



COMHAIRLE NAN EILEAN SIAR:

4 FEBRUARY 2008

## **ELECTRICITY ACT 1989 - LEWIS WIND FARM APPLICATION AND RELATED MATTERS**

Report by Director for Sustainable Communities and Chief Executive

### **PURPOSE OF REPORT**

To update Members on the Lewis Windpower Application for consent under the 1989 Electricity Act.

### **COMPETENCE**

- 1.1 There are no legal, financial or other constraints to the recommendations being implemented.

### **SUMMARY**

- 2.1 Under section 36 and 37 of the Electricity Act 1989 an application for 234 three-megawatt turbines (702MW) in Lewis was submitted to the Scottish Executive on 4 November 2004 (with an addendum soon after). The Comhairle considered this application as 'Principal Consultee' at the meeting of the Environmental Services Committee on 28 June 2005 and the recommendations of that Committee were considered by the Comhairle at its meeting on 29 June 2005. The Comhairle considered a further Addendum to the Environmental Statement at the meeting of the Environmental Services Committee on 8 February 2007 and the recommendations of that Committee were considered by the Comhairle at its meeting on 15 February 2007. Having considered the application, the Comhairle decided to recommend to Scottish Ministers that the amended application for 181 turbines (651MW) should be approved subject to a range of terms, measures and conditions (including the reduction in the number of turbines by five).
- 2.2 The main purpose of this report is to clarify the current position, advise on activities which the Comhairle can consider with regard to pursuing its agreed view on the development, and to highlight matters which have a bearing on the future development of wind farms in the Western Isles.
- 2.3 Having considered information to hand it is initially considered that there are a number of activities that the Comhairle can engage in with regard to the Lewis Windpower application. Furthermore, the future development of wind farms in the Western Isles will be determined by a wide range of inter-related matters in the near future.

### **RECOMMENDATIONS**

- 3.1 **It is recommended that the Comhairle:**
- a) **note the current position with regard to the Lewis Windpower Ltd application as set out in this Report;**
  - b) **authorise the Chief Executive to carry out the activities highlighted in paragraph 7.5 of this Report in consultation with the Convener and the Energy Member Officer Working Group;**
  - c) **request that the Director for Sustainable Communities prepare a report on a Comhairle response to the second National Planning Framework consultation for the April 2008 series of meetings; and**
  - d) **request that the Director for Sustainable Communities prepare a report for April 2008 with regard to the approach to be taken to the preparation of revised Supplementary Planning Guidance for Wind Farms in the Western Isles.**

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Appendices: Appendix 1 – Letter from Energy Consents Unit, 25 January 2008

Appendix 2 – Lewis Wind Power Appropriate Assessments

Appendix 3 – Consideration of development proposals affecting SPAs and SACs

Appendix 4 – Letter to First Minister from the Convener, 28 January 2008

Background Papers: None

## REPORT DETAILS

### INTRODUCTION

- 4.1 The main purpose of this report is to address three related issues, which have been highlighted recently:
- clarify the position with regard to the Scottish Government consideration of the Lewis Windpower Ltd application;
  - discuss activities which the Comhairle can consider with regard to pursuing the Comhairle's agreed view on the development; and
  - highlight matters which will have a bearing on the future development of wind farms in the Western Isles.

### BACKGROUND TO APPLICATION

#### Electricity Act 1989 Applications for Consent

- 5.1 Developers of power stations (which include renewable energy developments) with an installed capacity in excess of 50 MW are required to obtain consent from the Scottish Ministers under Section 36 of the Electricity Act 1989. Such consents usually also deem planning permission. This means that such applications for consent must be made to the Scottish Government and not to the Planning Authority.

#### The Lewis Windpower Application

- 6.1 Under the Electricity Act 1989 (both sections 36 and 37) an application for 234 three-megawatt turbines in Lewis was submitted to the Scottish Executive on 4 November 2004 (with an addendum soon after). The Comhairle considered this application as Principal Consultee at the meeting of the Environmental Services Committee on 28 June 2005 and the recommendations of that Committee were considered by the Comhairle at its meeting on 29 June 2005. The Comhairle decided to recommend to the Scottish Ministers that the application should be approved subject to a range of terms, measures and conditions.
- 6.2 A further addendum to the Environmental Statement was submitted to the Scottish Executive on 13 December 2006. As a result of additional environmental work Lewis Windpower reduced the scale of the proposed wind farm from 234 wind turbines to 181 wind turbines of 3.6MW each (with a reduction in the amount of associated infrastructure).
- 6.3 The Comhairle considered the Addendum to the Environmental Statement at the meeting of the Environmental Services Committee on 8 February 2007 and the recommendations of that Committee were considered by the Comhairle at its meeting on 15 February 2007. The Comhairle decided to recommend to the Scottish Ministers that the application should be approved subject to a range of terms, measures and conditions (including the reduction in the number of turbines by five).
- 6.4 The Comhairle's support for the project given in 2005 and reiterated in 2007 was based on the following key matters (considered relevant at these times):
- On balance, it was concluded that there were "**imperative reasons of overriding public interest (IROPI)**, including those of a social or economic nature" that justify approving the proposals;
  - The proposed development would, on its own, contribute 40% toward meeting the **Scottish Executive target** of 18% of energy production from renewable resources by 2010 and 18% toward the Scottish target of 40% by 2020;

- The proposed development would, on its own, make viable the installation of an **interconnector** that would be able to carry renewable energy from the Western Isles to the mainland, thereby facilitating a long-term contribution of renewable energy from an area that is recognised to have the best renewable energy resource in Europe and one of the best in the world;
  - It was considered that contributions made by the developer to the **Western Isles Charitable Trust** (or equivalent) should be utilised in an Environmental Management and Enhancement project that would benefit habitats and species (including birds) throughout the Western Isles; and
  - The terms of the **National Planning Framework** that recognises the role the electricity distribution system will need to play in order to take advantage of Scotland's renewable potential. The Framework says, *"A new link to the Western Isles is seen as a key strategic improvement to the electricity transmission system to facilitate the development of Scotland's renewable energy resources. The key improvements to the electricity transmission system to facilitate the development of Scotland's renewable energy resources are the rebuilding of the grid spine between Denny and Beaully; the upgrading of the interconnector south; and a new link to the Western Isles."*
- 6.5 The development is largely within the Lewis Peatlands Special Protection Area (SPA) – protected for wild birds. SNH, SEPA, Historic Scotland, Scottish Water, Western Isles Fisheries Trust, Salmon Fisheries Board, National Air Traffic Service and HIA have all objected to the proposal. Nearly 10,000 public representations were opposed to the proposal during both consultation processes.

#### **CURRENT POSITION**

- 7.1 The Comhairle received a letter dated 25 January 2008 regarding the Government's Appropriate Assessments of the application. The letter to the Comhairle is attached at Appendix 1. The Appropriate Assessments are contained at Appendix 2.
- 7.2 Appropriate Assessments (AA) of the impacts of the proposed wind farm on each of the European designated sites in accordance with Article 6(3) of the Habitats Directive must be undertaken by the Scottish Government as the competent authority before a decision is made. The overall assessment of the development is that it will have a serious detrimental impact upon qualifying bird species of the Lewis SPA and that the proposal would adversely impact upon the integrity of the site. A simplified flow chart, taken from Scottish Executive Guidance with regard to the Habitats and Birds Directives, of how to consider proposals affecting SACs and SPAs is contained in Appendix 3. The Habitats and Birds Directives are complex and therefore this report does not attempt to go through the full details of the implications of the Directives on this or other wind farm developments.
- 7.3 It is understood that the developer has also been written to by the Energy Consents Unit of the Scottish Government and that the developer will have until mid February to respond to a proposed Ministers view. Thereafter, Ministers will make a final decision. As we understand it, Ministers are currently minded to refuse the application in light of the outcome of the AA.
- 7.4 Since the Comhairle has become aware of the current situation the Convener has written to the First Minister. A copy of that letter is attached at Appendix 4 of this Report. At the time of writing no response to the letter has been received.
- 7.5 As it is clear that Ministers have not made an announcement as yet, it will be in the Comhairle's interest to examine avenues open to it to pursue its view on the application. Having given the matter consideration the activities below are suggested as approaches to pursuing the view of the Comhairle. These are:
- Before Mid February, clarifying in writing to the Government the Comhairle's argument, that in spite of the negative AA, the Habitats Directive 'alternatives' test be looked at within the context of the Western Isles and that there are imperative reasons of overriding public interest in approving the Lewis Windpower application;

- actively engage with Government and other relevant officials;
  - contact be made with the local MP, MSP and List MSPs for the Highlands and Islands;
  - contact be made with the Economy, Energy and Tourism Committee of the Scottish Parliament; and
  - discussions take place with Lewis Wind Power Ltd to understand their current approach.
- 7.6 It is considered that taking legal advice on the Scottish Ministers' approach is primarily a matter for the developer to pursue at this stage. It is also considered that the content of the Assessments themselves are a matter for Ministers and that the assessments are concluded.
- 7.7 Depending upon the outcome of Ministers' consideration, in the medium term, discussion with the developer on any revised application which does not adversely affect Natura 2000 interests may also be a matter to pursue.
- 7.8 The Comhairle has in the past sought to challenge the basis upon which areas have been designated under the Natura 2000 network and has taken its case to the European Commission. That exercise has not been fruitful. It is therefore suggested that it should be assumed that the existing suite of Natura 2000 conservation designations will remain at the present level. However, the Energy MOWG continues to take an interest in this matter and if, based on further work, the situation was to change any recommendations to the Comhairle on this matter is likely to come through the Energy MOWG.

#### **FUTURE WIND FARM STRATEGY**

- 8.1 There are a number of future developments and issues which will have a strong bearing upon the scope of wind farm Developments in the Western Isles.

#### **Planning Policy**

- 9.1 National Planning Policy for renewables has recently been reviewed in the form of Scottish Planning Policy 6 (SPP6) and it is not expected that there will be any further changes in the near future. However if Government energy policy were to change there may be implications for national planning policy on renewables.
- 9.2 Locally, there are several pieces of work that have been prepared relating to the development of the islands' renewable energy resource. Specific planning related documents include:
- Western Isles Structure Plan (2003) and the Finalised Local Plan (2005) (collectively the Development Plan);
  - Supplementary planning guidance (SPG) entitled "Considerations for Renewable Energy Developments" (2004); and
  - Landscape Capacity Study for Onshore Wind farms in the Western Isles – (2004) SNH/CnES.
- 9.3 The Development Plan and associated SPG set out the Comhairle's policy position in relation to renewable energy developments and they provide criteria based direction on matters that the Comhairle make wish to take into account in considering proposals for such developments.
- 9.4 Both the Development Plan and the SPG were prepared within the framework of national planning policy as set out in NPPG6 Renewable Energy Developments and PAN 45 Renewable Energy Technologies as well as the first National Planning Framework (2004) which recognised the potential of the Outer Hebrides to make a significant contribution to national renewable energy targets.
- 9.5 NPPG6 has since been superseded by SPP6 (as mentioned above) which updates the Government's advice on how Planning Authorities should address the development of

renewable energy resources, both in terms of the Development Plan and of the Development Management process.

### **Current Development Proposals**

- 10.1 Three major development proposals have been submitted for Scottish Government determination under s36 of the Electricity Act and await decision. These are Lewis Wind Power; Beinn Mhor Power (BMP); and the Pairc wind farm.
- 10.2 In each of these cases the Comhairle has recommended to Scottish Ministers that the proposals be approved albeit with amendments and conditions attached. The outcomes of these developments will obviously influence the shape of wind farm development in the Western Isles.
- 10.3 The application for 53 turbines by BMP is expected to be considered at a Public Local Inquiry in May of this year. However, a decision may not be made until 2009. It is expected that an Addendum to the Pairc wind farm, based on a 26-turbine scheme, will be submitted to the Scottish Government later this year.
- 10.4 A further large-scale development at Feiriosbhal (16 turbines - a subset of the BMP 53 scheme) is presently in process for determination under the Planning Acts by the Comhairle as Planning Authority. The Pentland Road scheme for 6 turbines is due to go to a Public Local Inquiry. However, that Inquiry has now been placed on hold until June 2008 pending ongoing negotiations between NATS and the developer.
- 10.5 Two (Arnish and Monan), three turbine developments have been consented (one of which has been constructed). There are a number of smaller scale 'Community' developed wind turbines at various stages in the planning process.

### **Interconnector**

- 11.1 Results of consultations on a sub-sea cable connection from Lewis to the mainland by SHETL will be another important factor in the future for windfarm development and for the planning strategy of the Comhairle. It is expected that a consultation on SHETL final plans will be forthcoming in the early part of this year. There is also a range of other work ongoing into sub-sea cable connections for island areas.

### **Planning Strategy for the future**

- 12.1 The updated national planning policy SPP6 continues to support the development of Scotland's renewable energy resources. The principles set out in the updated policy recognise that future renewable generation technologies, the electricity market and transmission grid availability may develop in ways that cannot be foreseen. The intention is to review the position regularly. In the first instance, the focus should be on facilitating early progress towards national targets in an environmentally acceptable way, whilst, at the same time, recognising that new distribution and transmission networks need to be developed to harness Scotland's renewables potential.
- 12.2 In the light of the reviewed national policy, Scottish Ministers have instructed all planning authorities to prepare supplementary planning guidance that reflects these principles (a matter reported to the Comhairle in December 2007). In order to achieve this planning authorities are expected to make positive provision for renewable energy developments by:
  - *Supporting a diverse range of renewable energy technologies including encouraging the development of emerging and new technologies;*
  - *Recognising the importance of fully engaging with local communities and other stakeholders at all stages of the planning process;*
  - *Guiding development to appropriate locations and providing clarity on the issues that will be taken into account when assessing specific proposals; and*
  - *Maximising environmental, economic and social benefits;*

*Whilst at the same time:*

- *Meeting international and national statutory obligations to protect designated areas, species and habitats and protecting the historic environment from inappropriate forms of development; and*
  - *Ensuring impacts on local communities and other interest are satisfactorily addressed. Such interests will vary from technology to technology.*
- 12.3 The Comhairle will begin the process of revising its Supplementary Planning Guidance in the near future. This offers an opportunity to confirm the Comhairle's approach and to set out how it would now see that implemented. A report is expected to be prepared on the matter for the April 2008 series of meetings.
- 12.4 National policy seeks to achieve a spatial dimension to Development Plans whereby they would identify areas where the planning authorities would encourage the development of renewable as well as areas where such developments would be resisted. However, it is unrealistic to begin to conclude on a spatial approach while there are major wind farm applications undetermined. Consideration would be aided by the context of the determination of these developments.
- 12.5 SPP6 requires that public consultation is an integral part of the SPG preparation process. The Comhairle will need to consider how best to engage with communities in the preparation of the SPG. Furthermore, the preparation of SPG would be aided by any support or partnership working with the Scottish Government e.g. funding of specific research not covered by existing studies.

### **Second National Planning Framework**

- 13.1 Scottish Government is currently consulting formally on a draft Second National Planning Framework (NPF2). The first NPF (2004) had recognised both the renewables potential of these islands as well as the threat to their long term sustainability arising from depopulation. The Comhairle was of the view that, in the intervening years, little action had been taken at national level to convert this into action. Therefore the Comhairle took up an early invitation to submit its views on what should be included in NPF2.
- 13.2 This submission, entitled 'Energising the Outer Hebrides' majored on land use opportunities arising from the development of the Outer Hebrides renewable resources and their export to the mainland with a view to being the catalyst for the regeneration of Stornoway and the wider island economy.
- 13.3 First indications are that the draft NPF2 could be stronger in its support for the Outer Hebrides and the Comhairle is in a position to respond to the NPF2 consultation in this vein, confirming its stance in the next two months. Discussions can therefore take place, through this consultation with the Scottish Government to fully understand the Governments strategy in relation to the Outer Hebrides.

### **CONCLUSIONS**

- 14.1 It is concluded that in relation to the Comhairle view on the Lewis Windpower application there are a number of measured steps that can be taken to influence Scottish Ministers.
- 14.2 In terms of the future planning strategy for the Comhairle, that will be influenced by a number of issues and projects in the planning process but also by the Second National Planning Framework and importantly the preparation of fresh Supplementary Planning Guidance for wind farms.