



A specialist energy consultancy

Planning, Design and Access Statement

Midton of Balgray Farm – Habitat Area

Zenobe Limited

16525-001-R1
23 February 2024

COMMERCIAL IN CONFIDENCE



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Contents

Document Control.....	3
Contents.....	4
1 Introduction	5
1.1 Introduction	5
1.2 Statement approach	5
2 The Applicant	6
3 Site Description	7
3.1 Site Overview	7
3.2 Site Selection.....	7
3.3 Site Access.....	8
3.4 Site History.....	8
4 Description of the Proposed Development	1
4.1 Overview	Error! Bookmark not defined.
5 Planning Policy Considerations	2
5.1 National Planning Framework 4 (NPF4).....	2
5.1.1 Applying/Using NPF4	2
5.1.2 The National Spatial Strategy for Scotland 2045	3
5.2 Development Plan.....	5
5.2.1 Introduction	5
5.2.2 EALDP 2017 - East Ayrshire Local Development Plan	5
5.3 Other Material Considerations	7
5.3.1 Draft Planning Guidance: Biodiversity	7
5.3.2 Measuring Biodiversity: Research into Approaches	7
6 Planning Appraisal.....	8
6.1 Introduction	8
6.1 Principle of the Proposed Development.....	8
6.1.1 Suitability of the Proposed Location.....	8
6.1.2 Compliance with National Planning Framework 4.....	8
6.2 Compliance with the Local Development Plan	9
6.2.1 Biodiversity and Ecology	9
6.2.2 Landscape.....	9
6.2.3 Flood Risk and Drainage.....	10
7 Summary and Conclusions.....	11

1 Introduction

1.1 Introduction

This Planning, Design & Access Statement has been prepared by TNEI Services Limited (TNEI) on behalf of Zenobe Limited (Zenobe) to accompany an application for the creation of a habitat area at the Midton of Balgray Farm (the Site). This application proposes to create a habitat area (the Proposed Development) using excess soil from the adjacent Kilmarnock South BESS which is currently under construction. The Proposed Development includes for biodiversity and landscape enhancements. The Site is located within the administrative area of East Ayrshire Council immediately to the north of the Kilmarnock South Substation, Kilmarnock. The nearest post code to the Site is KA1 5JW.

In March 2022, TNEI assisted Zenobe with the preparation and submission of a Section 36 application for Kilmarnock South Battery Energy Storage System (BESS) with a maximum installed capacity of 300MW on land immediately southwest of the Site. The permission for Kilmarnock South BESS was granted by Scottish Minister in March 2023. The Proposed Development is associated with this previously consented BESS development, as this application seeks permission to create the Proposed Development at Midton of Balgray farm by using excess soil from the BESS Site.

The Proposed Development at the Midton of Balgray farm is a minor planning application as the redline boundary does not exceed 2 hectares. The approximate area to be used for habitat improvement is 1.85 hectares.

1.2 Statement Approach

This Statement combines the Planning Statement and Design and Access Statement requirements and comprises a series of sections that cover the design principles and concepts that have been applied to the Proposed Development in response to its context and how issues relating to access have been dealt with. It also includes a planning policy appraisal. The structure of this Statement is:

- Section 1: Introduction;
- Section 2: The Applicant;
- Section 3: Site Description;
- Section 4: Description of the Proposed Development;
- Section 5: Planning Policy Considerations;
- Section 6: Planning Appraisal; and
- Section 7: Summary and Conclusions.

2 The Applicant

Zenobe was established to enable the transition to full zero carbon, non-polluting power, and transport systems.

Zenobe's vision is to make clean energy accessible. We do this in two ways. First, we use grid-scale batteries to overcome the challenges of intermittent renewables and so accelerate the uptake of clean generation. Second, we improve air quality by turning diesel vehicle fleets electric.

Today Zenobe are the leading owner and operator of battery storage in the UK. Established in 2017, Zenobe have raised over £500 million into our business, own and operate a third of the UK's electric vehicle bus fleet and have approximately 175 MW of batteries operating or in construction to enable National Grid to transport more renewable power. Zenobe aims to be the market leader in grid connected battery storage and the development at Kilmarnock South is Zenobe's third battery storage development above 50 MW in Scotland with many more in the pipeline and at 300 MW it will be one of the largest battery projects in the UK.

Zenobe has constructed and is now operating the largest transmission connected battery in Europe at Capenhurst in Cheshire at 100MW. Zenobe won a nine-year contract from National Grid ESO to deliver 40MVar of reactive power services from May 2020. This was the first time a battery has been contracted for this type of service anywhere in the world.

Zenobe has also constructed and is now operating the first transmission connected battery at Wishaw, near Glasgow. The 50MW/100MWh project is the largest in Scotland, the first to win a constraint management pathfinder contract and will provide significant security of supply and environmental benefits to the area. Zenobe are also currently constructing the 300MW Blackhillock BESS project in Keith and the 300MW Kilmarnock South BESS project.

Zenobe have undertaken an assessment of the CO2 savings from the project. When the battery is in operation and responding to grid system requirements such as constraint management or stability, the site will 'displace' other more carbon intensive and costly forms of generations such as Combined Cycle Gas Turbines (CCGTs). This in turn reduces the overall CO2 being produced by the operation of the grid network. It is anticipated that this will save around 78,000 tonnes of carbon every year and over 15 years more than 1.4 million tonnes of CO2 will have been saved by the operation of the project. To further support the environmental benefit of the Kilmarnock South BESS project, they are looking to implement a sizeable biodiversity enhancement area adjacent to the current site which will create multiple habitats and further encourage local wildlife in the area.

3 Site Description

3.1 Site Overview

The Site is located on land immediately northwest of Kilmarnock South Substation, off Treeswoodhead Road. Drawings 1-1 and 1-2 show the Site edged in red and the land under Applicant’s control is edged in blue, which includes the area of the Kilmarnock BESS Site.

The Site itself comprises mainly agricultural land (1.85 hectares) and has most recently been used for growing arable crops. In terms of topography, the land generally slopes down gradually in a south-easterly direction, drawing 1-3 shows existing Site topography, and drawing 1-4 shows the proposed Site topography.

The area immediately surrounding the Site is predominantly rural in nature, with the exception of the Substation to the southeast, and comprises primarily open agricultural land with established woodland belts and hedgerows. There are several overhead electricity lines in the area, leading from the substation, which acts as the main feature of the locality.

A watercourse (Muggersland Burn) and an associated belt of mature trees form Site’s southern boundary. The existing tree belt associated with Muggersland Burn would be unaffected by the Proposed Development.

The nearest residential property is located to the north (Midton of Balgray), with a further 11 properties within 500 m.

There is a Public Right of Way (PRoW) to the north of the site, close to Balgray Cottages. The nearest Core Path, K11 Caprington Estate, is located approximately 2.4 km northwest.

3.2 Site Selection

In an attempt to further enhance the biodiversity benefit and assist in the reduction of traffic movements of the originally consented BESS development, as owners/occupiers of the Midton of Balgray property, Zenobe are seeking to utilise their land for this development as it is directly adjacent to the main site itself, thus creating a logical connectivity and avoid any unnecessary use of the C53 road. There are no national or local landscape, ecological, or cultural heritage designations located within the Site or immediately adjacent to the Site. According to NatureScot 2019 Landscape Character Assessment, the Site is located within the Landscape Character Type (LCT) – Ayrshire Lowlands. This landscape type forms an extensive area that occupies much of the Ayrshire basin. The Assessment notes that – *“the landform is surprisingly complex, dissected by many burns and streams draining to incised main river valleys to create an undulating lowland landscape”*. Key characteristics include:

- Predominantly pastoral landcover, with some arable;
- Regularly shaped fields enclosed by beech or hawthorn hedges – the maintenance and reinstatement of hedgerows and hedgerow trees is a key objective;
- A settlement pattern that is historic in origin – the typical lowland system being based on larger farmsteads with a hinterland of fields;
- A dense network of minor roads, many of which are rural in character; and
- Riparian woodlands along minor watercourses.

The landscape surrounding the Site is primarily as described within the key characteristics of this LCT.

There are no identified statutory ecology or ornithological designations within 5km of the Site and no local designations within 3km, as identified via the Local Development Plan (LDP) online mapping. The nearest Ancient Woodland lies approximately 1.2 km east of the Site.

There are 27 Listed Buildings and three Scheduled Monuments within 3 km of the Site boundary. Carnell Garden and Designed Landscape (GDL) is located approximately 2.2 km to the south-east. There are two non-inventory designed landscape/gardens (Treesbank and Dallars House) within 3 km of the Site boundary.

3.3 Site Access

The Proposed Development would utilise an existing Midton of Balgray Farm access located on Treeswoodhead Road (C53), which forms part of the main development. The excess soil used to create the habitat area will be transferred directly from the BESS development to Midton of Balgray utilising a gap that is to be formed within the existing hedgerow and therefore avoiding the public road network.

3.4 Site History

As per the Council's planning portal, there is only one recent planning application submitted on land where the Proposed Development is located. This application (ref. 19/0795/PP) was submitted to East Ayrshire Council (EAC) for the construction of a cabin to provide additional living accommodation.

4 Description of the Proposed Development

This application proposes to import excess soil from the Kilmarnock South BESS site into Midton of Balgray Farm for the creation of a habitat area including landscape and biodiversity enhancements. This excess soil which is being stripped from the BESS site is currently being transported to a nearby landfill site, which has resulted in a significant increase in the number of HGV vehicle movements within the initial earthworks phase of the construction. The Proposed Development is considered to be a very sustainable and environmentally friendly alternative where the stripped soil is proposed to be used to create a habitat area.

The Applicant proposes to import the excess soil from the BESS site to Midton of Balgray Farm, which is located immediately to the southwest, not only resulting in a decrease in HGV movements on the local road network but also reducing air and noise pollution associated with the soil transfer.

The Proposed Development would result in a change in the topography of the Site which consists of two fields at Midton of Balgray Farm. A Landscape Management Plan (ref. 2189_S01) along with the Landscape Plan drawing (ref. 2189_L01) has been prepared by TGP Landscape Architects to help understand the existing topography compared to the proposed topographic change. As a result of this change, the visual impact of the original BESS development to the north will be significantly improved from the original landscaping plans. This boundary was highlighted by EAC in their consultation of the original BESS development as a façade which required specific attention alongside the southern boundary in terms of visual screening.

The proposed importation of excess soil would raise the height of the field compared to the surrounding area but as the landscape plan shows, the Site is designed to still keep its natural topographic slope i.e., where the topography of the Site was originally sloping towards the Muggersland Burn, the proposed topography would still be sloping in the same direction. This means that the Proposed Development would not result in the risk of flooding within the Site or elsewhere.

The Landscaping Plan reflects on the planting approach for the Proposed Development, as follows:

- Approach for use of the relocated topsoil,
- Retaining all the trees and hedgerows on the Site,
- Demonstrating where the proposed planting of new native mixed hedgerows, trees, and wildflower meadows will be located,
- Use of coarse bark mulch up to 50-75mm depth where all the tree and hedge planting is proposed, and
- Guidance on planting seasons and phasing of planting to take place.

A Drainage Strategy (document ref. 23007_103) has also been produced to support this application. As it is proposed that there will be a change in the topographic level of the proposed Site, this drainage Strategy proposes measures for optimum results. These measures are:

- Proposed Private Surface water catch pit,
- Proposed Private Surface water pipework,
- Proposed 2.0m wide swale plus filter drain underneath, and
- Proposed headwall.

5 Planning Policy Considerations

This section sets out the relevant planning legislative framework and policy background for the Proposed Development. Both national and local level, as well as other material considerations, are identified and considered throughout this Chapter.

This section does not include an assessment of the Proposed Development’s compliance with existing planning and energy policies. An assessment against the provisions of the statutory Development Plan and other relevant material considerations is contained within Section 6 of this statement.

5.1 National Planning Framework 4 (NPF4)

National Planning Framework 4 (NPF4) is the primary material consideration for all planning decisions, including the determination of planning applications, in Scotland. It is a long-term spatial plan for Scotland which sets out where development and infrastructure is needed and provides land use policy for development and investment in Scotland to assist in achieving Net Zero, sustainable development by 2045.

Following draft versions of NPF4 being published in 2021 and 2022, the Scottish Parliament voted to approve the revised NPF4 in whole in January 2023 and in February 2023 NPF4 was formally adopted. NPF4 now forms part of the statutory Development Plan and replaces National Planning Framework 3 (NPF3) and Scottish Planning Policy (SPP). As a result, NPF4 exerts a profound influence on all planning matters within Scotland and should be given significant weight in determining applications for new development.

5.1.1 Applying/Using NPF4

In the ministerial foreword NPF4, Tom Arthur MSP states, inter alia, that *“putting the twin global climate and nature crises at the heart of our vision for a future Scotland will ensure the decisions we make today will be in the long-term interest of our country”*. Furthermore, when explaining how the plan is to be used, it is stated in Annex A of NPF4 that *“we must embrace and deliver radical change so we can tackle and adapt to climate change, restore biodiversity loss, ...”*.

Centralised development management policies are introduced in NPF4 which are to be applied Scotland wide and NPF4 is also required by law to contribute to six outcomes (Annex A of NPF4) linked to, amongst other things, *“meeting any targets relating to the reduction of emissions of greenhouses gases”*.

Part 1 of NPF4 outlines the National Spatial Strategy for Scotland 2045 (NSS) which has been developed to support the planning and delivery of ‘Sustainable Places’, ‘Liveable Places’ and ‘Productive Places’. The NSS recognises the urgency of addressing climate change, particularly when stating that *“the world is facing unprecedented challenges. The global climate emergency means that we need to reduce greenhouse gas emissions and adapt to the future impacts of climate change”* (emphasis added). When discussing the NSS regarding delivering ‘Sustainable Places’, the Scottish Government highlight how, by 2030 we must have made significant progress towards reaching Net Zero emissions by 2045.

In response to the positioning of the twin crises front and centre of NPF4, the NSS and how planning is expected to operate, the application for the Proposed Development would need emphasise the necessity for the decision-makers to afford significant weight to its contribution to national and global nature targets.

5.1.2 The National Spatial Strategy for Scotland 2045

The National Spatial Strategy for Scotland 2045 has been developed to support the planning and delivery of:

- ‘Sustainable Places’: *“where we reduce emissions, restore and better connect biodiversity”*;
- ‘Liveable Places’: *“where we can all live better, healthier lives”*; and
- ‘Productive places’: *“where we have a greener, fairer and more inclusive wellbeing economy”*.

Part 2 of NPF4 uses the three identified delivery themes (sustainable, liveable, and productive places) to group the national planning policies. With regard to the application of the national level policies, NPF4 states:

“The policy sections are for use in the determination of planning applications. The policies should be read as a whole. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. It is for the decision maker to determine what weight to attach to policies on a case-by-case basis. Where a policy states that development will be supported, it is in principle, and it is for the decision maker to take into account all other relevant policies”.

In terms of ‘sustainable places’ relevant policies include the following:

- Policy 1: Tackling the Climate and Nature Crisis;
- Policy 3: Biodiversity;
- Policy 4: Natural Places;
- Policy 5: Soils; and
- Policy 6: Forestry, Woodland, and Trees;

A summary of the relevant provisions of the above policies is detailed below.

Policy 1: Tackling the Climate and Nature Crisis

A significant shift in the policy context under which national planning policy has been prepared is exemplified through Policy 1 in NPF4.

Policy 1 directs that that *“significant weight”* should be given to the matters of the climate change emergency and nature crisis when considering *“all development proposals”* (emphasis added) and the policy intent is *“to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis”*.

By making this the first policy in NPF4, its Policy Intent (above) and Policy Outcome of *“Zero carbon, nature positive places”* are re-positioned as a priority of the document, and for all plans and planning decisions.

The Climate and Nature Crises (‘the twin Crises’) have undoubtedly been placed front and centre of NPF4 and of how planning is expected to operate, which has never before been the case in national planning policy. Planning policy no longer leaves the judgement of how much weight should be afforded to the climate emergence solely to the decision maker, thus, the Proposed Development should be given significant weight in response to its contribution to meeting nature targets

Policy 3: Biodiversity

The Policy Intent for Policy 3 is *“to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks”*.

Policy 3 requires proposals to contribute to the enhancement of biodiversity through development and to also, where possible, integrate nature-based solutions. For proposals of national or major scale, or for development which requires an EIA, support will only be granted where it is demonstrated that *“the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention”* (emphasis added).



The policy sets out the following criteria which development proposals of national or major scale, or which require EIA, are required to illustrate:

- i. *“the proposal is based on an understanding of the existing characteristics of the site and its local, regional, and national ecological context prior to development, including the presence of any irreplaceable habitats;*
- ii. *wherever feasible, nature-based solutions have been integrated and made best use of;*
- iii. *an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;*
- iv. *significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate; and*
- v. *local community benefits of the biodiversity and/or nature networks have been considered”.*

Policy 3 does not however set any specific targets or offer advice on what constitutes as acceptable biodiversity gain or *“significant enhancements”*, instead it is stated that *“best practice assessment methods should be used”*. The Scottish Government published a Draft Planning Guidance on Biodiversity in November 2023, to set out their expectations on implementing NPF4 policies which support the cross-cutting NPF4 outcome ‘improving biodiversity’.

Policy 4: Natural Places

The Policy Intent for Policy 4 is *“to protect, restore and enhance natural assets making best use of nature-based solutions”* and the Policy Outcomes are that natural places are *“protected and restored”* and natural assets are *“managed in a sustainable way that maintains and grows their essential benefits and services”*.

Policy 4a) underlines how development proposals which will unacceptably impact the natural environment will not be supported.

With regards to nationally important designations, development proposals should not compromise the overall integrity or objectives of said areas or any significant adverse effects must be clearly outweighed by social, environmental, or economic benefits of national importance (policy 4c). With regards to significant adverse effects on local designations, development proposals should not compromise the integrity of said area or the qualities for which it has been identified. If they do, for local designations, the social, environmental, or economic benefits of the proposal must be of *“at least local importance”* (Policy 4d).

Policy 4 states that *“the precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance”* and explains how if adverse effects on species protected by legislation occur, proposals will not be supported unless they meet the relevant statutory tests.

Policy 5: Soils

The Policy Intent of Policy 5 is *“to protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development”*.

Policy 5 states that for development proposed on peatland, carbon-rich soils or priority peatland habitat, a detailed site-specific assessment is required to identify the baseline (including depth, habitat condition, quality, and stability of carbon rich soils), likely effects (including on soil disturbance) and net effects (on climate emissions and loss of carbon).

Policy 6: Forestry, Woodland, and Trees

The Policy Intent of Policy 6 is “to protect and expand forests, woodland and trees”.

Policy 6 states that development proposals will not be supported where there will be:

- i. “Any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition;
- ii. Adverse impacts on native woodlands, hedgerows, and individual trees of high biodiversity value, or identified for protection in the Forestry and Woodland Strategy;
- iii. Fragmenting or severing woodland habitats, unless appropriate mitigation measures are identified and implemented in line with the mitigation hierarchy;
- iv. Conflict with Restocking Direction, Remedial Notice or Registered Notice to Comply issued by Scottish Forestry.”

The policy demonstrates how proposals which include woodland removal will not be supported unless they “will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal” and, furthermore, highlights the likelihood of compensatory planting to be required for proposals where woodland is removed. However, the Proposed Development will see a habitat area created which will add to habitats and so there will be no woodland removal or impacts on trees.

5.2 Development Plan

5.2.1 Introduction

The Site falls under the jurisdiction of East Ayrshire Council as the Local Planning Authority, therefore, the statutory Development Plan is the adopted East Ayrshire Local Development Plan 2017 (the LDP). Further LPA documents considered as part of this assessment are detailed below:

- EALDP East Ayrshire Local Development Plan 2, Main Issues Report, June 2020; and
- East Ayrshire State of the Environment Report, August 2016 (updated March 2019).

5.2.2 EALDP 2017 - East Ayrshire Local Development Plan

The East Ayrshire Local Development Plan, EALDP 2017, adopted in April 2017, provides strategic sites and areas for development throughout East Ayrshire, as well as specific landscape designations and various guidance for differing forms of development. A key aim of this LDP is to strike a balance between securing energy supplies, maximisation of responsible use of resources, and protection and celebration of the natural and historic assets, to result in lasting economic and environmental benefits for all communities.

The key aim of the spatial strategy within the LDP is to promote high quality, sustainable development. As such a presumption in favour of development which makes contributions to sustainable development exists. Section 2 of the LDP details the vision and spatial strategy of the plan, including the overarching policy for development to adhere to, for these to be achieved, as discussed below.

Relevant policies applicable to the Proposed Development are set out below:

Policy ENV8: Protecting and Enhancing the Landscape

Development proposals within rural areas of East Ayrshire will be assessed with consideration of the Ayrshire Landscape Character Assessment. The State of the Environment Report: Chapter 2 –

Landscape and Visual, identifies the Proposed Development being located within the Ayrshire Lowlands (AYS7) landscape designation, which is not deemed a landscape area of high sensitivity. Policy ENV8 details the following guidance for development within rural areas:

- (i) *Development proposals are sited and designed to respect the nature and landscape character of the area and to minimise visual impact. Particular attention will be paid to size, scale, layout, materials, design, finish, and colour.*
- (ii) *Where visual impacts are unavoidable, development proposals should include adequate mitigation measures to minimise such impacts on the landscape.*
- (iii) *Particular features that contribute to the value, quality and character of the landscape are conserved and enhanced. Development that would result in the loss of valuable landscape features, to such an extent that character and value of the landscape, are unacceptably diminished, will not be supported.*

Policy ENV9: Trees, Woodland, and Forestry

Policy ENV9 recommends the retention of individual trees, hedgerows and woodlands which contribute to the amenity, nature conservation and landscape value of a particular area. Proposals should therefore avoid the removal of these and require replanting and other provisions, satisfactory to the Council and Forestry Commission Scotland, if removal is unavoidable.

Policy ENV10: Carbon Rich Soils

The EALDP recognises the role of peatland soils as carbon stores within aspirations to reduce net carbon emissions. As such;

“the Council will seek to minimise adverse impacts from development on such soils, including by the release of CO₂ to the atmosphere.”

Policy ENV 11: Flood Prevention

The EALDP has set out precautionary measures for Flood Risk and Mitigation in the case of development on lands vulnerable to Fluvial and Surface Water flooding. The policy sets out the Flood Risk Framework already contained within SPP within which Flood Risk Assessment will be applicable for sites based on categories of flood risk set out by SEPA guidance.

“The Council will also encourage new flood management measures, including flood protection schemes, restoring natural features, enhancing flood storage capacity and avoiding the construction of new culverts and the opening of existing culverts.”

5.2.3 Emerging Local Development Plan

On 5 December 2022, EAC submitted LDP 2 to the Scottish Ministers for Examination. The Plan and all necessary paperwork were submitted to the Scottish Government’s Planning and Environmental Appeals Division (‘DPEA’) on 24 February 2023. The Scottish Minister’s Examination of LDP 2 commenced on 11 May 2023. LDP 2 is a plan for EAC from 2023 to 2028 comprising of following documents:

- Volume 1: Vision, aims, spatial strategy and policies.
- Volume 2: Settlement maps (Site allocations).
- Rural area map.

Several policies appear to be similar between the LDP1 and LDP2. Where policies effectively duplicate those from LDP1 they are not repeated here. This section therefore considers other policies of relevance from LDP2.

Policy NE1: Protecting and Enhancing Landscape and features

According to LDP 2 Settlement Maps – Rural map, the Site is not located within any protected Area for landscape or its features.

Policy NE3: Local Landscape Area

According to LDP 2 Settlement Maps – Rural map, the Site is not located within Local Landscape Areas of Policy NE1 (Protecting and Enhancing Landscape and features), Policy HE 4 (Heritage Gardens & Designed Landscapes Inventory) or Policy HE4 (Heritage Gardens & Designed Landscapes non-Inventory).

Policy NE4: Nature Crisis

This policy ensures biodiversity enhancement, nature recovery and nature restoration across East Ayrshire. This policy states that development proposals that contribute to the enhancement of biodiversity, including the restoration of degraded habitats, build and strengthening nature networks and improve the connections between these networks and minimise adverse impacts through careful planning and design will be supported.

5.3 Other Material Considerations

5.3.1 Draft Planning Guidance: Biodiversity

Scottish Government published a draft Planning Guidance on Biodiversity in November 2023, this guidance sets out the expectations for implementing NPF4 policies which supports the cross-cutting NPF4 outcome of improving biodiversity.

5.3.2 Measuring Biodiversity: Research into Approaches

Scottish Government published a research into approaches to measuring Biodiversity in Scotland in September 2023, this report demonstrates both consensus and divergencies in priorities across the four policy areas agriculture, conservation and biodiversity monitoring, natural capital markets, and planning and development. To meet the needs of all four sectors, a biodiversity measurement approach or metric will need both common features and some degree of flexibility in its application.

6 Planning Appraisal

6.1 Introduction

As set out above in Section 5, planning applications are required to be determined against the policies of the Development Plan unless material considerations indicate otherwise as stated in Section 25 and 37(2) of the Planning Act 1997, as amended. The requirement to have regard to “*any other material considerations*” is in effect a statutory requirement to ensure that all other relevant matters have been considered. With the adoption of NPF4, this now takes precedence as the primary policy document against which to assess the Proposed Development, followed by the Development Plan and any other material considerations.

Section 25 and 37(2) of the Planning Act 1997, as amended require applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The Planning Act 1997 does not provide a definition of what constitutes a ‘material consideration’ in so far as is relevant to planning applications. However, it is generally accepted in case law that any consideration which relates to the use and development of land should be capable of being a material consideration. The weight to be attached to any material consideration in reaching a decision is a matter of judgement for the decision-taker. However, the decision-taker is required to demonstrate that in reaching that decision they have considered all the relevant matters. It should however be noted that there is no Strategic Development Plan in relation to the Site and therefore the Development Plan in this instance only refers to the LDP.

This section addresses those planning matters raised by the Proposed Development against the planning policy context outlined in Section 5 above. Compliance with NPF4 is considered first and then against the Council’s relevant LDP policies.

6.1 Principle of the Proposed Development

6.1.1 Suitability of the Proposed Location

An overview of the Proposed Development was provided in Section 4; further detail is provided below with descriptions of various environmental considerations related to the Proposed Development. A review of the EALDP and resources made available by SEPA, NatureScot, and Historic Environment Scotland (‘HES’) have been undertaken in order to inform the Application. The Proposed Development is not within any of the following statutory designations: Special Areas of Conservation (‘SAC’); Special Protection Areas (SPAs); Site of Special Scientific Interest (SSSIs); Ramsar Sites; Garden and Designed Landscapes (GDL); or Conservation Areas. There are also no Listed Buildings or Scheduled Monuments within the Site boundary.

The Proposed Development will allow the sustainable use of excess soil generated from the construction of the Kilmarnock South BESS for the creation of a biodiversity enhancement area whilst simultaneously reducing the level of traffic movement associated with the original BESS development using the A719/C53. The Proposed Development has been sensitively designed to provide an area of habitat including native species and has been designed to allow connectivity through and around the Site.

6.1.2 Compliance with National Planning Framework 4

As noted above, the Second Part of NPF4 uses three themes (sustainable, liveable, and productive places) to address national planning policy.

The relevant NPF4 policies include the following:

- Policy 1: Tackling the Climate and Nature Crisis;
- Policy 3: Biodiversity;
- Policy 4: Natural Places;
- Policy 5: Soils; and
- Policy 6: Forestry, Woodland, and Trees.

The overall aim of these NPF4 policies is to maintain the quality of nature and where possible help enhance biodiversity. The Proposed Development is to ensure that the biodiversity within the Site is protected and enhanced. The Proposed Development would enhance the ecological and landscaping value of the Site through the creation of a habitat area including landscape and biodiversity enhancements. The habitat which would be created has been designed to maximise the benefit to local wildlife and to provide better habitat connectivity.

In support of this planning application, a Preliminary Ecological Appraisal (including a site walkover survey) has been undertaken within the local area to ensure no adverse impacts of the development occur and moreover to ensure that the Proposed Development benefits local species and habitats within the Site boundary and in close proximity of the Site.

The Proposed Development has adopted more nature-focused design measures to determine the final Layout after receiving inputs from landscape, drainage, and ecology consultants. This Planning, Design, and Access Statement is also accompanied by other submission documents such as a Landscape Management Plan, Landscape masterplan, Drainage Strategy, and Preliminary Ecological Assessment with this application to demonstrate the development's compliance with Policies 3, 4, and 6 of NPF4.

With respect to soils, best practice methods will be employed for the movement of the excess soil from the construction of the BESS to Midton of Balgray to facilitate and implement the Proposed Development. It is therefore considered that the Proposed Development is in compliance with Policy 5 of NPF4.

6.2 Compliance with the Local Development Plan

6.2.1 Biodiversity and Ecology

The area within the Site boundary is being used as an agricultural field and currently has low ecological value. The Preliminary Ecological Appraisal ('PEA') was prepared by Tetra Tech in February 2024 and is submitted in support of this planning application. This PEA concluded that the Proposed Development is considered to have a negligible impact on the statutory designated sites due to the limited scope of works and distance from any designated sites. The PEA report provides recommendations for mitigation measures against potential impacts to habitat during construction and also lists some enhancement recommendations to further increase the biodiversity value of the Proposed Development.

Policy NE4: Nature Crisis is particularly relevant to the Proposed Development. The Proposed Development will contribute to the enhancement of biodiversity and will help to build and strengthen nature networks and improve those networks so will have significant biodiversity benefits. The Proposed Development draws strong support from this policy contributing to its aims. The Proposed Development is therefore considered to be in compliance with NPF4, EALDP Policies ENV6 and ENV9 and LDP 2 policies NE1 and NE4 as there would be no significant adverse impacts from the Proposed Development.

6.2.2 Landscape

The protection and enhancement of East Ayrshire's landscape character as identified in the Ayrshire Landscape Character Assessment is a key consideration in assessing the appropriateness of development proposals in the rural area. Development that would result in the loss of valuable



landscape features, to such an extent that the character and value of the landscape, are unacceptably diminished, will not be supported.

The Proposed Development would see the creation of a habitat area using excess soil from the Kilmarnock South BESS site. Although the Proposed Development would change the topography of Midton of Balgray Farm, it is considered to be a more sustainable and environmentally friendly solution for using the excess soil, see drawing KLMS Existing Plan (with Topo) and KLMS Proposed Site Layout. A Landscaping plan (ref. 2189_L01) prepared by TGP forms part of this application, and this plan demonstrates how the Proposed Development would incorporate the imported excess soil and enhance the landscape without any potential effect on the local area.

The Landscape Plan (ref. 2189_L01) has taken into consideration the root protection areas by maintaining a 10m buffer zone along the north, east, and part of the western boundaries of the Site to avoid potential damage to roots and/or encroachment to potential bat commuting routes for the existing hedgerow and trees present along these areas.

The Proposed Development has followed an iterative design process taking account of ecology and landscape inputs. The effects of the Proposed Development on the local landscape are considered to be positive as the proposed landscape alterations would help the council with Climate Change and would also result in increased biodiversity in the local area. Therefore, any landscape/visual effects from the Proposed Development are considered localised and acceptable for the Site surroundings.

In summary, the Proposed Development could be accommodated with positive and relatively localised effects on the local landscape character and visual amenities. It is concluded that the Proposed Development aims to conserve and enhance the biodiversity value of land by retaining and planting new trees and hedgerows, to minimise the fragmentation of habitats and to improve habitat connectivity. Enhancement measures have been proposed to improve the overall biodiversity value of the site and the Proposed Development is therefore considered to be in compliance with EALDP Policies OP1, ENV6 and ENV8 and LDP 2 Policies SS1, NE1 and NE3.

6.2.3 Flood Risk and Drainage

According to Scottish Environment Protection Agency (SEPA), the Proposed Development is located in an area at little to no risk (< 0.1 % annual probability) of fluvial and pluvial flooding. The risk of flooding to the Site from groundwater sources is also considered to be low, while the risk of flooding to the Site from sewers and artificial sources is deemed to be absent.

The drainage strategy accompanies this application which has been undertaken in accordance with the standing advice and requirements of the NPF4, EALDP, LDP2, and general guidance. It is concluded that the Proposed Development complies with NPF4 EALDP policies ENV11. The drainage strategy has been produced in line with the Landscape Plan (ref. 2189_L01) that shows the proposed development site surfacing as Native Wildflower Meadow. Due to the proposed green finish of the site, being 100% permeable, no significant surface water runoff will be expected at design events.

However, as a conservatory approach, the proposed scheme allows for a combination of swales plus filter drains along the whole perimeter of the development site to ensure that, under extreme storm events, there will be no residual surface water runoff leaving the application site boundary, with the potential water excess to be safely re-route up to its discharge into the Muggerland Burn. Since the proposed surface water discharge will be to the equivalent greenfield runoff rate, no surface water control and/or attenuation will be required. The proposed drainage elements including the SuDS features shown in the drainage strategy are to be private and maintained by the Applicant.



7 Summary and Conclusions

TNEI Services Limited (TNEI) is submitting this planning application to East Ayrshire Council on behalf of Zenobe Limited (Zenobe) for the creation of a habitat area at the Midton of Balgray farm. The Proposed Development is considered to be a more sustainable and environmentally friendly alternative to use the excess soil from the Kilmarnock South BESS site at Midton of Balgray Farm to create a habitat area that will have biodiversity and landscape benefits. This in turn will help to significantly reduce HGV movements and avoid excess soil being taken to landfill which has wider sustainability benefits.

As part of this application relevant environmental considerations have been made and the Proposed Development is considered to have a positive outcome on the environment, with minimum adverse impacts. Any potential adverse impacts from the Proposed Development are considered to be outweighed by the biodiversity and landscape enhancements benefits.

It is considered that the Proposed Development can draw support from NPF4, particularly with respect to biodiversity enhancement, and complies with the relevant policies of the statutory Development Plan and offers significant benefits which have been listed throughout this Statement. It is therefore respectfully requested that East Ayrshire Council kindly grant permission for the Proposed Development.