East Lothian Council

REPORT TO: Planning Committee

MEETING DATE: 4 June 2024

BY: Executive Director – Place

SUBJECT: Application for Planning Permission for Consideration

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***Note**: this item was called off the Scheme of Delegation List by Councillor Bruce for the following reason:* Because of local concern surrounding this application given the close nature of the proposed development to local housing in Cockenzie.

ECU Application No. ECU00004926

ELC Reference No. 24/00002/SGC

Proposal Electricity Act 1989 – Application to construct and operate an electricity generating station and associated infrastructure

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

Applicant Naomi Warrenberg
Cockenzie Storage Limited
5 New Street Square, London, EC4A 3TW

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 the 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

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Proposal	Electricity Act 1989 – Application to construct and operate an electricity generating station and associated infrastructure
Location	Land South-West of Inglis Farm, Cockenzie, EH32 0JT
Applicant	Naomi Warrenberg Cockenzie Storage Limited 5 New Street Square, London, EC4A 3TW
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 is 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.

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 (App 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: 102MW and 240MW of installed capacity. The closest residential properties (at Inglis Farm and the Chimneys) are located approx. 80 metres north of the proposed battery containers. 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 would be sited some 50 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 342MW BESS facility that would consists of:

- 140 battery containers
- 35 transformers
- 70 inverters
- 3 switchgear containers,
- a control building,
- 2 water storage tanks,
- a surface water pump station,
- access tracks,
- fencing,
- a 4m high noise attenuation 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 342MW of electricity would be imported and exported to the grid network as required. The development would consist of 140 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. This includes inverters and transformers.

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 11 written representations, all of which make objection to the proposed development.

The main grounds of objection can be summarised as follows:

- Impact on health of nearby residents from noise or other impact of this untested technology;
- Proximity to a primary school, medical centre, local businesses as well as residential housing, play park and playing field;
- Potential impact of a major emergency due to fire or explosion;
- Insufficient detail in the application about the control measures to prevent thermal runaway reaction and any measures to mitigate the impact of an incident should it occur;
- Ground water pollution from contaminated run-off water;
- Potential for fire which would give off toxic fumes, heavy metals can pollute the ground which makes the ground unusable for centuries
- The Loss of Class 1 prime arable land. Food security
- Lack of consideration for future generations from land contamination and long-term health impacts;
- Adverse impact on tourism, the wild life and the birds;
- The application does not state what type of battery would be used;
- The size of the proposal is far too large;
- The proposal fails to provide any evidence of adhering to national and international guidance on the siting of the BESS, primarily the UK National Fire Chiefs Council document *Grid Scale Battery Energy Storage System planning – Guidance for FRS*
- The proposed earth bund cannot be considered an ‘open zone’; it is inaccessible, ugly, and will dominate the land meant to be amenity and usable by all in the community;

- The proposed bund is too close to the existing high voltage overhead electricity line and therefore building this bund would cause the construction equipment to encroach into the safe working distance for overhead pylons;
- BESS sites require a schedule of 'augmentation', i.e. New batteries to be installed in the future to keep up capacity. Lack of information about the phasing proposals for augmentation
- Both noise limits are of no use if the contractor is not also required to monitor and submit readings to the Council. This is particularly important due to the residential areas nearby;
- The bund to the north of the site should be completed as a priority programme item in order to protect against the remaining construction noise from the site;
- Overnight generators or pumping will affect neighbouring residents and should not be permitted;
- The site should be used for employment and the current proposal is not job intensive;
- The proposal encroaches into the existing playing field;
- The proposed bund/noise attenuation will be ineffective for residents of Cedar Drive
- The BEESS should be within the former coal store site;
- In the case of fire SFRS will not be able to respond quickly as there are no large fire stations close by;
- Planning application and submitted documents and reports eg NFSS report are too ambiguous and in parts misleading;
- There is no 24/7 on-site personnel either monitoring engineers nor security, which would be unacceptable especially when over-heating resulting in thermal runaway and also “wilful damage" are events which could result in a catastrophic event.

COMMUNITY COUNCIL COMMENTS

Cockenzie & Port Seton Community Council find nothing that reassures them that this development is suitable for this site and they object to this application in its current form.
After considering the benefits and the risks the Community Council find the risks are not tolerable. The rationale for this is based on the UK National Fire Chief Council document ‘Grid Scale Battery Energy Storage System planning – Guidance for FRS’. In particular, the first two principles of the guidance that should be considered in the development of such systems are:
1. Effective identification and management of hazards and risks specific to the siting, infrastructure, layout, and operations at the facility.
2. Impact on surrounding communities, buildings, and infrastructure.

- The Community Council draws attention to a recent study published by the Journal of Energy Chemistry, which highlights that fires resulting from BESS failures can pose serious safety risks to nearby personnel, communities, and emergency responders. The release of toxic fumes and hazardous materials during a battery fire can further exacerbate health and safety concerns;
- The document submitted with the application titled ‘Battery Storage Safety Management Plan’ (BSSMP) claims also to be an Emergency Response Plan. These are two separate plans and the management of risks to prevent a major incident should not be confused with the actions required to control a major

incident; this should be detailed in an Emergency Response Plan which must be site specific;

- The BSSMP is a generic template and fulfils neither requirement to manage risk proactively or reactively. It does not adequately detail how risk specific to this system and this site will be managed onsite and it does not detail the basic emergency actions that the HSE advise is necessary, for example evacuating an area;
- The BSSMP template has not been fully completed and in places is left blank where critical information is required (e.g. Section 4 Post Incident Recovery);
- The application fails to adequately consider the impact this development has on housing immediately adjacent to the site and the wider community. The most significant impact the Planning Design and Access Statement considers on neighbouring communities is noise, which the Community Council consider completely inadequate;
- The immediate and long-term impact from fire and explosion is the Community Council's main concern.
- In the Planning Design and Access Statement fire is addressed under 'Other matters'. Fire is well known to be a major factor in these systems which the planning applicant consistently under addresses throughout the application;
- The application does not meet the requirements of NPF4, Policy 11 e) i, which requires:
  'e) In addition, project design and mitigation will demonstrate how the following impacts are addressed:
  i. impacts on communities and individual dwellings, including, residential amenity, visual impact, noise and shadow flicker
- The site is in a greenfield site (Class 1 agricultural land) immediately adjacent to housing and the obvious location for it is in a brownfield site away from housing. In the Planning Design and Access Statement the planning consultant acknowledges 'there may be other sites suitable for the proposal;
- This site is immediately to the SW of the community and the prevailing SW winds will direct toxic fumes in the event of a fire or explosion directly towards housing immediately adjacent to the BESS and to the nearby primary school and medical centre;
- The proposal does not meet the requirements of the Local Development Plan PROP EGT1. This development is not the best use of the location's assets because it not only results in the loss or amenity and prime agricultural land but it will prohibit the use of the land for future development where there are greater economic and employment benefits for the local community. There are no meaningful and sustainable employment opportunities associated with this development;
- Water suppression is a key control identified by the National Fire Chiefs Council guidance on BESS. Whilst water suppression is mentioned frequently in the Battery Storage Safety Management Plan there are no drawings or specifications for the application to support any assertion in the plan;
- The Battery Storage Safety Management Plan details that vents will be installed in the battery containers, which will, in the event of a runaway reaction, 'allow the pressure to release upwards and away from the container ensuring that the ventilation and dispersion will prevent any build-up of explosive gasses and that the upper and lower explosive limits are not reached'. However, there is no provision for deflagration venting systems on the drawings for the containers;
- Detection is mentioned frequently in the Battery Storage Safety Management Plan, however there are no drawings or specifications within the application to detail the systems that will be installed;

- The drainage strategy report makes no reference to any means of containment of contaminated run-off in event of a major incident;
- The drawings detail a distance between twin rows of 6m, however units on the same twin row are significantly less than 6m (2.5m), so not do not meet the requirements of the NFCC guidance and in the event of a thermal reaction will significantly increase the risk of spread of fire and explosion;
- The Battery Storage Safety Management Plan predominantly refers to the battery type being Lithium-Ion (more reactive) but the same document also specifies batteries as being Lithium Iron Phosphate (more stable but lower energy density than Lithium Ion), and also refers to batteries on occasion as Lithium Ion Phosphate (the Community Council advises that this is not a recognised technology and appears to be an error). The type of battery chemistry must be clarified as a key element of the planning process and proven to meet the highest safety standard/ best available technique;
- The Planning Access and Design Statement acknowledges there will be a new link road directly along the southern perimeter of the BESS development. However, the visual impact of the BESS on the new road is not detailed in the Landscape & Visual Appraisal and the impact of noise of the BESS on the users of the new road is not detailed in the Acoustic Design Specification;
- Most importantly, the impact (or control) of a potential fire or explosion on the users of the new road is not detailed in the Battery Storage Safety Management Plan. The new road will feature shared use cycle lanes and pedestrian walkways so it will be a key link between the Cockenzie and Port Seton and Prestonpans communities, and children will use it to get to school. The safety of road users must be considered and has not been.

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 therefor 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 Governments 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 3

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 (EcIA) 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.

The **Council's Biodiversity Officer** notes the advice from NatureScot that it is unlikely that the proposal would have a significant effect on any qualifying interests either directly or indirectly and therefore an appropriate assessment under the Habitats Regulations is not required.

The Council's Biodiversity Officer has appraised the submitted Ecological Impact Assessment (EcIA) report and concurs with its main findings, one of which is that the habitat of the site is of low biodiversity value due to its current use as agricultural field, with a high instance of disturbance by it being used as a dog walking area. The mitigation measures outlined in the EcIA should be implemented in full.

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 Biodiversity Officer advises that a Landscape and Ecological Mitigation and Management Plan (LEMMP) covering a 30-year period should be produced to detail proposals for landscape and biodiversity mitigation and enhancement. This should be informed by the ecological survey work and EcIA and should consider the ongoing long-term management of biodiversity enhancement measures. The findings of the Ecological survey would be a starting point to identify which habitats to enhance, restore, expand and maintain. The BESS is located within a predominantly agricultural and grassland habitat and therefore this should be a significant focus to enhance the connectivity of this habitat in addition with any other measures as appropriate. The LEMMP should refer to the Scottish Biodiversity Strategy, the Council's Green Network Strategy SPG-Nature Networks section. The Council is currently in the process of reviewing its Local Biodiversity Action Plan, and if this is available in time the Biodiversity Officer recommends it should also be referred to.

The submitted LEMMP proposals should include:

a. A full planting plan and planting schedule and specification; and
b. a program of management, replacement planting, thinning and pruning with a typical 12 month cycle showing the detail and frequency of when different aspects of the landscape maintenance specification occur on site.

The submitted LEMMP proposals should also accord with the following requirements:

- Field margins surrounding the development should be supplemented with a local native wildflower seed mix to encourage the development of suitable habitat and nectar for pollinator species. Vegetation management is suggested to retain diverse wildflower rich swards.
- Planting of native hedgerows or scattered trees around the margins of the development to compensate for loss of habitat.
- If reptiles are found during construction works will stop and an ecologist contacted for advice
- Where removal of habitat suitable for bird nesting is required this should ideally take place outside the nesting bird season, or if that is not possible a nesting bird check should be carried out immediately prior to the works. A buffer zone to exclude works will be established while the nest is active.
- Precautionary measures to protect mammals during construction.

The submitted LEMMP proposals should include a timetable for implementation, and management thereafter. Development should thereafter be carried out in accordance withy the LEMMP proposals so approved.

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** advises that the proposed development would be seen in the context of the existing infrastructure e.g. electricity pylons, electricity substations. The Landscape Officer advises that the submitted landscape proposals plan does not include any tree or hedgerow planting on the southern boundary of the proposed development. Therefore, the proposed development would lead to a localised adverse landscape and visual impact. Notwithstanding this, in the context of this industrial area the proposed development including the acoustic fence would not be unacceptable if coloured appropriately.

The Council's Landscape Projects Officer advises that through a pre-application discussion the applicant was alerted that the red line boundary for Cockenzie link road with planning reference 22/00440/P, overlaps with the proposed Substation and BESS site. There are trees G004 shown to be retained as part the link road application and it appears that the proposed BESS service road along the south eastern boundary will fall within the root protection area of trees shown to be retained.
The applicant has not carried out and submitted a tree condition survey, constraint and tree protection plan. It is necessary for this information (a tree condition survey, constraints and tree protection plans) to be submitted to establish impact on the trees and to identify any appropriate protection measures required to safeguard the woodland to the southeast (G004).

In addition, should the tree constraints plan indicate that the proposed access road to the southeast lies within the root protection area of retained trees within group G004 then information on its construction in accordance with section 7.4 of British Standard BS5837:2012 'Trees in relation to design, demolition and construction' should be submitted. If it is not possible to construct the road thus to prevent damage to retained trees then the development would need to be redesigned to remove it from the root

protection area of these trees to avoid losing the trees it is proposed to retain. Therefore, the Council's Landscape Projects Officer objects to this application unless a tree condition survey, constraints and tree protection plans are submitted to address the concerns raised above.

The Council's Landscape Projects Officer also advises that it may not be feasible to include trees on the southern slopes of the proposed 4-meter high earth bund due to their proximity to the overhead electricity lines. In addition, the proposed slopes of the bund at 1 in 1 are too steep to enable tree planting. There appears to be room to the north side of the bund to create a much shallower longer slope to enable tree planting to the north side. If it is established that the planting cannot be carried out, then it would be necessary for the applicant to submit an alternative scheme of landscape mitigation.

Without the further information and amended drawings the current proposal does not comply with Policies 4, 6 and 14 of NPF4 or Policies, NH8, DP1 and DP2 of the Lothian Local Development Plan 2018.

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 application and is 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. He confirms that the following levels of attenuation will be required, the detailed engineering of which is to specified in an updated noise report:

- Battery Containers: -30 dB,
- Inverters: -16 dB,
- Transformers: - 4 dB,
- Substation Transformers: 0 dB.
- A 4m high bund 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-high acoustic fencing (as outlined in Figure 6 of Ian Sharland Ltd's Noise Report of 14th January 2024).

The Senior Environmental Health Officer confirms that a further noise report should be submitted once specific mitigation measures have been incorporated into the final design layout to ensure the following recommended condition can be met:

• For operational noise, the Rating Level, LArTr, 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, LA90,T. All measurements to be made in accordance with BS 4142: 2014+A1:2019 "Methods for Rating and Assessing Industrial and Commercial Sound".

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** confirms 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 advises that the Drainage Strategy is appropriate and highlights 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 is 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 advises 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 raises 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 plans submitted for the Cockenzie BESS show the provision of landscaping over part of the approved footway. Such landscaping would impede access and present a safety risk to pedestrians.

The **Council's Road Services** raise concern about this part of the proposal. As this represents a risk to pedestrian safety, the Council objects to the Cockenzie BESS. This objection could be overcome if the proposals were amended to ensure that the footway could be formed in accordance with planning permission 22/00440/P.

The Council's Road Services have also provided the following comments:

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 advises 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.
Whilst the principle of development is accepted, based on the assessment against other policy considerations, the Council objects to the proposal on the following detailed matters:

1. No tree condition survey, constraint and tree protection plan have been submitted with this application. It is necessary for this information (a tree condition survey, constraints and tree protection plan) to be submitted in order to accurately identify whether any trees are detrimentally impacted by the development as proposed or require to be removed to facilitate the development and to establish any appropriate protection measures to the existing woodland in the south east corner of the site to avoid adverse impact on the trees by this development. If it is not possible to construct the road thus to prevent damage to retained trees then the development would need to be redesigned to remove it from the root protection area of these trees to avoid losing the trees it is proposed to retain.

2. The plans submitted for the Cockenzie BESS show the provision of landscaping over part of the footway approved by planning permission 22/00440/P as part of the new link road. Such landscaping would impede access and present a safety risk to pedestrians. An alternative landscape plan should be submitted that does not include any overlapping on the footway.

If these issues were resolved then the proposal would be considered to be in accordance with the provisions of the stated relevant Development Plan policies, subject to the imposition of the conditions mentioned below.

It should be noted that if these objections are not resolved then the application would likely have to go through an inquiry process.

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. That the Scottish Government Energy Consents Unit is informed that East Lothian Council objects to the granting of consent under Section 36 of the Electricity Act 1989 for the reasons set out in this report; and
2. That the East Lothian Chief Planning Officer be authorised to undertake any discussions with the Scottish Government Energy Consents Unit to resolve these objections and conditions to be attached to the consent if required; and
3. That if consent is granted then it be subject to the following conditions:

REQUIRED CONDITIONS

1 The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

Reason:
To ensure that the development is commenced within a reasonable period.

2 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.

3 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.

4 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.

5 A Landscape and Ecological Mitigation and Management Plan (LEMMP) covering a 30 year period should be produced to 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. To include:

a. A full planting plan and planting schedule and specification
b. A program of management, replacement planting, thinning and pruning with a typical 12 month cycle showing the detail and frequency of when different aspects of the landscape maintenance specification occur on site

Reason:
In the interests of safeguarding biodiversity interests.

6 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:

(i) Measures to manage and control the speeds of construction traffic, including advisory speed limit signage on the local road network; and
(iii) 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.

7 No external lighting shall be installed on site unless and until details of it have been submitted to and approved by the Planning Authority.

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

8 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:

(i) 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)

(ii) a dilapidation survey of the construction traffic access route

(iii) The core paths and permissive route shown on the Landscaping plan must remain accessible at all times or an appropriate alternative pedestrian route provided.

(iv) As noted by Transport Scotland the Abnormal Loads Assessment Report is outstanding and will be required for approval prior to commencement of development

(v) 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.
(vi) 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.

(vii) details of temporary signage in the vicinity of the site warning of construction traffic;

(viii) 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;

(ix) details of how the behaviour of contractor and subcontractor drivers will be monitored and enforced with particular regards to vehicle speeds; and

(x) 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.

9 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.

10 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.

11 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 and six months from the date of Final Commissioning without prior written approval of the Scottish Ministers in consultation with the Planning Authority.

Reason:
To ensure the development only operates within its designed and planning lifespan.

12 If the Development fails to export electricity via the grid connection for a continuous period of twelve months, then it shall be deemed to be redundant and unless otherwise agreed in writing with the Planning Authority, the Company shall undertake the decommissioning, restoration and aftercare of the Site as required by other stated conditions.

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

13 No development shall commence unless and 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 and restoration and aftercare of the site, and shall 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.

Unless the Development has been deemed to be redundant under condition 12, no later than twelve months prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier) a Detailed Decommissioning, Restoration and Aftercare Plan, based upon the principles of the approved Decommissioning, Restoration and Aftercare Strategy, shall be submitted for the written approval of the Planning Authority.

If the Development has been deemed to be redundant under condition 12, no later than twelve months from the date the Development has been deemed to be redundant, a

Detailed Decommissioning, Restoration and Aftercare Plan, based upon the principles of the approved Decommissioning, Restoration and Aftercare Strategy, shall be submitted for the written approval of the Planning Authority.

The Detailed Decommissioning, Restoration and Aftercare Plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of above ground elements of the Development, the treatment of ground surfaces, confirmation of the status of subterranean elements of the Development (retention, removal, or other such proposal), the management and timing of the works and environment management provisions which shall include (but is not limited to):

(a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
(b) details of the formation of any construction compounds, 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 storage and management;
(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 watercourse crossings; and
(l) a species protection plan based on surveys for protected species carried out no longer than eighteen months prior to submission of the plan.

The Development shall be decommissioned, the site restored, and aftercare undertaken in accordance with the approved Detailed Decommissioning, Restoration and Aftercare Plan, unless and until 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 No development shall commence unless and until a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations are submitted to the Planning Authority.

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.

The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations.

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.

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.

16 Prior to the commencement of development, a report on the actions to be taken to reduce the Carbon Emissions from the build and 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, where feasible and appropriate in design terms, and new car charging points and infrastructure for them, 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.