

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

From: Debbie Flaherty
Energy and Climate Change Directorate
Energy Consents

15 April 2017

Cabinet Secretary for Economy, Jobs and Fair Work

APPLICATION FOR CONSENT UNDER S36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER S57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE SOUTH KYLE WIND POWERED ELECTRICITY GENERATING STATION NEAR NEW CUMNOCK, IN EAST AYRSHIRE AND DUMFRIES AND GALLOWAY.

Purpose

1. To seek your determination on an Application made by Vattenfall Wind Power Limited (“the Company”) for consent under section 36 of the Electricity Act 1989 and deemed planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997 to construct and operate the South Kyle wind farm consisting of **50 turbines** with a generating capacity **exceeding 50 MW**.
2. The proposed development is situated approximately 5km to the east of Dalmellington, with the application site across the boundary between the administrative areas of East Ayrshire Council, which has 30 turbines and Dumfries & Galloway Council having 20 turbines. The generating capacity of this development if consented would be approximately 170 MW.

Priority

3. Routine.

Background

4. On 22 August 2013 the Company applied for consent under section 36 of the Electricity Act 1989 (“the Act”) to construct and operate the South Kyle wind farm in the local Planning Authority areas of East Ayrshire and Dumfries & Galloway. The Application proposed 50 turbines with height to vertical blade tip not exceeding 149.5m and with a nominal installed capacity of 170 MW. The application also includes 6 permanent wind monitoring masts, new and upgraded site roads and associated infrastructure.
5. In October 2014 in response to the initial consultation and to address issues raised by consultees officials on behalf of Scottish Ministers requested that the Company submit Further Information to support their application containing clarification in relation to Peat Landslide and Risk Assessment and draft Species Protection Plans on Otter, Bats and Red Squirrel as requested by SNH. This was duly advertised and consulted upon. With the exception of SNH who

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

commented they still required the Company to provide adequate details of the management/mitigation measures to minimise impacts on bats, East Ayrshire Council, Dumfries & Galloway Council and SEPA had no further comments.

6. Officials note that in August 2015, to inform the public inquiry, the Company submitted Supplementary Environmental Information (SEI) of updated Landscape and Visual Impact assessment dated July 2015.
7. In accordance with regulatory requirements this Application has been subject to wide ranging consultation. We are satisfied that there are no outstanding issues that remain to be considered before determination of the Application.

Public Local Inquiry

8. East Ayrshire Council, one of the relevant Planning Authorities objected but as this was outwith the agreed timescale Scottish Ministers were not required to cause a Public Local Inquiry (PLI) to be held. However, officials recommended Ministers refer the section 36 application under the terms of the paragraph 3(2) of Schedule 8, for a PLI to be held and this was duly carried out.
9. **The Reporters have recommended that section 36 consent and deemed planning permission should be granted for the South Kyle wind farm proposal.**

PLI – Claim for Expenses

10. In connection with this application a subsequent claim for expenses was made by the Company against East Ayrshire Council. The Reporters to the PLI submitted their report dated 24 November 2016.
11. **The Reporters recommend that Ministers dismiss the application for an award of expenses.**
12. The Reporters' findings, recommendations and conclusions of the PLI and claim for expenses are set out within **Annex D**.

Recommendation

13. Having taken all material issues into account, including the statutory consultation responses, public representations, the findings, conclusions and recommendations of the Reporters and all other material considerations, officials are of the view that you should:
 - **grant consent under section 36 of the Electricity Act 1989 and deemed planning permission under 57(2) of the Town and Country Planning (Scotland) Act 1997 subject to conditions being attached to both.**
 - **dismiss the application for an award of expenses.**

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

14. A draft decision letter with conditions is attached at **Annex C – Decision letter**.

Publicity

15. Subject to your agreement, arrangements to announce this determination will be made by means of a News Release. The Communications Office will submit a draft News Release under separate cover for your approval. The consent and decision letter will also be made available to the public on the Scottish Government Energy Consents website and at the library at Victoria Quay, Edinburgh.

Attachments

16. The following annexes are attached to assist you in making your decision:

Annex A	Regulatory requirements and Advice to Ministers
Annex B	Background Information
Annex C	Decision Letter and Conditions
Annex D	Decision Letter – Claim for Expenses
Annex E	Site Map

17. A copy of the PLI report and Claim for Expenses report are attached to assist you.

Debbie Flaherty
Energy Consents Unit
EXT 41258

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for the Environment, Climate Change and Land Reform					X
Cabinet Secretary for Economy, Jobs and Fair Work	X				
Cabinet Secretary for Rural Economy and Connectivity					X
Minister for Local Government, & Housing					X
Minister for Business, Innovation and Energy					X
DG Finance DG Economy Chris Stark, Energy (via ECCBMU) David Ritchie, Energy Frances Pacitti, Energy Catherine Cacace, Energy James McKenzie, Energy Nikki Anderson, Energy Alan Brogan, Energy Christine McKay, Energy Norman Macleod, SGLD Olive Hogg, SGLD Simon Bonsall, Planning David Miller, Special Adviser Communications, Economy David Henderson – DPEA Paul Cackette - DPEA					

APPLICATION FOR CONSENT UNDER S36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER S57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE SOUTH KYLE WIND POWERED ELECTRICITY GENERATING STATION NEAR NEW CUMNOCK, IN EAST AYRSHIRE AND DUMFRIES AND GALLOWAY.

REGULATORY REQUIREMENTS AND ADVICE TO MINISTERS

Legislation

1. Any proposal to construct, extend or operate a wind farm with a generation capacity in excess of 50 MW requires consent under section 36 of the Electricity Act 1989 (“the Act”). On granting consent under section 36 for a development, the Scottish Ministers may also direct that planning permission for that development is deemed to be granted in terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997. The section 36 consent and planning permission may be subject to conditions.
2. Under paragraph 3(2) of Schedule 9 to the Act the Scottish Ministers must have regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. Under paragraph 3(3) the Scottish Ministers must avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.
3. Under Schedule 8 to the Act and regulations made under the Act, Scottish Ministers are required to consult the relevant Planning Authority and any other interested parties. In addition, to comply with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (the EIA Regulations), Scottish Ministers have to consult the relevant Planning Authority (Dumfries & Galloway Council and East Ayrshire Council), Scottish Natural Heritage (SNH), the Scottish Environment Protection Agency (SEPA), Historic Environment Scotland and such other persons that are in Ministers’ opinion likely to be concerned by the proposed development by reason of their specific environmental responsibilities.
4. In accordance with section 36(5A) of the Act, before granting any section 36 consent Scottish Ministers are required to:
 - (a) obtain SEPA advice on matters relating to protection of the water environment; and
 - (b) have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.
5. SEPA’s advice has been considered as required by section 36(5A) and due regard given to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003. We have consulted SEPA regarding a CAR licence in respect of the development proposals. SEPA have confirmed a CAR

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

licence is required and the proposal accords with Water Framework Directive objectives. SEPA have indicated that based on the information available a CAR licence is capable of being authorised.

Environment

6. Officials consider that there is sufficient information to allow Ministers to be satisfied that they have had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.
7. Officials consider that Scottish Ministers can be satisfied that the Company has done what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites, buildings or objects.

EIA Regulations

8. Regulation 4(2) of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the EIA Regulations”) provides that Scottish Ministers must not grant consent unless:
 - (a) they are satisfied that the Company has complied with their obligations to submit an Environmental Statement relating to the Application;
 - (b) they have taken into consideration the environmental information (the Environmental Statement, Supplementary Environmental Information and any representations duly made by consultative bodies and others); and
 - (c) the applicable procedures laid down in the EIA Regulations in respect of publicity and consultation has been followed.

Officials consider that you can be satisfied that these requirements have been met.

Scottish Planning Policy (SPP)

9. SPP outlines Scottish Government planning policy on Renewable Energy Development. Whilst it makes clear that the criteria against which applications should be assessed will vary depending on the scale of the proposal and area characteristics, it states that these are likely to include impacts on: landscapes and visual (including wild land); natural heritage (including birds); carbon rich soils; public access (including long distance walking, cycling and scenic identified in NPF); historic environment; tourism and recreation; road traffic; adjacent trunk roads; the water environment (including flood risk); communities and individual dwellings; aviation; telecommunications; noise; shadow flicker; greenhouse gas emissions; and any cumulative impacts that are likely to arise. It also makes clear that, where relevant, the following should be a material consideration when considering an application: net economic benefit; the scale of contribution to renewable energy generation targets; opportunities for energy storage; the need

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

for conditions relating to decommissioning and site restoration; and the need for robust planning obligations to ensure site restoration is achieved.

Local Development Plans

10. At the time of issuing their Report and recommendation to Scottish Ministers on 24 November 2016 the Reporters noted that East Ayrshire Council had published a proposed local development plan. The proposed plan was undergoing examination as there were unresolved representations to its renewable energy policies, which meant that its contents may be modified as a result of the examination process. The Reporters therefore concluded that its requirements should be given limited weight.
11. The Reporters found that there was nothing in the proposed LDP that would require any different or additional assessment in their report beyond what they had undertaken for the development plan.
12. Officials have considered the examination report which took account of issues arising from unresolved representations which were identified by the council. The Proposed East Ayrshire Local Development Plan Examination Report was issued to East Ayrshire Council on 30 November 2016. The examination report read alongside the proposed LDP is indicative of an up to date more supportive policy framework consistent with SPP.
13. East Ayrshire Council intends to adopt the Proposed East Ayrshire Local Development Plan as modified. The modified plan was submitted to Scottish Ministers as the Council's intended Local Development Plan on 3rd March 2017.
14. Officials have considered the terms of the modified plan and do not consider that it gives rise to any new issues. The adoption of the modified local development plan does not alter the recommendation to accept the Reporters' findings, agree with their reasoned conclusions and adopt them for the purposes of the Scottish Ministers' own decision.

Public Local Inquiry (PLI)

15. East Ayrshire Council, one of the relevant Planning Authorities, objected but as this was outwith the agreed timescale Scottish Ministers were not required to cause a PLI to be held. However, in recognising the Planning Authority's numerous grounds for objection and level of public representations received, Officials recommended Ministers refer the section 36 application under the terms of the paragraph 3(2) of Schedule 8, for a PLI to be held.
16. East Ayrshire Council's main objections are that the development:
 - is not sensitive to and does not reflect the landscape character;
 - results in significant adverse cumulative visual and landscape impacts, the acceptable limit of cumulative impact has been reached and the area should be afforded significant protection;
 - is outside the Areas of Search;

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

- will result in significant adverse visual impacts on the landscape character and on the residential amenity of communities;
- causes adverse impacts on existing rivers and lochs, including Loch Doon;
- causes adverse visual impacts on the skyline and landform at this location;
- causes adverse impacts to unresolved primary surveillance radar at Lowther Hill and consequential associated impact on NATs air traffic management operations at Prestwick Centre.

17. Dumfries & Galloway Council, also a relevant Planning Authority, did not object subject to conditions being imposed.

18. Scottish Ministers caused a public inquiry to be held in accordance with paragraph 3(2) of Schedule 8 to the Act. The PLI report and Reporters' recommendation received by Ministers is dated 24 November 2016.

19. The dates of inquiry sessions and site inspections are set out within the preamble to the PLI report at page 16.

Main issues, findings and recommendations of the Report

20. The Reporters recommended that the Application for section 36 consent for the South Kyle wind farm proposal be granted.

21. A Summary of Report of Inquiry is set out at pages 3 to 15 of the Report.

22. Chapter 1 of the Report relates to background information on the proposed Development, site description, consultation responses, representations and the Council considerations.

23. Chapter 2 of the Report deals with Policy Context, Chapter 3 with the landscape and visual effects (including landscape effects, visual effects and cumulative landscape and visual effects), chapter 4 the socio-economics effects, chapter 5 aviation effects, chapter 6 with Ecology and Natural Heritage Effects, chapter 7 with Cultural Heritage Effects, chapter 8 the effect on Dark Skies and chapter 9 the proposed conditions and planning obligations. In each chapter the Reporters summarise the cases for each party, taking account of the precognitions, hearing statements, the discussion at the inquiry and hearing sessions and the closing submissions. They also took into account the environmental information in the Environmental Assessment, the Further Information and Supplementary Environmental Information submitted during Inquiry, the written representations and all of the other information supplied for the inquiry and hearing sessions. The Reporters' conclusions on the subject of each chapter follow the summaries of the parties' cases. The Reporters' overall conclusions and recommendation with regard to South Kyle wind farm can be found in chapter 10 of the Report.

24. The Reporters concluded the development would have significant adverse landscape and visual effects and that some such effects are inevitable in a large-scale wind-energy proposal. East Ayrshire Council has suggested that certain amendments to the proposed scheme might reduce those effects and that therefore the applicant has not done all it reasonably can to mitigate such effects

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

as required by Schedule 9 of the Electricity Act 1989. The Reporters' do not agree: the council's amendments would create a different proposal that would deliver significantly less renewable energy.

25. The Reporters are satisfied that the socio-economic, aviation, ecological, cultural heritage and dark-sky effects are not unacceptable and comply with relevant planning policy, subject to mitigation being secured and effects being minimised as proposed.
26. The Reporters find the proposal can be described as “development that would contribute to sustainable development”. The Reporters therefore consider the proposal benefits from the presumption in favour of such development set out in SPP paragraph 33. The Reporters are also satisfied that the requirements of Schedule 9 of the Electricity Act 1989 are met.
27. The Reporters find that the proposal is supported by EU, UK and Scottish Government Energy and climate change policy. It complies with Scottish Government planning policy and with relevant provisions of the development plan.
28. Having regard to all of the evidence, the Reporters conclude that the benefits of the proposal in terms of renewable energy generation and its contribution to reductions in the emissions of greenhouse gases outweigh the adverse effects on landscape and visual amenity it would have.

PLI – Claim for Expenses

29. There was a claim for expenses made by the Company against East Ayrshire Council at the Inquiry and this has been dealt with by the Reporters in the Claim for Expenses report dated 24 November 2016. Paragraphs 3 – 6 of the report deal with a preliminary matter raised by the Council stating the claim had been submitted too late. The Reporters considered the submissions of the Council and the Company and agreed to consider the claim.
30. The Company claimed the Council had behaved unreasonably and that, as a consequence it had been obliged to incur unnecessary expenses. They base their claim on what is described as the Council's introduction of new matters at a late stage in the proceedings, and their expenses incurred in addressing the two matters of late evidence that it would not have incurred had the council not behaved unreasonably.
31. The Council's response to the claim is described in paragraphs 18 - 29 of the Claim for Expenses report. The Council's conclusion, that even if Ministers were to find that some element of the Council's behaviour had been unreasonable (which it does not accept) it cannot be demonstrated that this led to any additional expense on the part of the Company, is contained at paragraphs 26 – 29 of the report.

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

32. The Reporters' overall conclusions and recommendation with regard to the application by the Company are set out in paragraphs 30 – 49 of the Claim for Expenses report and their recommendation is at paragraph 50.
33. The Reporters concluded that East Ayrshire Council did not act unreasonably and recommend that Ministers dismiss the Application for an award of expenses. A draft decision letter can be viewed at **Annex D**.

Community Shared Ownership

34. Officials note in paragraph 4.77 of the PLI report that the Company have committed to working with the local community to implement an offer of Shared Ownership for the South Kyle project. The Company submitted that the revenue generated by community ownership of part of the development would deliver an on-going revenue stream for the community to spend on local projects for the life of the wind farm and beyond.
35. The Company submitted information to the Reporters on how their shared-ownership offer might work and advised their preferred model for the shared ownership scheme would be that described in the *Scottish Governments Good Practice Principles for Shared Ownership of Onshore Renewable Energy Developments* (the good practice principles) as the "shared revenue model". The Company wish to offer the community the ability to acquire up to 5% of the project.
36. Officials acknowledge that local and community ownership can have a lasting positive impact; building businesses, community resilience and providing alternative sources of income. Whilst the ownership of any development is not a material consideration in determining its acceptability in planning terms, the net economic impacts of shared owner ship may be a material planning consideration.
37. Officials note that the Company's discussions with potential partners are at an early stage and there is no certainty that a community shared offer will be delivered. Having considered the information submitted by the Company regarding their aspirations to provide a community shared ownership offer we find it is not sufficient to determine the net benefit that this might bring to the economic position of the area. Officials therefore disagree with the Reporters' view that the Company's offer to allow the community to obtain a share of the development is a matter to which the Reporters should have regard. Officials recommend Scottish Ministers do not accept the Reporters' conclusion at paragraph 4.80. and do not take this into account in determining this application.

Non Material matter

38. In accordance with Scottish Government Policy, the payment of a developer contribution should not be a material consideration however Officials note the Company has given a commitment to provide £5,000 per MW installed per annum at South Kyle Wind Farm in community benefit payment through the

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

creation of a community partnership strategy involving three community councils, who would administer the benefit.

Duration of planning permission

39. Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that planning permission lapses if development has not begun within a period of 3 years. Section 58(2) of that Act enables Ministers to direct that a longer period is allowed before planning permission lapses. Scottish Government policy is that due to the constraints, scale and complexity of constructing such developments and the variables around wind farm connections feeding into the line, a 5 year time scale for the commencement of the development is appropriate. A direction by Scottish Ministers under section 58(2) of the Town and Country Planning (Scotland) Act 1997 has therefore been included in the draft letter of consent at **Annex C**.

Advice to Ministers

40. Officials have considered fully the Reporters' findings, reasoned conclusions and recommendations in the PLI report and Claim for Expenses report, and are of the view that Ministers should accept their findings, agree with their reasoned conclusions and adopt them for the purposes of their own decision, with the exception of the Reporter's conclusion regarding shared community benefit offer.

41. Draft decision letters are attached at **Annex C** and **Annex D**.

Debbie Flaherty
Local Energy & Consents
Ext 41258

APPLICATION FOR CONSENT UNDER S36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER S57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE SOUTH KYLE WIND POWERED ELECTRICITY GENERATING STATION NEAR NEW CUMNOCK, IN EAST AYRSHIRE AND DUMFRIES AND GALLOWAY.

BACKGROUND INFORMATION

1. An Application was submitted by Vattenfall Wind Power Limited (“the Company”), a company registered in England forming part of the Vattenfall Group, the parent company of which is Vattenfall AB, a Swedish public limited liability company owned by the Swedish state. The Vattenfall Group is involved in the development and operation of wind farms both offshore and onshore and currently operates 545MW of onshore and 836MW of offshore wind across Europe. In the UK it operates 3 onshore windfarms; Edinbane on the Isle of Skye, Clashindarroch in the north east of Scotland and Swinford in Leicestershire. It also holds consent for the 100MW European Offshore Wind Deployment Centre off Aberdeen due for commissioning in 2018.
2. The current ownership of the site is split between Forestry Commission Scotland (35%) and one private landowner (65%). The site covers approximately 2403 ha and mainly comprises of commercial forestry and some small areas of open moorland. The site is bounded by the B741 to the north of the site and the nearby A713, Castle Douglas to Ayr Road, runs to the west of the site. To the west of the site lies Dalmellington and Bellbank, to the north is an area of open moorland, Loch Doon lies to the south west and to the east is the established Windy Standard wind farm.
3. The South Kyle proposed development was originally considered for 82 turbines, scoped down to 57 and finalised at 50 turbines for this application. The 50 turbines have a hub height of 93 metres and a ground to blade tip height of 149.5m. Each turbine has a maximum generating capacity of up to 3.4MW and the proposed installed capacity at this site if consented would be approximately 170 MW.
4. Following formal consultation and to address issues raised by consultees officials on behalf of Scottish Ministers requested that the Company submit Further Information to support their application containing clarification in relation to Peat Landslide and Risk Assessment and draft Species Protection Plans on Otter, Bats and Red Squirrel as requested by SNH. This Further Information was submitted by the Company on 20 October 2014.
5. The current South Kyle site once formed part of a larger site called Kyle Wind Farm. Kyle Wind farm comprised the existing South Kyle site and an area to the north of the B741. Back in 2005 Amec Wind Energy made an application for a 100 turbine development, later reduced to 85 turbines. East Ayrshire Council objected and after public local inquiry, in late 2008 it was refused consent for issues relating to impacts upon landscape and aviation.

OFFICIAL SENSITIVE – ADVICE TO MINISTERS

6. The proposal will have 8 on-site borrow pits, 30.6km of new on-site access tracks and 26km of upgraded site roads, various control buildings, welfare facility, a sub-station, 6 permanent 100 metre wind monitoring masts. It is envisaged that the grid connection point will be at the New Cumnock Substation at Meikle Hill

Public Representations

7. A total of approximately 1305 public representations have been received by Scottish Ministers to date, 1280 of which were objections to the Application and 25 representations of support. The objections raised concerns on a number of subjects including principles of the development contrary to planning policy, inappropriate location, landscape and visual impact, cumulative impact, harm to ecology, wildlife and the environment, noise and other pollution, lack of community benefits and harm to the local economy, harm to designated archaeological and heritage sites and that Ayrshire has contributed more than its share towards national energy needs.
8. The support for the Application is that it would provide clean energy, is in an appropriate location and will bring benefits to the local community.
9. All issues raised in the letters of objection have been considered in detail by statutory consultees and in the course of the PLI, and are addressed by officials in that context.

Consultation Exercise

10. Under Schedule 8 of the Electricity Act 1989 (“the Act”) and regulations made under that Act, Ministers are required to consult the relevant Planning Authority and any other interested parties. In addition, to comply with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the EIA Regulations”), you have to consult Scottish Natural Heritage (“SNH”), the Scottish Environment Protection Agency (“SEPA”) and any other person likely to be concerned by the proposed Development by reason of their specific environmental responsibilities.
11. In complying with the EIA Regulations, the Company identified the proposed Development as an EIA development which would require an Environmental Statement. This statement described the environmental impact and the proposed mitigation measures associated with the Development.
12. Officials consulted a wide range of relevant organisations including colleagues within the Scottish Government on the Application, Environmental Statement (ES) and Further Information (FI). As part of both the ES and FI consultations, we sought the advice of SNH, SEPA, and both Planning Authorities, East Ayrshire and Dumfries & Galloway Council in accordance with the statutory requirements.

Public Local Inquiry

13. East Ayrshire Council, one of the relevant Planning Authorities, objected to the Application but as this was outside agreed timescales there was no statutory requirement for Scottish Ministers to cause a PLI to be held. However, Officials considered the numerous points of objection put forward by East Ayrshire Council, all other material considerations and the 1280 objections from members of the public received, and the need for transparency and fairness, and recommended a PLI be held. The Council were represented at the PLI.
14. Principal Reporter David Buylla and Reporter Robert Seaton were appointed to conduct the Inquiry.
15. Other parties represented or who contributed to the PLI were:

- Patna Community Council
- New Cumnock Community Association
- Scottish Dark Skies Observatory
- Craigengillan Estate
- Ms Bea Holden
- Professor John C Brown
- Mr Robert Ince
- Bristow Helicopters
- Maritime and Coastguard Agency

The cases made by these parties are summarised on page 3 of the PLI Report.

16. Representations by other parties not represented at the PLI, who responded to the statutory consultation exercises conducted by officials in the Energy Consents Unit, were considered by the Reporter and these are summarised in Chapter 1 of the Report.

Energy and Climate Change Directorate
Energy Division

T: 0300-244 1064
E: Frances.Pacitti@gov.scot



Vattenfall Wind Power
St Andrews House
Haugh Lane
Hexham
Northumberland
NE45 3RB

Date

Dear Sirs,

CONSENT UNDER S36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER S57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF THE SOUTH KYLE WIND POWERED ELECTRICITY GENERATING STATION IN THE COUNCIL AREA OF EAST AYRSHIRE AND DUMFRIES AND GALLOWAY COUNCIL

Application

I refer to the Application made by Vattenfall Wind Power Ltd, a company incorporated under the Companies Acts with company number 062905750 and having its registered office at 1 Tudor Street, London UK EC4 YOAH dated 22 August 2013 for consent under section 36 of the Electricity Act 1989 (“the Electricity Act”) for the construction and operation of South Kyle Wind Farm, situated approximately 5km to the east of Dalmellington, within the administrative areas of East Ayrshire Council and Dumfries & Galloway Council, with a generating capacity exceeding 50MW.

Following formal consultation the Company submitted Further Information on 20 October 2014 to address issues raised by consultees. This Further Information contained clarification in relation to Peat Landslide and Risk Assessment and draft Species Protection Plans for Otter, Bats and Red Squirrel.

At the request of the Reporters to inform participants to the Public Enquiry the Company submitted Supplementary Environmental Information (SEI) (dated July

2015) on 25 September 2015 updating their landscape and visual cumulative assessment.

This letter contains the Scottish Ministers' decision on the Application.

Planning Permission

In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 Scottish Ministers may on granting consent under section 36 of the Electricity Act direct that planning permission is deemed to be granted in respect of the development for which section 36 consent is granted. This letter contains the Scottish Ministers' decision on such a direction.

Consultation

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the EIA Regulations") on 22 August 2013 the Company submitted an Environmental Statement (ES). In accordance with statutory requirements, advertisement of the Application and Environmental Statement was made in the local and national press and the opportunity given for those wishing to make representations to do so.

Following the submission of Further Information on 20 October 2014, the Company advertised again to provide a further opportunity for the public and interested parties to make representations.

On 25 August 2015, to inform participants in the Public Enquiry of the updated landscape and visual cumulative assessment, the Company submitted Supplementary Environmental Information (SEI) to the ES dated July 2015. The submission of this information was advertised by the Company in late August 2015, again giving the public and interested parties an opportunity to comment.

Under paragraph 2(1) of Schedule 8 to the Electricity Act, notice of the Application must be served on the Relevant Planning Authority and notice was served on East Ayrshire Council and Dumfries & Galloway Council. Notifications were also sent to SNH and SEPA. A wide range of other relevant organisations were also notified and consulted.

In addition to representations by the Planning Authorities, SNH, SEPA and Historic Environment Scotland, a total of 1305 public representations were received; 1280 were objections to the Application and 25 were of support. A summary of consultation responses and third party representations is contained within the Public Local Inquiry Report.

Public Local Inquiry (PLI)

East Ayrshire Council, one of the relevant Planning Authorities objected but as this was outwith the agreed timescale Scottish Ministers were not required to cause a Public Local Inquiry (PLI) to be held. However, officials recommended Ministers refer

the section 36 application under the terms of the paragraph 3(2) of Schedule 8, for a PLI to be held and this was duly carried out.

The PLI was held in New Cumnock Community Centre. The inquiry sessions were held on 9,10 and 11 December 2015 and hearing sessions took place on 8, 9 and 11 December 2015 with post inquiry exchanges of submissions concluding by 29 January 2016. The Reporters conducted an accompanied inspection of the site on 15 December 2015. In addition the Reporters carried out unaccompanied site inspections of the site, its surroundings and other locations referred to in evidence on 29 May 2015, 7 December 2015 ,15 January 2015 and 22 January 2015.

A claim for expenses was made by the Company against East Ayrshire Council at the close of the Inquiry.

The Report of Inquiry and Separate Claim for Expenses report was received by the Scottish Ministers on 24 November 2016. The Reporters' recommendations to Scottish Ministers are:-

- that the Application for section 36 consent for South Kyle be granted, and
- that the application for an award of expenses be dismissed.

Environmental matters

The Scottish Ministers are satisfied that the Environmental Statement, Further Information and Supplementary Environmental Information, has been produced in accordance with the EIA Regulations and that the applicable procedures regarding publicity and consultation laid down in the those Regulations have been followed.

Scottish Ministers have had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.

Scottish Ministers are satisfied that the Company has done what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites, buildings or objects.

Duration of planning permission

Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that planning permission lapses if development has not begun within a period of 3 years. Section 58(2) of that Act enables Ministers to direct that a longer period is allowed before planning permission lapses. Scottish Government policy is that due to the constraints, scale and complexity of constructing such developments, and the variables around wind farm connections feeding into the line, a 5 year time scale for the commencement of development is appropriate.

The Scottish Ministers' Considerations

Chapter 2 of the Report deals with Policy Context, Chapter 3 with the landscape and visual effects (including landscape effects, visual effects and cumulative landscape and visual effects), chapter 4 the socio-economics effects, chapter 5 aviation effects, chapter 6 with Ecology and Natural Heritage Effects, chapter 7 with Cultural Heritage Effects, chapter 8 the effect on Dark Skies and chapter 9 the proposed conditions and planning obligations. In each chapter the Reporter summarise the cases for each party, taking account of the precognitions, hearing statements, the discussion at the inquiry and hearing sessions and the closing submissions. They also took into account the environmental information in the Environmental Assessment, Further Information and the Supplementary Environmental Information submitted during Inquiry, the written representations and all of the other information supplied for the inquiry and hearing sessions. The Reporters' conclusions on the subject of each chapter follow the summaries of the parties' cases. The Reporters' overall conclusions and recommendation with regard to South Kyle wind farm can be found in chapter 10 of the Report.

Scottish Ministers have considered fully the Reporters' findings and reasoned conclusions and adopt them for the purposes of their own decision, with the exception of their conclusion regarding community shared ownership.

Scottish Ministers agree with the Reporters recommendation that section 36 consent should be granted for the proposed wind farm at South Kyle, and that a direction deeming planning permission to be granted should be given.

Community Shared Ownership

Scottish Ministers have considered the information provided by the Company regarding their aspirations to provide a community shared ownership offer and find it is not sufficient to determine the net benefit that this might bring to the economic position of the area. Scottish Ministers therefore disagree with the Reporters' view that the Company's offer to allow the community to obtain a share of the development is a matter to which they and Scottish Ministers should have regard. Scottish Ministers do not accept the Reporters' conclusion at paragraph 4.80 and have not taken this into account in their determination of this application.

Local Development Plan

At the time of issuing their Report to Scottish Ministers on 24 November 2016 the Reporters noted that East Ayrshire Council had published a proposed local development plan. The proposed plan was undergoing examination as there were unresolved representations to its renewable energy policies, which meant that its contents may be modified as a result of the examination process. The Reporters therefore concluded that its requirements should be given limited weight.

The Reports found that there was nothing in the proposed LDP that would require any different or additional assessment in their report beyond what they had undertaken for the development plan.

The examination process considered all the issues arising from unresolved representations which were identified by the Council. The Proposed East Ayrshire Local Development Plan Examination Report was issued to East Ayrshire Council on 30 November 2016. The examination report read alongside the proposed LDP is indicative of an up to date more supportive policy framework consistent with SPP.

East Ayrshire Council intends to adopt the Proposed East Ayrshire Local Development Plan as modified. The modified plan was submitted to Scottish Ministers as the Council's intended Local Development Plan on 3rd March 2017.

Ministers have considered the terms of the modified plan and do not consider that it gives rise to any new issues. The adoption of the modified local development plan does not alter the Scottish Ministers' view to accept the Reporters' findings, agree with their reasoned conclusions and adopt them for the purposes of their own decision.

The Scottish Ministers' Determination

Subject to the conditions set out in **Part 1 of Annex 2**, Scottish Ministers **grant consent** under section 36 of the Electricity Act 1989 for the construction and operation of the South Kyle Wind Powered electricity generating station in East Ayrshire Council and Dumfries & Galloway Council areas (as described in **Annex 1**).

Subject to the conditions set out in **Part 2 of Annex 2**, Scottish Ministers direct that **planning permission is deemed to be granted** under section 57(2) of the Town and Country Planning (Scotland) Act 1997 in respect of the development described in Annex 1.

The Scottish Ministers direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply with regard to that planning permission and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction if there has not been commencement of development within that period.

In accordance with the EIA Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality in which the land to which the Application relates is situated.

Copies of this letter and the consent have been sent to the Planning Authorities. This letter has also been published on the Scottish Government Energy Consents website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts

<https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=12>

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours faithfully

FRANCES PACITTI
Head of Energy Consents
A member of the staff of the Scottish Ministers

draft

ANNEX 1

Description of the Development

The South Kyle wind farm with a generating capacity exceeding 50 MW, comprising a 50 turbine wind-powered electricity generating station, located on land approximately 5km east of Dalmellington, across the boundary between the East Ayrshire Council and Dumfries & Galloway Council planning areas, as described in the Application and Environmental Statement (submitted on 22 August 2013) Further Information (submitted on 20 October 2014) and Supplementary Environmental Information (submitted 25 August 2015). This is subject to the conditions in Annex 2.

The principal components and ancillary development of the wind farm comprise:

- 50 wind turbines with a maximum tip height of 149.5 metres;
- wind turbine foundations and associated hardstandings;
- 6 permanent wind monitoring masts (100m);
- new onsite access tracks;
- upgraded onsite access tracks;
- potential 8 onsite borrow pits;
- temporary works (site compounds including concrete batching plant, storage areas);
- electricity substation compound;
- underground cables;
- permanent welfare facility;
- connection compound.

Conditions attached to Section 36 Consent

1. Duration of the Consent

(1) This consent shall expire after a period of 25 years from the date of Final Commissioning.

(2) Written confirmation of the First Commissioning Date and Final Commissioning Date shall be provided to both Planning Authorities and Scottish Ministers no later than one calendar month after each date.

Reason: To define the duration of the consent and ensure construction and first to final commissioning is completed within a reasonable period of time. .

2. Commencement of Development

(1) Development shall be commenced no later than five years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct in writing.

(2) Written confirmation of the intended date of Commencement of Development shall be provided to both Planning Authorities and Scottish Ministers no later than one calendar month before that date.

Reason: To avoid uncertainty and ensure that the consent is implemented within a reasonable period.

3. Non-assignment of consent

(1) This consent may not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment of the consent with or without conditions.

(2) The Company shall notify both Planning Authorities in writing of the name of the assignee, principal named contact and contact details within 14 days of the consent being assigned.

Reason: To safeguard the obligations of the consent if transferred to another person.

4. Aviation safety at Glasgow Prestwick Airport

(1) No development shall commence unless and until such time as the Scottish Ministers, in consultation with the Airport Operator and the Company, are satisfied that:

- (a) a Radar Mitigation Solution has been identified by the Airport Operator; and;
- (b) the Radar Mitigation Solution can be implemented and maintained for the lifetime of the development (or such shorter period as the Scottish Ministers in consultation with the Airport Operator and the Company are satisfied is necessary to mitigate the impact of the wind turbines).

(2) No blade shall be fitted to any turbine forming part of the development and no such turbine shall operate, save as provided for and in accordance with the Testing Protocol, unless and until such time as the Scottish Ministers receives confirmation from the Airport Operator that all measures required by the Radar Mitigation Solution prior to operation of any turbine have been implemented.

(3) No turbine shall operate other than in accordance with the terms of the Radar Mitigation Solution.

Reason: In the interests of aviation safety.

5. Aviation radar at Lowther Hill

(1) No part of any turbine shall be erected above ground until a Primary Radar mitigation Scheme agreed with the Operator has been submitted to and approved in writing by the Scottish Ministers in order to avoid the impact of the development on the Primary Radar of the Operator located at Lowther Hill and associated air traffic management operations.

(2) No part of any turbine shall be erected above ground until the approved Primary Radar Mitigation Scheme has been implemented and the development shall thereafter be operated fully in accordance which such approved Scheme.

Reason: To secure mitigation of impacts on the Lowther Hill radar and associated air traffic operations of NATS (En-Route) plc. ("NERL).

6. Serious Incident Reporting

In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company will provide written notification of the nature and timing of the incident to the Scottish Ministers, including confirmation of remedial measures taken and/ or to be taken to rectify the breach, within 24 hours of the incident occurring.

Reason: To keep the Scottish Ministers informed of any such incidents which may be in the public interest.

7. Implementation in accordance with approved plans and requirements of this permission

Except as otherwise required by the terms of the section 36 consent and this deemed planning permission, the Development shall be undertaken in accordance with the application including the approved drawings shown in the Environmental Statement, the Further Information (submitted on 20 October 2014) and Supplementary Environmental Information (submitted 25 August 2015).

Reason: to ensure that the Development is carried out in accordance with the approved details.

8. Design and operation of wind turbines

(1) No development shall commence unless and until full details of the proposed wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, and external finish and colour), the monitoring masts, any external transformer units and all associated apparatus have been submitted to, and approved in writing by, the Relevant Planning Authority.

(2) The overall height of the wind turbines shall not exceed 149.5 metres to the tip of the blades in a vertical position as measured from natural ground conditions immediately adjacent to the turbine base.

(3) The wind turbines shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned.

(4) Each wind turbine shall have three blades and all wind turbines shall rotate in the same direction.

Reason: To ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts assessed in the environmental statement and in the interests of the visual amenity of the area.

9. Signage

No name, sign, or logo shall be displayed on any external surface of the wind turbines or any external transformer unit other than those required to meet statutory health and safety requirements.

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

10. Design of sub-station and ancillary development

(1) No development shall commence unless and until final details of the temporary construction compound (including details of the external appearance of and materials for any buildings within the compound and any associated parking area) have been submitted to, and approved in writing by, the Relevant Planning Authority.

(2) The development shall take place in accordance with the approved details or such other detail as may be approved in writing by the Relevant Planning Authority from time to time.

(3) The development shall be maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned.

Reason: To ensure that the environmental impacts of the sub-station and ancillary development forming part of the Development conform to the impacts assessed in the environmental statement and in the interests of the visual amenity of the area.

11. Micro-siting

(1) Subject to paragraph (2), all wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the location as shown on figure 4.2 of the Environmental Statement (drawing number 6133-531-PA-001).

(2) Wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro-siting within the site. However, unless otherwise approved in advance in writing by the Relevant Planning Authority (in consultation with SEPA, SNH and Historic Environment Scotland as necessary) micro-siting is subject to the following restrictions:

- (a) No wind turbine, building, mast, track or hardstanding shall be moved more than 50 metres from the position shown on figure 4.2 of the Environmental Statement (drawing number 6133-531-PA-001).
- (b) No micro-siting shall take place into areas hosting Ground Water Dependent Terrestrial Ecosystems;
- (c) With the exception of watercourse crossings and related tracks, no element of the Development shall be micro-sited to a location within 50 metres of a watercourse (or closer to a watercourse if approved within such distance);
- (d) All micro-siting permissible under this condition must be approved in advance in writing by the Environmental Clerk of Works appointed under **condition 13**.

(3) Within one calendar month of the Final Commissioning Date the Company shall send to the Planning Authorities a plan of the development as built showing the final position of all wind turbines, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development. The plan should also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the Ecological Clerk of Works (EcoW) or Relevant Planning Authority's approval, as applicable.

Reason: to control environmental impacts while taking account of local ground conditions.

12. Planning Monitoring Officer

(1) No development shall commence unless and until the Planning Authorities have approved in writing the terms of appointment by the Company of an independent and suitably qualified environmental consultant. The terms of appointment shall:

- (a) Impose a duty to monitor compliance with the terms of the deemed planning permission and conditions attached to this consent;
- (b) Require the Planning Monitoring Officer to submit a monthly report to the Planning Authorities summarising works undertaken on site; and
- (c) Require the Planning Monitoring Officer to report to the Planning Authorities any incidences of non-compliance with the terms of the deemed planning permission and conditions attached to this consent at the earliest practical opportunity.

(2) The Planning Monitoring Officer must be appointed on the approved terms during the period from the Commencement of Development to the completion of post construction restoration works.

Reason: To enable the development to be suitably monitored to ensure compliance with the consent issued.

13. Ecological Clerk of Works

(1) No development shall commence unless the Relevant Planning Authority has approved in writing the terms of appointment by the Company of an independent and suitable qualified Ecological Clerk of Works (ECoW) in consultation with SNH and SEPA as necessary. The terms of appointment shall:

- (a) impose a duty to monitor compliance with the ecological and hydrological requirements set out in the Environmental Statement and any other information lodged in support of the application, the Construction and Environmental Management Plan, Habitat Management Plan and any other plans approved under **condition 15** ("the ECoW works");
- (b) require the ECoW to report to the Company's nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
- (c) require the ECoW to submit monthly reports to the Relevant Planning Authority summarising works undertaken on site t and
- (d) require the ECoW to report to the Relevant Planning Authority any incidences of non-compliance with the ECoW Works at the earliest practical opportunity.

(2) The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of this consent.

(3) No later than 6 months prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier), the Company shall submit details of the terms of appointment by the Company of an independent ECoW throughout the decommissioning, restoration and aftercare phases of the Development to the Relevant Planning Authority for approval in consultation with SNH and SEPA.

(4) An ECoW shall also be appointed under the terms of this condition throughout the decommissioning and restoration phases of the Development.

Reason: To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.

14. Geotechnical engineer

(1) No development shall commence unless the Relevant Planning Authority has approved in writing the terms of appointment by the Company of an independent and suitably qualified geotechnical engineer. The terms of appointment shall include requirements for the independent geotechnical engineer:

- (a) to review the peat management plan required as part of the Construction Method Statement produced in accordance with **condition 15** and
- (b) to report to the Relevant Planning Authority on compliance with that plan.

(2) The independent geotechnical engineer shall be appointed on the approved terms from Commencement of Development, throughout any period of construction activity and during any period of post-construction restoration works approved in terms of this consent.

15. Construction Method Statement and Construction Environmental Management Plan

(1) No development shall commence unless a Construction Method Statement (“the CMS”) incorporating a Construction Environmental Management Plan (“CEMP”) has been submitted to and approved in writing by the Planning Authorities in consultation with SNH and SEPA. The CMS shall include (but shall not be limited to):

- (a) the timing of construction works;
- (b) the formation of temporary construction compounds, access tracks for welfare facilities, turning areas, internal access tracks, car parking, material stockpiles, lighting columns, any construction compound boundary fencing and any areas of hardstanding;
- (c) parking, loading and unloading facilities and manoeuvring areas for vehicles within the site;
- (d) the methods of working to be employed in the construction of the cable trenches, crane pads; the wind turbines and meteorological masts and any foundation works;
- (e) site illumination during the construction period;
- (f) the siting and detail of measures to suppress dust arising from construction activities;
- (g) the prevention of pollution of ground or surface water and management of drainage and a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- (h) protection of private water supplies;

- (i) a drainage management plan, demonstrating how all surface and waste water arising during and after development will be monitored, managed and prevented from polluting any watercourses or sources;
- (j) 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;
- (k) methods of disposal for foul drainage and sewage;
- (l) details of emergency procedures for the construction period;
- (m) a site waste management plan dealing with the disposal of waste and other materials not required for construction purposes (dealing with all aspects of waste produced during the construction period other than peat), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. The site waste management plan shall also cover disposal of forestry materials;
- (n) post-construction restoration and reinstatement of the working areas not required during the operation of the Development, including construction access tracks, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas;
- (o) a site-specific scheme for the working and restoration of each borrow pit forming part of the Development, including working method statement, details of handling of any overburden, drainage, programme of implementation of works described in the scheme, hours of blasting, and full details of restoration including topographic surveys of pre-construction profiles and details of the restored borrow pit profiles;
- (p) a plan for management of peat required to be excavated in the construction of the Development, to include:
 - (i) details of vegetated turf stripping and storage, peat excavation (including volumes), handling, storage and re-use,
 - (ii) the full peat slide mitigation measures set out in the environmental statement and addendum (including the draft Geotechnical Risk Register),
 - (iii) a requirement for further assessment of peat slide risk once tree felling has taken place at higher risk turbine and track locations,
 - (iv) identified peat storage sites selected on the basis of geotechnical criteria, and
 - (v) details of supervision of peat storage sites by a geotechnical engineer;
- (q) the management of noise resulting from construction activities;
- (r) site specific details for management and operation of any concrete batching plant (including disposal of pH rich waste water and substances);
- (s) measures for soil storage and management;
- (t) details of watercourse crossings;
- (u) measures for preventing deposit of material on the road; and
- (v) details of construction of site access and maintenance of visibility splays.

(2) The CEMP shall include:

- (a) Species Protection Plans in respect of bats (including in particular in providing adequate details of the management/mitigation measures that will be adopted to minimise the potential impacts on bats – specifically informed by the results of the bat survey work undertaken for the EIA and with a particular focus on

Leisler's bats), otter and red squirrel as outlined within Appendix 2 of the Further Information dated October 2014;

(b) protective measures for breeding birds, water vole, pine martin, reptiles and badgers and fish populations (as outlined in the Environmental Statement and draft environmental management plan accompanying it), the outcome of pre-construction surveys for these species and corresponding mitigation measures to be employed.

(3) The approved CEMP and Species Protection Plans shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to the mitigation measures to better protect these species.

(4) Where a review indicates that amendments are required, an updated and amended Plan or Plans (the "Amended Plan(s)") shall be submitted for the written approval of the Relevant Planning Authority in consultation with SNH.

(5) Unless otherwise agreed in writing with the Relevant Planning Authority, the CMS, CEMP and Species Protection Plans and any subsequent approved Amended Plan(s) shall be implemented in full as approved.

Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on amenity and the environment, and that the mitigation measures contained in the Environmental Statement and Further Information dated October 2014 which accompany the application, or as otherwise agreed, are fully implemented.

16. Construction Hours

(1) Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work taking place on Sundays or on national public holidays. Outwith these specified hours, development on the site shall be limited to turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, unless otherwise approved in advance in writing by the planning authorities.

(2) HGV movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements to or from site taking place on Sundays or on national public holidays.

Reason: In the interests of local amenity.

17. External lighting of site

There shall be no external lighting of the site save as approved under **condition 15(e)** or as required under condition **28**.

Reason: To safeguard the visual amenities of the area.

18. Installation of cables

All electrical cabling between the wind turbines and the switchgear control building shall be installed and kept underground.

Reason: To safeguard the visual amenities of the area.

19. Traffic Management Plan

(1) No development shall commence until a Traffic Management Plan (“the TMP”) has been submitted to and approved in writing by the Planning Authorities. The TMP shall include:

- (a) the routing of all traffic associated with the Development on the local road network, including any speed restrictions;
- (b) the scheduling of construction traffic excluding abnormal indivisible loads;
- (c) measures to ensure that the specified routes are adhered to, including monitoring procedures;
- (d) details of all signage and lining arrangements to be put in place;
- (e) provisions for emergency vehicle access;
- (f) identification of a nominated person to whom any road safety issues can be referred;
- (g) the works required to achieve vehicular access from the site to the public road;
- (h) improvements to the public road to facilitate the development;
- (i) vehicle parking and turning arrangements within the site;
- (j) identification of any roads along which excessively heavy or other extraordinary traffic or vehicles are to be routed and for pre- and post-construction survey of such roads, if any;
- (k) a travel plan for the construction phase of the development to minimise private car travel during the construction phase of the development; and
- (l) a plan for access by vehicles carrying abnormal loads, including the number and timing of deliveries, the length, width and axle configuration of all extraordinary traffic accessing the site.

(2) The TMP shall be implemented as approved.

Reason: In the interests of road safety and to ensure that abnormal loads access the site in a safe manner.

20. Habitat Management Plan

(1) There shall be no Commencement of Development until a Habitat Management Plan (“the HMP”) has been submitted to and approved in writing by the Planning Authorities in conjunction with SNH and SEPA. The HMP shall include the mitigation and enhancement measures referred to in Chapter 12 of the Environmental Statement dated August 2013 and any measures required to secure its implementation.

(2) The approved HMP shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the

habitat plan objectives. Where a review indicates that amendments are required, and in any case after ground condition surveys undertaken following construction, an updated and amended HMP shall be submitted for the written approval of the Relevant Planning Authority.

(3) Unless otherwise agreed in writing with the Relevant Planning Authority, the approved habitat management plan and any subsequent approved revisions to the habitat management plan shall be implemented in full.

Reason: To secure proposed ecological mitigation and enhancement measures; in the interests of good land management and the protection of habitats.

21. Programme of archaeological works

(1) There shall be no Commencement of Development until a programme of archaeological works has been submitted to and approved by the Relevant Planning Authority. The programme shall include measures to be taken to protect and preserve any features of archaeological interest in situ, and the recording and recovery of archaeological features which cannot be so preserved.

(2) The approved scheme of archaeological works shall thereafter be implemented in full.

Reason: To ensure the protection or recording of archaeological features on the site

22. Forestry Management Plan

(1) There shall be no Commencement of Development until a Forestry Management Plan ("the FMP") incorporating the Brownhills and Deughwater Forests has been submitted to and approved in writing by the Relevant Planning Authority in consultation with Forestry Commission Scotland Conservator. The FMP shall provide for long-term retention with selective felling, diversification of species and replanting to maintain a permanently wooded valley.

(2) The FMP must comply with the requirements set out in the UK Forestry Standard (Forestry Commission, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers, or such replacement standard as may be in place at the time of submission of the FMP for approval. The FMP must include-

- (a) details of the location of the area to be planted;
- (b) details of land owners and occupiers of the land to be planted;
- (c) the nature, design and specification of the proposed woodland to be planted;
- (d) details of all consents required for delivery of the FMP and timescales within which each will be obtained;
- (e) the phasing and associated timescales for implementing the FMP;
- (f) proposals for the maintenance and establishment of the FMP, including annual checks, replacement planting, fencing, ground preparation and drainage; and
- (g) proposals for reporting to the Relevant Planning Authority on compliance with timescales for obtaining the necessary consents and thereafter implementation of the FMP.

(3) Unless otherwise agreed in writing by the Relevant Planning Authority, the Development shall not be commissioned to supply electricity on a commercial basis unless all relevant consents necessary for implementation of the approved FMP in accordance with the phasing and timescales set out therein have been obtained.

(4) In the event that there is no reasonable prospect of the relevant consents necessary for implementation of the approved FMP being obtained, then the Company shall submit an amended FMP to the Relevant Planning Authority for approval in consultation with Forestry Commission Scotland. Unless otherwise agreed in writing by the Relevant Planning Authority, the Development shall not be commissioned to supply electricity on a commercial basis unless all relevant consents necessary for implementation of the approved amended FMP in accordance with the phasing and timescales set out therein have been obtained.

(5) The approved FMP (or, as the case may be, an approved amended FMP) shall be implemented in full, unless otherwise agreed in writing by the Relevant Planning Authority after consultation with the Forestry Commission Scotland Conservator.

Reason: To secure replanting to mitigate against effects of deforestation arising from the Development.

23. Access management plan

(1) There shall be no Commencement of Development unless an Access Management Plan (AMP) is submitted to and approved in writing by the Relevant Planning Authority. The AMP shall:

- (a) take account of “Good Practice during wind farm construction, 2nd Edition 2013, Part 7 Recreation and Access”,
- (b) identify limitations on access rights during the construction phase and how these will be managed;
- (c) set out the access management regime during the operational phase;
- (d) provide detail on viewpoint(s) creation and interpretative signage associated with the nearby industrial heritage and the timing of its installation; and
- (e) include proposals for restoration and improvement of the Water of Deugh core path, should it be damaged during construction of the Development.

(2) The approved AMP shall be implemented in full.

Reason: To ensure that public access provision is managed throughout the construction period and public access is provided for during the operation period.

24. Noise

(1) The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

(2) No electricity shall be exported until the Company has submitted to the Relevant Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Relevant Planning Authority.

(3) The Company shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The Company shall provide this information in the format set out in Guidance Note 1(e) to the Relevant Planning Authority on its request, within 14 days of receipt in writing of such a request.

(4) Within 21 days from receipt of a written request from the Relevant Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the Company shall, at its expense, employ a consultant approved by the Relevant Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Relevant Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Relevant Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

(5) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Relevant Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Relevant Planning Authority under paragraph (d), and such others as the independent consultant considers likely to result in a breach of the noise limits.

(6) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the Company shall submit to the Relevant Planning Authority for written approval proposed noise limits selected from those listed in the tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits shall be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling, unless otherwise agreed with the Relevant Planning Authority due to location-specific factors.

(7) The Company shall provide to the Relevant Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in

accordance with the Guidance Notes within 2 months of the date of the written request of the Relevant Planning Authority for compliance measurements to be made under paragraph (d), unless the time limit is extended in writing by the Relevant Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Relevant Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

(8) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4 the Company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (f) above unless the time limit has been extended in writing by the Relevant Planning Authority.

Table 1: Night-time noise limits (2300-0700)

Property	Standardised wind speed at 10 metre height (m/s)									
	3	4	5	6	7	8	9	10	11	12
	Noise limit (dB L _{A90})									
Waterhead	40	40	40	40	40	40	40	40	40	40
Glenmuck	40	40	40	40	40	40	40	40	40	40
Clawfin Farm	40	40	40	40	40	40	40	40	40	40
Clawfin Bungalow	40	40	40	40	40	40	40	40	40	40
Meiklehill	40	40	40	40	40	40	40	40	40	40
Knockanlee	40	40	40	40	40	40	40	40	40	40
Nith Lodge	40	40	40	40	40	40	40	40	40	40
Maneight	40	40	40	40	40	40	40	40	40	40
Brownhill	45	45	45	45	45	45	45	45	45	45

Table 2: Daytime noise limits (0700-2300)

Property	Standardised wind speed at 10 metre height (m/s)									
	3	4	5	6	7	8	9	10	11	12
	Noise limit (dB L _{A90})									
Waterhead	35	36	36	36	37	38	39	39	39	39
Glenmuck	36	36	37	37	37	38	38	38	38	38
Clawfin Farm	35	35	35	35	35	35	36	38	38	38
Clawfin Bungalow	35	35	35	35	35	35	36	38	38	38
Meiklehill	35	35	35	35	35	36	38	41	41	41
Knockanlee	35	35	35	35	35	36	38	41	41	41
Nith Lodge	35	35	35	35	35	36	38	41	41	41
Maneight	35	35	35	35	35	36	38	41	41	41
Brownhill	45	45	45	45	45	45	45	45	45	45

Reason: to protect nearby residents from undue noise and disturbance. To ensure that noise limits are not exceeded and to enable prompt investigation of complaints.

25. Television reception

Prior to First Commissioning a scheme providing for a baseline survey and the investigation and alleviation of any electro-magnetic interference to terrestrial television caused by the operation of the turbines shall be submitted to and approved

in writing by the Relevant Planning Authority. The scheme shall provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at any dwelling, commercial premises or other building, which exists or had planning permission at the date of this permission, where such complaint is notified to the Company by the Relevant Planning Authority within 12 months of the Final Commissioning Date. Where impairment is determined by the qualified television engineer to be attributable to the wind farm, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Relevant Planning Authority.

Reason: To ensure local television services are sustained during the construction and operation of this development.

26. Redundant turbines

If one or more turbine fails to generate electricity for a continuous period of 12 months, then unless otherwise agreed in writing by the Relevant Planning Authority, the Company shall, by no later than 14 days following the expiration of the 12 month period, submit a scheme to the Relevant Planning Authority for its written approval setting out how the relevant turbine(s) and associated infrastructure will be removed from the site and the ground restored and including a timetable for its full implementation. The scheme shall have regard to the restoration strategy approved under **condition 29**. The approved scheme shall thereafter be implemented in accordance with the approved timetable.

Reason: To ensure that any redundant wind turbine is removed from Site, in the interests of safety, amenity and environmental protection

27. Aviation safety

(1) There shall be no Commencement of Development until the Company has provided both Planning Authorities, the Ministry of Defence, the Defence Geographic Centre (DGC) and Defence Infrastructure Organisation Safeguarding (DIOS) with the following information in writing:

- (a) The date of Commencement of Development;
- (b) The position of the wind turbine towers and meteorological masts in latitude and longitude;
- (c) The height above ground level of the wind turbines to blade tip and of the meteorological masts;
- (d) the proposed date of completion of construction;
- (e) The details and specification of turbine and meteorological mast aviation warning lighting and confirmation that all such lighting shall only comprise of infrared lighting; and
- (f) the proposed maximum extension height of any construction equipment on site;

(2) Within 7 days after the erection of the final turbine the Company shall provide written confirmation to both Planning Authorities, DGC and DIOS of the actual date on which construction of turbines was completed, and the final location of the

turbines and meteorological masts in latitude and longitude (in degrees, minutes and seconds), and the final height above ground level of each turbine.

(3) In each case, the Company shall provide evidence to the Relevant Planning Authority that it has carried out notification as required in this condition.

Reason: In the interests of aviation safety.

28. Aviation lighting

No wind turbine shall be erected until a scheme of infra-red aviation lighting is submitted to and approved in writing by both Planning Authorities. The scheme, which shall be applied to turbines numbered 4, 15, 19, 20, 23, 25, 29, 30, 33, 37, 38, 39, 45, 46, 49 and 50 as shown on Figure 4.2 within the Environmental Statement dated August 2013, shall be implemented as approved.

Reason: In the interests of aviation safety.

29. Site decommissioning, restoration and aftercare

(1) The Development shall cease to generate electricity and shall be decommissioned by no later than the date falling twenty five years from the date of Final Commissioning. The total period restoration of the Site in accordance with this condition shall not exceed three years beginning from the date falling twenty five years from Final Commissioning without prior written approval of the Relevant Planning Authority.

(2) There shall be no Commencement of Development unless a decommissioning and restoration strategy has been submitted to and approved in writing by the Relevant Planning Authority. The strategy shall outline measures for the decommissioning of the Development and restoration of the site and any aftercare.

(3) No later than 12 months prior to the decommissioning of the Development or the expiration of this consent (whichever is earlier), a detailed decommissioning and restoration plan, based upon the approved decommissioning and restoration strategy, shall be submitted to both Planning Authorities for their written approval. The detailed decommissioning and restoration plan shall provide updated and detailed proposals for the removal of the wind turbines and associated development above ground, and the foundations of the wind turbines to a depth of one metre below ground level, and reinstatement of the land. The plan shall include proposals for the management and the timing of the works and for the restoration of the site, which shall also include:

- (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 new features required to facilitate the decommissioning and restoration including but not limited to: the construction compound, 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) 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) 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;
- (l) a species protection plan based on surveys for protected species (including birds) carried out no longer than 12 months prior to submission of the plan).

(4) The Development shall be decommissioned and the site restored thereafter undertaken in accordance with the plan, unless otherwise agreed in writing in advance with the Relevant 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.

30. Financial guarantee

(1) No development shall commence until the Company has delivered to the Relevant Planning Authority written details of the bond or other financial provision which it proposes to put in place to secure the cost of performance of all decommissioning, restoration and aftercare requirements as contained in **condition 29** in that Planning Authority's area, for the written approval of the Relevant Planning Authority. Before giving its written approval, the Relevant Planning Authority may require the Company to provide a review of the suitability of the legal arrangements for provision of the bond or other financial provision and/or its value by a suitably qualified independent professional commissioned for the purpose by the Company with the approval of the Relevant Planning Authority.

(2) There shall be no Commencement of Development until the Company has delivered to the Relevant Planning Authority the bond or other financial provision and the Relevant Planning Authority has given written confirmation that the bond or other financial provision is satisfactory.

(3) The Company shall ensure that the approved bond or other financial provision is maintained and is of suitable value throughout the duration of this consent and until the date of completion of all work required under **condition 29**.

(4) The adequacy of the approved bond or other financial provision shall be reviewed at five yearly intervals, or such other intervals as agreed by the Relevant Planning Authority, from Commencement of Development, by a suitably qualified independent professional commissioned by the Company with the approval of the relevant Planning Authority. The findings of such reviews shall be provided to the Company and the Relevant Planning Authority within 14 days of the review taking place. Any revisions to the bond or other financial provision recommended by the review and agreed in writing by the Relevant Planning Authority shall be made by the Company within 28 days of the Company's receiving the relevant Planning Authority's written agreement. The Company shall then without delay provide documentary evidence to the Relevant Planning Authority that the agreed revision has been made.

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

Guidance notes for Condition 24 on noise

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

(a) Values of the LA90,10min noise statistic shall be measured at the complainant's property using a sound level meter of EN 60651/BS EN 60804 Type 1, or EN 61672 Class 1 quality (or the replacement thereof) set to measure using a fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This shall be calibrated in accordance with the procedure specified in BS 4142: 2014 (or the replacement thereof). These measurements shall be made in such a way that the requirements of Note 3 shall also be satisfied.

(b) The microphone should be mounted at 1.2-1.5 m above ground level, fitted with a two layer windshield (or suitable alternative approved in writing by the Relevant Planning Authority), and placed outside the complainant's dwelling. Measurements should be made in "free-field" conditions. To achieve this, the microphone should be placed at least 3.5 m away from the building facade or any reflecting surface except the ground at a location agreed with the Relevant Planning Authority.

(c) The LA90,10min measurements shall be synchronised with measurements of the 10 minute arithmetic mean wind speed and with operational data, including power

generation information for each wind turbine, from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed and wind direction at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods, unless otherwise agreed in writing with the Relevant Planning Authority. The mean wind speed data shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 m height wind speed data which is correlated with the noise measurements of Note 2(a) in the manner described in Note 2(c).

(e) Data provided to the Relevant Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

Guidance Note 2

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b). Such measurements shall provide valid data points for the range of wind speeds, wind directions, times of day and power generation as agreed in the assessment protocol. At its request the Company shall provide within 28 days of the completion of the measurements all of the data collected to the Relevant Planning Authority.

(b) Valid data points are those that remain after all periods during rainfall have been excluded. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Note 1(c) and is situated in the vicinity of the sound level meter.

(c) A least squares, "best fit" curve of a maximum 2nd order polynomial or otherwise as may be agreed with the Relevant Planning Authority shall be fitted between the standardised mean wind speed (as defined in Note 1 paragraph (d)) plotted against the measured LA90,10min noise levels. The noise level at each integer speed shall be derived from this best-fit curve.

Guidance Note 3

Where, in the opinion of the Relevant Planning Authority, noise immissions at the location or locations where assessment measurements are being undertaken contain a tonal component, the following rating procedure shall be used:

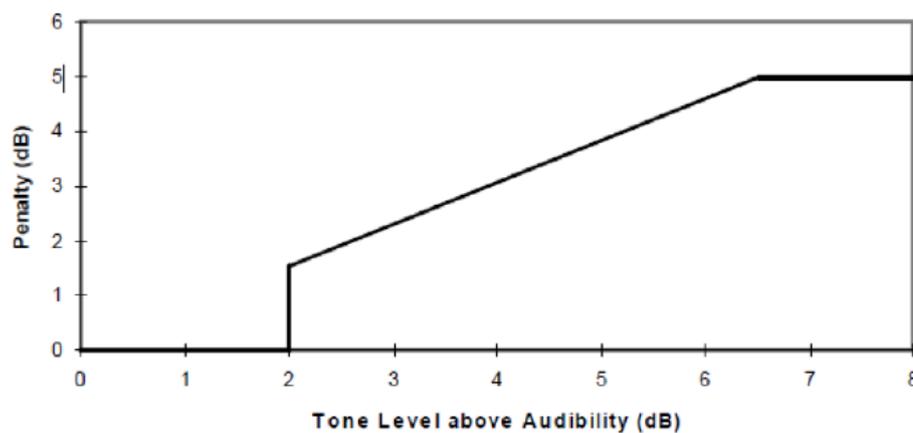
(a) For each 10 minute interval for which LA90,10min data have been obtained as provided for in Notes 1 and 2, a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods shall be regularly spaced at 10 minute intervals provided that uninterrupted clean data are available. Where clean data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

(b) For each of the 2 minute samples the margin above or below the audibility criterion of the tone level difference, ΔL_{tm} (Delta Ltm), shall be calculated by comparison with the audibility criterion, given in Section 2.1 on pages 104-109 of ETSU-R-97.

(c) The margin above audibility shall be plotted against wind speed for each of the 2-minute samples. For samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

(d) A linear regression shall then be performed to establish the margin above audibility at the assessed wind speed for each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic average shall be used.

(e) The tonal penalty shall be derived from the margin above audibility of the tone according to the figure below. The rating level at each wind speed shall be calculated as the arithmetic sum of the wind farm noise level, as determined from the best-fit curve described in Note 2, and the penalty for tonal noise.



Guidance Note 4

If the wind farm noise level (including the application of any tonal penalty as per Note 3) is above the limit set out in the conditions, measurements of the influence of background noise shall be made to determine whether or not there is a breach of condition. This may be achieved by repeating the steps in Notes 1 & 2 with the wind farm switched off in order to determine the background noise, L_3 , at the assessed wind speed. The wind farm noise at this wind speed, L_1 , is then calculated as follows, where L_2 is the measured wind farm noise level at the assessed wind speed with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[10^{\frac{L_2}{10}} - 10^{\frac{L_3}{10}} \right]$$

The wind farm noise level is recalculated by adding the tonal penalty (if any) to the wind farm noise.

Definitions

In this consent and deemed planning permission:

“Airport Operator” means Glasgow Prestwick Airport Limited or any successor as holder of a licence under the Air Navigation Order 2000 from the Civil Aviation Authority to operate Glasgow Prestwick Airport.

“the Application” means the Application submitted by the Company on 22 August 2013.

“Commencement of Development” means the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997.

“the Company” means Vattenfall Wind Power Limited, having its registered office at 1 Tudor Street, London UK EC4 YOAH Company No. 062905750, or such other person as from time to time has the benefit of the consent granted under section 36 of the Electricity Act 1989.

“the Development” means the development described in Annex 1.

“Environmental Statement” means the Environmental Statement submitted by the Company on 22 August 2013 with the Application.

“Final Commissioning” means the earlier of (a) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development; or (b) the date 18 months after the date of First Commissioning.

“First Commissioning” means the date on which electricity is first exported to the grid on a commercial basis from any of the wind turbines forming part of the development.

“Operator” means NATS (En Route)plc., incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whitely, Fareham, Hants, PO15 7FL or such other organisation licensed from time to time under Section 5 and 6 of the Transportation Act 2000 to provide air traffic services to the relevant managed area (within the meaning of Section 40 of the Act).

“Planning Authorities” means East Ayrshire Council and Dumfries and Galloway Council.

“Primary Radar Mitigation Scheme” means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all times the impact of the development on the “Lowther Hill” primary radar and air traffic management operations of the Operator.

“Radar Mitigation Solution” means such equipment, procedural or technological measures as the Airport Operator identifies as necessary and sufficient to prevent the

operation of the Development or of any turbines forming part of the Development impacting adversely on radar performance or on the performance of other navigational aids at Glasgow Prestwick Airport or on maintaining safe and efficient air traffic control services or procedures or airspace and which the Airport Operator is willing and able to implement and maintain for the lifetime of the Development or for such shorter period as may be agreed in consultation with the Airport Operator as necessary to mitigate any such adverse impact.

“Relevant Planning Authority ” means East Ayrshire Council in so far as a condition relates to development within the administrative boundary of East Ayrshire Council; and Dumfries and Galloway Council in so far as a condition relates to development within the administrative boundary of Dumfries and Galloway Council.

“Testing Protocol” means the protocol to control the operation of any turbine or turbines forming part of the development for the purposes of testing of the Radar Mitigation Solution.

“SEPA” means the Scottish Environmental Protection Agency.

“SNH” means Scottish Natural Heritage.

Energy and Climate Change Directorate
Energy Division

T: 0300-244 1064
E: Frances.Pacitti@gov.scot



Vattenfall Wind Power
St Andrews House
Haugh Lane
Hexham
Northumberland
NE45 3RB

Date

Dear Sirs,

CLAIM FOR EXPENSES IN CONNECTION WITH THE APPLICATION FOR THE CONSTRUCTION AND OPERATION OF THE SOUTH KYLE WIND POWERED ELECTRICITY GENERATING STATION IN THE COUNCIL AREA OF EAST AYRSHIRE AND DUMFRIES AND GALLOWAY.

1. On **DATE OF DECISION** Scottish Ministers granted an application for consent under section 36 of the Electricity Act 1989, and granted deemed planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997, for Vattenfall Wind Power Limited to construct and operate South Kyle Wind Farm, near New Cumnock in the East Ayrshire and Dumfries & Galloway planning authority areas. In determining the application, the Scottish Ministers caused a public local inquiry to be held under paragraph 3(2) of Schedule 8 to the Electricity Act 1989. The inquiry and hearing sessions took place from 8 to 11 December 2015.
2. At the inquiry's close, claims were submitted on behalf of Vattenfall Wind Power Limited, for awards of expenses to be made by the Scottish Ministers against East Ayrshire Council.
3. The Reporters to the inquiry submitted a Report to the Scottish Ministers on the Claim for an Award of Expenses. Mr David Buylla and Robert Seaton's report is dated 24 November 2016 and sets out their findings and recommendation to the Scottish Ministers.

Reporter Recommendation

4. In their report, the Reporters outline the main points for the claimant Vattenfall Wind Power Ltd and East Ayrshire Council, and set out their own reasoned conclusions.
5. The Reporters concluded that East Ayrshire Council did not act unreasonably and recommended that Ministers dismiss the application for expenses.

The Scottish Ministers' Considerations

6. The Scottish Ministers have considered the Report into the claim for expenses and adopt the Reporters' reasoning as set out in their report. Further, the Scottish Ministers agree with the recommendation that they decline to make any award of expenses against East Ayrshire Council in this case.

Copies of this letter and the Report to Scottish Ministers – Claim for an Award of Expenses, have been sent to East Ayrshire Council.

Yours sincerely

Frances Pacitti
Head of Energy Consents