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Planning for Renewables

Scottish Young Planners Network Conference

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Introduction

- ***How do you secure development consent for a renewables project?***
 - *Identifying the project*
 - *Application framework*
 - *Electricity Act 1989*
 - *Town and Country Planning (Scotland) Act 1997*
 - *Environmental Impact Assessment*
 - *Practical Tips*
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Identifying the Project

- ***What is renewable energy?***
 - Renewable energy is energy that comes from a natural source that will not run out
 - Common examples - wind, solar, tidal
- ***What is a renewable energy project?***
 - The construction and operation of a development for the generation of renewable energy



Identifying the Project

- **Size Matters!**
 - Two ways to apply for development consent depending on the **permitted capacity** of the proposed generating station
 - Section 36 of the Electricity Act 1989: If the project **exceeds** 50 megawatts
 - Town and Country Planning (Scotland) Act 1997: If the project is **up to (and includes)** 50 megawatts
 - To place that in context: a modern onshore turbine is likely to have a capacity of between **3 and 4 megawatts**
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Section 36 Applications

- ***Framework legislation***
 - **Electricity Act 1989**
 - **The Electricity (Applications for Consent) Regulations 1990**
 - **The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017**
 - If Section 36 Consent is granted, deemed planning permission is also granted
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Section 36 Applications

- **Procedure (1990 Regulations and Schedule 8 of the 1990 Act)**
 - **Pre-application Consultation** is not mandatory but is good practice
 - **Gate Check 1:** How does will the application address the Scoping Report?
 - **Gate Check 2:** How will the application be processed and determined?
 - Application submitted to the Scottish Ministers under section 36 of the 1989 Act
 - ***“A generating station shall not be constructed at a relevant place, and a generating station at such a place shall not be extended or operated except in accordance with a consent granted by the appropriate authority”***
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Section 36 Applications

- ***Environmental Impact Assessment***
 - The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017
 - Environmental Impact Assessment Report: ***Section 36 Consent cannot be issued without it!***
 - Schedule 2 development “***carrying out development to provide a generating station***”
 - Screening and Scoping
 - Each issue dealt with in its own chapter: for example: project description, alternatives, ecology, noise, shadow flicker, historic environment, aviation, ornithology
 - Independent audit of the EIA Report
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Section 36 Applications

- ***Objections by the Planning Authority***
 - The application is notified to the relevant planning authority
 - Planning authority has four months to lodge an objection (generally considered in a similar way to a planning application)
 - If the objection is not withdrawn, a public inquiry must be held (or a hearing)
 - Windfarm developments - common objections relate to landscape and visual impact, and noise
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Section 36 Applications

- ***Public Inquiries***
 - Heard before a Scottish Government Reporter who prepares a Report for the Scottish Ministers
 - Further procedure requiring an Inquiry Statement, Precognitions (Witness Statements), Statement of Agreed Matters, Inquiry Documents
 - Evidence heard in public (either remote or in person)
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Section 36 Applications

- ***Public Inquiries***
 - Adversarial
 - Examination-in-chief and cross-examination allowed
 - Differences with Hearings
 - Scottish Ministers must take into account the Report – although they do not need to follow its recommendation



Section 36 Applications

- **Determination**
 - The Scottish Ministers' decision is final – there is no right of appeal
 - Legal challenge can be raised on a point of law – similar to a judicial review
 - Must be done within 6 weeks of the decision – timescales are strict



Planning Permission

- ***Framework legislation***
 - Town and Country Planning (Scotland) Act 1997
 - Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013
 - Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
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Planning Permission

- ***Application Process***
 - Pre-application Consultation
 - Screening and Scoping
 - Environmental Impact Assessment Report
 - Submit application – four month determination period
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Planning Permission

- ***Determination***
 - Approved, refused, or minded to grant
 - Minded to grant – requirement for a Section 75 Agreement and/or Section 96 Agreement
 - Issues and timescales
 - Section 36 Consent generally granted subject to a condition requiring a legal agreement to be entered into before the commencement of development
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Planning Permission

- ***Appeal***
 - A refusal can be appealed to the Scottish Ministers
 - An appeal will be dealt with by way of written submissions, a hearing, or a public inquiry
 - The Scottish Ministers' decision is final - it cannot be appealed
 - A legal challenge can be raised on a point of law against the Ministers' decision – again, similar to a judicial review
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Top Tips

- ***Stop, collaborate, and listen!***
- ***Share issues***
- ***Listen to (and challenge) the experts***
- ***A stitch in time, saves nine...***
- ***Legal audit of EIA Report and Planning Statement***



Q and A

- The Planning Team is here to help!



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