

REPORT TO: Planning Committee

MEETING DATE: 4 February 2025

BY: Executive Director – Place

SUBJECT: 24/00008/SGC: Energy Consents Unit (ECU) Consultation: Electricity Act 1989 – Application for battery energy storage system and associated infrastructure. Amendment to application ECU reference: ECU00004926, to sub divide the site with Parcel B being formed, comprising 102 MW of BESS and associated infrastructure, Land to South-West of Inglis Farm, Cockenzie

1

ECU Application No. ECU00006022

ELC Reference No. 24/00008/SGC

Proposal Electricity Act 1989 – Application for Battery Energy Storage System and Associated Infrastructure. Amendment to application ECU Reference: ECU00004926, to sub divide the Site with Parcel B being formed, comprising 102 MW of BESS and Associated Infrastructure.

Location Land South-West of Inglis Farm, Cockenzie, EH32 0JT

Applicant Naomi Warrenberg

Cockenzie Storage B Limited
2 Upperton Gardens, Eastbourne, BN21 2AH

Ward 02 Preston, Seton, Gosford

REPORT

In Scotland, any proposal to construct, extend, or operate an onshore electricity generating station with a capacity of 50 megawatts (MW) or over requires the consent of Scottish Ministers under Section 36 of the Electricity Act 1989. Such applications are processed on behalf of the Scottish Ministers by the Energy Consents Unit ("ECU"). Onshore generating stations which will have a capacity of less than 50MW when constructed are not within the scope of the Electricity Act, and such proposals require an application for planning permission to be submitted

to the relevant local planning authority. A battery energy storage system is to be treated as an electricity generating station.

The ECU consults East Lothian Council on all Section 36 applications within East Lothian.

At the Council meeting of 27 February 2024 a new procedure for processing Section 36 consultation requests was approved. It was agreed that once the consultation response has been completed by the Planning Service it will be placed on the Committee Expedited List. Members then have seven days in which to request referral to Planning Committee. Otherwise, the consultation response is deemed to be accepted and the Service Manager for Planning shall be authorised to proceed on that basis.

The ECU have consulted the Council in respect of a proposed battery energy storage system on land South-West of Inglis Farm, Cockenzie. The consultation response completed by the Planning Service is attached as Appendix 1.

RECOMMENDATION

It is recommended that the content of Appendix 1 is approved as the Council's consultation response to the ECU.

APPENDIX 1

ECU Application No. ECU00006022

ELC Reference No. 24/00008/SGC

| | |
|-----------|--|
| Proposal | Electricity Act 1989 – Application for Battery Energy Storage System and Associated Infrastructure. Amendment to application ECU Reference: ECU00004926, to sub divide the Site with Parcel B being formed, comprising 102 MW of BESS and Associated Infrastructure. |
| Location | Land South-West of Inglis Farm, Cockenzie, EH32 0JT |
| Applicant | Naomi Warrenberg Cockenzie Storage B Limited 2 Upperton Gardens, Eastbourne, BN21 2AH |
| Ward | 02 Preston, Seton, Gosford |

ENERGY CONSENTS UNIT (“ECU”) CONSULTATION: PROPOSED BATTERY ENERGY STORAGE SYSTEM ON LAND SOUTH-WEST OF INGLIS FARM, COCKENZIE (REFERRED THROUGHOUT THIS REPORT AS “COCKENZIE BESS”), EAST Lothian COUNCIL’S RESPONSE

Proposed Battery Energy Storage System (BESS), Transformers, Substations and Associated Infrastructure

BACKGROUND

This application has been made to the Scottish Ministers under Section 36 of the Electricity Act 1989 for the construction and operation of a Battery Energy Storage Facility (BESS). In the case of S36 applications planning authorities are a consultee to the application process and are not the Consenting Authority.

With regard to paragraph 2(2) of Schedule 8 to the Electricity Act and regulation 8 of the Consents Regulations, if a planning authority makes an objection within the timescale given by regulation 8 (1) and that objection is not withdrawn, the Scottish Ministers must cause a Public Inquiry to be held unless the Scottish Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the planning authority.

Application ECU Reference: ECU00004926 was previously considered by ELC Planning Committee at its meeting on 4th June 2024 ([Agendas, reports and minutes | East Lothian Council](#)). This application is still under consideration by the Scottish Ministers and now the application is proposed to be amended to sub-divide the site into Parcel A and Parcel B. The amended application is referred to as “Cockenzie

BESS - Amended Application (Application A). Parcel A is to comprise 240MW of BESS with supporting infrastructure. The new S36 application is referred to as “Cockenzie BESS - New Application (Application B)” and would comprise of 102 MW of BESS with supporting infrastructure in Parcel B.

The underlying development proposed on Parcel A and B is fundamentally the same as in the original application (ECU Reference: ECU00004926) which was subject to statutory consultee comments in 2024. Also, all mitigation and enhancements remain the same as in the original application. Therefore, no physical differences are now proposed to the scheme of BESS development approved by Planning Committee at their meeting of the 4th June. The proposal only seeks to sub-divide the site into Parcel A and Parcel B.

The application site measures approximately 15.2ha in size and is located on land south-west of Inglis Farm, Cockenzie, East Lothian, EH32 0JT. The northern section of the site comprises agricultural land (categorised as prime agricultural land of class 1) with small areas of grassland and woodland. The southern section of the site covers part of the approved Cockenzie Link Road scheme (Ref: 22/00440/P) and part of the former coal store. The BESS equipment would be located within the northern section of the larger application site i.e. north of the approved, but as yet unbuilt, Cockenzie Link Road. The BESS equipment would be constructed within two separate compounds or parcels ie Parcel A that would accommodate batteries of 240MW of installed capacity (considered under the original application ECU Reference: ECU00004926) and Parcel B with batteries of 102MW capacity. The application that is the subject of this report is for Parcel B and supporting infrastructure that would be located within the red line boundary of the application site.

The closest residential properties at Whin Park are located approx. 150 metres north of the proposed battery containers included within Parcel B. A large area of open space, including a playing field and play area called Whin Park is located immediately to the north of the application site. The nearest battery containers within Parcel B would be sited some 130 metres from this play area.

The site is within the inventory Battlefield for the Battle of Prestonpans and an area allocated in the adopted LDP as Proposal EGT1 (Land at Former Cockenzie Power Station).

On 11th of September 2023, the Scottish Ministers issued an Environmental Impact Assessment (“EIA”) screening opinion that the proposal does not constitute EIA development and that the application submitted for this development is not required to be accompanied by an EIA report.

PROPOSAL

The proposed application is for a 102MW BESS facility that would consists of:

- 44 battery containers
- 11 transformers
- 22 inverters
- 1 switchgear containers,

- a control building,
- a customer control room
- 2 water storage tanks,
- a surface water pump station,
- access tracks,
- fencing,
- a 2.8m high noise attenuation landscaped earth bund,
- planting, and
- gates and associated infrastructure.

The proposed BESS facility is intended to provide electricity for export to the grid from batteries which will store surplus electricity to be fed into the grid when required at short notice. A maximum of 102MW of electricity would be imported and exported from the application site to the grid network as required. The development would consist of 44 lithium-ion battery containers. There will also be three containers for Customer switchgear and one control building.

The battery storage units would be arranged in rows 7m in length, 2.8m wide, and 3.1m in height. The Proposed Development will also require associated infrastructure that will allow the power to be imported from and exported into the grid, including two substations, inverters and transformers with some individual elements of this infrastructure being in the region of 13.7m in height.

The nature of BESS facilities means that the technology operates at varying times of the day dependent on demand.

There are two points of access to the site. The first being from the west, off the B1348, this would be for emergency and maintenance purposes only. The second main access would be taken from the south east, from the B6371. This would be for construction purposes. These points of access would be used until such time as they are replaced by a replacement road that would link the B1348 with the B6371 (the approved Cockenzie Link Road).

The construction of the proposed development would take approximately 12-14 months with the majority of the construction to be completed in a 4–6-month period. Once completed, the site will be operated remotely, however there will be weekly maintenance and inspection visits (taking access from the west off the B1348).

THE DEVELOPMENT PLAN

The application is made under the Electricity Act 1989 and not the Planning Act and therefore the development plan does not have the primacy it normally would for planning decisions. It is still an important material consideration in this instance and informs the Council's consultation response.

The development plan comprises National Planning Framework 4 ("NPF4"), which was adopted by Scottish Ministers on 13 February 2023, and the adopted East Lothian Local Development Plan 2018 ("ELLDP").

NPF4 identifies 18 national developments that are significant developments of national importance. National development 3 of NPF4 (Strategic Renewable

Electricity Generation and Transmission Infrastructure) supports renewable electricity generation, repowering, and expansion of the electricity grid.

National development 3 informs that the electricity transmission grid will need substantial reinforcement including the addition of new infrastructure to connect and transmit the output from new on and offshore capacity to consumers in Scotland, the rest of the UK and beyond.

Whilst National development 3 references a Scotland wide rather than a specific location, the south of Scotland (including East Lothian) is identified for supporting on and offshore electricity generation from renewables and delivering new and/or upgraded infrastructure directly supporting on and offshore high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations.

National Planning Framework 4

NPF4 is Scotland's national spatial strategy for Scotland. It sets out spatial principles, regional priorities, national developments and national planning policy. Relevant Policies are:

- 1 – Tackling the climate and nature crises
- 2 – Climate mitigation and adaptation
- 3 – Biodiversity
- 4 – Natural places
- 5 – Soils
- 6 – Forestry, woodland and trees
- 7 – Historic Assets and Places,
- 9 – Brownfield, vacant and derelict land and empty buildings
- 11 – Energy
- 13 – Sustainable Transport
- 14 – Design, Quality and Place
- 22 – Flood risk and water management
- 23 – Health and safety

Local Development Plan

The following policies and proposal are relevant:

EGT1 (Land at Former Cockenzie Power Station),
NH5 (Biodiversity and Geodiversity Interest, including Nationally Protected Species),
NH7 (Protecting Soils),
NH8 (Trees and Development)
NH11 (Flood Risk),
NH12 (Air Quality)
NH13 (Noise)
OS1 (Protection of Open Space)
Policy CH5 (Battlefields)

T2 (General Transport Impact),
T4 (Active Travel Routes and Core Paths as part of the Green Network Strategy),
DP1 (Landscape Character),
DP2 (Design); and
SEH2 (Low and Zero Carbon Generating Technologies).

REPRESENTATIONS

East Lothian Council has received 25 written representations, all of which make objection to the proposed development.

The main grounds of objection can be summarised as follows:

1. Loss of prime grade 1 arable greenfield land.
2. Lack of key information that is required to assess the proposal eg lack of an Emergency Plan or an Evacuation Plan
3. Impact on amenity and environment. The proposed BESS would be one of the largest such installations in Scotland and is far too close to housing, a school, a doctor's surgery, a play park and the main route in and out of the area. There are concerns of the noise from the air-cooled air conditioning units that will operational continuously.
4. There are concerns about the safety aspects of building this facility so close to our community. There are concerns about any coherent safety plan in place and if the local fire service have the ability to cope with a fire and toxic fumes. The objections highlighted that given the prevailing winds, the whole community would be affected by this. The Battery Storage Safety Management Plan submitted by the applicant is insufficient.
5. Future of the site and impact wider ecosystem. In the event of accident and potential contamination what assurances exist that the site can be returned to prime arable land? There are concerns of a risk of contaminated water entering the Forth. Also some objectors expressed their concerns of the acoustic impacts on protected species such as bats.
6. There is already a vast amount of BESS consented within the UK, including in Scotland, and surely there should be a national process to evaluate suitable sites.
7. Concern over the structure of the company who will be building and operating these BESS systems.

There are a number of BESS already consented in the United Kingdom. However it is still open for developers to seek consent for new BESS, and each application must thereafter be treated on its individual merits.

The structure of the operating company is not a material consideration in the determination of this application.

COMMUNITY COUNCIL COMMENTS

Cockenzie & Port Seton Community Council raised the following objections:

1. The proposed site is greenfield grade 1 arable land, sitting as the only such site (approx. 5ha) within a much larger site of approx. 100ha the vast majority of which is brownfield and requiring redevelopment.
2. Due to the proximity of the site to housing, Cockenzie Primary School, and major routes into and out of Cockenzie and Port Seton additional concerns are raised around Impact on Amenity and Safety. Some representatives of the renewable energy industry sector would not consider sites within 200m of residential properties.
3. The acoustic impact on surrounding properties and wildlife populations, in particular bats, must be considered.
4. As regards safety, the current application is either deficient or wilfully misleading. National Fire Safety Services (Ltd) produced a report which describes the primary battery technology as Lithium-Ion Phosphate (not a recognised technology). Lithium-Ion is the more dangerous (lower thermal runaway threshold, at 100C when fully charged and as little as 80C when overcharged, and potential for production of Hydrofluoric Acid in an emergency situation). Before a decision can be reached a full safety analysis including Plume Assessment, Evacuation Plan, Emergency Response plan all involving SFRS must be carried out.

PRINCIPLE OF DEVELOPMENT

The proposed development would enable the storage of electricity and would contribute to the delivery of infrastructure of national importance. As transmission infrastructure to support renewable energy, it is also part of National Development 3 and is thus supported by NPF4.

As the proposal supports renewable energy, the principle of the proposal is also consistent with Policy 11 of NPF4, which states that development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported, including enabling works, such as grid transmission and distribution infrastructure.

Proposal EGT1 of the adopted East Lothian Local Development Plan 2018 is of relevance in the determination of this application, as almost the entire site is located within the EGT1 allocation. This Proposal states that land at the above site “will be safeguarded for future thermal power generation and carbon capture and storage consistent with National Development 3. Land at Cockenzie may also present significant opportunities for renewable energy-related investment. The Council will work together with developers, the landowner, the relevant agencies, local organisations and interested parties, including local residents to ensure that the best use is made of the existing land and infrastructure in this area. If there is insufficient land for competing proposals, priority will be given to those which make best use of the location’s assets and which will bring the greatest economic benefits. Development proposals must avoid unacceptable impact on the amenity of the surrounding area, including residential development”.

The ELLDP helps facilitate the transition to a low carbon economy by supporting means of energy generation that help to reduce greenhouse gas emissions. It seeks to support a diverse range of renewable and low carbon energy generation in appropriate locations, taking environmental, community and cumulative issues into account.

Generally, both NPF4 and the LDP look to focus development within settlements or previously developed land, with only limited types of development being acceptable in the countryside. Proposal EGT1, which covers the application site and the wider former Power Station site, states, amongst other things, that land at Cockenzie may also present significant opportunities for renewable energy related investment. By being a form of renewable energy related investment, the proposal is not inconsistent with Proposal EGT1.

The northern tip of the site is allocated within the ELLDP as existing open space and therefore Policy OS1 (Protection of Open Space) is relevant to the determination of this application. This Policy states that recreational, leisure and amenity open space and facilities, including outdoor sports facilities, will be safeguarded to meet the recreational needs of the community or protect the amenity or landscape setting of an area. Alternative uses will only be considered where there is no significant loss of amenity or impact on the landscape setting and:

- i. the loss of a part of the land would not affect its recreational, amenity or landscape function, or
- ii. alternative provision of equal community benefit and accessibility would be made available, or
- iii. provision is clearly in excess of existing and predicted requirements.

With regards to this part of the application site, the proposal includes tree planting and landscaping and therefore it would not change the function of the existing open space allocation. Therefore, this element of the proposal is consistent with Policy OS1 of the ELLDP.

While the principle of this development is acceptable, there are several other issues that require to be considered. This is in line with Policy 11 of NPF which lists thirteen criteria relating to the design and mitigation of energy related developments that require to be addressed to determine their compliance with the Development Plan.

CLIMATE

Policy 1 of NPF4 states that when considering all development proposals significant weight will be given to the global climate and nature crises.

The Scottish Government's Climate Change Plan sets out the national Scottish Government's pathway to achieve the ambitious targets set by the Climate Change (Scotland) Act 2009, as amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, and the commitment to end Scotland's contribution to climate change by 2045.

Scotland's renewable electricity generation has grown rapidly over the last twenty years, and a large contribution to achieving the commitment set out in the plan will be made by the increased decarbonisation of our electricity system.

The Climate Change Plan notes operating a zero-carbon electricity system will mean finding new ways to provide a range of technical services and qualities currently provided by fossil fuel and nuclear generation. Battery storage is one technology which helps achieve these goals.

However, it is important to ensure that the lifecycle carbon impacts of the proposal itself are assessed and mitigated. At its meeting on the 27th of August 2019 the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on the 3rd September 2019 the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority a report on the actions to be taken to reduce the carbon emissions from the completed development should be imposed on consents for relevant development proposals.

It is recommended that such a condition should be imposed on any consent for this proposed development, consistent with the requirements of Policy 2 of NPF4 and Policy SEH2 of the ELLDP.

BIODIVERSITY

The proposal is supported by Habitat Regulations Assessment (HRA) and Ecological Impact Assessment (EclA) which are included within this application. The Energy Consent Unit who, under the Habitats Regulations, are the competent authority is required to consider the effects of the proposal on the Firth of Forth Special Protection Area.

Having considered the submitted information, the Biodiversity officer is content that the proposal would not impact on bats and that no further surveys or assessments are required in this regard. The **Council's Biodiversity Officer** does not raise any objections to the current proposal subject to implementation of the recommended conditions relating to ecology and a Landscape and Ecological Mitigation and Management Plan. Subject to the imposition of this recommended condition the proposal conforms with NPF4 Policy 3.

LANDSCAPE AND VISUAL IMPACT

The land of the application site is allocated by Proposal EGT1 of the ELLDP and thus forms part of the former Power Station site. It is located north to the approved (yet to be built) link road and to the southeast of the existing substation.

The **Council's Landscape Projects Officer** comments on the previously considered application (Application ECU Reference: ECU00004926) noted that the proposed development would be seen in the context of the existing infrastructure e.g. electricity pylons, electricity substations. The Landscape Officer does not raise any objections to the current proposal subject to implementation of the recommended conditions.

HISTORIC ENVIRONMENT

The **Council's Archaeology/Heritage Officer** advises that given the location of the proposal there is no or minimal indirect impacts likely on the historic environment. In relation to direct impacts there is some potential for buried archaeological remains to be impacted and therefore the Council's Archaeology/Heritage Officer would advise that an Archaeological Programme of Works (5% Evaluation by archaeological trial trench) is carried out on the area of the development which lies outside the former coal store. If consent is granted it is recommended that this requirement be secured by the imposition of a condition.

SOILS

NPF4 has a strong policy presumption against development that is located on prime agricultural land. However, one exception is where the proposal is for 'essential infrastructure and there is a specific locational need and no other suitable site'. The definition of 'essential' infrastructure in the NPF includes energy storage and generation technologies therefore covering this proposal.

Policy EGT1 of the adopted East Lothian Local Development Plan 2018 states that land at Cockenzie may present significant opportunities for renewable energy-related investment.

The agricultural land classification for the site is the highest Class 1 – land capable of producing a very wide range of crops. However, this classification was previously considered when East Lothian Council allocated the wider site for development through Proposal EGT1 of the ELLDP.

The proposed development is essential infrastructure with a specific need for its location, justified by its site selection process, to reinforce the electricity transmission system, supporting a secure and stable supply of energy as part of National Development 3 of NPF4. Therefore, the proposed development is not inconsistent with Policy 5 of NPF4 or Policies NH7 and EGT1 of the adopted East Lothian Local Development Plan 2018.

NOISE AND VIBRATION AND AMENITY

The applicant has undertaken an Acoustic Design Specification report which looks at the noise impact of the proposed BESS on properties ('noise-sensitive receptors'). A number of residential and non-residential properties have been selected including those located in Cockenzie on: Inglis Farm (80m distance from the source of noise), The Chimneys (90m distance from the source of noise) and in Prestonpans on: Cedar Drive (150 distance from the source of noise) and Atholl View (168m distance from the source of noise).

The **Council's Senior Environmental Health Officer** reviewed the noise report submitted with the previous application (Application ECU Reference: ECU00004926) and was satisfied that, subject to mitigation measures being adopted, the development will not result in any significant loss of amenity to the occupants of those nearby residential properties. The Senior Environmental Health

Officer has no additional comments to make regarding the current proposal as all previously discussed noise attenuation measures remain in place.

Subject to the recommended noise control being secured by a conditional grant of consent, the Council's Senior Environmental Health Officer raises no objection to the proposed Cockenzie BESS, being satisfied that it would not have an unacceptable impact on the residential amenity of nearby properties.

The **Council's Senior Environmental Compliance Officer** raises no objection to the proposal in respect of ground contamination.

The Cockenzie BESS would be located sufficiently far from the nearest residential properties such that it would not harm their residential amenity through harmful loss of sunlight or daylight.

FLOOD RISK

The proposal is supported by a Flood Risk Assessment (FRA) and Surface Water Drainage Strategy.

The **Council's Flood Protection Manager** did not submit comments on the current application. However, with regards to the previous application (Application ECU Reference: ECU00004926) he provided the following comments which are considered to be relevant to the current proposal.

It was confirmed that SEPA's Flood Hazard Mapping indicates that the site is not at risk from a river or coastal flood event with a return period of 1 in 200 years plus climate change. That is the 0.5% annual risk of a flood occurring in any one year with an allowance for climate change.

There are however small pockets of surface water flood risk shown on the northern side of the site at a 1 in 200-year surface water flood event.

The applicant has submitted a Drainage Strategy and Flood Risk Assessment as part of their application, highlighting the risk and proposed mitigation measures.

The Council's Flood Protection Manager previously advised that the Drainage Strategy is appropriate and highlighted the measures which he would seek to see in a drainage strategy. It is stated that the surface water will be directed through the ground, to a SUDS detention basin, where it will then be pumped and discharged into a private sewer to the South. The discharge rate is limited to 10.9l/s/Ha, having been calculated using existing greenfield runoff rates. The detention basin is to provide attenuation up to a 1 in 200 + CC (40%) level without flooding. A safe route is shown for any overspill above this.

It is noted that the applicant has, as per Figure 5.4 of the FRA, highlighted that none of the infrastructure is situated within the river, surface water or coastal functional flood plain (1 in 200 year) as identified by SEPA's Flood Hazard Maps. The Senior Engineer was previously content with this approach.

The Council's Flood Protection Manager expects Micro Drainage or similar calculations to be submitted to provide evidence of the statement that the drainage will not surcharge at a 1 in 30 + CC (40%) flood event. The applicant will be required to submit this information.

The Council's Flood Protection Manager advised that within the drainage layout drawing, it is noted that the "Connection to Existing Drain to be confirmed". The applicant will be required to clarify that there can be a connection made to this drain before the Senior Engineer could accept the approach.

The submission of Micro Drainage or similar calculations and clarification that the new drainage can tie into the existing drain on the southern side can both be secured by a conditional grant of consent for the proposed development. Subject to this, the Council's Flood Protection Manager previously raised no objection to the Cockenzie BESS proposal on the grounds of flood risk or drainage.

TRANSPORTATION AND ACCESS

The Cockenzie BESS would be located immediately to the north of the link road approved by the grant of planning permission 22/00440/P. The approved link road includes a footway on the northern side of the carriageway. Such a footway is necessary to provide a safe means of access for pedestrians. The **Council's Road Services** commented that the shared-use path is now on the south side of the new link road and that the BESS proposal should take full account of the active travel connections in the area, in particular the raised tables proposed over the side roads of the link road.

The plans submitted for the Cockenzie BESS Parcel B application show that the footway could be formed in accordance with planning permission 22/00440/P.

The Council's Road Services confirmed that the following comments submitted for the previous application (Application ECU Reference: ECU00004926) are still relevant:

1. A dilapidation survey of the construction traffic access route should be undertaken before commencement of development
2. All vehicles likely to access the site must have room to turn within the site to avoid the need for reversing out onto the public road (existing and proposed public road)
3. The core paths and permissive route shown on the Landscaping plan must remain accessible at all times or an appropriate alternative pedestrian route provided.
4. As noted by Transport Scotland the Abnormal Loads Assessment Report is outstanding and will be required for approval prior to commencement of development
5. Prior to the movement of any abnormal load, any accommodation measures required on the local road network, including the removal of street furniture, junction widening and traffic management must be the subject of a Road Safety Audit, and subsequently approved and implemented to the satisfaction of the Planning

Authority. Any resultant reinstatement works should be approved at the same time and be implemented within the agreed timeframe.

6. Temporary measures will be necessary to deal with surface water run-off during construction of the site, in accordance with the requirements of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and General Binding Rules.

These matters can all be secured by a conditional grant of consent for the proposed development.

The Council's Road Services further advise that all works within or affecting the public road including works on paths and footways must be authorised in advance by this Council. Further, any proposals, which include new or extended public roads, will also require Road Construction Consent prior to carrying out any works and for which application should be made to the Head of Infrastructure.

FIRE RISK

Several objections have been received on this issue raising concerns about the fire risk and proximity to residential properties.

Scottish Fire and Rescue Services did not provide comments on the current application.

Scottish Fire and Rescue Services previously advised however that there is currently no statutory requirement for Fire and Rescue Services (FRSs) to engage in the planning process of BESS sites. However, The National Fire Chiefs Council (NFCC) encourages early engagement with the local FRS, continuing throughout the planning process, and have therefore provided a guidance document. This document relates specifically to grid scale BESS, in open air environments, using lithium-ion batteries.

The Council recommends that the ECU should satisfy themselves that either the proposed BESS would not result in an unacceptable fire safety risk or that the matter of fire risk is competently dealt with under other legislation.

CONCLUSION

The principle of the Cockenzie BESS is acceptable, as Proposal EGT1 of the ELLDP, which covers the application site and the wider former Power Station site, states, amongst other things, that land at Cockenzie may present significant opportunities for renewable energy related investment. The proposed development would also contribute towards the increased decarbonisation of our electricity system, consistent with Scottish Government objectives.

It is considered that the proposal complies with the policies of the adopted East Lothian LDP and NPF4.

The Council further recommends that the ECU should satisfy themselves that either the proposed BESS would not result in an unacceptable fire safety risk or

that the matter of fire risk is competently dealt with under other legislation.

RECOMMENDATION:

1. The Council strongly recommends that the ECU should satisfy themselves that either the proposed BESS would not result in an unacceptable fire safety risk or that the matter of fire risk is competently dealt with under other legislation. The Council further recommends that the ECU should consider whether a safety management plan should be required. The ECU should also consider whether it is necessary to further consult with the Health & Safety Executive on this matter.
2. That the Scottish Government Energy Consents Unit is informed that East Lothian Council does not object to the granting of consent under Section 36 of the Electricity Act 1989 for the reasons set out in this report; and
3. That the East Lothian Chief Planning Officer be authorised to undertake any discussions with the Scottish Government Energy Consents Unit to resolve any issues relating to conditions to be attached to the consent if required; and
4. That if consent is granted then it be subject to the following conditions:

REQUIRED CONDITIONS

Part 1 - Conditions attached to the Section 36 Consent

1. Commencement of Development

- (1) The Commencement of the Development shall be no later than three years from date of this consent, or such other period as the Scottish Ministers may direct in writing. Written confirmation of the intended date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authority no later than one calendar month before that date.

Reason: To ensure that the Development is commenced within a reasonable period. And to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.

2. Notifications

- (1) Written confirmation of the Date of Final Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date.

Reason: To allow the Planning Authority and the Scottish Ministers to calculate the date of expiry of the consent.

3. Assignment

- (1) The Company must not assign the consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment, with or without conditions or refuse the assignment.
- (2) In the event that the assignment is authorised, the Company shall notify the Planning Authority and Scottish Ministers in writing of principal named contact at the assignee and contact details within fourteen days of the consent being assigned.
- (3) The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with this condition.

Reason: *To safeguard the obligations of the consent if transferred to another company.*

4. Serious Incident Reporting

- (1) In the event of any breach of health and safety or environmental obligations relating to the Development causing harm to the environment (including harm to humans) during the period of this consent, written notification of the nature and timing of the incident shall be submitted to the Scottish Ministers within twenty-four hours of the incident occurring, including confirmation of remedial measures taken and/or to be taken to rectify the breach.

Reason: *To keep Scottish Ministers informed of any serious incidents which occur, and which may be in the public interest.*

5. Design and Operation of Storage Technology

- (1) There shall be no Commencement of the Development unless and until details of the Storage Technology and Approved Layout to be implemented, including final details of access and water supply for emergency services, have been submitted to and approved in writing by the Scottish Ministers in consultation with the Planning Authority. The Storage Technology details and infrastructure, including the battery storage units to be deployed, shall be consistent with the Application.
- (2) Thereafter, the Development shall be installed and maintained in accordance with the approved details, unless otherwise agreed in writing by the Scottish Ministers in consultation with the Planning Authority.

Reason: *In the interests of protecting the environment and visual amenity.*

Part 2 - Conditions attached to Deemed Planning Permission

6. Implementation in accordance with Approved Layout and requirements of the section 36 consent

- (1) Except as otherwise required by the terms of this consent and deemed planning permission the Development shall be undertaken in accordance with the Application, the planning drawings and all documentation lodged by the Company or its appointed agents on behalf of the Company in support of the Application. For avoidance of doubt this includes any recommended or proposed measure to avoid, minimise or offset any identified potential impact of the Development which is committed to or recommended in the Application and its constituent assessments.

Reason: *To ensure that the Development is carried out in accordance with the approved details.*

7. Commencement of development

- (1) The Development must be begun not later than the expiration of three years beginning with the date of this consent.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.
- (3) There shall be no Commencement of Development unless and until details of the phasing of the Development has been submitted to and approved in writing by the Planning Authority. Thereafter the Development shall be implemented in accordance with the approved phasing scheme unless any change is agreed in advance in writing by the Planning Authority.

Reason: *To comply with section 58 of the Town and Country Planning (Scotland) Act 1997 and to ensure that the permission is implemented within a reasonable period and to allow the Planning Authority to monitor compliance with obligations attached to this planning permission as appropriate, and to ensure a properly programmed development.*

8. Colours

- (1) Prior to the commencement of development details of the finishing colours for all of the components of development shall be submitted to and approved in writing by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved.

Reason: *In the interests of the visual amenity of the area.*

9. Environmental Impact

- (1) Prior to the commencement of any development a report on the actions to be taken to reduce the Carbon Emissions from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable technology for all new buildings including the consideration of any opportunities for heat recovery systems, where feasible and appropriate in design terms. The details shall include a timetable for implementation.

Development shall thereafter be carried out in accordance with the report so approved.

Reason: *To minimise the environmental impact of the development.*

10. Species Protection Plan

- (1) Unless otherwise agreed in writing by the Planning Authority through the submission and approval of a Species Protection Plan prior to the commencement of development, no removal of hedgerow, trees or clearance of vegetation within the site shall take place during bird breeding season (which is March-August inclusive).

Reason: *In the interests of safeguarding biodiversity interests.*

11. Construction Environmental Management Plan

- (1) There shall be no Commencement of Development unless and until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority. The CEMP shall include (but not be limited to) provisions in respect of:
 - a) mitigation measures for potential dust, noise, and vibration impacts on nearby properties;
 - b) waste management, pollution control and mitigation;
 - c) surface water management;
 - d) procedures for monitoring compliance and dealing with any breaches of the approved management plan;
 - e) the formation of access from the public road to accommodate construction vehicles;
 - f) access geometry, surfacing, and sightlines (this should specify both the construction and post construction access arrangements);
 - g) the additional signage on both public roads where access will be taken to inform drivers of the construction vehicles;
 - h) details of proposed temporary site compound for storage of materials;
 - i) machinery, and designated car parking;
 - j) details of a routing plan for deliveries to the Site; and

- k) a timetable for the construction phase including confirmation of site operating times on each day of the week.

The measures set out within the approved CEMP shall thereafter be implemented in full.

Reason: *To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment.*

12. Public Access Management Plan

- (1) Prior to the commencement of development a Public Access Management Plan shall be submitted to and approved in writing by the Planning Authority. The Public Access Management Plan shall include the following details:

- a) Measures to manage and control the speeds of construction traffic, including advisory speed limit signage on the local road network; and
- b) Details of any temporary and permanent infrastructure that will be delivered to ensure the safe and convenient active travel routes in the local area, including a timetable for the implementation of the measures.

Thereafter, the Public Access Management Plan shall be implemented and complied with in accordance with the approved details, unless otherwise approved in writing by the Planning Authority.

Reason: *To ensure the safe continuation of public access and amenity.*

13. Financial Guarantee

- (1) There shall be no Commencement of Development unless and until a bond or other form of financial guarantee, which secure the cost of performance of all decommissioning, restoration and aftercare obligations referred to in condition 14 is submitted to and approved in writing by the Planning Authority.
- (2) The value of the financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in condition 14.
- (3) The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in condition 14.
- (4) The value of the financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any

variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.

- (5) It shall be the responsibility of the applicant to fund any work undertaken by a suitably qualified independent professional.

Reason: to ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.

14. Site Decommissioning, Restoration and Aftercare

- (1) The Development will disconnect from the grid and cease to import or export electricity no later than the date falling forty years from the date of Final Commissioning. The total period for operation of the Development, decommissioning and restoration of the Site in accordance with this condition shall not exceed forty-one years from the Date of Final Commissioning without prior written approval of the Scottish Ministers in consultation with the Planning Authority.
- (2) No Development shall commence until a Decommissioning, Restoration and Aftercare Strategy has been submitted to and approved in writing by the Planning Authority. The strategy shall include measures for the decommissioning of the Development, restoration and aftercare of the Site and will include, without limitation, proposals for the removal of the above ground elements of the Development, confirmation of the status of subterranean elements of the Development (retention, removal, or other such proposal), the treatment of ground surfaces, the management and timing of the works and environmental management provisions.
- (3) No later than 3 years prior to decommissioning of the Development or the expiration of the consent (whichever is the earlier) a detailed Decommissioning, Restoration and Aftercare Plan, based upon the principles of the approved Decommissioning Strategy, shall be submitted to the Planning Authority for written approval. The detailed Decommissioning, Restoration and Aftercare Plan, will provide updated and detailed proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include:
- a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases); to include the items listed in the CEMP site waste plan.
 - b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
 - c) a dust management plan;

- d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the Site entrances and the adjacent local road network;
- e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the Site;
- f) details of measures for soil restoration;
- g) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- h) details of measures for sewage disposal and treatment;
- i) temporary site illumination;
- j) the construction of any temporary access into the Site and the creation and maintenance of associated visibility splays;
- k) details of any watercourse crossings;
- l) a species protection plan based on surveys for protected species (including birds) carried out no longer than 18 months prior to submission of the plan.
- m) traffic management plan
- n) timetable for decommissioning and restoration, which period shall not exceed two years unless otherwise agreed in writing by the planning authority.
- o) Restoration Layout Plan showing the indicative final restored layout including agricultural grade land and which shall include restoration of the topography which existed prior to the commencement of the Development unless otherwise agreed with the Planning Authority.
- p) The Development shall be decommissioned, the Site restored, and aftercare thereafter undertaken in accordance with the approved detailed decommissioning, restoration and aftercare plan, unless otherwise agreed in writing in advance with the Planning Authority.

Reason: To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the Site, in the interests of safety, amenity and environmental protection.

15. Removal of redundant equipment

- (1) The Company shall supply to the Planning Authority an annual written report confirming that the battery energy storage facility is importing and exporting electricity to the grid. If the battery storage facility fails to import or export electricity to the grid for a continuous period of 12 months, then unless otherwise agreed in writing with the Planning Authority, the Company shall no later than one year after the last day of this 12-month period submit the Site Decommissioning, Restoration and Aftercare Plan to the Planning Authority for approval and implement it in accordance with condition 14.

Reason: To ensure that if the Development or part thereof becomes redundant the equipment is removed from the Site, in the interests of safety, amenity and environmental protection.

16. Drainage

(1) Prior to the commencement of development, the following details shall be submitted to and approved by the Planning Authority:

- The submission of Micro Drainage or similar calculations; and
- clarification that the new drainage can tie into the existing drain on the southern side of the site.

Development shall thereafter be carried out in accordance with the details so approved.

Reason: *To ensure the development is appropriately protected against flood risk and does not give rise to increased flood risk elsewhere.*

17. Construction Traffic

(1) Prior to the commencement of development, a Construction Traffic Management and Routing Plan (CTMRP) for the construction phase of the development shall be submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland. The CTMRP shall, unless otherwise approved in writing by the Planning Authority, include the following details:

- a) All vehicles likely to access the site must have room to turn within the site to avoid the need for reversing out onto the public road (existing and proposed public road)
- b) a dilapidation survey of the construction traffic access route
- c) The core paths and permissive route shown on the Landscaping plan must remain accessible at all times or an appropriate alternative pedestrian route provided.
- d) As noted by Transport Scotland the Abnormal Loads Assessment Report is outstanding and will be required for approval prior to commencement of development
- e) Prior to the movement of any abnormal load, any accommodation measures required on the local road network, including the removal of street furniture, junction widening and traffic management must be the subject of a Road Safety Audit, and subsequently approved and implemented to the satisfaction of the Planning Authority. Any resultant reinstatement works should be approved at the same time and be implemented within the agreed timeframe.
- f) Temporary measures will be necessary to deal with surface water run-off during construction of the site, in accordance with the requirements of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and General Binding Rules.
- g) details of temporary signage in the vicinity of the site warning of construction traffic;

- h) details of wheel washing facilities which must be provided and maintained in working order during the period of construction and/or decommissioning of the site. All vehicles must use the wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle wheels;
- i) details of how the behaviour of contractor and subcontractor drivers will be monitored and enforced with particular regards to vehicle speeds; and
- j) a Staff Travel Plan to include measures to minimise dependency on the private car to and from the construction compounds.

The development shall thereafter be carried out in accordance with the approved CTMRP unless otherwise approved in writing by the Planning Authority.

Thereafter the approved programme of monitoring shall be implemented. Any remedial works required to those public and trunk roads shown by the monitoring as arising from the construction of the development shall be undertaken by the applicant within 3 months of the completion of the final monitoring undertaken, unless an alternative means of securing the works is approved in writing by the Planning Authority. Any damage to the road surface as a direct result of the construction process of the development that is identified during the monitoring which could result in a significant risk to road safety shall be repaired immediately.

Reason: *In the interests of road safety and in the interest of the promotion of sustainable modes of transportation.*

18. Abnormal Loads

- (1) Prior to commencement of deliveries to site, the proposed route for any abnormal loads on the trunk road network must be submitted to and approved by the Planning Authority, in consultation with Transport Scotland as the trunk roads authority.

Reason: *To minimise interference and maintain the safety and free flow of traffic on the Trunk Road as a result of the traffic moving to and from the development.*

- (2) Prior to the movement of any abnormal load, any accommodation measures required on the trunk road network, including the removal of street furniture, junction widening and traffic management must be approved and implemented to the satisfaction of the Planning Authority, in consultation with Transport Scotland.

Reason: *To minimise interference and maintain the safety and free flow of traffic on the Trunk Road as a result of the traffic moving to and from the development.*

- (3) Prior to the movement of any components and/or construction materials, any additional signing or temporary traffic control measures deemed necessary on

the trunk road network due to the size or length of any loads being transported must be undertaken by a recognised QA traffic management consultant, to be approved by Transport Scotland.

Reason: *To ensure that the transportation of any components/materials will not have any detrimental effect on the road and structures along the route.*

19. Noise

(1) Prior to the commencement of development, a further noise report shall be submitted to and approved by the Planning Authority. The further noise report shall:

a) Specify the detailed engineering that is required to provide attenuation to the following equipment, in order to accord with part c) of this condition:

- Battery Containers,
- Inverters,
- Transformers,
- Substation Transformers;

b) Provide details of a 4m high bund that will be installed to the north boundary of the compound to provide further attenuation to the houses of Inglis Farm, The Chimneys and Cedar Drive. All perimeter fencing around the equipment compounds will be 4m acoustic fencing as outlined in Figure 6 of Ian Sharland Ltd's Noise Report of 14th January 2024; and

c) Demonstrate that the following noise limits can be met:

- For operational noise, the Rating Level, L_ATr, of noise associated with the operation of the proposed facility when measured at least 3.5m from the façade of any neighbouring residential property in freefield conditions, shall be no more than 5dB (A) above the background noise level, L_A90,T. All measurements to be made in accordance with BS 4142: 2014+A1:2019 "Methods for Rating and Assessing Industrial and Commercial Sound".

The further noise report shall also contain a timetable for the implementation of all necessary mitigation measures.

Development shall thereafter be carried out in accordance with the further noise report so approved, and operational noise from the battery energy storage system shall comply with the noise limits set out above.

Reason: *To safeguard the amenity of nearby noise sensitive properties*

20. Lighting

- (1) There shall be no Commencement of Development unless and until details of external lighting (including details of the lighting units and any emergency lighting, the time period for illumination for each unit, the angle and intensity of illumination and hours of operation) has been submitted to and approved in writing by the Planning Authority. Unless essential emergency lighting only, any other lighting must not be operational unless personnel are on site.

Reason: *In the interests of visual amenity in the area, and to avoid unnecessary light disturbance*

21. Archaeological works

- (1) There shall be no commencement of development until the applicant has undertaken and reported upon a Programme of Archaeological Work (5% Evaluation by archaeological trial trench) of the area of the development which lies outside the former coal store with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the Planning Authority.

Reason: *In the interests of archaeological and natural heritage.*

22. Coal mining legacy

- (1) Prior to the commencement of development, a competent person must be employed by the Company to carry out a positional review of the mine entry in the area, to calculate its potential area of departure and zone of influence and to prevent unauthorised access into this area of potential instability.
- (2) Once the potential area of departure and zone of influence has been ascertained, no works must be undertaken during the construction and operation of the development.

Reason: *In the interests of public safety.*

23. Landscape and Ecological works

- (1) There shall be no Commencement of Development until an updated Landscape Masterplan, and a Landscaping and Ecological Mitigation and Monitoring Plan (LEMMP), has been submitted to and approved in writing by the Planning Authority. Thereafter, the approved scheme shall be fully implemented prior to the site becoming operational, unless otherwise agreed in writing by the Planning Authority.
- (2) The LEMMP shall cover the forty year life of the development and shall detail enhancements for landscape and biodiversity mitigation and enhancement.

This should be informed by the ecological survey work and consider the ongoing long-term management of biodiversity enhancement measures.

- (3) The updated Landscape Masterplan shall include (but not be limited to) the following:
- a) A full planting plan and planting schedule and specification (with the maximisation of native planting species for new planting and mitigation for loss of existing features);
 - b) A scheme of earthworks including levels to all bunds and SUDS basins
 - c) Woodland creation;
 - d) Hedgerow planting;
 - e) Appropriate habitat creation to the SUDS basin
 - f) A programme of management, replacement planting, thinning and pruning with a typical 12-month cycle for the forty year life of the development;
 - g) Details of measures if reptiles are found during construction;
 - h) Precautionary measures for the protection of mammals during construction;
 - i) Specification of the timetable for implementation (to account for breeding birds, and all other seasonal requirements) and management thereafter for a thirty year period;
 - j) Tree protection measures for trees retained on and adjacent to the site to include temporary protective fencing in accordance with figure 2 of BS5837:2012 and ground protection as required;
 - k) Details of existing trees on and adjacent to the site including their root protection areas as defined by BS5837:2012.

Reason: In order to ensure the planting is acceptable at this location, and in the interests of visual amenity and ensure that species and habitats affected by the development are afforded suitable protection during the construction and operation of the development.