

Our ref: LEEM/VJC/298420  
Your ref:

The Clerk to the Moray Council Local Review Body  
The Moray Council  
High Street  
Elgin  
Moray  
IV30 1BX

10 March 2010

Dear Sir/Madam

**Planning Application Reference 09/00247/FUL - Myreton Crossroads, Keith, Moray**

We refer to the Notice of review submitted on behalf of our mutual clients by Seren Energy and now enclose the supplementary legal submission, to be read in conjunction with the remainder of the review statement. Kindly receipt.

Yours faithfully

**Lee Murphy**  
**Associate**  
**Harper Macleod LLP**

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# Supplementary Notice of Review Statement - Legal Submission

## Notice of Review

09/00247/FUL

### Install 2 x 800 KW Wind Turbines at Myreton Crossroad, Keith, Moray

## 1 Introduction

- 1.1 This submission is supplementary to the Notice of Review Statement submitted with the Notice of Review by Seren Energy.

## 2 Reasons for Refusal

### Reason 1

- 2.1 Insofar as Wind Energy Policy Guidance for Moray Council dates from December 2005, and draws distinctions between commercial, community and micro-renewable generation and those distinctions are not drawn in Scottish Planning Policy, the Wind Energy Policy Guidance requires to be read in the context of current Scottish Planning Policy, which encourages small business in rural areas to invest in ownership of renewable energy projects or to develop their own projects (paragraph 183 of SPP).

The application and supporting documentation demonstrates an acceptable impact in terms of visual appearance of a wind farm and are appropriate to the surrounding area and character, as narrated in the Notice of Review Statement.

### Reason 2

- 2.2 The application and supporting documentation does demonstrate an acceptable cumulative impact and accordingly, the application and review should be granted, subject to conditions.

### Reason 3

- 2.3 There is no evidence from the Decision Notice nor from the determination process that any risk of “serious and undesirable” precedent has been taken into account. From decisions in the cases of Poundstretcher –v- The Secretary of State for the Environment [1988] 3 P.L.R.69 and Woolwich Building Society –v- The Secretary of State for the Environment and South Bedfordshire District Council [1995] E.G. 114 (C.S.) it is clear that “... *mere fear or generalised concern is not enough. There must be evidence in one form or another for the reliance and precedent.*” Each individual application must be considered on its own facts and circumstances.

It is argued that the current Local Plan policy in Moray Council area discriminates against the very type of application in point; being the type of development encouraged by Scottish Government in Scottish Planning Policy.

### 3 Scottish Planning Policy

- 3.1 Scottish Planning Policy (“SPP”) was published in February 2010 and is the current statement of the Government policy. In determining the Review regard should be had to the contents of that Policy as a material consideration given that the SPP post dates both the Moray Structure Plan and the Moray Local Plan (the Development Plan). We would highlight a number of policy statements from SPP, which it is argued that the Development Plan does achieve this in the current form.
- 3.2 Paragraph 14 states that *“Development plans should provide clear guidance on what will or will not be permitted and where ... in the policies that provide a clear indication of how a decision maker will react to a development proposal should be included in the plan. Plans should therefore provide opportunity and stability.”*
- 3.3 Paragraph 14 also states: *“...development plans ... should be clear about the scale of anticipated change and demonstrate the underlying reasons for the preferred location and the likely sequence of development.”*
- 3.4 Paragraph 22 states: *“Development management is a key part of the planning system and should operate in support of the Government’s central purpose of increasing sustainable, economic growth. This means providing greater certainty and speed of decision making as a means of creating good quality sustainable places ... processes should be responsive, reliable, transparent and efficient. Decisions should be taken against a framework of up to date and effective development plans and supplementary guidance.”*
- 3.5 Paragraph 23 states: *“... It is important that stakeholders understand their roll in the planning process and how decisions have been arrived at. There should be clear but concise reports of the considerations that have been taken into account in reaching decision in all planning applications.”*
- 3.6 Paragraph 183 states: *“There is potential for communities and small business in ... rural areas to invest in ownership of renewable energy projects or to develop their own projects ... planning authorities should support ... small businesses in developing such initiatives in an environmentally acceptable way.”*
- 3.7 Paragraph 284 states: *“... Development plans should support all scales of development associated with the generation of energy and heat from renewable sources, ensuring that an areas renewable energy potential is realised and optimised in a way that takes account of relevant, economic, social, environmental and transport issues and maximises benefits. Development plans should support the wider application of medium and smaller scale renewable technologies.” [As mentioned at 2.1]*
- 3.8 Paragraph 188 states: *“When considering cumulative impact, planning authorities should take account of existing wind farms, those which have permission and valid applications for wind farms which have not been determined. Decisions should not be unreasonably delayed because other schemes in the area are at a less advanced state in the application process. The weight that planning authorities attach to undetermined applications should reflect their position in the application process. Cumulative impact will largely relate to the scale and proximity of further development. The factors that will be taken into account when considering cumulative impact should be set out in the development plan or supplementary guidance.”*

- 3.9 The Notice of Review Statement sets out material planning considerations on why the application should be granted, subject to conditions. It is argued that the current Development Plan and Supplementary Guidance do not comply with the Scottish Planning Policy, which is a material consideration in the determination of the application.
- 3.10 In terms of Section 25 of the Town & Country Planning (Scotland) Act 1997, an application which is in accordance with the development plan should be approved unless material considerations indicate otherwise. By the same argument, applications which do not appear, on the face of it, to be in accordance with the development plan may properly be approved where material considerations indicate.
- 3.11 The impracticality of policy IMP1 and MSP2, if applied to its logical conclusion, is a material consideration and mitigates against the application of that policy without further and detailed consideration of the facts and circumstances and details of each proposal.
- 3.12 It is argued that Policy ER1 does not comply with Scottish planning policy insofar as it fails to recognise the support that should be given to a diversity of renewable energy technologies in terms of Paragraph 184 of Scottish Planning Policy. Further, the policy is contrary to the policy stated in Paragraph 183 of SPP.

For the reasons stated above and those in the Notice of the Review Statement, the application should be granted subject to conditions.

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