

# Report

|                         |  |
|-------------------------|--|
| <b>Report to:</b>       | <b>Planning Committee</b>                                      |
| <b>Date of Meeting:</b> | <b>5 September 2023</b>  |
| <b>Report by:</b>       | <b>Executive Director (Community and Enterprise Resources)</b> |

|  |  |
|--|--|
| <b>Reference no:</b>                   | P/23/0308  |
| <b>Proposal:</b>                       | Erection of 6 wind turbines, access tracks and ancillary infrastructure (Section 42 application to amend condition 1 of P/20/0406 to extend time period to 16 April 2054 and Condition 15 to extend period for decommissioning to three years) |
| <b>Site Address:</b>                   | Muirhall Wind Farm<br>Auchengray<br>Lanark   |
| <b>Applicant:</b>                      | Muirhall Wind Farm Ltd   |
| <b>Agent:</b>                          | Muirhall Energy Ltd  |
| <b>Ward:</b>                           | 02 – Clydesdale North  |
| <b>Application Type:</b>               | Modification, Variation or Removal of Planning Conditions  |
| <b>Advert Type:</b>                    | Environmental Impact Assessment (EIA) Report : Lanark Gazette 12 April 2023<br>EIA Report : Edinburgh Gazette 14 April 2023<br>Non-notification of neighbours: Lanark Gazette 12 April 2023<br>Bad Neighbour: Lanark Gazette 12 April 2023     |
| <b>Development Plan Compliance:</b>    | Yes  |
| <b>Departures:</b>                     | None   |
| <b>Recommendation:</b>                 | Grant Subject to Conditions  |
| <b>Legal Agreement:</b>                | Not Required   |
| <b>Direction to Scottish Ministers</b> | Not Required   |

## **1. Reason for Report**

- 1.1. The application is required to be determined by the Planning Committee under Clause 5.1 of the Decision-Making Process 2015 as it constitutes a major planning application.

## **2. Site Description**

- 2.1. The application site forms part of what is now considered as Phase 1 of the existing Muirhall wind farm, which is located approximately 2 km south east of the settlement of Auchengray. The overall wind farm array comprises 11 turbines which were erected over three phases and this particular phase involves 6 turbines, each at a height of 125m to blade tip. The turbines have been operational since 2011.

## **3. Description of Proposed Development**

- 3.1. The application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) to vary the wording of planning conditions 1 and 15 attached to planning permission P/20/0406 (a previous Section 42 application that granted consent for the original 25 years for the lifetime of the wind farm to be extended to 30 years). The applicant is now seeking consent for a 40 year operational period for the Muirhall wind farm (condition 1) and extension of the period for carrying out restoration of the site (condition 15) as follows and these changes are marked in italics.

- 3.2 Condition 1 of application P/20/0406 states:-

"That consent is granted from the date of this consent until *28<sup>th</sup> March 2041.*"

The applicant has requested that condition 1 be varied to read:-

"That consent is granted from the date of this consent until *16<sup>th</sup> April 2054.*"

- 3.3 Condition 15 of planning application P/20/0406 states:-

*"Within 12 months* of the end of the period of this consent as specified in condition 1 above, (unless a further consent is granted) all wind turbines, ancillary equipment and buildings shall be dismantled and removed from the site and the land shall be restored and subject to aftercare, in accordance with the restoration and aftercare scheme referred to in Conditions 16 and 17. For the purposes of this condition "restored" means the removal of all wind turbines, turbine pads, initial layer of foundation and all buildings and ancillary development. Notwithstanding this requirement, no later than one year prior to the commencement of the restoration and aftercare scheme, the Council as Planning Authority, shall review the retention of pads, foundations, cable/ducts, and access tracks within the context of the restoration strategy to identify any elements to be retained on site or requiring alternative reinstatement."

The applicant has requested that condition 15 be varied to read:-

*"Within 3 years* of the end of the period of this consent as specified in condition 1 above, (unless a further consent is granted) all wind turbines, ancillary equipment and buildings shall be dismantled and removed from the site and the land shall be restored and subject to aftercare, in accordance with the restoration and aftercare scheme referred to in Conditions 16 and 17. For the purposes of this condition "restored" means the removal of all wind turbines, turbine pads, initial layer of foundation and all buildings and ancillary development. Notwithstanding this requirement, no later than one year prior to the commencement of the restoration and aftercare scheme, the Council as Planning Authority, shall review the retention of pads, foundations, cable/ducts, and access tracks within the context of the restoration strategy to identify any elements to be retained on site or requiring alternative reinstatement."

- 3.4 A separate planning application P/23/0309 which seeks similar changes to conditions to the planning permission for phase 2 of Muirhall wind farm is the subject of a separate report on this agenda.
- 3.5 If successful, the effect of a Section 42 application to modify a planning condition or conditions is to grant a further planning permission for the whole development but with the amended condition or conditions replacing those that were previously issued, or with conditions removed if required. All other conditions, if relevant, are also required to be attached to any new planning permission. If the proposed changes to the condition or conditions are deemed unacceptable, then Section 42 of the Act requires the application to be refused. Any refusal of an application under Section 42 of the Act does not have any effect on the original planning permission which remains intact.

#### **4. Relevant Planning History**

- 4.1. Muirhall wind farm comprises 11 turbines in total and was developed over three phases under separate planning permissions. In terms of phase 1, planning permission was originally granted for 6 turbines at a maximum height of 125m to blade tip in 2008 (Planning Ref: CL/05/0209) and was subject to a condition limiting the life span of the turbines to 25 years. A Section 42 application (ref: P/20/0406) was approved in August 2020 to increase the operational timescale for the approved turbines to 30 years ie until 2041. This 2020 consent is the current, extant permission that the 6 turbines are operating under and is therefore the permission that is subject to this current Section 42 application.
- 4.2 Phase 2 of the wind farm constituted a further 2 turbines at a maximum height of 145m to tip height (Planning Ref: CL/12/0074 granted in September 2012). This phase of the wind farm has been operational since 2014 with a life span until 2039. Planning permission P/20/0409 was subsequently granted for the operational timescale of the development to be extended by a further 2 years ie 2041.
- 4.3 Phase 3 of the wind farm (Planning Ref: CL/14/0113) constituted a further 3 turbines at a height of 147m to tip. This application was originally refused on landscape and visual matters but the subsequent appeal to the DPEA was sustained in July 2015. The turbines have now been operational since 2016 with a life span until 28 March 2041. It should however be noted that this phase of the wind farm is now under separate ownership.

#### **5. Supporting Information**

- 5.1. The applicant has submitted a number of supporting documents with the application, including a Section 42 Supporting Statement setting out the justification for the application, and copies of the original submitted Environmental Statement (ES) documents and figures.

#### **6. Consultations**

- 6.1. The Ministry of Defence (MOD) – no adverse comments or objections, as the turbine location and dimensions haven't altered from the previous approval.  
Response: Noted.
- 6.2. National Air Traffic Services (NATS) – no adverse comments or objections to the proposals.  
Response: Noted.
- 6.3. Edinburgh Airport – no objection to the application, as the proposals do not conflict with safeguarding criteria.  
Response: Noted.

## **7. Representations**

7.1 Following the statutory period of neighbour notification and advertisement, 1 letter of representation, objecting to the application, has been received. The issues raised are summarised as follows:-

- ◆ Too many wind farms in this area
- ◆ They are a blot on the landscape
- ◆ Damage to the local roads
- ◆ Damage to peat
- ◆ Damage to wildlife, including birds, bats and insects
- ◆ Interference with mobile phones, radar and television signals
- ◆ Only people who gain are MPs, the landowner and Councils

The above issues will be considered in the assessment below. This letter is available for inspection on the planning portal.

## **8. Development Plan**

8.1. Under Section 25 of the Town and Country Planning (Scotland) Act 1997, all applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

### **8.2 National Planning Framework 4**

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. NPF4 supports the planning and delivery of sustainable places, liveable places, and productive places.

#### National Planning Framework 4 Policies

- ◆ Policy 1 - Tackling the climate and nature crises
- ◆ Policy 2 - Climate mitigation and adaptation
- ◆ Policy 3 - Biodiversity
- ◆ Policy 4 - Natural places
- ◆ Policy 5 - Soils
- ◆ Policy 11 - Energy
- ◆ Policy 29 - Rural development

### **8.3 South Lanarkshire Local Development Plan 2 (2021)**

For the purposes of determining planning applications the Council will, therefore, assess proposals against the policies contained within the adopted South Lanarkshire Local Development Plan 2 (SLLDP2). In this regard the application site and associated proposals are affected by the following policies contained in the SLLDP2:-

#### SLLDP2 Volume 1 Policies

- ◆ Policy 1 - Spatial Strategy
- ◆ Policy 2 - Climate Change
- ◆ Policy 4 - Green Belt and Rural Area
- ◆ Policy 5 - Development Management and Placemaking
- ◆ Policy 14 - Natural and Historic Development
- ◆ Policy 15 - Travel and Transport
- ◆ Policy 18 - Renewable Energy

## **9. Guidance**

9.1. None applicable.

## **10. Assessment and Discussion**

- 10.1. Under the terms of Section 25 of the Town and Country Planning (Scotland) Act 1997, all applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The policies contained within National Planning Framework 4 and the South Lanarkshire Local Development Plan 2 are the main consideration in this case, together with an assessment of any other material planning considerations.
- 10.2 As the proposals involve amendments to an existing consent, now implemented, there is no opportunity to revisit the principle of the development, or any facets of the Original Consent that do not form part of the proposed amendments. Therefore, in this instance, the assessment of the proposals relates solely to consideration of any impacts that may arise from an increase in the permitted period of operation of Muirhall Wind Farm from 25 to 40 years, and from the extended period proposed for site decommissioning and restoration. The main matters for the Council's consideration are therefore whether these extended periods for operation and decommissioning/restoration of the wind farm would continue to comply with the Development Plan. No changes to the scale, design or layout of the approved scheme are proposed.
- 10.3 In determining whether the proposed extension to the operation of the wind farm is acceptable, it should be noted that the 25 year time limit on the original permission was not imposed to mitigate any effects of the wind turbines on the surrounding area, but rather reflected the 'industry standard' at the time, in that the operational capacity of turbines was limited by the technology then in place.
- 10.4 However, as technology has advanced and wind farms become an established feature, developers have sought to extend their operational time limits. Overall, there is a general presumption in favour of granting permission in such cases, unless exceptional circumstances suggest otherwise. In this instance, the policy direction on wind farm development is broadly similar to when the original permission was granted, and it is considered that the environmental impact of the proposals remains unchanged. In addition, the application, if successful, would result in an additional 13 years of renewable electricity generation for an already consented/operational wind farm, which accords with policy direction at both a national and a local level.
- 10.5 The previous consents, now implemented, first established the principle of a wind farm development at Muirhall in 2008. The amendments proposed relate, firstly, to an extension of the permitted period of operation from 27 to 40 years for the full Wind Farm site (in conjunction with application P/23/0309). As such, the key issue in assessing the application is whether the continued operation of the wind farm for a further 13 years is considered acceptable. In addition, consideration requires to be given to the proposed extension of time for site decommissioning and restoration. A detailed assessment against NPF4, local development plan policy in the adopted South Lanarkshire Local Plan 2 and its associated supporting planning guidance on Renewable Energy has been carried out. It is concluded that the extension of the permitted period of operation for the Wind Farm and the extension of time for site

decommissioning and restoration would accord with the relevant assessment criteria and would not have any resultant significant, adverse impacts.

10.6 A single letter of objection to the application was received, and whilst noting the comments the current application isn't proposing any further wind turbines or associated infrastructure on the existing wind farm site. In addition, the principle of a wind farm on the site was first established in 2008, with full consideration being given to impacts on visual and residential amenity, impact on the local road network, impacts on peat, wildlife, ecology, and biodiversity, and on potential interference issues.

10.7 It should also be noted that the Original Permission is also subject to a legal agreement to ensure the provision of a habitat management plan is implemented throughout the lifetime of the wind farm. The legal agreement also requires yearly contributions (£2,500 per MW generated) to the South Lanarkshire Renewable Energy Fund. It should be noted that whilst not a material consideration to the assessment of the application, if this application is successful, it would result in an additional 13 years of payments being made to this fund. The legal agreement has been structured in such a way that any permission that supersedes the Original Permission (as would be the case if this current application were permitted) would also be subject to the provisions of the legal agreement and a variation of the agreement is not required.

10.8 Conclusion

In conclusion, it is considered that subject to the replication of the relevant (post construction) conditions attached to the original permission, the proposals for the extension of the operational life span of the wind farm, and for the extended period of site decommissioning and restoration are considered acceptable. It is, therefore, recommended that the Planning Committee approve the application.

**11. Recommendation and Conditions**

11.1. The Committee is asked to agree the following recommendation:-

**Grant consent subject to the following conditions:-**

01. That consent is granted from the date of this consent until 16 April 2054

Reason: In order to define the terms of the consent.

02. The development shall be carried out strictly in accordance with the terms of the application and the accompanying Environmental Statement (ES) as amended in part by the addendum, including all mitigation measures as stated therein subject to the conditions below, such conditions having precedence over the terms of the application, the ES, and the Addendum.

Reason: In order to define the terms of the consent.

03. That within 3 months of the date of decision, a guarantee to cover all site restoration and aftercare liabilities imposed on the expiry of this consent will be submitted for the written approval of the planning authority. Such guarantee must:-

- i. be granted in favour of the planning authority;
- ii. be granted by a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee;
- iii. be for an amount which covers the value of all site restoration and aftercare; liabilities as determined by the planning authority at the commencement of development;

- iv. contain provisions so that all the site restoration and aftercare liabilities as determined at the commencement of development shall be increased on each fifth anniversary of the date of this consent;
- v. come into effect on or before the date of commencement of development and expire no earlier than 24 months after the end of the aftercare period.

Reason: In the interests of amenity and in order to retain effective planning control.

- 04. In the event of any turbine, or group of turbines, failing or being no longer required for electricity generation, or any other reason, for a continuous period of six months, unless otherwise agreed with the planning authority, the turbine(s) shall be replaced (in the case of failures), or dismantled and removed. In the case of removal, that part of the site accommodating the turbine, the turbine pad and access roads shall be reinstated within three months of the end of the six month period of non-generation in accordance with the agreed scheme under condition 51 of this permission, all to the satisfaction of the Council as Planning Authority.

Reason: In order to define the terms of the consent.

- 05. That within 6 months from the date of this decision, a monitoring plan shall be submitted to the Council as Planning Authority setting out the steps that shall be taken to monitor the environmental effects of the development during the operational phase. The plan shall make specific reference to habitat creation, biodiversity impact, ground water, surface water, noise, and dust. Thereafter, the plan shall be implemented to the satisfaction of the Council. Results of such monitoring to be submitted to the Council on a 6 monthly basis, or a frequency agreed in writing by the Council, as Planning Authority.

Reason: In the interest of amenity and the environment.

- 06. Throughout the decommissioning and subsequent restoration of the site, an appropriately qualified environmental clerk of works named to and approved by the Council as Planning Authority shall be made available by the developer to direct said works. The ecological clerk of works shall also check water quality and other ecological matters and shall provide regular reports as an input to the compliance assessment.

Reason: In order to ensure suitable restoration.

- 07. That within 6 months from the date of this decision, a Pollution Prevention and Incident Plan which includes mitigation measures against environmental pollution during the life of the site shall be submitted to the Council as Planning Authority.

Reason: In the interests of pollution prevention.

- 08. At the reasonable request of the Council as Planning Authority and following a complaint to the Council relating to noise emissions arising from the operation of the wind farm, the wind farm operator shall appoint an independent noise consultant, whose appointment shall require to be approved by the Council, to measure the level of noise emission from the wind farm at the property to which the complaint related. The measurement and calculation of noise levels shall be undertaken in accordance with ETSU-R-97 having regard to paragraphs 1 to 3 and 5 to 11 inclusive of the schedule on Pages 95 to 97 inclusive, and Supplementary Guidance Notes to the Planning Obligation pages 99 to 109 of ETSU-R-97.

Reason: In the interests of amenity.

09. Noise from the wind turbines shall not exceed the following levels at the boundary of the curtilage of any adjacent noise sensitive premises at wind speeds of up to 9 metres per second at 10m height as measured on the site:-

- Quiet Daytime Hours, as defined in ETSU-R-97 as all evenings 1800 to 2300, Saturdays 1300 to 1800 and Sundays 0700 to 1800, background noise level plus 5dB(A) L90 or 40 dB(A) L90 whichever is the greater;
- Night time Hours, as defined in ETSU-R-97 as 2300 to 0700 on all days plus 5dB(A) L90 or 43 dB(A) L90, whichever is the greater.

Reason: In the interests of amenity.

10. If the tonal noise emitted by the development exceeds the threshold of audibility by 6.5dB or more, then the acceptable noise specified in condition 9 shall be reduced by 5dB, always providing that the definition of audibility for the purposes of this condition shall be as described in 'The Assessment and rating of Noise from Wind Farms (ETSU-R-97).

Reason: In the interests of amenity.

11. Pursuant to condition 8 above, where an assessment of any noise impact which, in the opinion of the Council as Planning Authority acting reasonably, is found to be in breach of the noise limits described in condition 9, the developer shall carry out mitigation measures to remediate the breach so caused. Details of any such mitigation measures required are to be submitted to the planning authority for prior approval.

Reason: In the interests of amenity.

12. That within 3 months from the date of this decision, details shall be submitted to the Council as Planning Authority of groundwater management, water treatment and the means of drainage from all hard surfaces and structures within the site. For the purposes of this condition, "hard surfaces" includes internal access tracks, construction and laydown areas, turbine pads and crane pads. The details to be submitted should indicate the means of protecting groundwater and diverting surface water run-off and will allow for the recharging of peat areas within the site. Thereafter the approved measures shall be implemented for the lifetime of the development, hereby approved.

Reason: In the interests of hydrology.

13. The clearance of snow from access tracks will be by mechanical means only unless otherwise agreed in writing by the Council as Planning Authority. For the avoidance of doubt the use of chemicals or salt based material is not to be used for snow clearance purposes.

Reason: In the interests of the environment.

14. Any fuel, oil, lubricant, paint, or solvent stored on site should be contained within bunds or double skin tanks which must be locked and capable of containing at least 110% of the largest capacity vessel stored therein and any spillage of any oil shall be dealt with immediately.

Reason: In the interests of the environment.



15. Within 3 years of the end of the period of this consent, as specified in condition 1 above, (unless a further consent is granted) all wind turbines, ancillary equipment and buildings shall be dismantled and removed from the site and the land shall be restored and subject to aftercare, in accordance with the restoration and aftercare scheme referred to in Conditions 16 and 17. For the purposes of this condition "restored" means the removal of all wind turbines, turbine pads, initial layer of foundation and all buildings and ancillary development. Notwithstanding this requirement, no later than one year prior to the commencement of the restoration and aftercare scheme, the Council as Planning Authority shall review the retention of pads, foundations, cable/ducts, and access tracks within the context of the restoration strategy, to identify any elements to be retained on site or requiring alternative reinstatement.

Reason: In the interests of restoration.

16. Prior to the decommissioning of any turbine, an aftercare scheme for the restored site shall be submitted to and approved by the Council as Planning Authority and thereafter implemented to its satisfaction. The aftercare scheme shall include the measures necessary to manage the site or that part of the site as the case may be in accordance with the habitat management plan subject to the Section 75 Agreement compiled in conjunction with this planning permission.

Reason: In the interests of aftercare.

17. Without prejudice to the generality of condition 16 above, prior to the development becoming operational, the restoration plan will include details of phased decommissioning, the land use prevailing after decommissioning has taken place, the means of disposal of all waste materials and road metal, the dismantling methodologies for each turbine setting out the extent of recovery or of recycling of all metals and other recyclable parts, the means of removing the turbine bases and crane pads and the removal of cabling and ducts within the site.

Reason: In the interests of restoration.

18. That within 3 months from the date of this decision, a written scheme, setting out a protocol for the assessment of shadow flicker (and including mitigation measures) in the event of the receipt of a complaint, shall be submitted and approved by the Council as Planning Authority. Operation of the turbines shall take place in accordance with the approved protocol unless the Council gives its prior written approval to any variation.

Reason: In the interest of amenity.

19. The wind farm operator shall undertake of monitoring of migratory pink-footed geese birds from the date of this consent: at five yearly intervals, at 1, 5, 10 and 15 years thereafter. Surveys during operation shall record bird strikes and bird movement during the migratory period between September and November. Within one month of the issue of planning permission the detail and methodology for the ornithological monitoring and reporting of results shall be submitted to and approved by the Council as Planning Authority in consultation with Scottish Natural Heritage and such other parties the Planning Authority considers appropriate. The findings of these surveys shall be collated into two reports, at three and fifteen years after commissioning of the development, and all of the original data, and the reports, shall be made available to the Planning Authority, Scottish Natural Heritage and other such parties as the Planning Authority considers appropriate.

Reason: In the interests of ornithology.

## **12. Reason for Decision**

- 12.1. The proposals to extend the lifespan of a wind farm development that already benefits from planning consent by 13 years to 16 April 2054, and to extend the period for site decommissioning to 3 years are considered acceptable, subject to the imposition of the previous suite of applicable environmental conditions. The proposals are considered to accord with Policies 1, 2, 3, 4, 5, 11 and 29 of the National Planning Framework 4, and with Policies 1, 2, 4, 5, 14, 15, and 18 of the adopted South Lanarkshire Local Development Plan 2 and its supporting planning guidance on Renewable Energy.

**David Booth**

**Executive Director (Community and Enterprise Resources)**

**Date: 28 August 2023**

## **Background Papers**

Further information relating to the application can be found online:-

[P/23/0308 | Erection of 6 wind turbines, access tracks and ancillary infrastructure \(Section 42 application to amend condition 1 of P/20/0406 to extend time period to 16.04.2054 and Condition 15 to extend period for decommissioning to three years\) | Muirhall Wind Farm Auchengray Lanark](#)

## **Corporate Considerations**

The report raises no impacts or risks in terms of equalities or financial implications. Any implications in terms of climate change, sustainability or the environment will have been considered above in terms of the relevant national and local policies.

## **Contact for Further Information**

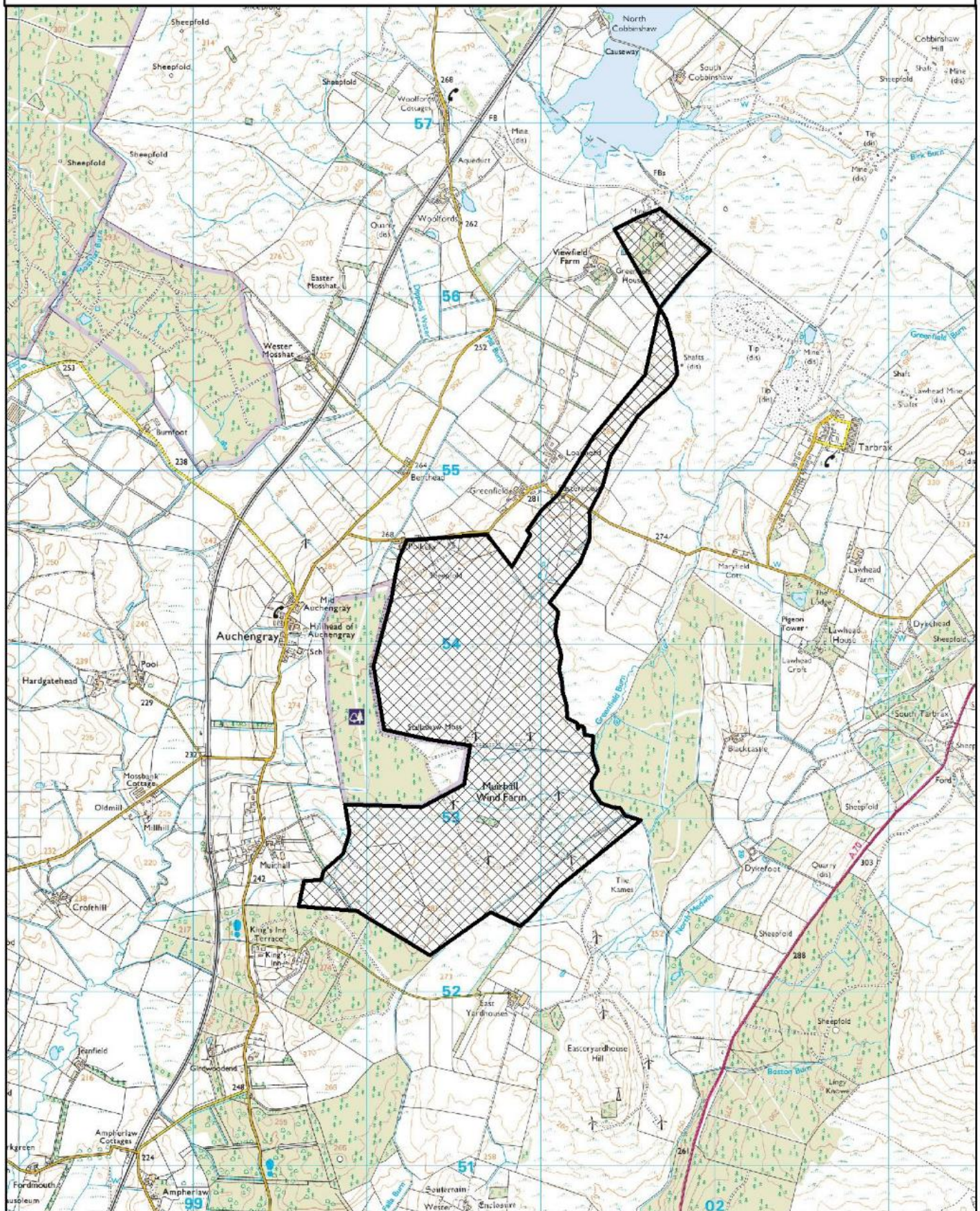
If you would like to inspect the background papers or want further information, please contact:-

Tel: 01698 454867

E-mail: [planning@southlanarkshire.gov.uk](mailto:planning@southlanarkshire.gov.uk)



# P/23/0308 Muirhall Wind Farm Phase 1



© Crown copyright and database rights 2023 OS 100020730. You are permitted to use this data solely to enable you to respond to, or interact with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.



Scale:  
1:30,000  
Date:  
11/08/2023



**South Lanarkshire Council**  
**Community and Enterprise Resources**  
Planning and Regulatory Services