

T: 0141-242-0361  
E: william.black@gov.scot

Rachael Allum  
Principal Development Planner  
**Banks Renewables Limited**  
Inkerman House  
St Johns Road  
Meadowfield  
Durham  
County Durham  
DH7 8XL

18 June 2020

Dear Ms Allum

**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 LETHANS WIND FARM APPROXIMATELY 5 KILOMETRES NORTH-EAST OF NEW CUMNOCK IN THE EAST AYRSHIRE COUNCIL PLANNING AUTHORITY AREA**

**Application**

I refer to the Application made by Banks Renewables (Lethans Wind Farm) Limited ("the Company"), incorporated under the Companies Acts (Registered Number: 8217768) of Inkerman House, St John's Road, Meadowfield, Durham, County Durham DH7 8XL on 07 June 2019 for consent under section 36 of the Electricity Act 1989 ("the Act") for the construction and operation of Lethans Wind Farm ("the proposed Development") with a generation capacity exceeding 50 megawatts, approximately 5 kilometres north-east of New Cumnock within the planning authority area of East Ayrshire Council ("the Planning Authority").

**This letter contains the Scottish Ministers' decision to grant section 36 consent for the Development as described at Annex 1.**

**Planning Permission**

In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 the 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' direction that planning permission is deemed to be granted.**

## **Background**

In March 2018 the Scottish Ministers granted the Company consent under section 36 of the Act and deemed planning permission for the construction and operation of Lethans Wind Farm (“the consented Lethans Wind Farm”). The Application submitted by the Company in June 2019 (“Lethans Wind Farm 2019”), subject to this decision, is for an alternative design to the wind farm granted consent in March 2018. The Lethans Wind Farm 2019 Application is for section 36 consent for 30 years instead of the 25 years previously granted and proposes an updated design with changes to the turbine tip heights (see below) and increases to the rotor diameters (from approximately 114m to 117m-150m).

The main changes are as follows:

| <b>The consented Lethans Wind Farm</b>   | <b>Lethans Wind Farm 2019</b>  |
|--|--|
| 7 turbines @ 136m tip height<br>(T2, T12, T14, T17, T19, T20 & T23)  | 7 turbines @ 176m tip height<br>(T2, T7, T10, T17, T19, T20 & T23)   |
| 9 turbines @ 149.9m tip height<br>(T4, T7, T8, T10, T15, T18, T22, T24 & T26)  | 10 turbines @ 200m tip height<br>(T4, T8, T11, T12, T15, T18, T21, T22, T24 & T26)   |
| 1 turbine @ 152m tip height<br>(T21)   | 5 turbines @ 220m tip height<br>(T13, T14, T16, T25 & T27)   |
| 5 turbines @ 176m tip height<br>(T11, T13, T16, T25 & T27)   |  |
| Construction of approximately 14.5km of new access tracks (in addition to using approximately 2.35km of existing tracks) | Construction of approximately 13.13km of new access tracks (in addition to using approximately 5.99km of existing tracks). |
| 12 new water crossings (with 8 existing water crossings upgraded).   | 11 new water crossings (with 13 existing water crossings upgraded).  |

## **Legislation Consultation, EIA Regulations and other Environmental Consideration**

Under Schedule 8 to the Act, and the Electricity (Applications for Consent) Regulations 1990 (“the Consents Regulations”) made under the Act, the relevant planning authority, in this case East Ayrshire Council, is required to be notified in respect of a section 36 consent application.

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”) the Company submitted an

Environmental Impact Assessment report (“the EIA report”) in support of the Application describing the proposed Development and giving an analysis of its environmental effects. In accordance with requirements of the EIA Regulations and the requirements of the Consents Regulations, the EIA report and all associated documentation was made available for public inspection. Notices were published in the Edinburgh Gazette as well as in national newspapers, on the application website and in newspapers circulated in the respective local communities affected by the proposed Development informing the public of the application and, if they wished to do so, how representations to the Scottish Ministers could be made.

In September 2019, the Company submitted Additional Information relating to additional landscape visual information, heritage visualisations and ground conditions/peat. In accordance with Regulation 20 of the EIA regulations the Additional Information was made available for public inspection. Further notices were published in the Edinburgh Gazette, the application website and in newspapers circulated in the respective local communities informing the public of the Additional Information and, if they wished to do so, how representations to the Scottish Ministers could be made.

To comply with the EIA Regulations, the Scottish Ministers are required to consult the relevant Planning Authority, as well as Historic Environment Scotland (“HES”), the Scottish Environment Protection Agency (“SEPA”) and Scottish Natural Heritage (“SNH”) and other persons that are likely to be concerned by the proposed Development by reason of their specific environmental responsibilities.

The Scottish Ministers are satisfied that, in accordance with requirements of both the Consents Regulations and the EIA Regulations, a notice of the proposed Development was published on the application website and advertised in local and national press. The application was also placed in the public domain, and the opportunity given for those wishing to make representations to do so. Notifications were sent to East Ayrshire Council as the relevant Planning Authority as well as to SNH, SEPA and HES.

The Scottish Ministers have had regard to the matters set out in Schedule 9 of the Electricity Act in respect of the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. The Scottish Ministers shall avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

The Scottish Ministers have given consideration to the extent to which the Company has demonstrated in the Application submitted that they have done what they reasonably can to mitigate any effect, which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites buildings or objects.

In accordance with section 36(5A) of the Act, before granting any section 36 consent the Scottish Ministers are also required to:

- obtain SEPA advice on matters relating to the protection of the water environment; and
- have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

SEPA's advice has been considered as required by section 36(5A) with due regard given to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003. SEPA have no objection to the proposed Development. In their response to the Scottish Ministers they advised that the methodology proposed for installation of water crossings is in accordance with good practice principles. They acknowledged that the Company had identified that CAR construction site licence will be required and a Pollution Prevention Plan will be produced in accordance with Sector Specific Guidance. SEPA direct the Company to the Regulations section of the SEPA website for advice on regulatory requirements and good practice advice.

The Scottish Ministers consider that there is sufficient information to be satisfied that the Company has 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.

The 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.

Scottish Ministers are satisfied that the Company has avoided, so far as possible, causing injury to fisheries or to stock of fish in any waters.

The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations and EIA Regulations and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representation on the proposed Development.

### **Conservation of Habitats and Species Regulations**

The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Scottish Ministers to consider whether the proposed Development would be likely to have a significant effect on a European site or European offshore marine site (either alone or in combination with other plans or projects), as defined in the Habitats Regulations, and if the development is directly connected with or necessary to the management of the site.

SNH advised of the connectivity between the proposed Development and the Muirkirk and North Lowther Uplands Special Protection Area ("the SPA") in relation to the qualifying species, namely, Hen Harrier, Golden Plover, Merlin, Peregrine and Short Eared Owl. Consequently, the Scottish Ministers are required to consider the effect of the proposed Development on the SPA by carrying out a Habitats Regulations Appraisal ("HRA"). The Scottish Ministers can confirm that a HRA has been undertaken (see Annex 3). The environmental information to inform the appraisal was presented in the EIA report which accompanied the Application. The HRA has therefore been produced using information already advertised in accordance with the EIA regulations.

The conclusion of the Scottish Ministers, following advice from SNH, is that the proposed Development will not adversely affect the integrity of the SPA.

## **Public Local Inquiry**

In terms of paragraph 2 of Schedule 8 to the Act, if the Planning Authority makes an objection and that objection is not withdrawn, the Scottish Ministers must cause a public inquiry to be held. In this case, the Planning Authority did not object to the proposed Development and there is therefore no statutory requirement for a Public Local Inquiry ("PLI").

Paragraph 3 of Schedule 8 to the Act provides that where objections or copies of objections have been sent to the Scottish Ministers in pursuance of regulations made under that paragraph, the Scottish Ministers must consider those objections together with all other material considerations with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they must cause a PLI to be held. The Scottish Ministers have taken all material considerations into account, including the objections from RSPB Scotland and ScotWays and how they will be given effect to, and consider that there are no significant issues which have not been adequately considered in the EIA report, in the Additional Information or in consultation responses.

The Scottish Ministers are satisfied there is sufficient information to be able to make an informed decision on the application without the need for a PLI.

## **Summary of the Consultation Responses**

**The Planning Authority** had no objection to the proposed Development. They concluded that, subject to conditions and to there being a Section 75 legal agreement between the Company and the Council prior to the Scottish Ministers issuing section 36 consent and deemed planning permission, the proposed Development would comply with East Ayrshire Council's Local Development Plan and associated policies. The Scottish Ministers are satisfied that the material matters raised in the Planning Authority's requirement for such an agreement have been secured by conditions attached to the deemed planning permission.

**HES** advised that the proposed Development will not have a direct effect on any asset within their remit and will not cause any significant adverse effect on the setting of any category "A" listed buildings, Inventory Garden Designed Landscapes or on the integrity of the setting of any of the schedule monuments in the vicinity. HES did not object to the proposed Development.

**SEPA** had no objection subject to there being conditions regarding the monitoring of private water supplies, a Habitat Management Plan, a Peat Management Plan (including a requirement for post-consent, pre-construction peat probing), a waste management plan dealing specifically with peat and forest waste and a Construction and Environmental Management Plan.

The Scottish Ministers have imposed appropriately worded conditions (see Annex 2 for all conditions) which will address the matters raised by SEPA.

**SNH** advised that although there are natural heritage interests of international and national importance close to the site of the proposed Development - Muirkirk & North Uplands SPA and the Muirkirk Uplands Site of Special Scientific Interest and the North Lowther Uplands Site of Special Scientific Interest, they will not be adversely affected by it.

SNH asked that a detailed Habitat Management Plan, a Bird Protection Plan and a Construction Environmental Management Plan are agreed to and implemented to help reduce any potential residual effects and any indirect effects. The Scottish Ministers have imposed appropriately worded conditions (see Annex 2) which will address these matters.

SNH are of the opinion that the proposed Development will not adversely affect the integrity of the SPA. SNH advised that the Scottish Ministers are required to complete a HRA in respect of the effect the proposed Development will have on the SPA. **Please see Annex 3** for the Habitats Regulations Appraisal.

With regards to impacts on peat and peatland habitats, including Class 1 peat within the site of the proposed Development, SNH advised that they are unlikely to be significant. SNH asked that peat and peatland habitats related conditions attached to the consented Lethans Wind Farm should also be attached to any consent granted “for the new proposal”.

The Scottish Ministers have imposed appropriately worded peat and peatland habitats related conditions, which will address these matters.

With regards to landscape and visual impacts SNH did not object and neither did they object to the effects that aviation lighting would have. They did however request that any consent given by the Scottish Ministers “*should reflect a requirement for the mitigation measures proposed by the applicant to reduce the intensity of aviation Lighting on turbines to be implemented*”.

The Scottish Ministers have imposed a planning condition to secure an aviation lighting scheme which details the mitigation and operating protocols necessary to reduce the visual impacts arising from the lighting.

#### Internal Scottish Government Advisors

**Scottish Forestry** initially objected on the grounds that there was insufficient information submitted which would enable them to ascertain if there was justification for the quantity of felling proposed and which would enable them to calculate the total amount of replanting which would be required. Following discussions between Scottish Forestry, the Company and the Scottish Ministers agreement was reached regarding the total amount of replanting to be done and the objection was withdrawn.

**Transport Scotland** has no objection subject to conditions in respect of abnormal load route/s on the trunk road network and appropriate traffic control and management.

The Scottish Ministers have imposed appropriately worded conditions covering abnormal load route/s on the trunk road network and appropriate traffic control and management.

**Ironside Farrar** were engaged by the Scottish Ministers to assess the Peat Landslide Hazard Risk Assessment (“PLHRA”) presented by the Company in the EIA report. Following receipt of further clarification from the Company, Ironside Farrar recommended additional ground investigation is carried out post consent and the

PLHRA to be updated accordingly. The Scottish Ministers have imposed a planning condition which gives effect to this recommendation.

**Marine Scotland Science** has no objection subject to conditions in respect of fish monitoring (quantitative electrofishing surveys) and water quality monitoring.

The Scottish Ministers have imposed appropriately worded conditions covering fish monitoring (quantitative electrofishing surveys) and water quality monitoring.

#### Non-statutory consultees

A wide range of relevant organisations were consulted:

**RSPB Scotland** objected to the proposed Development on the grounds of the adverse impacts it would have on the integrity of the Muirkirk and North Lowther Uplands Special Protection Area ("the SPA"). RSPB Scotland also objected on the grounds that the proposed Development is contrary to the East Ayrshire Local Development Plan and contrary to Scottish Planning Policy with regard to the protection of internationally designated sites. The Scottish Ministers note that RSPB Scotland's concerns with regards to the SPA is contrary to that of SNH who concluded that the proposed Development will not adversely affect the integrity of the SPA.

The Scottish Ministers are satisfied that the proposed Development will not adversely affect the integrity of the SPA and will not be detrimental to the conservation objectives of the qualifying bird species.

RSPB Scotland have asked that if the Scottish Ministers decided to grant section consent to the proposed Development, conditions regarding post-construction bird monitoring and the establishment of a Habitat Management group should be imposed. RSPB Scotland also requested conditions for a Breeding Bird Protection Plan and a Habitat Management Plan

The Scottish Ministers have imposed appropriately worded conditions as requested by RSPB Scotland.

**Scotways** objected to the proposed Development because several turbines are located in close proximity to recorded rights of way and routes known to be in public recreational use. Scotways request that an Access Management Plan is devised in consultation with East Ayrshire Council's access team.

There is no Scottish Government policy or East Ayrshire Council policy which sets out requirements regarding separation distances between turbines and rights of way. The Scottish Ministers have imposed a condition which will ensure that public access across the site is managed during both the construction and operational phases of the Development.

**British Horse Society** did not object to the proposed Development. The British Horse Society expects turbine siting within the proposed Development to respect all existing equestrian access and to consider opportunities for the development of further access wherever possible.

**Glasgow Prestwick Airport** and **NATS Safeguarding** did not object provided that the conditions applied to the consented Lethans Wind Farm regarding a radar mitigation scheme were also applicable to the proposed Development.

The Scottish Ministers have imposed radar mitigation conditions which will address the Prestwick Airport and NATS Safeguarding requirements.

**Nith District Salmon Fisheries Board** (“NDSFB”) did not object to the proposed Development and requested that it be conditional that fishery surveys previously carried out are again carried out during the construction phase, during post construction and during commissioning. To provide a comprehensive assessment of the fishery resource, NDSFB have requested that the surveys should include a suite of electrofishing surveys which would include all tributaries entering the River Nith which drain the proposed Development site.

The Scottish Ministers have imposed an appropriately worded Fish Monitoring Programme which will address the issues raised by NDSFB.

**Ayrshire Rivers Trust (and River Ayr District Salmon Fishery Board)** did not object to the proposed Development and requested the same or similar fish survey condition requested by NDSFB. With regards to the avoidance of potential negative impacts on watercourses, they also requested that a *“comprehensive mitigation and monitoring plan using the most up to date best practice guidelines should be included”* in any consent granted.

The Scottish Ministers have imposed appropriately worded conditions which will address the issues raised by Ayrshire Rivers Trust (and River Ayr District Salmon Fishery Board).

**British Telecom (OpenReach), Defence Infrastructure Organisation (MoD), Glasgow Airport, the Joint Radio Company, Scottish Water** and **Visit Scotland** have no objection to the proposed Development.

**Civil Aviation Authority, Crown Estate Scotland, the John Muir Trust, Mountaineering Scotland, Scottish Wild Life Trust** did not submit a consultation response and neither did **Kirkconnel & Kelloholm Community Council, Logan, Lugar & Cronberry Community Council, Netherthird Community Council** and **New Cumnock Community Council**.

**Dumfries and Galloway Council**, a neighbouring planning authority, advised that there would be no formal consultation response offered regarding the proposed Development.

Full details of the consultation responses are available on the Energy Consents website at [www.energyconsents.scot](http://www.energyconsents.scot)

### **Public Representations**

A total of 2 public representations were received by the Energy Consents Unit regarding the proposed Development, both being from the same person and both citing landscape and visual impacts as grounds for the objection.



## MAIN DETERMINING ISSUES

The Scottish Ministers, having taken account of all relevant information, consider that the main determinative issues are:

- the extent to which the proposed Development accords with and is supported by Scottish Government policy and the terms of East Ayrshire council's local development plan;
- the renewable energy benefits of the proposed Development;
- the estimated contribution made by the proposed Development to reducing CO2 emissions; and
- the likely significant adverse effects of the proposed Development on the environment, in particular:
  - i. landscape and visual impacts including effects of visible aviation warning lighting; and
  - ii. impact upon the conservation objectives of the Muirkirk and North Lowther Uplands Special Protection Area.

**The extent to which the proposed Development accords with and is supported by Scottish Government policy and the terms of the Planning Authority's Local Development Plan.**

### Climate Change and Renewable Targets

The seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a priority for the Scottish Ministers. The Climate Change (Scotland) Act 2009, passed by the Scottish Parliament in 2009, sets out the targets for reducing greenhouse gas emissions as an interim 42% reduction target for 2020 and an 80% reduction target for 2050. On 25 September 2019, the Scottish Parliament passed the Climate Change (Emissions Reduction Targets) (Scotland) Bill, setting the target for Scotland to be carbon-neutral, meaning net-zero CO<sub>2</sub>, by 2045 at the latest. Additionally the Bill set out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040.

The Scottish Government's 2020 Route map for Renewable Energy in Scotland published in June 2011 and updated in September 2015 confirms that the Scottish Government's target for renewable electricity generation is for renewables to generate at least the equivalent of 100% of gross annual consumption by 2020.

The Scottish Government's ambitions for renewables and the delivery of clean electricity in Scotland go beyond the current 2020 targets. The Scottish Government has set a 2030 decarbonisation target, to achieve a carbon intensity of 50 gCO<sub>2</sub>/kWh of electricity generation in Scotland.

BEIS Energy Trends data published in December 2019 showed Scotland has generated 21,688 GWh of renewable electricity in the first nine months of 2019, up 23.0% from the same point in 2018. Scotland's overall renewable electricity capacity was 11.7 GW as of September 2019, up by 0.9 GW from September 2018. A further 12.9 GW of capacity is in the pipeline (i.e. either under construction, awaiting construction or in planning). This indicates that Scotland remains above the interim 2015 target of 50% suggesting that progress is being made towards achieving the target of 100% by 2020. The Scottish Ministers are of the opinion that proposed

Development will make a significant contribution to achieving the 2020 target and thereafter, maintaining renewable energy targets.

### Scotland's Third National Planning Framework ("NPF3")

NPF3 is the spatial expression of the Scottish Government's economic strategy. It brings together plans and strategies across sectors to provide a coherent vision of how Scotland should evolve over the next 20 to 30 years. It sets out the Scottish Government's commitment to establishing Scotland as a leading location for the development of renewable energy technology.

NPF3 sets out the strategic spatial policy context for decisions and actions by the Scottish Government and its agencies. All planning authorities are required to reflect this policy in their strategic and local development plans. Amongst its wide-ranging policies, NPF3 sets out the need for a strategy to reduce reliance on fossil fuels and emphasises not just the challenges in embracing a renewable and low carbon economy while protecting and sustaining environmental assets but also the wider benefits that this will bring, especially in employment creation. It also sets out that onshore wind will continue to make a significant contribution to diversification of energy supplies. In Scotland, there has been significant progress towards low carbon objectives.

NPF3 together with Scottish Planning Policy ("SPP" - see below) further sets out what is expected of the planning system, including a spatial strategy for a low carbon place where an 80% reduction in greenhouse gas emissions is achieved by 2050.

The Scottish Ministers are satisfied that the proposed Development makes a considerable and valuable contribution towards meeting greenhouse gas emissions and renewable electricity targets, as well as the diversification of energy supplies.

### Scottish Planning Policy ("SPP")

The Scottish Government supports onshore wind energy development in appropriate locations. SPP introduces a presumption in favour of development that contributes to sustainable development, setting out that policies and decisions should be guided by certain principles.

Paragraph 169 of SPP outlines the Scottish Government planning policy on Renewable Energy Development citing that proposals for energy infrastructure developments should always take account of spatial frameworks for wind farms. Considerations will vary relative to the scale of the proposal and area characteristics but includes impacts on:

- landscapes and visual amenity (including wild land);
- natural heritage (including birds);
- carbon rich soils; public access (including long distance walking, cycling and scenic routes 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;
- the need for conditions relating to decommissioning and site restoration; and
- the need for robust planning obligations to ensure site restoration is achieved.

The Scottish Ministers are satisfied that matters relating to SPP, and in particular paragraph 169, have been addressed in the EIA report, in the Additional Information subsequently submitted and in the responses received to the consultations carried out.

The Scottish Ministers have considered the effects that the proposed Development will have on the landscape character of East Ayrshire and are satisfied that will not create any adverse effects. The Scottish Ministers are also satisfied that it will not create any significant effects on National Scenic Areas, National Parks or any other area which has a designation. This consideration is supported by the fact that no objection relating to effects on landscape character were received from any consultee.

The Scottish Ministers also note that there will be local and national economic benefits associated with large scale capital expenditure projects such as the proposed Development.

Taking everything into account, the Scottish Ministers are content that the proposed Development is sustainable development and is supported by SPP.

### Scottish Energy Strategy

The Energy Strategy sets out a vision for the future energy system in Scotland through to 2050. It sets out the priorities for an integrated system-wide approach that considers the use and supply of energy for heat, power and transport. The strategy sets out two new targets for the Scottish energy system by 2030:

- the equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption to be supplied from renewable sources; and
- an increase by 30% in the productivity of energy uses across the Scottish economy.

The strategy provides a long term vision to guide energy policy decisions to tackle the challenges of decarbonising heat and transport in order to meet Scotland's long term energy and climate change targets.

The Onshore Wind Policy Statement (“OWPS”) reaffirms the vital role for onshore wind in meeting Scotland’s energy targets. The statement sets out the Scottish Government’s position for the ongoing need for more onshore wind development and capacity in locations across Scotland where it can be accommodated.

OWPS also acknowledges that although the common assumption is that there is a 25 year life limit for the operation of a wind farm, there is no current statutory or legislative limits imposed on the duration of consent that may be granted. The operating period of an individual matter which developers may consider prior to the submission of an application. In this case the Company has requested a 30 year limit on the consent to operate the wind farm.

The Scottish Ministers are satisfied that the proposed Development will contribute positively to the Scottish Energy Strategy.

#### Compatibility with the Local Development Plan and Supplementary Guidance

The Planning Authority assessed the proposed Development against the East Ayrshire Local Development Plan, which was adopted in April 2017. In their assessment, the Planning Authority focused on the significant environmental effects predicted to arise in East Ayrshire as a result of the proposed Development. The Planning Authority stated that *“the proposed development is considered to be acceptable subject to mitigation, when assessed against the spatial framework”* and following *“Detailed assessment against the relevant LDP policies”* it is *“on balance with the benefits of the development and subject to mitigation measures, to be in accordance with those relevant policies”*.

The Planning Authority concluded that the proposed Development is, subject to conditions and a legal agreement, *“compliant with the Development Plan”*.

The Scottish Ministers accept and agree with the Planning Authority’s conclusion that the proposed Development is supported by their Local Development Plan and have imposed the relevant conditions as requested by them to give effect to the mitigation measures required to render the environmental impacts of the proposed Development acceptable. The Scottish Ministers are also satisfied that the material matters raised in the Planning Authority’s requirement for a legal agreement have been secured by conditions attached to the deemed planning permission.

### **The renewable energy benefits of the proposed Development**

#### Renewable Energy Produced and Contribution to Targets and Carbon Payback

NPF3 is clear that planning must facilitate the transition to a low carbon economy, and help to deliver the aims of the Scottish Government’s Report on Proposals and Policies. Our spatial strategy facilitates the development of generation technologies that will help to reduce greenhouse gas emissions from the energy sector. Scotland has significant renewable energy resources, both onshore and offshore. Spatial priorities range from extending heat networks in our cities and towns to realising the potential for renewable energy generation in our coastal and islands areas.

Policy Principles set out in SPP state that the planning system should:

- Support the transformational change to a low carbon economy, consistent with national objectives and targets, including deriving:
  - 30% of overall energy demand from renewable sources by 2020;
  - 11% of heat demand from renewable sources by 2020; and
  - the equivalent of 100% of electricity demand from renewable sources by 2020.
- Support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity – and the development of heat networks.

The Scottish Ministers are satisfied that the proposed Development will contribute to the Scottish Government's strategic priorities. It has the capacity to generate in excess of 50 megawatts of power which is the equivalent of the annual electricity consumption of approximately 94,246 homes. The deployment of this amount of renewable energy produced in Scotland is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target for the equivalent of 100% of Scotland's electricity demand being met from resources by 2020.

### **The estimated contribution made by the proposed Development to reducing CO2 emissions**

#### Carbon Payback

The carbon payback for the proposed Development has been evaluated and presented in the EIA report using the approved carbon calculator. Whilst noting the limitations of any such calculations, the online carbon calculator provides the best available means by which carbon calculations can be provided in a consistent and comparable format. With regards to the proposed Development, calculations indicate that the carbon emissions in developing it will be paid back (i.e. offset by carbon savings) in approximately 2.3 years and is expected to provide a total carbon saving of 4,591,000 tonnes over its 30 years consented lifetime.

The Scottish Ministers are satisfied that the proposed Development will provide considerable carbon savings.

### **The likely significant adverse effects of the proposed Development on the environment**

#### **Landscape and Visual Impacts**

The proposed Development will be located within two different Landscape Character Types ("LCTs"). These are *LCT 18a East Ayrshire Plateau Moorlands* and *LCT 10 Upland River Valley*. The majority of the proposed Development, including all 22 turbines, will be located within LCT 18a East Ayrshire Plateau Moorlands. The only part in LCT 10 Upland River Valley is a small access element.

Corsencon Hill is a distinctive and prominent feature in the area and it is described in the East Ayrshire Landscape Capacity Study as a "*landmark hill*" and "*one of the higher hills with steeper slopes and defined summit prominent in views across the settled lowlands of Ayrshire*".

Within a 'cumulative context' it is the consented Glenmuckloch Wind Farm which is included in baseline for assessment of cumulative landscape and visual impacts. In their EIA report the Company state that Glenmuckloch Wind Farm establishes the presence of turbines in the landscape in which the proposed Development will be located and collectively, they "*would relate well together and in most views would read as a single coherent scheme*" and as such the proposed Development "*would generally reinforce the presence of turbines in views rather than introduce turbines into any views which are currently unaffected by turbines*".

The Company provided a full and detailed assessment of the landscape and visual impacts of the proposed Development in the EIA report, further supplemented by the Additional Information which has been considered by SNH and the Planning Authority before responding to the Scottish Ministers on the proposed Development.

In landscape terms, taking account of the Planning Authority's Spatial Framework, the site that encompasses the wind turbines is situated entirely within a Group 3 area as set out in Scottish Planning Policy spatial framework. These are areas with potential for wind farm development, where wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.

In their EIA report, the Company concludes that although the Landscape and Visual Impact Assessment ("the LVIA") identified some significant landscape and visual effects, the landscape has the capacity to accommodate the effects identified.

#### The Planning Authority

The Planning Authority have no objection to the proposed Development. They identify, in terms of the impacts on the landscape, that the proposed Development requires to be considered against their Local Development Plan - Policy ENV8: Protecting and Enhancing the Landscape which sets out that "*if a development would create unacceptable visual intrusion or irreparable damage to landscape character, it will not be supported by the Council*".

The Planning Authority summarise in their assessment of the landscape and visual impacts of the proposed Development that:

- The proposed Development results in landscape and visual impacts which are greater in magnitude than the originally consented Lethans Wind Farm but the proposed Development does not have unacceptable indirect impact on neighbouring landscape types nor on Corsencon Hill which is a landmark hill, though impacts on this feature remain significant.
- Visual impacts can be considered under separate headings – daytime impacts and night time impacts. Daytime visual impacts, despite being significant across distances up to around 10km in places, owing to the large scale of the turbines, are not ultimately considered to be unacceptably adverse, despite their increased prominence when compared with the originally consented Lethans scheme.
- In terms of impacts on the nearest settlement, New Cumnock, whilst views would be possible throughout the settlement, to varying degrees, no such views are considered to unacceptably impact on the settlement and New Cumnock as a whole is not significantly affected.

- Night time impacts result from the requirement for visible aviation safety lighting on all 22 turbines due to their height (over 150m). The proposed aviation lighting mitigation is considered by the Planning Authority to reduce the visual impacts from the turbine lighting to a level whereby significant impacts would be relatively localised and ultimately not unacceptable.

Cumulatively, the Planning Authority considered that whilst the current proposed Development would result in increased cumulative effects they concluded them to be marginal and therefore not unacceptable.

### SNH

SNH have no objection to the proposed Development, they summarise in their response to the Scottish Ministers their view that:

- The proposed Development would result in significant adverse effects on parts of the 'Upland Valley' and 'East Ayrshire Plateau Moorland' Landscape Character Types ("LCTs"). The setting of the landmark Corsencon Hill, which lies at the boundary of these LCTs, would be significantly affected, particularly in views from the north-west.
- Significant adverse effects on views would be likely to occur up to around 7km from the proposed Development with views from the north and north-west being particularly affected.
- Although landscape and visual effects would be relatively limited in extent, and no designated or other valued landscapes would be significantly affected, the design is not optimal with much overlapping of stacking of turbines evident, giving a noticeably congested appearance seen largely from the north and north-west.

SNH advise that any consent given to this proposal should reflect a requirement for the mitigation measures proposed by the applicant to reduce the intensity of aviation lighting on turbines to be implemented.

### Conclusions

The Scottish Ministers acknowledge and agree with the views of both the Planning Authority and SNH that there will be some significant adverse effects on parts of the 'Upland Valley' and 'East Ayrshire Plateau Moorland' Landscape Character Types (LCTs).

The Scottish Ministers note however the Planning Authority's view that *"the landscape is of a scale which is capable of accommodating the proposed Development"*. It is further noted by the Scottish Ministers that the Planning Authority concludes *"that it is still possible to appreciate the landform of Corsencon Hill, despite the influence of the proposed turbines on it"*. The Scottish Ministers agree that the landscape has the capacity to accommodate the proposed Development and are therefore satisfied that the proposed Development's impacts on the characteristics of the landscape are acceptable.

SNH identify in their response to the Scottish Ministers that significant visual impacts, particularly in views from the north and north-west, will be experienced at out to around 7 kilometres. The Planning Authority also identify there will be some significant daytime visual impacts.

The Scottish Ministers note the Planning Authority's view with regards to daytime visual impacts, that although there will be significant impacts they "do not reach a level such that they would be deemed unacceptable". It is also noted by the Scottish Ministers, with regards to visual impacts on townscape, that the Planning Authority concluded that there were no impacts on New Cumnock (the nearest town) or other smaller settlements nearby which would be considered unacceptable.

The Scottish Ministers acknowledge that there are some significant visual impacts experienced as a consequence of the size and scale of the proposed Development but agree with the conclusions drawn by the Planning Authority and SNH that they are limited in their effect. The Scottish Ministers are satisfied that the visual impacts are not overall unacceptable.

With regards to cumulative impacts, the Scottish Ministers agree that the proposed Development in combination with the adjacent consented Glenmuckloch Wind Farm will detrimentally affect the setting of and views to and from Corsencon Hill. However, the Scottish Ministers note, with regards to cumulative impacts, that the Planning Authority concluded the impacts were not of a magnitude that was judged to be unacceptable. Having considered the views presented in the EIA report, particularly those representative of views towards Corsecon Hill, the Scottish Ministers agree with the Planning Authority that it is *"still possible to appreciate the landform of Corsencon Hill, despite the influence of the proposed turbines on it"*. The Scottish Ministers are satisfied that the cumulative impacts of the proposed Development are acceptable.

The Scottish Ministers acknowledge SNH's request for a condition to secure the aviation lighting mitigation proposed by the company in their Application. The Scottish Ministers agree with the Planning Authority's view that the aviation lighting mitigation proposed by the Company to reduce the effects of the aviation lighting on neighbouring settlements will reduce impacts to a relatively localised and acceptable level, accepting that these settlements are already impacted by typical settlement lighting. An appropriate condition has been imposed to give effect to the requirement for aviation lighting mitigation.

### **Impact upon the integrity of the Muirkirk & North Lowther Uplands Special Protection Area**

The site of the proposed Development is not subject to any international or national landscape, nature conservation or cultural heritage designations. It is however adjacent to the Muirkirk & North Lowther Uplands Special Protection Area ("the SPA"). The Scottish Ministers' assessment of the implications of the proposed Development on the SPA concluded that it will not adversely affect the integrity of the SPA. See Annex 3.

### **Reasoned Conclusion**

The Scottish Ministers, having taken account of all relevant information, consider that the proposed Development is supported by national policies which promote the principle of onshore wind farms in appropriate locations, recognising the benefits of



renewable energy generation which supports the Scottish Government's policies to tackle climate change.

The Scottish Ministers are satisfied that potential for significant adverse effects on ecology and on the Muirkirk & North Lowther Uplands Special Protection Area will be addressed by adherence to the mitigation measures proposed in the EIA report and the Additional Information by imposing appropriate conditions such as condition 17 "Construction and Environmental Management Plan", condition 27 "Species Pre-Construction Surveys" and condition 29 "Breeding Bird Protection Plan".

The Scottish Ministers are satisfied that although the LVIA identified some significant landscape and visual effects, it is considered that the landscape has the capacity to accommodate the effects identified. The Scottish Ministers are also satisfied that many of the environmental issues, including those relating to LVIA and aviation lighting, have been appropriately addressed by way of the design of the proposed Development and by mitigation, and that the issues which remain, primarily landscape and visual impacts, are acceptable and on balance outweighed by the benefits of the proposed Development.

The Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that this reasoned conclusion is up to date.

### **The Scottish Ministers' Determination**

Subject to the conditions set out in **Part 1 of Annex 2** the Scottish Ministers **grant consent** under section 36 of the Electricity Act 1989 for the construction and operation of the Lethans wind powered electricity generation station in the East Ayrshire Council area (as described in **Annex 1**).

The consent hereby granted will last for a period of 30 years from the earlier of:

- i) The date when electricity is first exported to the electricity grid network from all of the wind turbines hereby permitted; or
- ii) The date falling 18 months after electricity is generated from the first of the wind turbines hereby permitted.

Subject to the conditions set out in **Part 2 of Annex 2** the 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.

### **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 timescales associated with grid connection, a 5 year time scale for the commencement of the development is typically appropriate.

As a consequence of the potential delays the Covid 19 pandemic may have on predicted construction timescales the Scottish Ministers consider it is reasonable to

add an additional year to typical timescales. The Scottish Ministers therefore 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 6 years from the date of this direction if there has been no development within that period.

In accordance with the EIA Regulations, the Company must publicise this determination on a website maintained for the purpose of making information publicly available, in the Edinburgh Gazette and in a newspaper circulating in the locality in which the land to which the Application relates is situated.

Copies of this letter have been sent to the public bodies consulted on the application including the Planning Authority, SNH, SEPA and HES. This letter has also been published on the Scottish Government Energy Consents website at <http://www.energyconsents.scot>.

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 Court:

<http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=8>.

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

Yours sincerely

REDACTED

**WILLIAM BLACK**

A member of the staff of the Scottish Ministers

|         |   |                                 |
|---------|---|---------------------------------|
| Annex 1 | - | Description of the Development; |
| Annex 2 | - | Conditions;                     |
| Annex 3 | - | Habitats Regulations Appraisal; |
| Annex 4 | - | Location Plan;                  |
| Annex 5 | - | Turbine layout.                 |

## Description of the Development

The Development comprises a wind-powered electricity generating station known as Lethans Wind Farm, located on land approximately 5 kilometres north-east of New Cumnock in the East Ayrshire Council Planning Authority area, all as specified in the application and accompanying Environmental Impact Assessment Report submitted on 07 June 2019 and Additional Information submitted in September 2019.

The principal components of the Development comprise:

- **22** wind turbines:
  - **7** turbines with maximum tip height of 176 metres – (T2, T7, T10, T17, T19, T20 & T23)
  - **10** turbines with maximum tip height of 200 metres - (T4, T8, T11, T12, T15, T18, T21, T22, T24 & T26)
  - **5** turbines with maximum tip height of 220 metres - (T13, T14, T16, T25 & T27)
- a hard standing area/set down area and external transformer at each turbine;
- 5.99 kilometres of existing track;
- approximately 13.13 kilometres of new onsite access tracks;
- underground cabling and communications cables;
- 11 new and 13 upgraded watercourse crossings;
- a control building and associated temporary construction compound;
- additional control building and temporary construction building (required by Scottish Power/network operator);
- a substation building;
- a temporary site compound area for the duration of the construction period;
- up to 5 borrow pits; and
- a concrete batching plant.

**Part 1**

**The consent granted in accordance with section 36 of the Electricity Act 1989 is subject to the following conditions:**

**1. Duration of Consent**

Written confirmation of the date of First Commissioning and of the date of Final Commissioning shall be provided to the Scottish Ministers and to the Planning Authority no later than one calendar month after the occurrence of that date.

**Reason:** *To allow the Planning Authority and Scottish Ministers to calculate the date of expiry of the consent.*

**2. Commencement of Development**

- (1) The Development shall be commenced no later than 6 years from the date of this consent, or such other period as the Scottish Ministers may direct in writing.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authority as soon as is practicable after deciding on such a date.

**Reason:** *To ensure that the consent is implemented within a reasonable period. And to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.*

**3. Non-assignment**

- (1) This consent shall not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment, with or without conditions.
- (2) The Company shall notify the Planning Authority and Scottish Ministers in writing of the name of the assignee, principal named contact and contact details within fourteen days of the consent being assigned.

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

**4. 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 written notification of the nature and timing of the incident shall be submitted to the Scottish Ministers within twenty-four hours of the incident occurring, including confirmation of remedial measures taken and/or to be taken to rectify the breach.

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

## 5. Aviation Radar – Prestwick Airport

- (1) No development shall commence unless and until a radar mitigation scheme setting out the measures to be taken to minimise impairment by the Development upon the performance of aerodrome navigation aids and/or the efficiency of air traffic control services at Glasgow Prestwick Airport, for the lifetime of the Development, has been submitted to and approved in writing by, the Scottish Ministers in consultation with the Airport Operator.
- (2) No blade shall be fitted to any turbine or turbines 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: (a) all measures required by the Radar Mitigation Scheme prior to (i) blade fitting; and (ii) operation of any turbine have been implemented; and (b) the Civil Aviation Authority has evidenced its approval to the Airport Operator that the Radar Mitigation Scheme is acceptable mitigation for the Development and has been satisfactorily implemented by the Airport Operator.
- (3) No turbine shall operate other than in accordance with the terms of the Radar Mitigation Scheme approved under the terms of parts [1] and [2].

**Reason:** *To secure mitigation of impacts on Prestwick Airport aerodrome navigation systems.*

*Definitions – Condition 5:*

**"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.*

**"Radar Mitigation Scheme"** *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.*

**"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.*

## 6. Aviation Radar – NATS

- (1) No development shall commence unless and until such time as the Scottish Ministers receive confirmation from the Operator that: (a) a Primary Radar Mitigation Scheme has been identified; and (b) the Primary Radar Mitigation Scheme can be implemented and maintained for the lifetime of the development.

- (2) No blade shall be fitted to any turbine or turbines 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 Operator that: (a) all measures required by the Primary Radar Mitigation Scheme prior to (i) blade fitting; and (ii) operation of any turbine have been implemented; and (b) the Civil Aviation Authority has evidenced its approval to the Operator that the Primary Radar Mitigation Scheme is acceptable mitigation for the development and has been satisfactorily implemented by the Operator.
- (3) The Development shall be operated in accordance with the approved Primary Radar Mitigation Scheme.

**Reason:** *To secure mitigation of impact on NATS aerodrome navigation systems.*

#### *Definitions – Condition 6*

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

**"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.

### **7. Compensatory Planting**

- (1) No development shall commence unless and until a compensatory woodland planting scheme to compensate for the loss of 107.6 hectares of existing woodland ("the Replanting Scheme"), which complies with the requirements of the UK Forestry Standard (or such replacement standard as may be in place at the time of submission of the Replanting Scheme) and the guidelines to which it refers, has been submitted to, and approved in writing by, the Scottish Ministers in consultation with the Planning Authority. The Replanting Scheme must include:
  - (a) details of the location of the area(s) to be planted;
  - (b) if the area(s) is (are) not within Ayrshire and Arran, evidence that locations in Ayrshire and Arran have been investigated with justification for not utilising such areas;
  - (c) details of the design/layout and species composition of the proposed replacement woodland;
  - (d) the phasing and associated timescales for implementing the Replanting Scheme; and
  - (e) proposals for the maintenance and establishment of the Replanting Scheme, including annual checks, replacement planting, fencing, ground preparation and drainage.

- (2) The Replanting Scheme approved under part (1) of this condition shall be implemented in full, unless otherwise agreed in writing by the Scottish Ministers after consultation with the Planning Authority.

***Reason:*** *To secure compensatory planting from the loss of woodland arising from the Development.*

## **Part 2**

**The planning permission deemed to be granted under section 57 of the Town and Country Planning (Scotland) Act 1997 for the Development described in Annex 1 is subject to the following conditions**

### **8. Implementation in accordance with approved plans and requirements**

- (1) Except as otherwise required by the terms of the section 36 consent and deemed planning permission, the Development shall be undertaken in accordance with the application including the approved drawings shown in the Environmental Impact Assessment Report submitted on 11 June 2019 (as supplemented by the Additional Information submitted on 02 October 2019).
- (2) Any proposed deviation from the detail provided within these documents must be submitted to and approved in writing by the Planning Authority.

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

### **9. Design and Operation of Turbines**

- (1) No turbines shall be erected on site unless full details and specification of the proposed wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour, which should be non-reflective pale grey semi-matt), and all turbine associated apparatus have been submitted to and approved in writing by the Planning Authority.
- (2) The blade to tip height of the wind turbines forming the wind powered generating station shall not exceed the heights set out in the description of the Development at Annex 1.
- (3) When operational, all wind turbine blades shall rotate in the same direction.
- (4) The wind turbines shall be constructed and operated in accordance with the details approved under part (1) and be maintained in the approved colour, free from external rust, staining or discolouration, until such time as the Development is decommissioned.

**Reason:** *To ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts assessed in the EIA report and Additional Information and in the interests of the visual amenity of the area.*

### **10. Signage**

No wind turbine, anemometer, power performance mast, switching station, transformer building or enclosure, ancillary building or above ground fixed plant shall display any name, logo, sign or advertisement (other than health and safety signage) unless and until otherwise approved in writing by the planning authority.

**Reason:** *In the interests of the visual amenity of the area.*



## 11. Design of Sub-Station and Ancillary Development

- (1) No development of the substation shall commence unless and until final details of the external appearance, dimensions, and surface materials of the substation building, associated compounds, construction compound boundary fencing, external lighting and parking areas have been submitted to, and approved in writing by, the Planning Authority.
- (2) The substation building, associated compounds, fencing, external lighting and parking areas approved under part (1) shall be constructed in accordance with the approved details.

**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 EIA report and Additional Information and in the interests of the visual amenity of the area.*

## 12. Micro-Siting

- (1) All wind turbines, buildings, areas of hardstanding, borrow pits and tracks shall be constructed in the location shown on plan reference PA03 (May 2019) However, wind turbines, buildings, masts, areas of hardstanding borrow pits and tracks may be adjusted by micro-siting within the site but micro-siting is subject to the following restrictions, unless otherwise approved in writing by the Planning Authority in consultation with SEPA and SNH:
  - (a) No wind turbine, building, mast, access track, borrow pits or hardstanding shall be moved more than 50 m from the position shown on the original approved plans (PA03 (May 2019));
  - (b) No micrositing shall take place where infrastructure would be microsited into an area of peat deeper than the currently approved location and that is greater than 1 metre deep with the exception of any floated infrastructure unless otherwise agreed with the Planning Authority;
  - (c) No micrositing shall take place within areas hosting Groundwater Dependent Terrestrial Ecosystems; and
  - (d) All micrositing permissible under this condition must be approved in advance in writing by the Ecological Clerk of Works ("ECoW") appointed under Condition 16 of this consent.
- (2) No later than two months after the date of Final Commissioning, an updated site plan must be submitted by the Company to the Planning Authority showing the final position of all wind turbines, areas of hardstanding, tracks and associated infrastructure forming part of the Development. The plan shall specify areas where micrositing has taken place, and, for each instance, be accompanied by copies of the ECoW or Planning Authority's approval, as applicable.

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

### **13. Ground Investigation Environmental Management Plan**

- (1) Prior to commencement of any ground investigation works an Environmental Management Plan for the ground investigation works including the scope of the peat probing shall be submitted for the written approval of the Planning Authority. The Ground Investigation Environmental Management Plan shall include:
  - (a) The phasing of the ground investigation works;
  - (b) Full details of all intrusive site investigations and ground investigation works proposed, including details and a plan of any proposed tree felling required to facilitate investigation works; and
  - (c) Detailed method statements for carrying out all the investigation works including access plan and any general mitigation measures required to protect the environment, including water crossings and private water supply protection.
- (2) The ground investigation works shall be implemented in accordance with the Plan approved under part (1), unless amendments are approved in writing by the Planning Authority.

**Reason:** *to minimise environmental impacts*

### **14. Borrow Pits – Scheme of Work**

- (1) No development shall commence unless and until a site specific scheme for the working and outline restoration profile of each borrow pit forming part of the Development has been submitted to and approved in writing by the Planning Authority, in consultation with SEPA. The scheme shall include;
  - (a) A detailed working method statement based on site survey information and any ground investigations;
  - (b) Details of the handling of any overburden (including peat, soil and rock);
  - (c) Drainage and water management measures, including measures to prevent surrounding areas of peatland, water dependant sensitive habitats and Ground Water Dependant Terrestrial Ecosystems (GWDTE) from drying out;
- (2) Full details of the restoration and aftercare of the borrow pits at the end of the construction period and a timetable for these works. Details are to include, but not be limited to, topographic surveys of pre-construction profiles and details of topographical surveys to be undertaken of the restored borrow pit profiles and when the findings of such post-restoration surveys shall be submitted to the Planning Authority.

- (3) The scheme approved under parts 1 and (2) shall thereafter be implemented in full unless otherwise agreed in writing by the Planning Authority.

**Reason:** *To ensure that excavation of materials from the borrow pits is carried out in a manner that minimises the impact on the environment, road safety and amenity and to secure the restoration of borrow pits at the end of the construction period*

## **15. Borrow Pit Blasting**

- (1) No blasting shall take place until such time as a blasting method statement has been submitted to and approved in writing by the Planning Authority. The method statement shall include details of:
- (a) Blasting Monitoring locations;
  - (b) Type of monitoring equipment to be used;
  - (c) Frequency of monitoring;
  - (d) The methods employed to minimise the effects of overpressure arising from the blasting, having regard to blast design;
  - (e) Details of measures required to minimise the impact of blasting on residential dwellings in the vicinity of the site; and
  - (f) Submission of blasting records to the Planning Authority.
- (2) Blasting shall be carried out in accordance with the blasting method statement approved under part (1) unless otherwise agreed in advance and in writing with the Planning Authority.
- (3) Blasting 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 13.00 on Saturdays, with no blasting taking place on a Sunday or on a Public Holiday unless otherwise approved in advance, in writing, by the Planning Authority.

**Reason:** *To ensure that blasting activity is carried out within defined timescales to control impact on amenity.*

## **16. Ecological Clerk of Works**

- (1) No development shall commence unless and until the terms of appointment of an independent Ecological Clerk of Works (“ECoW”) by the Company have been submitted to and approved in writing by the Planning Authority. The terms of appointment shall:
- (a) impose a duty to submit a monitoring schedule which details the ecological and hydrological commitments provided in the EIA report submitted on 11 June 2019 (as supplemented by the Additional Information submitted on 02 October 2019) and other information lodged in support of the application; the Construction and Environmental Management Plan (“the CEMP”) approved in accordance with Condition 17; the Breeding Bird Protection Plan approved in terms of Condition 29; the Habitat Management Plan approved in accordance with Condition 25; and other plans, method statements and management strategies approved in terms of Condition 16;

- (b) Require the directing of the micro-siting and placement of turbines, tracks, borrow pits and associated infrastructure in line with Condition 12;
  - (c) Require the ECoW to report to the Planning Authority and the Company's nominated construction project manager any incidences of non-compliance with the CEMP and any other plans, method statements and protection and management plans, as set out under part (1)(a) at the earliest practical opportunity; and
  - (d) Require the ECoW to submit a monthly report for submission to the Planning Authority summarising works undertaken on site.
- (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 as part of the CEMP.
  - (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 the details and terms of appointment by the Company of an independent ECoW throughout the decommissioning, restoration and aftercare phases of the Development to the Planning Authority for its written approval in consultation with SNH and SEPA.
  - (4) The ECoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

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

## **17. Construction and Environmental Management Plan**

- (1) No development shall commence unless and until a Construction and Environmental Management Plan ("CEMP") containing site specific details of onsite construction works, post-construction reinstatement, site specific drainage and site specific mitigation, together with details of their timetabling, has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The CEMP will be informed by the ground investigation works (Condition 13) and best practice guidance. The CEMP shall include (but shall not be limited to):
  - (a) a phasing plan for the construction works;
  - (b) a site waste management plan (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;
  - (c) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, storage of materials during construction including fuels and chemicals, lighting columns, and any construction compound boundary fencing;
  - (d) a dust management plan;

- (e) site specific details for management and operation of any concrete batching plant (including disposal of pH rich waste water and substances);
- (f) Pollution Prevention and Incident Plan (PPIP) incorporating a Pollution Prevention Plan, Pollution Incident Plan and a Pollution Control Monitoring Plan, including arrangements for the storage and management of oil and fuel on the site;
- (g) soil storage and management including details of the outline quantities, locations and management of long term storage of construction generated top soils required to facilitate future site restoration;
- (h) a peat management plan, to include details of vegetated turf stripping and storage, peat excavation (including estimated volumes), handling, storage, re-use and peat waste;
- (i) a site drainage management strategy, demonstrating how all surface and waste water arising during and after construction will be managed and prevented from polluting any watercourses or sources, including all details of flood risk management on site;
- (j) measures to mitigate or reduce effects on Ground Water Dependant Terrestrial Ecosystems (GWDTE);
- (k) sewage disposal and treatment;
- (l) temporary site illumination;
- (m) the construction of the access into the site, including associated drainage and the creation and maintenance of associated visibility splays;
- (n) the method of construction of the crane pads;
- (o) the method of construction of the turbine foundations;
- (p) the method of working cable trenches, including reinstatement;
- (q) the method of construction and erection of the wind turbines;
- (r) the method of construction of the control building and sub-station;
- (s) the method of construction of access tracks including their width, likelihood of widening or passing places, means of drainage (which shall have regard for SUDS principles) and edge reinstatement including anticipated verge width. The specification shall be accompanied by a plan identifying locations of:
  - cut roads, other excavated roads;
  - sections of floating track - Access tracks on peat greater than 1 metre in depth to be floated unless otherwise agreed in writing with the Planning Authority; and
  - the cable trenches.
- (t) details of watercourse crossings, ensuring compliance with the Controlled Activity Regulations where appropriate;
- (u) post-construction restoration/ reinstatement of the working areas not required during the operation of the Development, including construction access tracks, construction compound, storage areas, laydown areas, passing places and other construction areas. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include timetabling of works and all seed mixes to be used for the reinstatement of vegetation;
- (v) a Species Protection Plan informed by pre-construction species surveys;
- (w) A Construction Noise Management Plan including details of the management of noise and vibration during construction, including that caused by construction traffic, to the lowest practicable levels and in accordance with BS 5228 (or any updated version which supersedes this

- document) and how any properties affected by construction noise will be kept informed;
- (x) A written scheme which details the methodology for dealing with any revisions to any of the documents required under part (1). Any revised documents will require to be provided to the Planning Authority for its written approval prior to implementation on site, and
  - (y) details of measures to protect the highly permeable aquifer (shown on Figure 10.3 Hydrology (date on plan May 2019) of the EIA Report June 2019) from construction related impacts unless turbine T2 and its associated infrastructure is micrositied out with the aquifer under the provisions of Condition 12.
- (2) The approved CEMP shall be implemented in full unless otherwise approved in advance in writing by the Planning Authority in consultation with SNH and SEPA.

**Reason:** *To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the EIA report and Additional Information accompanying the application, or as otherwise agreed, are fully implemented.*

## **18. Construction Hours**

- (1) With the exception of works associated with the upgrade of the C47 and U716 roads including the bridge bypass, construction works shall only take place between the hours of 07:00hrs and 19:00hrs on any Monday to Friday (inclusive) and 07:00hrs and 13.00hrs on any Saturday, with no construction work taking place on a Sunday or on a Public Holiday. Out with these specified hours, development on the site shall be limited to turbine erection, maintenance, pouring of concrete bases where such works commenced prior to the expiry of that working hours period, emergency works, dust suppression, and the testing of plant and equipment, unless otherwise approved in advance in writing by the Planning Authority.
- (2) HGV movements to or from the site (excluding abnormal loads, concrete deliveries and timber removal vehicles) during construction of the wind farm shall only take place between the hours of 08:00hrs and 18:00hrs on any Monday to Friday (inclusive) and 08:00hrs and 13.00hrs on any Saturday, with no HGV movements to or from site taking place on a Sunday or on public holidays.
- (3) Works associated with the upgrade of the C47 and U716 including the bridge bypass shall only take place between the hours of 08:00hrs and 18:00hrs on any Monday to Friday (inclusive) and 08:00hrs and 13.00hrs on any Saturday, with no HGV movements to or from site taking place on a Sunday or on public holidays.

**Reason:** *In the interests of local amenity.*

## **19. Mitigation Works - C47 Mansfield Road and U716 Road**

- (1) At least two months prior to the commencement of development, the Company must submit a scheme containing details of the proposed mitigation works on the C47 Mansfield Road and U716 road to accommodate the anticipated volumes of two way construction related traffic, including existing road users, for the written approval of the Planning Authority in consultation with the Ayrshire Roads Alliance.
- (2) The scheme shall include matters such as passing places, widening, overrun areas, signage etc., their number, specification and locations and the intent regarding responsibility and future maintenance of such works.
- (3) No development shall commence unless and until the scheme approved under part (1) is implemented and completed.

**Reason:** *To ensure that the mitigation measures for the C47 and U716 are suitable and are implemented in an appropriate timescale, in the interests of road safety.*

## **20. Road Condition Monitoring**

- (1) Prior to the commencement of development, the Company shall undertake a joint condition survey of the affected public routes (except Trunk Routes) with the Planning Authority or its nominated Advisor and a written and photographic record of the survey findings shall be submitted to the Planning Authority by the Company within 28 days of the survey taking place.
- (2) Condition surveys shall be repeated at intervals agreed between the Company and the Planning Authority or its nominated advisor for the duration of the construction period and a record of the survey findings and recommendations for any remedial works shall be submitted to the Planning Authority within 28 days of each survey having occurred.
- (3) Should any condition survey find that the public road has deteriorated as a result of the wind farm traffic and requires remedial action the Company shall agree the scope of works required with the Planning Authority, in consultation with the Ayrshire Roads Alliance and shall thereafter, undertake such remedial works within a timetable agreed with the Planning Authority, in consultation with the Ayrshire Roads Alliance.

**Reason:** *To ensure that an accurate record of the public road is available and to ensure that damage to the road is recorded and rectified in an appropriate timescale, in the interests of road safety.*

## **21. Public Road Access Layout**

- (1) Prior to commencement of development, the Company shall submit for the written approval of the Planning Authority, in consultation with the Ayrshire Roads Alliance, an Access Layout Plan.
- (2) All new access taken off the public road shall be of a commercial access type, with a 9 metre wide radius and the access shall accommodate for 2-way traffic

movement for the first 20 metres and be surfaced in a hard or bound material for a minimum of 10 metres from the edge of the public road unless a lesser distance is agreed in writing by the Planning Authority.

**Reason:** *In the interest of road safety.*

## **22. Traffic Management Plan**

- (1) No development shall commence unless and until a traffic management plan ("TMP") has been submitted to and approved in writing by the Planning Authority, in consultation with the Ayrshire Roads Alliance (ARA). The traffic management plan shall include:
  - (a) The routing of all traffic associated with the Development on the local road network;
  - (b) Details of adequate parking provision within the site for personnel, construction vehicles, and deliveries;
  - (c) Measures to ensure that the specified routes are adhered to, including monitoring procedures;
  - (d) Management of traffic associated with the Development on Mansfield Road at the times of school pupil pickup and drop off and how this will be monitored and enforced;
  - (e) An embargo on traffic associated with the Development using the section of the C47 to the South East of the U716 and how this will be monitored and enforced;
  - (f) Details of all signage and lining arrangements to be put in place;
  - (g) Provisions for emergency vehicle access;
  - (h) Breakdown recovery for traffic associated with the Development on single track roads;
  - (i) Winter maintenance provision;
  - (j) Identification of a nominated person to whom any road safety issues can be referred;
  - (k) 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 if required
  - (l) Any weight restrictions on the delivery route shall be highlighted and complied with during usage of the routes, and
  - (m) Requirements to notify ARA of all deliveries to the site which qualify as abnormal loads.
- (2) The traffic management plan approved under part (1) shall be implemented in full and adhered to during all construction works, unless otherwise agreed in advance in writing with the Planning Authority.

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

## **23. Abnormal Load - Route Assessment**

- (1) Prior to the movement of any abnormal loads the Company must undertake and submit for the written approval of the Planning Authority, in consultation with the Ayrshire Roads Alliance, an Abnormal Load Route Assessment, to



include structural assessments of all bridges, culverts, and other drainage structures on the C47 and the U716 affected by the Development.

- (2) Following completion of the Abnormal Load Route Assessment and prior to the movement of any abnormal load, a scheme setting out appropriate mitigation measures to address the findings of the Assessment shall be submitted for the written approval of the Planning Authority in consultation with the Ayrshire Roads Alliance.
- (3) Prior to any movement of abnormal loads the Company must complete any mitigation works set out in the scheme approved under part (2) of this condition, and maintain such measures during the period of abnormal load deliveries.

**Reason:** *To ensure that the delivery route is suitable and that appropriate mitigation measures are undertaken, in the interests of road safety.*

#### **24. Abnormal Load Deliveries**

- (1) Prior to the delivery of any abnormal load, the transportation route, timings and delivery methodology shall be submitted to and approved in writing by the Planning Authority in consultation with the Ayrshire Roads Alliance (ARA). The methodology shall include:
  - (a) All temporary works including relocation of signs, guardrails, bollards, street furniture and any other temporary measures;
  - (b) The duration, frequency and temporary measures required at each of the affected locations, and
  - (c) Details of the reinstatement of areas of temporary measures.
- (2) All works associated with abnormal loads shall be undertaken by the Company in accordance with the details approved under part (1) of this condition.

**Reason:** *In the interests of public road safety and to mitigate the effects of abnormal loads on the public road network.*

#### **25. Habitat Management Plan**

- (1) No development shall commence unless and until a Habitat Management Plan has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA
- (2) The Habitat Management Plan shall set out proposed habitat management of the site during the period of construction, operation, decommissioning, restoration and aftercare of the site, and shall provide for the maintenance, monitoring and reporting of the objectives of the Habitat Management Plan.
- (3) The approved Habitat Management Plan will include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the habitat plan objectives.
- (4) Unless otherwise agreed in advance in writing with the Planning Authority, the Habitat Management Plan approved under part (1) shall be implemented in full.

- (5) A Habitat Management Group (“HMG”), must be established to oversee the preparation and delivery of the Habitat Management Plan and to review and assess the results from ongoing monitoring. In addition to a representative of the Company, the HMG shall include a representative of East Ayrshire Council and any other party which is agreed to by those representatives.
- (6) The HMG, when established, shall have the powers to make reasonable changes to the Habitat Management Plan necessary to deliver its agreed objectives.

**Reason:** *In the interests of good land management and the protection of habitats.*

## **26. Reptile Survey**

- (1) No development shall commence unless and until a reptile survey has been undertaken to determine the presence/absence of reptile species and the results of the survey provided to the Planning Authority and SNH.
- (2) If the presence of reptiles is confirmed within the Micro siting Boundary shown on plan PA05 (May 2019), appropriate mitigation shall be defined in consultation with SNH and the details submitted for the written approval of the Planning Authority in consultation with SNH.
- (3) The mitigation measures approved under paragraph (2) shall be implemented during construction works.

**Reason:** *To minimise impact on reptiles during the construction phase.*

## **27. Species Pre-Construction Surveys**

- (1) No later than 12 months prior to the commencement of development pre construction surveys for black grouse, otter, water vole, badger, bats and red squirrel shall be undertaken. The results of the surveys shall be submitted to the Planning Authority and SNH prior to the commencement of development.
- (2) Where the surveys indicate that any of these species is present on site and could be affected by the Development, species protection plans shall be submitted for the written approval of the Planning Authority in consultation with SNH prior to commencement of development.
- (3) The species protection plans approved under part (2) shall be implemented during all construction works and, if required, the operational period of the wind farm.

**Reason:** *To ensure that adequate survey is undertaken and that protection is implemented, in the interests of minimising adverse effects on the species.*

## **28. Fish Monitoring Programme**

- (1) No later than 18 months Prior to the Commencement of the Development a Fish Monitoring Programme (“FMP”) shall be submitted to the Planning Authority for their written approval in consultation with Marine Scotland Science

and any such other advisors or organisations as may be required at the discretion of the Planning Authority.

- (2) The FMP shall consist of fully quantitative electrofishing baseline fish surveys, in late summer/autumn at sites which could potentially be impacted by the development or its construction and at control sites:
  - (a) one year prior to commencement of construction;
  - (b) at least annually, during construction; and
  - (c) for at least one year post-construction, the length of post-construction monitoring being dependent on monitoring results during the construction phase.
- (3) The sites should include those surveyed in the site characterisation study in preparation of the EIA report submitted on 11 June 2019 (as supplemented by the Additional Information submitted on 02 October 2019) and all tributaries entering the River Nith which drain the Lethans site.
- (4) The FMP shall provide for the submission of the results of the surveys to the Planning Authority and Marine Scotland Science within three months of each survey having taken place.
- (5) All survey/monitoring work must be undertaken using Scottish Fisheries Co-ordination Centre standards and in accordance with the approved programme and implemented in full.
- (6) The FMP shall detail the proposed mitigation where it is found that the construction has adversely impacted on fish populations and timelines for undertaking such mitigation as necessary.
- (7) Any updates or amendments made to the FMP by the Company must be submitted, in writing, by the Company to the Planning Authority for its written approval.
- (8) The FMP approved under part (1) or any updates or amendments to that document approved under part (7) shall be implemented during the period of its operation.

**Reason:** *To protect fish populations/fisheries within and downstream of the Development.*

## **29. Breeding Bird Protection Plan**

- (1) No development shall commence unless and until the Planning Authority, in consultation with SNH and RSPB, has approved in writing a Breeding Bird Protection Plan ("BBPP") prepared by a professional ornithologist and submitted by the Company.
- (2) The BBPP shall set out survey methods for the identification of sites used by protected and sensitive birds during construction and shall detail operational protocols to prevent or minimise disturbance of birds during construction of the Development.

- (3) The BBPP approved under part (1) shall be implemented during construction works.

**Reason:** *To minimise impacts on birds during the construction phase.*

### **30. Programme of Archaeological Works**

- (1) No development shall commence unless and until a programme of archaeological works to be carried out during construction of the Development has been submitted to, and approved in writing by, the Planning Authority in consultation with the West of Scotland Archaeology Service.
- (2) The programme of archaeological works 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 protected or preserved.
- (3) The programme of archaeological works approved under part (1) shall thereafter be implemented and adhered to during construction works.

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

### **31. Forest Management Plan**

- (1) There shall be no deforestation associated with construction of the Development, excluding site investigation works, unless and until a Forest Management Plan prepared in consultation with SNH and Scottish Forestry has been approved in writing by the Planning Authority.
- (2) The approved Forest Management Plan must be implemented unless otherwise agreed in writing by the Planning Authority.

**Reason:** *To minimise adverse impacts on forestry.*

### **32. Peat Landslide Management**

- (1) No development shall commence until a site specific detailed landslide risk assessment, informed by further ground investigations, detailed peat probing and detailed design has been approved in writing by the Planning Authority.
- (2) The peat landslide risk assessment shall comply with best practice contained in "Peat Landslide Hazard and Risk Assessments: Best Practice Guide for Proposed Electricity Generation Developments" published by the Scottish Government in April 2017, or such replacement standard as may be in place at the time of submission of the peat landslide risk assessment for approval. The peat landslide risk assessment shall include a scaled plan and details of any mitigation measures to be put in place, including the appointment of a suitably qualified geotechnical engineer if deemed necessary.
- (3) The approved peat landslide risk assessment shall thereafter be implemented and adhered to during all construction works unless otherwise agreed in writing with the Planning Authority.

**Reason:** *To minimise the risk of peat failure arising from the Development*

### **33. Private Water Supplies**

- (1) No development shall commence unless and until the Company has submitted to and received the written approval of the Planning Authority for a scheme for the protection, monitoring and mitigation of Private Water Supplies (PWS) which may be affected by the Development. The scheme shall take account of SEPA LUPS-GU31 guidance and shall detail:
  - (a) all mitigation measures to be taken to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of the section 36 consent and which may be affected by the Development;
  - (b) Water quality sampling methods and specify abstraction points;
  - (c) a monitoring regime for the PWS which shall include for monthly pre and post construction surveys of no less than 6 month duration in addition to construction period testing of appropriate frequency commensurate with the degree of construction activity taking place;
  - (d) how monitoring results will be assessed including the time taken to undertake such assessment and notification procedures on how the Planning Authority and the affected user of the PWS will be notified of the results; and
  - (e) the short, and where necessary, long term and/or permanent contingency measures that shall be put in place should the supply be adversely affected.
- (2) The PWS scheme approved under part (1) shall be implemented and thereafter undertaken and adhered to by the Company.

**Reason:** *To maintain a secure and adequate quality water supply to all properties with private water supplies this may be affected by the Development.*

### **34. Water Quality Monitoring**

- (1) No later than 14 months prior to the Commencement of the Development, a Water Quality Monitoring Programme ("WQMP") shall be submitted by the Company to the Planning Authority for its written approval in consultation with Marine Scotland Science and any such other advisors or organisations as may be required at the discretion of the Planning Authority.
- (2) The WQMP shall consist of hydrochemistry (the chemical characteristics of waterbodies) and physical data (including temperature, dissolved oxygen concentration, biological oxygen demand, turbidity, DOC, pH, alkalinity, ANC, aluminium, nitrate, nitrite, phosphate and flow data) collected:
  - (a) on a monthly basis for a minimum of 12 months pre-construction (to establish the baseline);
  - (b) during construction;
  - (c) for at least one year post-construction (civil works installation), with the length of post-construction monitoring dependent on the monitoring results during the construction phase, and

- (d) shall detail the timetabling of additional monitoring where an impact or change has been detected.
- (3) In accordance with the approved WQMP sampling shall take place at sites with a potential to be impacted by the Development or its construction and at control sites. The sites shall include those surveyed in the site characterisation study in preparation of the Environmental Impact Assessment Report.
- (4) The WQMP shall provide for both raw and interpreted written results of the sampling to be submitted to the Planning Authority and Marine Scotland Science on a quarterly basis from the first sample collected.
- (5) Any updates or amendments made to the WQMP must be submitted, for the written approval of the Planning Authority.
- (6) The approved WQMP and any approved updates or amendments to the approved WQMP shall be implemented in full.

**Reason:** *To ensure no deterioration of water quality, as stipulated by The Water Framework Directive (overall chemical status does not decrease as result of the development), and to protect fish populations within and downstream of the development area.*

### **35. Redundant Turbines**

- (1) Unless otherwise agreed in writing by the Planning Authority, if one or more wind turbines fails to generate electricity for a continuous period of twelve months, a scheme that takes cognisance of Condition 41, setting out how the relevant wind turbine(s) and associated infrastructure will be removed from the site and the ground restored, shall be submitted for the written approval of the Planning Authority no later than one month after the date of expiry of the twelve month period.
- (2) The scheme approved under part (1) shall be implemented within six months of the date of its approval, to the satisfaction of the Planning Authority.

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

### **36. Aviation Safety**

- (1) No development shall commence unless and until the Planning Authority, Ministry of Defence and NATS have been provided with the following information:
  - (a) the date of the expected commencement of each stage of construction;
  - (b) the height above ground level of the tallest structure forming part of the Development;
  - (c) the maximum extension height of any construction equipment; and
  - (d) the position of the wind turbines and masts in latitude and longitude.
- (2) The Company shall provide written details to the Planning Authority, evidencing compliance with part (1) and shall also provide written evidence of the Ministry

of Defence and NATS' satisfactory acceptance of said information, prior to the commencement of development.

- (3) The Company shall, as soon as is reasonably practicable and in any event within 7 days prior to the event, provide to the Planning Authority and the Ministry of Defence written notice of any proposed changes to the information provided under paragraph (1).
- (4) No turbine shall be erected on site until the Ministry of Defence have confirmed in writing to the Planning Authority that the information required under paragraph (3) has been provided and is satisfactory.
- (5) Within 7 days of the erection of the final turbine, the Company shall provide written confirmation to the Planning Authority, the Ministry of Defence and NATS of the actual date on which construction was completed and the confirmed latitude and longitude of all turbines (in degrees, minutes and seconds) and the height above ground level of each turbine (in metres to blade tip).

**Reason:** *In the interests of aviation safety.*

### **37. Aviation Lighting**

- (1) No turbines shall be erected on site until an Aviation Lighting Scheme has been submitted to and approved in writing by the Planning Authority, in consultation with the Civil Aviation Authority. This scheme must detail any mitigation and operating protocols necessary to reduce visual impacts from the lighting, as set out within the submitted Environmental Impact Assessment Report as supplemented by the Additional Information.
- (2) The Development shall be operated fully in accordance with the scheme approved under part (1), unless otherwise agreed in writing with the Planning Authority.

**Reason:** *In the interests of aviation safety and visual amenity.*

### **38. Access Management Plan**

- (1) No development shall commence unless and until an Access Management Plan ("AMP") has been submitted to and approved in writing by the Planning Authority. The AMP shall include (but shall not necessarily be limited to):
  - (a) Identified limitations on access rights during the construction phase;
  - (b) Full details of appropriate access management during the construction and operational periods of the wind farm, including such matters as the installation of gates to allow public access (walking, cycling and horse riding) and temporary or permanent diversion or stopping up of Public Rights of Way; and
  - (c) Warning/management signage which is appropriate and takes account of both the operational needs and access rights during both the construction and the operational periods of the wind farm.
  - (d) Set out the access management regime during the operational phase.

- (2) The approved AMP shall be implemented in full, unless otherwise agreed in writing with the Planning Authority.

**Reason:** *To ensure that public access is managed throughout the construction and operational period.*

### **39. Site Decommissioning, Restoration and Aftercare**

The Development will cease to generate electricity by no later than the date falling 30 years from the date of Final Commissioning. The total period for restoration of the Site in accordance with this condition shall not exceed three years from the date of Final Decommissioning with the exception of any ongoing aftercare period that may be required by the Decommissioning and Restoration Plan approved under Condition 40.

**Reason:** *To ensure decommissioning and removal of the Development in a timely manner.*

### **40. Decommissioning and Restoration Plan**

- (1) No development shall commence unless and until a Decommissioning and Restoration Plan ("DRP") has been submitted to, and approved in writing by, the Planning Authority in consultation with SNH and SEPA. The DRP shall include, unless otherwise agreed in writing with the Planning Authority (but shall not necessarily be limited to) details of:
- (a) works for the decommissioning and removal of the turbines (including the removal of foundations to a depth of at least 1 metre) and all above ground ancillary buildings and infrastructure and removal of all floating tracks;
  - (b) the treatment of ground surfaces including access tracks, water crossings and hard standing areas and any sub-surface elements including cabling to restore the site to its former condition, or other such condition as is agreed in writing by the Planning Authority;
  - (c) indicative details of the way the site will be decommissioned and restored including environmental management provisions, the incorporation of relevant matters from the CEMP, WQMP, BBPP, FMP, Species Protection Plans and any Reptile mitigation, a decommissioning and restoration timetable, justification for the proposed retention of any elements of the Development, a TMP, the treatment of disturbed ground surfaces and appropriate aftercare following site restoration; and
  - (d) how and when the DRP will be reviewed during the operational life of the Development.

**Reason:** *To provide an outline DRP that informs the level of financial guarantee required to decommission and restore the site, to ensure that a decommissioning plan is available throughout the duration of the consent, should it be required in the interests of safety, amenity and environmental protection.*

### **41. Final Decommissioning Plan**

- (1) No later than one year prior to decommissioning of the Development or the expiration of the 30 year period of operation (whichever is the earlier), a detailed decommissioning, restoration and aftercare plan that takes account of the latest



version of the outline the Decommissioning and Restoration Plan (approved under Condition 40), shall be submitted to the Planning Authority for written approval in consultation with SNH and SEPA. The detailed decommissioning, restoration and aftercare plan will provide updated and detailed proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of works and environment management provisions which shall 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 the decommissioning 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) details of measures for 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) details of measures for sewage disposal and treatment;
  - (i) temporary site illumination;
  - (j) a traffic management plan;
  - (k) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
  - (l) details of watercourse crossings, and
  - (m) a species protection plan based on surveys for protected species (including birds, bats and reptiles) carried out no longer than 18 months prior to submission of the plan.
- (2) The Development shall be decommissioned, the site restored and aftercare thereafter undertaken in accordance with the plan approved under part (1) of this condition, unless otherwise agreed in writing in advance by the Planning Authority in consultation with SNH and SEPA.

*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.*

## **42. Financial Guarantee**

- (1) No development shall commence on site until a financial guarantee in favour of and in terms acceptable to the Planning Authority is put in place by the Company as security against any failure by the Company to perform the decommissioning, restoration and aftercare obligations required by deemed planning Conditions 39 to 41 of this consent and the financial guarantee has been submitted to and approved in writing by the Planning Authority.

- (2) An approved financial guarantee shall be maintained from the commencement of development until the date of completion of all decommissioning, restoration and aftercare obligations required by deemed planning Conditions 39 to 41 of this consent.
- (3) The value of the guarantee shall be reviewed, and if necessary, adjusted prior to the expiry of each “Guarantee Period” (the period of five years from the date of issue of the most recent guarantee and the lifetime of each subsequent guarantee to follow) by agreement or by a suitably qualified independent professional within at least every five years of the date of the guarantee to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations.
- (4) Following each review and at least 28 days prior to the expiry of the existing financial guarantee the Company shall submit a replacement guarantee in favour of and in terms acceptable to the Planning Authority and for the value agreed under part (3).

**Reason:** *To ensure that there are sufficient funds available for the full costs of site restoration at all times.*

#### **43. TV and Radio Reception**

Prior to commencement of development, a baseline Television and Radio Reception survey shall be undertaken. In the event of a claim by any individual person regarding TV picture loss or interference, including radio reception, at their house, business premises or other building, this shall be investigated by an independent qualified engineer, appointed by the Company, and the results shall be submitted to the Planning Authority. Should any impairment to the TV signal or radio reception be attributable to the Development, the Company shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline TV or radio reception as relevant. For the avoidance of doubt, the resolution of disputes shall be determined by an independent arbiter e.g. OFCOM or other professional body as appropriate.

**Reason:** *To ensure local television/radio services are sustained during the construction and operation of the wind farm.*

#### **44. Cabling**

All cabling on the site between the wind turbines and the site sub-station shall be installed underground.

**Reason:** *To protect the visual amenity of the area.*

#### **45. Noise**

(1) Recording of operational data:

- (a) The wind farm operator shall continuously log wind speed, wind direction and power production at each wind turbine all in accordance with Guidance Note 1(d) of the attached Guidance Notes.

(b) The data from the wind monitoring mast and each wind turbine shall be retained for a period of not less than 24 months.

(c) The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the Planning Authority on its request within 14 days of receipt in writing of such a request.

(2) Setting the relevant noise limits for properties:

(a) If the Glenmuckloch Wind Farm (15/P/3/0236) is not operational, the rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out for those properties identified in the Tables 1 & 2.

**Table 1 - Between 07:00 and 23:00 - Noise level dB LA90, 10- minute (Site specific limits for Lethans Wind Farm applicable if Glenmuckloch Wind Farm is not operational)**

| Location (easting, northing grid co-ordinates) | Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods |    |    |    |    |    |    |    |    |    |    |    |
|--|---|----|----|----|----|----|----|----|----|----|----|----|
|  | 1   | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 |
| Kyle<br>(265141, 619159)                       | 35  | 35 | 35 | 35 | 37 | 39 | 41 | 43 | 45 | 47 | 48 | 48 |
| Glen<br>(265749, 614831)                       | 35  | 35 | 35 | 35 | 35 | 36 | 37 | 39 | 41 | 43 | 45 | 47 |
| Corsencon<br>(266760, 613897)                  | 37  | 37 | 37 | 37 | 38 | 39 | 39 | 40 | 42 | 43 | 44 | 44 |
| Glen Hall<br>(268484, 613384)                  | 38  | 38 | 38 | 39 | 39 | 40 | 42 | 44 | 46 | 47 | 48 | 48 |
| Niviston<br>(269077, 613511)                   | 35  | 35 | 35 | 35 | 37 | 39 | 41 | 45 | 47 | 50 | 52 | 55 |
| Glenwharrie<br>(271668, 614977)                | 35  | 35 | 35 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 43 | 44 |
| Fingland<br>(275532, 617682)                   | 35  | 35 | 35 | 35 | 35 | 35 | 35 | 36 | 37 | 39 | 40 | 41 |
| Vennel<br>(272547, 614901)                     | 35  | 38 | 40 | 41 | 41 | 41 | 42 | 42 | 42 | 42 | 42 | 42 |

**Table 2 - Between 23:00 and 07:00 - Noise level dB LA90, 10-minute (Site specific limits for Lethans Wind Farm applicable if Glenmuckloch Wind Farm is not operational)**

| Location (easting, northing grid co-ordinates) | Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods |    |    |    |    |    |    |    |    |    |    |    |
|--|---|----|----|----|----|----|----|----|----|----|----|----|
|  | 1   | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 |
| Kyle<br>(265141, 619159)                       | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 44 | 44 | 44 |
| Glen<br>(265749, 614831)                       | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Corsencon<br>(266760, 613897)                  | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Glen Hall<br>(268484, 613384)                  | 42  | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 |
| Niviston<br>(269077, 613511)                   | 42  | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 |
| Glenwharrie<br>(271668, 614977)                | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Fingland<br>(275532, 617682)                   | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Vennel<br>(272547, 614901)                     | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |

- (b) If the Glenmuckloch Wind Farm (15/P/3/0236) is operational, the rating level of noise immissions from the combined effects of the wind turbines hereby permitted, operating in conjunction with the consented and operational turbines of the Glenmuckloch Wind Farm (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes shall not exceed the values for the relevant integer wind speed set out in Tables 3 and 4.

**Table 3 - Between 07:00 and 23:00 - Noise level dB LA90, 10-minute (Cumulative limits if Glenmuckloch Wind Farm is operational)**

| Location (easting, northing grid co-ordinates) | Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods |    |    |    |    |    |    |    |    |    |    |    |
|--|---|----|----|----|----|----|----|----|----|----|----|----|
|  | 1   | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 |
| Kyle (265141, 619159)                          | 40  | 40 | 40 | 40 | 40 | 40 | 41 | 43 | 45 | 47 | 48 | 48 |
| Glen (265749, 614831)                          | 40  | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 41 | 43 | 45 | 47 |
| Corsencon (266760, 613897)                     | 40  | 40 | 40 | 40 | 40 | 40 | 39 | 40 | 42 | 43 | 44 | 44 |
| Glen Hall (268484, 613384)                     | 39  | 39 | 39 | 39 | 39 | 40 | 42 | 44 | 46 | 47 | 48 | 48 |
| Niviston (269077, 613511)                      | 39  | 39 | 39 | 39 | 39 | 39 | 41 | 45 | 47 | 50 | 52 | 55 |
| Glenwharrie (271668, 614977)                   | 40  | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 41 | 43 | 44 |
| Fingland (275532, 617682)                      | 40  | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 41 |
| Vennel (272547, 614901)                        | 40  | 40 | 40 | 41 | 41 | 41 | 42 | 42 | 42 | 42 | 42 | 42 |

**Table 4 - Between 23:00 and 07:00 - Noise level dB LA90, 10-minute (Cumulative limits if Glenmuckloch Wind Farm is operational)**

| Location (easting, northing grid co-ordinates) | Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods |    |    |    |    |    |    |    |    |    |    |    |
|--|---|----|----|----|----|----|----|----|----|----|----|----|
|  | 1   | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 |
| Kyle (265141, 619159)                          | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 44 | 44 | 44 |
| Glen (265749, 614831)                          | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Corsencon (266760, 613897)                     | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Glen Hall (268484, 613384)                     | 42  | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 |
| Niviston (269077, 613511)                      | 42  | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 |
| Glenwharrie (271668, 614977)                   | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Fingland (275532, 617682)                      | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Vennel (272547, 614901)                        | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |

- (c) Following a complaint alleging noise disturbance from turbines at the Lethans Wind Farm operating in conjunction with Glenmuckloch Wind Farm, in the event that the level of noise immissions (including the application of any tonal penalty) exceeds the values in Tables 3 and 4 (which detail the limits for cumulative noise), the operator of Lethans

Wind Farm shall undertake appropriate mitigation to reduce turbine noise immissions such that the limits in Tables 3 and 4 are met, or such that noise from the turbines hereby permitted (including the application of any tonal penalty) meets the levels set out in Tables 5 and 6 (which are the site specific limits for Lethans wind farm applicable if Glenmuckloch Wind Farm is operational).

**Table 5 - Between 07:00 and 23:00 - Noise level dB LA90, 10-minute (Site specific limits for Lethans Wind Farm applicable if Glenmuckloch Wind Farm is operational)**

| Location (easting, northing grid co-ordinates) | Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods |    |    |    |    |    |    |    |    |    |    |    |
|--|---|----|----|----|----|----|----|----|----|----|----|----|
|  | 1   | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 |
| Kyle<br>(265141, 619159)                       | 35  | 35 | 35 | 35 | 37 | 39 | 41 | 43 | 45 | 47 | 48 | 48 |
| Glen<br>(265749, 614831)                       | 35  | 35 | 35 | 35 | 35 | 36 | 37 | 39 | 41 | 43 | 45 | 47 |
| Corsencon<br>(266760, 613897)                  | 37  | 37 | 37 | 37 | 38 | 39 | 39 | 40 | 42 | 43 | 44 | 44 |
| Glen Hall<br>(268484, 613384)                  | 38  | 38 | 38 | 39 | 39 | 40 | 42 | 44 | 46 | 47 | 48 | 48 |
| Niviston<br>(269077, 613511)                   | 35  | 35 | 35 | 35 | 37 | 39 | 41 | 45 | 47 | 50 | 52 | 55 |
| Glenwharrie<br>(271668, 614977)                | 35  | 35 | 35 | 35 | 36 | 37 | 36 | 35 | 30 | 31 | 33 | 34 |
| Fingland<br>(275532, 617682)                   | 35  | 35 | 35 | 35 | 35 | 35 | 35 | 36 | 37 | 39 | 40 | 41 |
| Vennel<br>(272547, 614901)                     | 35  | 36 | 30 | 31 | 31 | 31 | 32 | 32 | 32 | 32 | 32 | 32 |

**Table 6- Between 23:00 and 07:00 - Noise level dB LA90, 10- minute (Site specific limits for Lethans Wind Farm applicable if Glenmuckloch Wind Farm is operational)**

| Location (easting, northing grid co-ordinates) | Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods |    |    |    |    |    |    |    |    |    |    |    |
|--|---|----|----|----|----|----|----|----|----|----|----|----|
|  | 1   | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 |
| Kyle<br>(265141, 619159)                       | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 44 | 44 | 44 |
| Glen<br>(265749, 614831)                       | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Corsencon<br>(266760, 613897)                  | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Glen Hall<br>(268484, 613384)                  | 42  | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 |
| Niviston<br>(269077, 613511)                   | 42  | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 | 42 |
| Glenwharrie<br>(271668, 614977)                | 33  | 33 | 33 | 33 | 33 | 33 | 33 | 33 | 33 | 33 | 33 | 33 |
| Fingland<br>(275532, 617682)                   | 43  | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 | 43 |
| Vennel<br>(272547, 614901)                     | 33  | 33 | 33 | 33 | 33 | 33 | 33 | 33 | 33 | 33 | 33 | 33 |

Note to tables 1/2/3/4/5/6:

- The geographical coordinates references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The standardised wind speed at 10 metres height within the site refers to wind speed at 10 metres height derived from those measured at hub height, calculated in accordance with the method given in the Guidance Notes.
- The noise emission limits set out in Tables 1, 2, 3 and 4 are increased to 45 dB(A) LA90, or the relevant ETSU-R-97 derived "quiet daytime hours" or the "night hours" noise limit based on the measured background noise levels plus 5dB(A), whichever is the greater, at any noise sensitive premises having a financial involvement with the wind farm. The wind farm operator must provide written confirmation of the location of any such premises to the Planning Authority for their written approval prior to commencement of development along with any resulting changes to the limits contained within Tables 1 to 6.
- The cumulative limits set in Tables 3 and 4 make the assumption that Glenmuckloch Wind Farm will operate within its consented noise limits as set out in Condition 31 (East Ayrshire Council application reference 15/P/3/0236 dated 16th May 2017).

(3) Noise Complaints Handling Procedure:

- (a)(i) Within 21 days from receipt of a written request of the Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ a suitably

qualified independent consultant approved by the Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property (or a suitable alternative location agreed in writing by the Planning Authority) in accordance with the procedures described in the attached Guidance Notes and the Noise Assessment Protocol agreed in accordance with part (3)(b) of this condition. The written request from the Planning Authority shall set out at least the date, time and location that the complaint relates to.

- (a)(ii) Within 14 days of receipt of the written request of the Planning Authority made under part (3)(a)(i), the wind farm operator shall provide the information relevant to the complaint, set out in part (1) of this condition to the Planning Authority in the format set out in Guidance Note 1(e).
- (b) Within 21 days of the written request, and prior to commencement of any measurements by the independent consultant for the assessment of the rating level of noise immissions, the wind farm operator shall submit to the Planning Authority, for its written approval, a proposed Noise Assessment Protocol. The noise assessment protocol shall set out the steps to be taken to investigate the noise complaint received in relation to Lethans Wind Farm and shall include (but shall not be limited to):
  - (i) the proposed measurement location identified in accordance with the Guidance Notes and, where necessary, part (3)(c), where measurements for compliance checking purposes shall be undertaken. Where there is more than one dwelling at a location specified in the tables at part (2) of this condition, the noise limits set for that location shall apply to all dwellings at that location;
  - (ii) 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 Planning Authority and such others as the independent consultant considers likely to result in a breach of the noise limits or considers necessary to obtain sufficient data to determine compliance with this condition. The assessment protocol shall also include a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component, and
  - (iii) where the proposed measurement location is close to the wind turbines, rather than at the complainant's dwelling (to improve the signal to noise ratio), then the operator's submission shall include a method to calculate the noise level from the wind turbines at the complainant's dwelling based on the noise levels measured at the agreed location (the alternative method). Details of the alternative method, together with any associated guidance notes deemed



necessary, shall be submitted to and agreed in writing prior to the commencement of any noise measurements.

The assessment of the rating level of noise immissions shall be undertaken by the independent consultant approved under part (3)(a)(i) in accordance with the attached Guidance Notes and Noise Assessment Protocol approved under part (3)(b), unless otherwise agreed in writing by the Planning Authority.

- (c) Where a dwelling to which a complaint is related is not identified by name or location in the tables at part (2) of this condition, the wind farm operator shall submit to the Planning Authority, for its written approval, proposed noise limits selected from those listed in the tables to be adopted at the complainant's dwelling for compliance checking purposes, prior to the commencement of compliance checking. The proposed limits are to 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. The submission of the proposed noise limits to the Planning Authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of the noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Planning Authority for the complainant's dwelling.
- (d) Within 2 months of the date of the written request from the Planning Authority under part (3)(a), unless the time limit is extended in writing by the Planning Authority, the independent consultant shall provide to the Planning Authority and the wind farm operator, the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes and the Noise Assessment Protocol agreed under part (3)(b). The assessment shall include all data collected for the purpose 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 Planning Authority with the independent consultant's assessment of the rating level of noise immissions.
- (e) Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the independent consultant shall submit a copy of the further assessment to the Planning Authority and the wind farm operator within 21 days of the submission of the independent consultant's assessment pursuant to part (3)(d) of this condition unless the time limits for the submission of the further assessment have been extended in writing by the Planning Authority.

#### (4) Scheme to Ensure Compliance:

- (a) Where the assessment by the independent consultant under parts (3)(d) or (3)(e) of this condition indicate that the rating levels of noise immissions exceeds the values for the relevant integer wind speed set out for those properties identified in the relevant tables at part (2) of this condition, the wind farm operator shall submit to the Planning Authority for its written approval, details and an explanation of the mitigation measures to be employed such that noise immissions from the development are reduced to meet the noise limits in the relevant tables, or other such limits agreed by the Planning Authority under part (3)(c).
- (b) The mitigation approved under part (4)(a) shall be implemented in full by the wind farm operator upon approval of the mitigation.

#### **Guidance Notes for Noise Condition:**

These notes are to be read with and form part of the planning condition on noise. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind turbines. The rating level at each integer wind speed is the arithmetic sum of the wind turbine 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  $L_{A90}$ , 10-minute noise statistic should be measured at the complainant's property (or other location agreed under part (3)(b) of the noise condition), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the 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 should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (b) The sound level meter should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the 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 metres away from the building façade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance is withheld, the wind turbine operator shall submit for the written approval of the Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

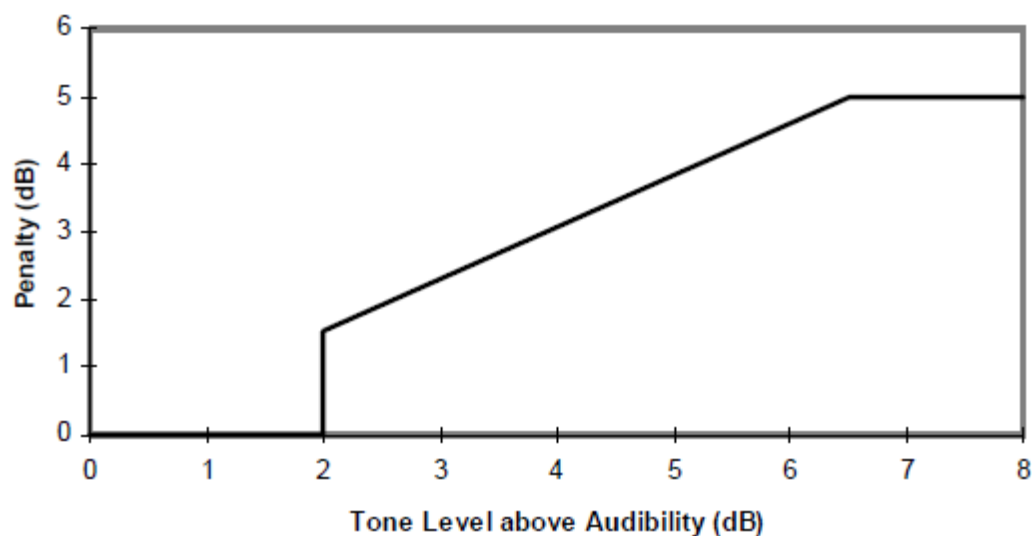
- (c) The  $L_{A90}$ , 10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with the Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm, and rain data logged in accordance with Guidance Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height 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 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter.
- (e) Data provided to the Planning Authority in accordance with the noise condition shall be provided in an electronic format as comma separated values, or in the case of audio recordings, WAV files of at least 16bit resolution.
- (f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Guidance Note 1(d).

## **Guidance Note 2**

- (a) The noise measurements shall be made as to provide not less than 20 valid data points as defined in Guidance Note 2(b).
- (b) Valid data points are those measured in the conditions specified in the agreed written protocol under part (3)(b) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. 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 measurements periods set out in Guidance Note 1. In specifying such conditions the Local Planning Authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.
- (c) For those data points considered valid in accordance with Guidance Note 2(b), values of the  $L_{A90}$ , 10-minute noise measurements and corresponding values of the 10-minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer wind speed.

### Guidance Note 3

- (a) Where, in accordance with the approved assessment protocol under part (3)(b) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which  $L_{A90}$ , 10-minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available (“the standard procedure”). Where uncorrupted data are not available, the first available uninterrupted 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.
- (c) For each of the 2-minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) A least squares “best fit” linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the “best fit” line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



### Guidance Note 4

- (a) If a tonal penalty is to be applied in accordance with Guidance Note 3, the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as

determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Planning Authority in its written protocol under part (3)(b) of the noise condition.

- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.
- (c) In the event that the rating level is above the limit(s) set out in the Tables attached to the conditions or the noise limits for a complainant's dwelling approved in accordance with part (3)(c) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- (d) The wind turbine operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
  - (i) Repeating the steps in Guidance Note 2, with the wind turbines switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the Planning Authority in its written request under part (3)(a) and the approved protocol under part (3)(b) of the noise condition.
  - (ii) The wind turbine noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

- (iii) The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind turbine noise L1 at that integer wind speed.
- (iv) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with Guidance Note 3 above) at any integer wind speed lies at or below the values set out in the tables attached to the condition or at or below the noise limits approved by the Planning Authority for a complainant's dwelling in accordance with part (3)(b) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with part (3)(b) of the noise condition then the development fails to comply with the condition.

## **DEFINITIONS**

**“development”** means the implementation of the consent and deemed planning permission by the carrying out of a material operation within the meaning of section 27 of the Town and Country Planning (Scotland) Act 1997, but excluding site or soil investigations and the Mansfield Road (C47 and U716) upgrading works (not excluding construction of the proposed by-pass).

**“the Development”** means the wind powered generating station and ancillary development described in Annex 1.

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

**“date of Final Commissioning”** means the earlier of (i) 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 erected in accordance with this consent; or (ii) the date falling eighteen months from the date of First Commissioning.

**“the Company”** means Banks Renewables (Lethans Wind Farm) Ltd (Company Number: 08217768) of Inkerman House, St John’s Road, Meadowfield, Durham, DH7 8XL or such other person as from time to time has the benefit of the consent granted under section 36 of the Electricity Act 1989.

**“HES”** means Historic Environment Scotland.

**“PA03 (May 2019)”** means Site Layout Plan – Construction Layout – Ref:HJB/780/296 – May 2019 as presented in the EIA report submitted by the Company to the Scottish Ministers in June 2019.

**“the Planning Authority”** means East Ayrshire Council.

**“Public Holiday”** means:

- New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January;
- 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January;
- Good Friday;
- Easter Monday;
- the first Monday in May;
- the first Monday in August;
- the third Monday in September;
- 30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day;
- Christmas Day, if it is not a Sunday or, if it is a Sunday, 27th December;
- Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December.

**“SEPA”** means Scottish Environment Protection Agency.

**“SNH”** means Scottish Natural Heritage.

## HABITATS REGULATIONS APPRAISAL

**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 CONSTRUCTION AND OPERATION OF THE LETHANS WIND POWERED ELECTRICITY GENERATING STATION APPROXIMATELY 5KM NORTH EAST OF NEW CUMNOCK IN EAST AYRSHIRE**

**Scottish Government: Energy & Climate Change Directorate**

**Habitats Regulations Appraisal of the Implications of the proposed Lethans Wind Farm Development on the Muirkirk & North Lowther Uplands Special Protection Area (SPA)**

07 MAY 2020

The following appraisal has been prepared by the Scottish Ministers as the Competent Authority for the above proposal.

|   | <b>Project and Site Description</b>             |  |
|---|---|--|
| 1 | Brief description of the project                | <p>Lethans Wind Farm is was granted section 36 consent in March 2018 for 22 turbines of between 136m to 176m blade tip height. It is lies within Lethans forestry plantation approximately 5km north east of New Cumnock in East Ayrshire and is immediately adjacent to the Dumfries &amp; Galloway boundary. On 07 June 2019, a new application for section 36 consent was submitted for a revised Lethans Wind Farm ("the proposal") comprising of:</p> <ul style="list-style-type: none"> <li>➤ 22 turbines - 7@176m, 10@200m &amp; 5@220m;</li> <li>➤ Mandatory lighting on all turbines (&gt;150m);</li> <li>➤ 11 new water crossings &amp; 13 existing watercourse crossings upgraded;</li> <li>➤ Approximately 13.13km new track;</li> <li>➤ Up to 5 borrow pits;</li> <li>➤ Other associated infrastructure.</li> </ul> |
| 2 | Brief description of the designated Natura site | <p>Lethans Wind Farm lies immediately adjacent to part of the Muirkirk and North Lowther Uplands SPA ("the SPA"). The SPA comprises three adjacent upland areas (two situated to the north and south of the town of Muirkirk, and one in the northern Lowther Hills), together with Airds Moss, a low-lying blanket bog situated between the two upland areas north and south of Muirkirk. The SPA covers 26832.47 hectares, with the predominant habitats including semi-natural areas of blanket bog, acid grassland and heath.</p> <p>The boundaries of the SPA are coincident with those of North Lowther Uplands SSSI, Blood Moss and Slot Burn SSSI, Garpel Water SSSI, Ree Burn and Glenbuck Loch SSSI and coincident with those of Muirkirk Uplands SSSI, except for</p>   |

|   |   |   |
|---|---|---|
|   |   | <p>the exclusion of the Upper Heilar and Tarmac forestry plantations on Airds Moss and the exclusion of Blood Moss, south of Dalblair. The SPA extension at Anderside Flow follows the SSSI extension.</p> <p>The SPA qualifying interests are as follows:</p> <p>Annex I Species: During the breeding season</p> <ul style="list-style-type: none"> <li>➤ Golden Plover (<i>Pluvialis apricaria</i>) – an estimated minimum of 154 pairs in 1999 representing at least 0.7% of the breeding population in Great Britain;</li> <li>➤ Hen Harrier (<i>Circus cyaneus</i>) – an average of 29.2 breeding females between 1994 and 1998, representing at least 6.0% of the breeding population in Great Britain;</li> <li>➤ Merlin (<i>Falco columbarius</i>) – an average of 9 pairs between 1989 and 1998, representing at least 0.7% of the breeding population in Great Britain;</li> <li>➤ Peregrine (<i>Falco Peregrinus</i>) – an average of 6 pairs, between 1992 and 1996, representing at least 0.5% of the breeding population in Great Britain;</li> <li>➤ Short-eared Owl (<i>Asio flammeus</i>) – an average of 26 pairs between 1997 and 1998, representing at least 3.0% of the breeding population in Great Britain.</li> </ul> <p>Annex I Species: Over winter</p> <ul style="list-style-type: none"> <li>➤ Hen Harrier (<i>Circus cyaneus</i>) – an average of 12 individuals, between 1991 and 1995, representing at least 2% of the wintering population in Great Britain.</li> </ul> |
| 3 | Conservation objectives for <b>Muirkirk &amp; North Lowther Uplands SPA</b>                           | <p>1) To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species (as per section 2 above) thus ensuring that the integrity of the site is maintained; and,</p> <p>2) To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> <li><b>a.</b> population of the species as a viable component of the site;</li> <li><b>b.</b> distribution of the species within the site;</li> <li><b>c.</b> distribution and extent of habitats supporting the species;</li> <li><b>d.</b> structure, function and supporting processes of habitats supporting the species;</li> <li><b>e.</b> no significant disturbance of the species.</li> </ul>  |
|   | <b>Screening</b>  |   |
| 4 | Is the proposal directly connected with, or necessary to, conservation management of the Natura site? | The proposal is <b>not</b> directly connected with, or necessary to, the conservation management of the Muirkirk and North Lowther Uplands SPA.   |



|   |   |   |
|---|---|---|
| 5 | Is the operation likely to have a significant effect on the qualifying interest of the <b>Muirkirk &amp; North Lowther Uplands SPA</b> either alone or in combination with other plans or projects. | <p>Yes, for all qualifying interests.</p> <p>The proposal lies adjacent to the SPA and within the core breeding season foraging ranges of all of the SPA's breeding bird interests. Additionally, it has been predicted that there could be a small collision risk to Hen Harrier during the non-breeding season from the proposal.</p> <p>The proposed development could therefore affect the SPA qualifying species through:</p> <ul style="list-style-type: none"> <li>– Collision mortality. This could affect the SPA conservation objective related to maintaining the population of the species as a viable component of the site.</li> <li>– Disturbance and/or displacement of qualifying species from foraging habitat on or close to the wind farm site. This might also have an impact on the conservation objective which seeks to maintain the population of the species as a viable component of the site.</li> <li>– Conversely, through <i>attraction</i> of individuals into areas within or close to the wind farm as a result of habitat change. This may in turn increase collision risk (as above).</li> </ul>  |
|   | <b>Appropriate Assessment</b>   |   |
| 6 | Identify the relevant conservation objectives to consider for the <b>Muirkirk &amp; North Lowther Uplands SPA</b>   | <p>The following assessment is based on advice received from Scottish Natural Heritage (SNH) in their consultation response of 05 August 2019 and the SNH Habitats Regulations Appraisal Proforma of 17 September 2019. The considerations detailed below also draw on the conclusions reached for the consented Lethans Wind Farm, as set out in SNH's Habitats Regulations Appraisal Proforma dated 24 March 2017 and the Scottish Minister's Habitats Regulations Appraisal of September 2017.</p> <p>This assessment has concluded that because the development site lies outside the boundary of the SPA, <b>conservation objectives 2b-2d will be met for all qualifying species</b>. As the focus is therefore on disturbance and collision mortality, the following conservation objectives are relevant:</p> <ol style="list-style-type: none"> <li>1. As per section 3, part 2(a) above, to avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species (as per section 3, part 2(a) above) thus ensuring that the integrity of the site is maintained, and,</li> <li>2. As per section 3, part 2(e) above), to ensure for the qualifying species that the following are maintained in the long term</li> </ol> <ul style="list-style-type: none"> <li>➤ Population of the species as a viable component of the site;</li> <li>➤ Distribution of the species within site.</li> </ul> |

|  |  |  |
|--|--|--|
|  |  | <p style="text-align: center;"><u>Hen harrier (breeding)</u></p> <p><i>Collision risk from Lethans Wind Farm</i></p> <p>From observed flight activity, mean annual collision risk for the proposal on its own is predicted to be 0.01 birds per annum. Although an increase from that predicted for the consented scheme, this risk of collision is still considered to be small given uncertainties around collision risk modelling and the precautionary nature of currently adopted avoidance rates for birds at operational wind farms. It is therefore concluded that the wind farm on its own would not have an adverse effect on the viability of the breeding population of hen harrier.</p> <p><i>Cumulative collision risk</i></p> <p>Based on the information for schemes within 2km of the SPA available to SNH, the mean annual cumulative collision risk to breeding hen harrier from operational, consented or application-stage wind farm developments is calculated to currently be between 0.282 – 0.295 birds per annum.</p> <p>Based on the extrapolation of the findings of population modelling carried out for the Kennoxhead Wind Farm in South Lanarkshire, SNH advised in relation to the consented Lethans Wind Farm that operational and consented wind farms were, at that time, very unlikely to have an adverse impact on the breeding hen harrier population. SNH further advised that the consent of Lethans would not change this because the additional effect was so small in the context of other existing and consented wind farms and the large uncertainty associated with estimates of wind farm induced mortality. While noting the predicted increase in mean annual collision risk from the current proposal compared with the consented scheme (an increase of 0.0032 birds), SNH consider that further population modelling would almost certainly lead to the same conclusion and that as such, this advice remains applicable to the Lethans Wind Farm as now proposed. It is therefore concluded that that the cumulative effect of the wind farm would not have an adverse effect on the viability of the breeding population of hen harrier.</p> <p><i>Disturbance</i></p> <p>The current Lethans Wind Farm proposal lies within the same application boundary as the consented Lethans Wind Farm. It therefore remains located in a narrow block of forestry between two sections of the SPA. Survey work identified hen harrier activity to the north and east of the wind farm (Confidential Figure 5.2.1, Appendix 5, TA 5.2 dated 17 May 2019). The dominant flight activity observed took place within the SPA, across open heath and grass habitats. Fe flights were observed within the forest area, though flight activity along rides and other open areas within</p> |
|--|--|--|

|  |  |
|--|--|
|  | <p>forest areas (and occasionally above tree height) can be expected.</p> <p>Nest sites used between 2009 and 2018 lie beyond likely disturbance distances for hen harrier (Ruddock &amp; Whitfield data) and flight activity was largely constrained by the location of the forest edge. In view of this, it is considered very unlikely that the wind farm will lead to significant disturbance of breeding hen harriers and it is therefore concluded that the related objective will be met.</p> <p><i>Habitat change</i></p> <p>The removal of trees to facilitate development will increase the amount of open ground habitat, while successive forestry harvesting will also create open habitats pre-thicket forestry. These habitats may be attractive to breeding hen harriers. Based on an assessment of habitat use using reported nest site locations from 2013, scenario modelling has considered the impact of habitat change on collision risk. This modelling suggests that is likely that collision risk will increase as a result of habitat change within the wind farm, even with adoption of the measures detailed within the Outline Habitat Management Plan. The model suggests an increase in collision risk by a factor of 1.22 (0.137/0.112), which if applied to the survey based collision risk (0.01) would give a corrected mean annual figure of 0.0122. This is not considered likely to have an adverse effect on the viability of the hen harrier breeding population.</p> <p><u>Hen harrier (non-breeding)</u></p> <p>There are no known winter hen harrier roost sites which would be affected by the proposal, either directly or as a result of disturbance.</p> <p>Mean annual collision risk to hen harriers during the non-breeding season is predicted to be 0.005 birds, an increase of 0.002 birds from the consented proposal. This increase from that predicted for the consented scheme is not considered to be of a level which would have an adverse effect on the wintering population, either alone or cumulatively.</p> <p>On this basis, the Scottish Ministers conclude that the conservation objectives will be met for this species.</p> <p><u>Short-eared owl (breeding)</u></p> <p>No collision risk has been predicted for short-eared owl and there has been no known recent and/or consistent nesting close to the site of the proposal. The only record SNH has of this species nesting within 2km of the site of the proposal dates from 1998.</p> <p>On this basis, it is concluded that the conservation objectives will be met.</p> |
|--|--|

|   |   |  |
|---|---|--|
|   |   | <p><u>Merlin (breeding)</u></p> <p>One merlin territory was recorded within the survey area. The nest site lies approximately 700m from the nearest turbine, beyond likely disturbance distances for the species.</p> <p>Flight activity by this species was predominantly recorded across open ground within the SPA. Potential mean annual collision risk is negligible (0.001 birds) and has been calculated on the basis of flights observed during the non-breeding season.</p> <p>On this basis, the Scottish Ministers conclude that the conservation objectives will be met for this species.</p> <p><u>Peregrine falcon (breeding)</u></p> <p>The peregrine pair that lies close to the site of the proposed wind farm is not considered to be part of the SPA breeding population. Further explanation is provided in SNH's 5 April 2016 consultation response to Dumfries and Galloway Council in respect of the Glenmuckloch Wind Farm proposal.</p> <p>On this basis, the Scottish Ministers conclude that the conservation objectives will be met for this species.</p> <p><u>Golden plover (breeding)</u></p> <p>No collision risk is predicted for breeding golden plover.</p> <p>The site of the proposal is located in forestry outside the boundary of the SPA and any likely breeding habitat for golden plover. Habitat change will have no effect on any breeding golden plover within the SPA.</p> <p>On this basis, the Scottish Ministers conclude that the conservation objectives will be met for this species.</p> |
| 7 | Can it be ascertained that the proposal/plan will not adversely affect the integrity of the <b>Muirkirk &amp; North Lowther Uplands SPA</b> | <b>Yes</b>   |
| 8 | Consider whether mitigation measures or conditions can be adopted to avoid impacts on site integrity  | <p>No mitigation is required to avoid an adverse effect on integrity.</p> <p>(The Scottish Ministers note that SNH's advice that a site-specific Habitat Management Plan ("HMP") is implemented is to help reduce the potential <i>residual</i> effects of the proposal on</p>   |

|   |  |  |
|---|--|--|
|   |  | the SPA, rather than to avoid an adverse effect on the integrity of the site.) |
|   | <b>CONCLUSION</b>                        |  |
| 9 | Can impacts on site integrity be avoided | <b>Yes.</b>  |