

Report

Report to:	Planning Committee
Date of Meeting:	5 September 2023
Report by:	Executive Director (Community and Enterprise Resources)

Reference no:	P/23/0309
Proposal:	Extension to existing Muirhall wind farm involving erection of two 145 metre high wind turbines and associated infrastructure (Section 42 application to amend condition 2 of P/20/0409 to extend time period to 16 April 2054 and Condition 4 to extend period for decommissioning to three years)
Site Address:	Muirhall Wind Farm Auchengray Lanark
Applicant:	Muirhall WF Extension Ltd
Agent:	Muirhall Energy Ltd
Ward:	02 – Clydesdale North
Application Type:	Modification, Variation or Removal of Planning Conditions
Advert Type:	Environmental Impact Assessment (EIA) Report : Lanark Gazette 12 April 2023 EIA Report : Edinburgh Gazette 14 April 2023 Non-notification of neighbours: Lanark Gazette 12 April 2023 Bad Neighbour: Lanark Gazette 12 April 2023
Development Plan Compliance:	Yes
Departures:	None
Recommendation:	Grant subject to Conditions
Legal Agreement:	Not Required
Direction to Scottish Ministers	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 the Phase 2 extension 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 (as described in 3.6 below). This particular phase involves the erection of 2 turbines, both at a height of 145m to blade tip. The turbines have been operational since 16 April 2014.

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 2 and 4 attached to planning permission P/20/0409 (a previous Section 42 application for Phase 2 of the Muirhall wind farm that granted consent for the operational timescale of the development for a further 2 years). The applicant is now seeking consent for a 40 year operational period for the Muirhall wind farm (condition 2) and the period for carrying out restoration of the site (condition 4) as follows and these changes are marked in italics.

- 3.2 Condition 2 of application P/20/0409 states:-

“That consent is granted from the date of this consent until *28th March 2041.*”

The applicant has requested that condition 2 be varied to read:-

“That consent is granted from the date of this consent until *16th April 2054.*”

- 3.3 Condition 4 of planning application P/20/0409 states:-

“*Within 12 months* of the end of the period of consent (unless a further consent is granted) all wind turbines, ancillary equipment and buildings shall be dismantled and removed from site and the land restored and subject to aftercare, in accordance with the restoration and aftercare scheme referred to in Condition 5. For the purposes of this condition 'restored' means the removal of all wind turbines, turbine pads, initial layers 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 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 4 be varied to read:-

“*Within 3 years* of the end of the period of consent (unless a further consent is granted) all wind turbines, ancillary equipment and buildings shall be dismantled and removed from site and the land restored and subject to aftercare, in accordance with the restoration and aftercare scheme referred to in Condition 5. For the purposes of this condition 'restored' means the removal of all wind turbines, turbine pads, initial layers 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 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/23/0308 which seeks similar changes to conditions to the planning permission for phase 1 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). 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.
- 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 and was subject to a condition limiting the life span of the turbines to 25 years ie 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. This 2020 consent is the current, extant permission that phase 2 of the wind farm is operating under and is therefore the permission that is subject to this current Section 42 application.
- 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 and the full copy is available to view 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 need 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 the Muirhall Wind Farm extension, from 27 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 extension to the original wind farm site (in conjunction with application P/23/0308). 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 extension to 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 Muirhall wind farm site was first established in 2008, with an additional 2 turbines granted consent in 2012. Full consideration would have been 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 on both applications.

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 extension, 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 the further application, subject to conditions:-

01. The development shall be carried out strictly in accordance with the terms of the application and the accompanying ES (Muirhall Wind Farm Extension Environmental Statement) 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.

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

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. Within 3 years of the end of the period of consent (unless a further consent is granted) all wind turbines, ancillary equipment and buildings shall be dismantled and removed from site and the land restored and subject to aftercare, in accordance with the restoration and aftercare scheme referred to in Condition 5. For the purposes of this condition 'restored' means the removal of all wind turbines, turbine pads, initial layers 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 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.

05. That within 6 months from the date of this decision, a restoration plan shall be submitted to and approved by the Council as Planning Authority and shall include details of phased decommissioning, the means of reinstating the site following the removal of the components of the development, 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.

06. Noise from the wind turbine shall not exceed 35db LA90 (10min) or background LA90 (10 min) + 5db, whichever is the greater at the boundary of the curtilage of any noise sensitive properties at all times at wind speeds of up to 9 metres per second as measured within the site.

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

Reason: In the interest of amenity.

07. 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.

Reason: In the interests of amenity.

08. Pursuant to condition 7 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 6, 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.

09. Within 3 months from the date of this permission an updated badger protection plan shall be submitted for the written approval of the Council, as Planning Authority. For the avoidance of doubt this protection plan shall show a clearly visible exclusion zone 200 metres around any badger setts and maintained as such for the lifetime of the development hereby approved, including any decommissioning works.

Reason: In the interests of badger protection.

10. 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.

11. The right of way which crosses the application site shall remain open to the public at all times during the operation, decommissioning and reinstatement phases of the development hereby approved.

Reason: In the interests of public access.

12. 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 5 of this permission, all to the satisfaction of the Council as Planning Authority.

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

13. The blades of the turbines shall both rotate in the same direction as each other and the turbines on the adjoining Muirhall wind farm (Phase 1).

Reason: In the interests of amenity.

14. 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.

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 amended lifespan of the wind farm would allow substantial additional renewable energy to be generated and is not considered to result in any adverse impacts in relation to the previous consented development. 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/23/0309 | Extension to existing Muirhall wind farm involving erection of two 145 metre high wind turbines and associated infrastructure \(Section 42 application to amend condition 2 of P/20/0409 to extend time period to 16.04.2054 and Condition 4 to extend period for decommissioning to three years\) | 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.

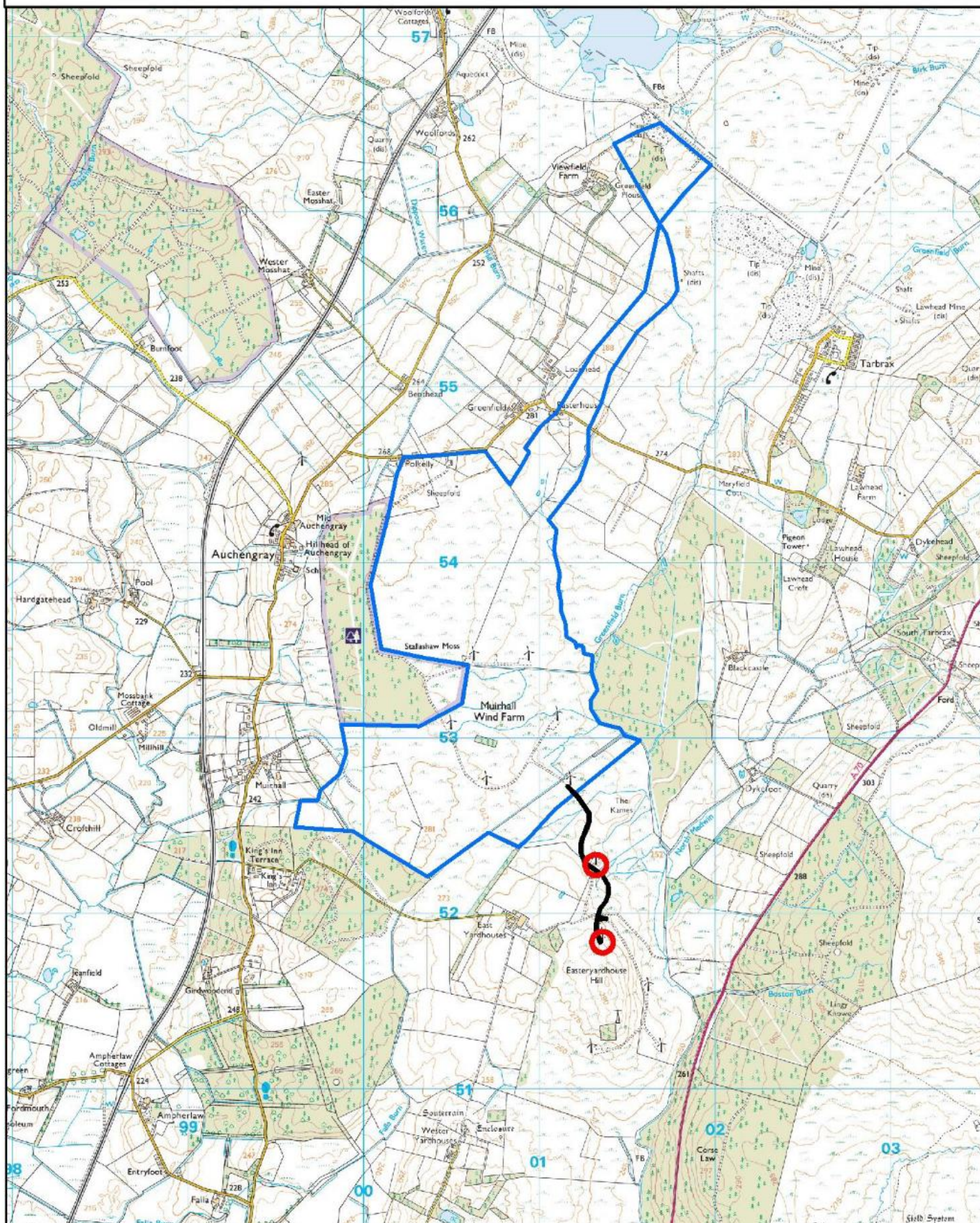
Contact for Further Information

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

Tel: 01698 454867

E-mail: planning@southlanarkshire.gov.uk

P/23/0309 Muirhall Wind Farm Phase 2 (Black line)
(Phase 1 shown as blue line)



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Scale:
1:30,000
Date:
14/08/2023



South Lanarkshire Council
Community and Enterprise Resources
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