning program will be agreed with the Council prior to the decommissioning works commencing. Whilst the details of this will need to be agreed and reflect the requirements at that time, the basis of this is that all the plant and equipment installed as part of this development can be removed from the site and reused, recycled or disposed of as required, and the land returned to its former use if deemed appropriate at the time.

10.190 Overall, it is not considered there would be any unacceptable impacts associated with the decommissioning period. Site restoration and decommissioning plans would be implemented including the measures in place to safeguard or guarantee the effective implementation of those plans. This could be controlled via appropriately worded planning conditions, including in relation to the requirement for a financial guarantee and restoration bond to be in place which would be requested by the Council.

The Proposal therefore complies with NPF4 Policy 11 Part e (xi and xii).

**Criteria e (xiii) – Cumulative impacts**

As identified within Section 7 of this report (Planning History), there are a number of approved and pending applications for similar types of development within South Ayrshire.

The applicant has adopted a 3 km radius for the cumulative impact assessment, as per the LVA study area. This has been applied in accordance with current best practice for this type of development and is informed by the visibility of the 3m high structures from certain distances. The applicant has outlined that at distances of approximately 3km, in the context of the landscape, visibility levels are to a degree which would not generate a substantial effect.

The applicant has acknowledged that a planning application (reference: 23/00176/APPM) for a 49.9MW energy storage facility at the Holmston Roundabout was granted in June 2023. The applicant considers there to be no cumulative impacts with this development given that the battery project is located over 3km from the site and is contained within a relatively small and screened area of land.

With regard to planning application reference 22/00625/APP which seeks planning permission for the erection of a wind turbine (with tip height of 99.5m) and associated works at Ailsa Hospital, this site is located approximately 3 km to the west of the Loch Fergus site. The application was submitted in July 2022, and is currently pending a decision. The applicant has stated that there is not predicted to be cumulative visual impacts with this project and the turbine development given the low-lying nature and density of the Proposal which ensures that visibility is largely screened by the higher land between the site of the Proposal and Ailsa Hospital as demonstrated in the ZTV mapping (Figures 2 and 3, LVA).

Given the lack of intervisibility possible between the Proposal and the two schemes above as outlined by the applicant, it is therefore considered that there is no potential for substantial cumulative effects.

There are no other existing schemes or pending/recently approved planning or Section 36 applications for solar farm, battery storage or wind farm related developments within a 3 km radius of the site.

There is therefore considered to be capacity within the landscape for this development without generating adverse cumulative effects. The Proposal is therefore compliant with Criteria e (xiii).

## Policy 11 Conclusion

Policy 11 states that in considering impacts, significant weight will be placed on the contribution of the Proposal to renewable energy generation targets and on greenhouse gas emission reduction targets. Policy 11 also states that significant landscape and visual impacts are to be expected for some forms of renewable energy and where impacts are localised and there is suitable design mitigation, as is considered to be the case with the current Proposal, they will generally be acceptable.

Each of the potential environmental impacts have been considered in detail above. Based on the conclusions drawn, there are no significant environmental effects that would warrant the balance to be shifted away from the Proposal's significant benefit to enhancing renewable energy provision and reducing greenhouse gas emission. This aligns with the intent of NPF4 which seek to address the climate emergency through promoting development that minimises emissions to achieve zero carbon, restore the natural environment and adapts to the current and future impacts of climate change.

In terms of LDP2, a similar conclusion can be reached. The key issue is narrowed to landscape and visual impact effects which will lessen overtime as a result of the hedgerows will, once established, screen and assist with the containment of the development in the local area, not resulting in widespread effects on any valued landscapes or designations.

All other effects identified above can be suitably mitigated, whereby adverse effects would not be significant and compliance with the LDP2 policy framework achieved.

The Development Proposal is therefore considered to accord with the Development Plan.

## Other Considerations

### Fire Safety and Fire Risk

Fire safety and fire risk in relation to renewable development proposals is a matter which has been subject to recent discussion at both Scottish Government and Heads of Planning Scotland (HOPS) level. At present, there is uncertainty in terms of its materiality to the Section 36 determination process as there is no government policy position or guidance on this matter.

Shortly after receiving the Section 36 consultation request through, the Council proactively engaged with The Scottish Government ECU to gain an early understanding on how the subject of fire safety and fire risk would be handled and considered by them as the determining authority. The response received from the ECU on the 13<sup>th</sup> of September 2023 advised that: (extract)

- 1 *“such matters have been considered to be out with the scope of planning considerations, with these being dealt with under existing UK law relating to health, safety and electricity operational safety.”*

As part of their response, the ECU also referenced a Private Members Bill (Lithium-ion Battery Storage (Fire Safety and Environmental Permits) Bill) which is calling for the UK's fire and rescue services to be made statutory consultants regarding planning applications for proposed industry lithium-ion battery storage facilities is at First Reading Stage (the first stage of a Bill's passage through the House of Commons). Given this Bill, the ECU's advised that despite their understanding and position on fire safety and fire risk, their current stance is to still consult both the Health and Safety Executive and Scottish Fire and Rescue Service for Section 36 applications of this nature.

The Health and Safety Executive (HSE) were subsequently consulted by the ECU and in their response stated that: (extract)

- 1 *“whilst Section 3C of the Electricity Act 1989 states that HSE will be consulted on all relevant electricity safety issues, Section 3D states that Section 3C does not apply in relation to functions of the Secretary of State under Section 36.”*

On this basis, HSE advised that they do not require, by the Electricity Act 1989, to provide a response to this Section 36 application. The response did state however that If consent is granted, construction and operation will need to be in accordance with health and safety law.

The Scottish Fire and Rescue Service were also consulted by the ECU, but there was no reply to this at the time of writing this report.

- 1 In contrast to the position set out by the ECU and the Health and Safety Executive, NatureScot advise in their response that they do consider fire risk to be a material consideration. NatureScot recommend a condition requiring a full fire safety and management plan otherwise they would object to the proposal.

- 1 The applicant has provided commentary on fire risk measures within their Design and Access Statement, and includes the following proposed mitigation:

*“If temperature increase continues or there is a failure of the air-conditioning units, the container would automatically partially or fully shutdown to mitigate against the risk of thermal runaway and fire; and*

*In the very unlikely event of a battery fire in one of the modules, a waterless fire suppression system would be triggered automatically. The fire suppression system would comprise appropriately designed extinguishing gas.”*

- 1 While the Scottish Government Energy Consents Unit and Health and Safety Executive do not consider fire risk and safety to be a matter for the S36 process, and therefore this proposal which is under consideration, NatureScot is of the contrary view that the matter is material to the S36 process because of the effects that fire could have on the environment. Given this identified risk, it is the view of the Planning Service that a precautionary approach to the potential environmental impacts (including potential impacts on the SSSI) associated with fire should be taken account of. This can be reasonably captured through a condition requiring an Emergency Action Plan which includes the recommendations of NatureScot and the applicant and which sets out a response, management and mitigation in such an event.

### **Agricultural Land and Peat / Soils**

The relevant policies are:

NPF4 Policy 5 (Soils) - aims to protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development and sets out that development on peatland, carbon rich soils and priority peatland can be acceptable where the development is for generation of green energy and aids the reduction in green house gases.

LDP Policy: Agricultural Land - seeks to protect prime agricultural land and where it is essential be used for the generation of energy from a renewable source, all development proposals must make secure provision for restoration to return the land to its former status once generation has ceased.

The Proposal is located entirely on non-prime agricultural land with the majority of the site located within class 4.2 which is described as “Land capable of producing a narrow range of crops, primarily on grassland with short arable breaks of forage crops”.

Available British Geology Society published data describes the superficial soils at site to be underlain by Till which contains clay, sand, gravel, and boulders varying widely in size and shape. NatureScot’s mapping indicates the soils across the entire site to be Noncalcareous Gleys which consist of Drifts derived from Carboniferous Sandstones, Shales and Limestones. The Scottish national Heritage Carbon and Peatlands tool illustrates that the entire site is covered in ‘Mineral Soils’ which is described as: “Mineral soil - Peatland habitats are not typically found on such soils (Class 0)”

A Peat Impact Statement has been submitted in support of this Section 36 application to act as confirmation of the consideration of peatlands within the project. Evidence of Peatland habitat has not been discovered through desk-based analysis and this has been confirmed by an on-site ecological survey.

Based on the above assessment, it is considered that the development is in compliance with NPF4 and LDP 2 policies given that the site is not identified as prime agricultural land, and there is no evidence of peatland habitat.

Furthermore, it is noted that the current agricultural application of slurry, pesticides and herbicides would be halted, which would reduce if not remove the potential for run-off affecting water bodies and watercourses in the surrounding area. Moving to less intensive farming methods over a prolonged period will also allow the soil to rest and recover naturally from years on intensive management.

### **S36 Consultation Conclusion**

Having considered the applicant’s supporting documentation and notwithstanding the identified benefits of the scheme, together with the responses received and having balanced the developers’ interest against the wider community interest it is recommended that no objection be submitted to the Scottish Government.



## **Recommendation**

It is recommended that no objection be raised to the proposal and that the Regulatory Panel delegate authority to the Director of Housing Operations and Development to conclude planning conditions with the Energy Consents Unit regarding, but not limited to, the following matters, should the Scottish Government be minded to grant consent as determining authority.

All conditions requested by Consultees can be grouped into the following topics and it is recommended that these be imposed should the ECU be minded to grant consent. In this event, the ECU would consult and seek to agree with the Planning Service, the specific wording of conditions.

- a. Surface Water Drainage Strategy;
- b. Construction Environmental Management Plan (CEMP);
- c. Decommissioning, Restoration and Aftercare Plan including financial guarantee and restoration bond;
- d. Construction Traffic Management Plan (CTMP);
- e. Management of the Discharge of Water;
- f. Access Construction Details;
- g. Off-Road Parking Provision Arrangements;
- h. Archaeological Written Scheme of Investigation (WSI);
- i. Pre-commencement updated ecological surveys including any Species Protection Plan;
- j. Detailed Habitat Management Plan; and
- k. Detailed planting plan and management regime.

Restrictions on construction days and hours;

Appropriate noise condition to ensure development operates in accordance with findings and levels of Noise Impact Assessment;

Flood risk avoid measures in line with recommendations made within the Kaya Consulting Flood Risk Assessment and Drainage Strategy;

All mitigation proposed within the Planning, Design and Access Statement;

Construction Management Plan (CMP);

Removal of infrastructure/physical components in the event they become obsolete or redundant;

Restriction on signage or illumination of infrastructure except for those required by law under other legislation;

Staff Travel Plan;

- Emergency Action Plan (can be contained in CEMP);

## **Background Papers**

Application form plans and supporting documentation including the Planning Statement and supplementary appendices and figures

Consultation responses to the ECU

Representations to the ECU

National Planning Framework (NPF) 4 - February 2023

Draft Energy and Strategy and Just Transition Plan (published January 2023)

Historic Environment Scotland Policy Statement

Planning Advice Note 2/2011 'Planning and Archaeology'

South Ayrshire Council Local Development Plan 2 - August 2022

South Ayrshire Local Landscape Designations Review 2018

Residential Visual Amenity Assessment Technical Guidance Note 2/19 (Landscape Institute)

Technical Advice Note: Assessment of Noise (TAN)

SEPA Flood Maps

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