

Item: 15

Policy and Resources Committee: 26 November 2019.

Orkney's Community Wind Farm Project.

Planning Application Procedure.

Joint Report by Chief Executive and Executive Director of Development and Infrastructure.

1. Purpose of Report

To consider requesting Scottish Ministers to call in planning applications related to Orkney's Community Wind Farm Project.

2. Recommendations

The Committee is invited to note:

2.1.

That three wind farm sites are currently being developed as part of Orkney's Community Wind Farm Project, namely:

- Wee Fea, Hoy.
- Quanterness, St Ola.
- Faray.

2.2.

That separate planning applications are likely to be submitted for each of the three sites in 2020, with Quanterness likely to be the first to be submitted.

2.3.

Options and routes through which any planning application could be determined, as outlined in the flowchart, attached as Appendix 1 to this report.

2.4.

That, as each site has a capacity lower than 50 megawatts, planning applications must be submitted to Orkney Islands Council, as local planning authority, rather than direct to Scottish Ministers.

2.5.

That Scottish Ministers can, at their discretion, call in a planning application, should the proposed development raise issues of national significance, although it is very rare in practice for Scottish Ministers to call in an application, even in cases where the local authority is the developer or where the local authority has previously notified the application to Scottish Ministers.

2.6.

That the applicant can also request Scottish Ministers to call in the planning application upon submission of that application to the local planning authority.

2.7.

That a request direct from an applicant to call in a planning application is rare and that it would be a matter for the Minister to decide upon, either accepting that the application should be determined by Scottish Ministers, or returning the application to the local authority for determination.

It is recommended:

2.8.

That, upon submitting the first planning application for sites related to Orkney's Community Wind Farm project, the Chief Executive should make a request to the Scottish Government that, based on national significance, the application be called in for determination by Scottish Ministers.

2.9.

That, should the Scottish Government accept the request outlined in paragraph 2.8 above, the same action should be taken for future planning applications relating to Orkney's Community Wind Farm project.

3. Background

3.1.

At the General Meeting of the Council on 5 March 2019 it was agreed that wind farms at Wee Fea in Hoy, at Quanterness in St Ola, and on Faray in the North Isles should be developed to planning application stage. These three wind farm sites are currently being developed under Orkney's Community Wind Farm Project.

3.2.

Separate planning applications are likely to be submitted for each of the three sites in 2020, with Quanterness likely to be the first to be submitted.

3.3.

In September 2019, the electricity market regulator, Ofgem, published its final decision on the needs case for a transmission interconnector for Orkney. It determined that there is a need for the connection and that, in order to trigger a new 220 megawatt (MW) cable, 135MW of new generation is required to have obtained planning permission, signed up to a grid connection agreement, and passed a financial audit before the end of 2021. Currently less than 40MW of new generation has gained planning permission. Noting that there are a number of other private projects at different stages of development, it is clear that, without Orkney's Community Wind Farm project, the threshold will not be met and a new interconnector will not be built.

4. Planning process

4.1.

A planning application for a wind farm site with a capacity lower than 50 megawatts and which does not meet the requirements contained in paragraph 1 of the Schedule to the Scottish Government Planning Circular 3/2009 must be submitted to the relevant local planning authority.

4.2.

The options and routes through which a planning application could be determined are outlined in the flowchart attached as Appendix 1 to this report. As can be seen there are a number of routes. All but one of the routes involve some level of direct scrutiny by the Scottish Government.

4.3.

Scottish Government Planning Circular 3/2009; notification on planning applications, outlines that Scottish Ministers can, at their discretion, call in any planning application for determination where the proposed development raises issues of national significance. This can also be requested by the developer upon submission of a planning application to the local planning authority.

4.4.

Such a request direct from an applicant to call in is rare and would be a matter for Scottish Ministers to decide upon, either accepting that the application should be determined by Ministers or handing the application back to the local authority for determination.

5. Proposed action

5.1.

As shown in Appendix 1, there are several routes through which the Scottish Government may be asked to determine, or may decide to take a role in determining, a planning application for any wind farm. This highlights that it seems probable that an application to and decision by the local planning authority will be checked or reassessed by the Scottish Government at some stage. It is therefore considered that the most expedient and cost-effective method of achieving a confirmed final decision on planning applications for Orkney's Community Wind Farm project would be to request that they are called in by the Scottish Ministers at the earliest opportunity.

5.2.

Having the decision determined by Scottish Ministers rather than the Council would avoid a situation where the Council, as developer, could have to decide whether to appeal against its own decision as a planning authority.

5.3.

Having the decision determined by Scottish Ministers rather than the Council may also help address any perceived conflict of interest by the Council as a developer of wind farms and the planning authority, noting that it is not uncommon or inappropriate for the Council to make planning determinations on Council sponsored projects. There is no definitive list of criteria to be referred to either by Scottish Ministers when deciding whether to call in an application or by an applicant when deciding whether to request that an application be called in. Perceived conflict of interest does not constitute a prescribed ground for requesting that Scottish Ministers call in a planning application. Nonetheless, conflict of interest is a particular issue in this case given that the Council is a relatively small local authority in terms of numbers of Elected Members potentially having to take on more than one type of role in relation to a number of these developments.

5.4.

An application can be called in by Scottish Ministers at their discretion if they consider that the proposed development raises issues of national significance. It is felt that a strong argument can be made that Orkney's Community Wind Farm project is of national significance for several reasons, including:

- The project's essential contribution to meeting the needs case for a new interconnector for Orkney, the construction of which is in line with national policies and targets.
- The contribution that the new interconnector would make in terms of meeting the national net-zero carbon emissions targets and interim targets.
- As an appropriate reaction to the declaration of a climate emergency and subsequent targets and actions associated with this.

- The community/local ownership ethos of the project which ties in with national targets and could be considered a national exemplar for a community based renewable energy development.

5.5.

It is therefore recommended that, upon submitting the first planning application for sites related to Orkney's Community Wind Farm project, the Chief Executive should make a request to the Scottish Government that, based on national significance, the applications be called in for determination by Scottish Ministers. It is also recommended that, should the Scottish Government accept that request, the same action should be taken for future planning applications relating to Orkney's Community Wind Farm project.

6. Links to Council Plan

6.1.

The proposals in this report support and contribute to improved outcomes for communities as outlined in the Council Plan strategic priority theme of Enterprising Communities.

6.2.

The proposals in this report relate directly to Priority 4.2, Strategic investment in projects to generate income and/or deliver significant community benefits, of the Council Delivery Plan.

7. Links to Local Outcomes Improvement Plan

The proposals in this report support and contribute to improved outcomes for communities as outlined in the Local Outcomes Improvement Plan priorities of Strong Communities, and A Vibrant Economy.

8. Financial Implications

8.1.

The decision to ask the Scottish Government to call in the planning applications would not impact on the cost of the application, which would remain at £125,000 per application, paid to the Council.

8.2.

Whilst there may be some savings through the referral of the planning process to Scottish Ministers it is likely that the Council Planning staff would require to carry out much of the work that they would have undertaken if the applications were being determined by the Council.

9. Legal Aspects

Whilst this report may impact on the process through which determination is made in relation to planning applications there are no material legal implications arising directly from the recommendations of this report.

10. Contact Officers

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11. Appendix

Appendix 1: Planning application process flowchart.

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