



Item: 8

Policy and Resources Committee: 21 April 2026.

Onshore Electricity Generation- Increasing Threshold for Applications under the Electricity Act 1989.

Report by Director of Infrastructure and Organisational Development.

1. Overview

- 1.1. The purpose of this report is to present the Council's response to the Scottish Government's consultation on increasing the threshold which determines whether applications for onshore electricity generating stations are decided by Scottish Ministers or by the relevant planning authority, for members' approval
- 1.2. In Scotland applications for onshore electricity projects are considered through two different routes. The Scottish Ministers are responsible for deciding applications to build, operate or modify onshore electricity stations with capacities exceeding 50MW under powers contained in the Electricity Act 1989. Applications concerning onshore electricity stations with capacities of 50MW or less are largely decided by Planning Authorities under the Town and Country Planning (Scotland) Act 1997, as amended.
- 1.3. The Scottish Government launched a consultation inviting views on increasing the current 50MW threshold which determines whether applications for onshore electricity generating stations are made to Scottish Ministers or to the relevant Planning Authority, for which responses were required by 27 March 2026.
- 1.4. Increasing the 50MW threshold would transfer decision-making responsibility from Scottish Ministers to Local Authorities. On the face of it, this expansion of local decision-making would be welcome in terms of vesting decision making at a more local level. However, this opportunity must be weighed against the capacity of the Planning Service to absorb the potentially considerable additional workload attached to this responsibility.

2. Recommendations

- 2.1. It is recommended that members of the Committee:
 - i. Approve the Council's response, attached as Appendix 1 to this report, in relation to the Scottish Government's consultation on increasing the threshold which determines whether applications for onshore electricity generating stations are decided by Scottish Ministers or by the relevant planning authority.

3. Background

- 3.1. Tackling the climate emergency has led to a significant increase in proposals for new electricity generation and storage across Scotland. Scottish Government statistics show that the volume of applications made to Scottish Ministers has more than quadrupled over the last 20 years with 15 applications made between 2001/03 and 70 applications made between 2021/23. As technology has developed, so the size and output of wind turbines have increased; in 2004 22 turbines would have been required to reach an installed capacity of 50MW but, today, only eight or nine turbines are required to reach the same output.
- 3.2. In Orkney, over the past 10 years there have been no applications for electricity generating stations over 50MW. However, as noted the scale of MW which can now be delivered through a smaller number of turbines for new sites or indeed for re-powering existing sites may indicate that applications could be more likely to exceed this threshold in future years.
- 3.3. Under section 36 of the Electricity Act 1989, any application for the construction and / or operation of onshore generating stations with a capacity exceeding 50MW must currently be determined by the Scottish Ministers. Ministers also have a general power to intervene in the determination of other planning application by a Local Authority and can 'call-in' an application to take on the decision-making role themselves. Applications made under the Electricity Act 1989 which Scottish Ministers determine cover a broad range of technologies including onshore wind, solar photovoltaics, battery energy storage systems, pumped storage hydro, hydropower, bioenergy and energy from waste. In all cases where Ministers determine section 36 applications, the Council will still be consulted as statutory consultee so, although not the ultimate decision maker, the Council will still have significant influence over the decision.

- 3.4. In England, large scale major development projects are determined centrally by the UK Government Secretary of State with a new threshold of 100MW (from 31 December 2025). Noting this, the Scottish Government is inviting views on increasing the 50MW threshold in Scotland, with options of either 100MW, 150MW or status quo for new applications submitted after any change comes into force.
- 3.5. The main considerations arising from this proposal are:
- i. The Verity House Agreement 2023 encourages decision making ‘local by default, national by agreement’ and this view is often supported in public consultations. As a general principle it is expected that the Council would wish to maximise local decision-making, which could be achieved by opting for a higher MW threshold.
 - ii. This aspiration must be balanced against the capacity of the Planning Service to support a process which would have considerable assessment and governance responsibilities as decision maker. This is a key consideration as without any change to the MW thresholds the Council would still be consulted as statutory consultee meaning that whilst not the ultimate decision maker, the Council will still have significant influence over a decision.
 - iii. Resourcing and Fees: Under current arrangements, Planning Authorities receive 50% of the fee paid to Scottish Ministers for applications made under the Electricity Act 1989 to enable a response as statutory consultee. If the Planning Authority assumes responsibility for the determination of more Section 36 applications, should the MW threshold be increased, this would result in increased fee income for the Planning Authority. On the face of it, this additional income could secure additional officer resource for the Planning Authority. However, this is not guaranteed, and it is unlikely to be possible to recruit in advance of an application fee being received. The additional responsibilities would therefore most likely fall to the existing planning team which is already under pressure to deliver existing heavy workloads. It is this reality which on balance encourages a leaning towards the status quo.
 - iv. Planning and Infrastructure Bill Reforms to the Electricity Act 1989, contained in the UK Government’s Planning and Infrastructure Bill, will introduce statutory pre-application engagement with affected communities, time limits for consultee responses and removal of the automatic right to Public Local Inquiry where a Planning Authority objects.

4. Conclusion

- 4.1. Whilst it would normally be the case that the Council would welcome the opportunity to expand local decision-making through a raising of the MW threshold requiring energy applications to be determined by Scottish Ministers in this case this is not considered to be the best outcome for the Council for the following reasons:
- i. there is already good opportunity for the Council to engage with consultation response to the Scottish Government on Section 36 applications, for which the Council is paid 50% of the fee.
 - ii. the benefit is outweighed by the risk that the scale of work involved in assuming a decision-making role for any future schemes would overburden the services.
- 4.2. On 19 March 2026, the Corporate Leadership Team agreed that, for these reasons, the Scottish Government Energy Consents Unit should continue to deal with all applications over 50MW with the safeguard that, for each application, the Council will be consulted as a statutory consultee and will therefore have considerable influence on the final decision. The consultation response at Appendix 1 includes this recommendation, amongst other responses to the questions posed in the Scottish Government consultation.
- 4.3. The deadline for consultation responses was 27 March 2026. A request was made to the Scottish Government to extend this deadline to allow presentation to this Committee. This was declined, but the Scottish Government has agreed that it will, as far as possible accept late representations.

For Further Information please contact:

Gavin Barr, Head of Planning and Regulatory Services, extension 2530, Email: gavin.barr@orkney.gov.uk.

Implications of Report

1. **Financial:** No financial implications arising directly from the recommendations within the report.
2. **Legal:** There are no significant legal implications arising from the recommendation contained in this report.
3. **Corporate Governance:** Not applicable.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.

- 7. Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
- Growing our economy.
 - Strengthening our Communities.
 - Developing our Infrastructure.
 - Transforming our Council.
- 8. Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
- Cost of Living.
 - Sustainable Development.
 - Local Equality.
 - Improving Population Health.
- 9. Environmental and Climate Risk:** None.
- 10. Risk:** None.
- 11. Procurement:** None.
- 12. Health and Safety:** None.
- 13. Property and Assets:** None.
- 14. Information Technology:** None.
- 15. Cost of Living:** None.

List of Background Papers

Consultation Document: [on-shore electricity generation - consultation on increasing the threshold for applications under the Electricity Act](#)

Appendix

Appendix 1 – Orkney Islands Council Consultation Response.

Onshore electricity generation: consultation on increasing the threshold for applications under the Electricity Act

Response from Orkney Islands Council

April 2026

Question 1) Should there be a single threshold applicable to all technologies?

The Council does not have a view on this matter.

Question 2) What threshold should apply for applications for electricity generation to be determined by planning authorities?

a) 50MW b) 100MW c) 150MW

Provided that the current arrangements for consulting with local authorities for relevant applications, and fee sharing arrangements are retained; 50MW should be retained as the threshold.

This is due to the fact that the Council would not have the specialist expertise and capacity which is available within the Scottish Government consents unit; and would therefore be unlikely to be able to handle the scale of activity required for the processing and governance of such larger scale proposals without having critical impact on baseline workload.

Question 3) Any change to the threshold would apply only to new applications. Do you have any comments on transitional arrangements?

Given our answer to question 2, we do not have a view on this question

Question 4) Do you have any other comments to add? Please add any comment in support of your answer.

As noted in our answer to question 2; our response to this consultation is based on the risk of impact on capacity to deliver planning functions within a small island authority. The present consultation-based approach is therefore considered to represent the most efficient and realistic approach to continue.

Question 5) Do you have any comments on the partial and draft impact assessments undertaken?

The Council does not have a view on this matter.

Question 6) Do you have any suggestions for additional sources of information on the potential impacts of the proposals that could help inform our final assessments?

The Council does not have a view on this matter.