

Planning and Environmental Appeals Division

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Mr D Mudie
Highland Council
Sent By E-mail

Our ref: PPA-270-2143

10 May 2016

Dear Mr Mudie

PLANNING PERMISSION APPEAL: HALSARY WIND FARM HALSARY FOREST WATTEN, NEAR WICK

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <http://www.gov.scot/Topics/Built-Environment/planning/Appeals/ourperformance/commentsandcomplaints>.

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Fiona Manson

FIONA MANSON
Case Officer
Planning and Environmental Appeals Division



Appeal Decision Notice

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Decision by David Liddell, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2143
- Site address: Halsary Wind Farm, Halsary Forest, Watten, Caithness
- Appeal by Scottish Power Renewables against the decision by The Highland Council to grant planning permission reference 15/01857/S42, dated 12 August 2015 subject to conditions.
- The development proposed: to develop land without compliance with condition(s) 1 previously attached to Planning Permission 09/00399/FULCA for the construction of a wind farm containing 15 (as amended) wind turbines and turbine foundations; crane hardstandings; 2 site accesses from the A9(T); fenced substation and switchgear compound; on-site underground cabling; on-site access tracks and associated pipe bridges and watercourse crossings; removal of forestry; one permanent steel lattice or tubular tower anemometry mast; two temporary power performance assessment masts; and ancillary construction development including two temporary construction compounds/lay-down areas.
- The condition appealed against is: (19) No development shall commence until a Compensatory Planting Plan has been submitted to and approved in writing by the Planning Authority. The Compensatory Planting Plan shall provide for the planting of 222 hectares (gross area), or such figure as may otherwise be agreed in writing by the Planning Authority, that includes a significant element of productive woodland, to be carried out across the sites identified as in the vicinity of;
 - a) Land at Strathgarve, Garve 241237, 861619 (NH 41237 61619), and
 - b) Land at Pennyland, Thurso 309593, 967871 (ND 09593 67871),and shall include full details of establishment, fencing, a programme for ongoing maintenance as well as the supervision of works both during and following completion by a suitably qualified forestry consultant.

The agreed Compensatory Planting Plan shall be implemented in full within one year of the first operation of the development and maintained thereafter for a period of not less than 10 years to the satisfaction of the Planning Authority.

Reason: To enable appropriate woodland removal to proceed, without incurring a net loss in woodland related public benefit, in accordance with the Scottish Government's policy on the Control of Woodland Removal.
- Application drawings: Location Plan FIG.NO1; Location Plan FIG PA A1; Proposed Layout Plan FIG PA A2 & FIG 4.1
- Date of site visit by Reporter: 21 March 2016

Date of appeal decision: 10 May 2016



Decision

I allow the appeal and vary the terms of the planning permission by deleting condition 19. I also make minor changes to the other conditions in the interests of clarity and consistency, and in accordance with the Act.

Background

1. Planning permission for the Halsary Wind Farm was granted by The Highland Council on 14 July 2014. That permission was for 15 turbines of a maximum height of 100 metres. It was subject to a number of conditions, including one requiring off-site tree planting to compensate for the loss of some of the commercial forestry which was to be felled to allow development of the wind farm.
2. Scottish Power Renewables, the appellant, made a further application to the council under Section 42 of the Act to develop the wind farm without condition 1 of the planning permission. This was solely to allow an increase in turbine height to 112 metres. The council granted this permission on 12 August 2015. In doing so, it re-imposed the same conditions as applied to the original permission. This included condition 19, requiring off-site compensatory tree planting.
3. The appeal before me is against the council's decision to re-impose condition 19 on the 2015 consent. The appellant's description of the proposal (in both applying to increase the height of the turbines and again, now, in appealing) is fairly brief. The effect of allowing the appeal is to create a planning permission which stands on its own. In the interests of clarity, I therefore adopt above the council's fuller description of the development.
4. In forwarding to DPEA the evidence relevant to the appeal, the council was unable to locate 8 letters of representation made in respect of the original planning application, submitted in 2009. I am satisfied, in particular given the comprehensive and detailed nature of the evidence before me and the relatively narrow scope of the appeal, that the content of these letters would have been unlikely to significantly influence the outcome of the appeal. DPEA received two letters of representation on the appeal. I take due account of these, and of the other representations made directly to the council.

Reasoning

5. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The key issues are whether the compensatory planting required by condition 19 is consistent with the requirements of the Highland-wide Local Development Plan, Scottish Planning Policy (SPP) and the Scottish Government's policy on the Control of Woodland Removal (CWR); and whether the condition meets the 6 tests in Circular 4/1998: The Use of Conditions in Planning Permissions.
6. The development plan consists of the Highland-wide Local Development Plan (HwLDP) and, of relevance in this case, the associated statutory supplementary guidance Trees, Woodlands and Development. Elements of the earlier Caithness Local Plan remain in force, although none of these are relevant to the wind farm development.

7. Policy 67 Renewable Energy is the key policy covering wind farm development in HwLDP. It requires proposals to be considered against their contribution to renewable energy targets and a number of other criteria. Development which is not significantly detrimental overall is supported.

8. Policy 51 Trees and Development deals principally with the protection, planting and management of trees in new development, and refers to the Trees, Woodlands and Development supplementary guidance. Policy 52 Principle of Development in Woodland provides more detailed policy on the tests to be applied to development involving the loss of woodland. It has a strong presumption in favour of protecting woodland resources, with development only supported where it offers a clear and significant public benefit. Where this involves woodland removal, compensatory planting will usually be required. The impacts on the forestry industry and the economic maturity of the woodland are also to be considered. The policy also states that all proposals affecting woodland will be assessed against conformity with the CWR.

9. The Trees, Woodland and Development supplementary guidance supplements policies 51 and 52 of HwLDP. It says that the purpose of compensatory planting is to secure, through new woodland on appropriate sites elsewhere, at least the equivalent woodland-related net public benefit embodied in the woodland to be removed. The council's preference is that any compensatory planting be within the Highlands.

10. One of the guiding principles of CWR is that woodland removal should only be allowed where it would achieve significant and clearly defined public benefits. These include social, economic and environmental benefits. Compensatory planting may form part of this balance. Criteria for determining the acceptability of woodland removal with and without compensatory planting are set out. The latter includes enhancing priority habitats and the connectivity of these and associated habitats. An email from Forestry Commission Scotland (FCS) to the council dated 21 December 2012 confirmed that such enhancement need not be the primary purpose of the land use change. The CWR defines priority habitats as those listed in the UK Biodiversity Action Plan (UKBAP), Natura sites, Ramsar sites, Sites of Special Scientific Interest (SSSIs), and National Nature Reserves (NNRs). In March 2015 FCS issued updated guidance ('the FCS guidance') to its staff on implementing the CWR. The guidance defines priority habitats as those listed in the EC Habitats Directive Annex I and UKBAP.

11. Annex C of the CWR provides broad advice on meeting the acceptability criteria for woodland removal without compensatory planting, with 'potential indicators of acceptability'. In respect of enhancing priority habitats and their connectivity, the change in land use should make a significant contribution within the boundaries of priority habitats or to the functional connectivity of priority and associated habitats.

12. The appeal site is an area of commercial forestry lying immediately to the east of the A9. The sites of three other consented wind farms (one of which, the Causeymire wind farm, is operational) lie nearby to the west, on the other side of the A9. The settlement of Mybster lies around 2km to the northwest, with Spittal around 1km beyond.

13. The wind farm would be located within what is currently Halsary Forest, an area of peatland which was planted with conifers in the mid 1980's. 612 hectares of forest would be felled. Open peatland, including the Shielton Peatlands SSSI and the Caithness & Sutherland Peatlands Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site lie adjacent to the south and east boundaries of the site. The River Thurso SAC lies to the west of the A9.

14. It is proposed that the appeal site (with the exception of the wind farm infrastructure itself) would be restored to its former blanket bog and heath habitats through initial ground works and then on-going management. Both the Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage (SNH) accept the principle of this, although they do have questions and concerns about certain aspects of the proposed restoration. However, both are content (as is the council) that the details of the restoration scheme can be finalised and agreed through a planning condition. There would be on-site tree planting to directly compensate for the small area of forestry (just over 8 hectares) on which the turbine foundations, access tracks and other wind farm infrastructure would be located. Condition 19 requires off-site planting of some 222 hectares of woodland to compensate for the loss of woodland across the wider site.

15. My focus below is on the issue of off-site planting. I sought further evidence from the appellant, the council, FCS and SNH on the interpretation of CWR and its application to the appeal proposal, the benefits of the habitat restoration, and other related matters. I consider these issues first before going on to assess the proposal against the requirements of the development plan.

16. I asked the parties whether 'enhancing priority habitats' referred to in the CWR would encompass the restoration of habitats to priority status. It was not put to me that this would be out with the scope of the policy. As the appellant points out, the FCS guidance refers to 'restoration to the desired habitat types within a reasonable timescale'. Although this is in the guidance not the policy itself, it does support the interpretation that 'enhancing priority habitats' can encompass restoration of land to such status. The guidance also says that, where restoration within a reasonable period cannot be achieved, the site 'should at least be capable of being set on the course for the desired habitat type to be evident within 15-20 years without further management intervention'. I return to the question of restoration timescales below.

17. The council explains that, in initially considering the case for woodland removal and compensatory planting, it assessed the restorable value of the peatland and the current and future value of the woodland. The 2005 Halsary Forest Design Plan, whilst identifying opportunities for felling and habitat restoration (overall around 100 hectares), retains timber production as a primary objective for the remaining area of over 500 hectares of the forest. Much of the woodland would, the council argues, be restocked in the absence of any wind farm development.

18. But, says the council, there is no standard formula which can be used to quantify how much of the forest would be likely to be considered suitable for replanting. So the council used peat depth as the best single indicator of a number of different factors which would be relevant. SNH was supportive of such an approach. This identifies those areas most suitable for peatland restoration and those areas most suitable for woodland retention.

This demonstrates, it is said, that the council is not requiring compensatory planting for those areas of felling which would achieve significant and clearly defined additional public benefits.

19. The council also considers that the appellant significantly undervalues the existing woodland, in particular its economic value. Halsary Forest is said to be relatively productive, with good access to timber markets. It supports valuable long-term employment for a number of local forestry-related businesses. Cumulative loss of woodland in the area will have a significant impact on those businesses.

20. It is not disputed that the restoration proposals for the site are aimed at returning it to what would be 'priority' habitats. Connectivity with the adjacent peatland habitats would be enhanced. On the face of it, therefore, the proposed restoration would seem to be the kind of circumstances which, under the terms of the CWR, compensatory planting may not be required. I recognise, however, that it is reasonable to consider the likely speed, success and degree of benefits of such restoration in reaching a view as to whether, in the words of the CWR, the proposal would 'contribute significantly to' priority habitat enhancement and result in 'significant and clearly defined additional public benefits'.

21. In this respect, the approach the council originally took was not, in my view, an unreasonable one. The CWR was still relatively novel and the council thought that there was some ambiguity as to its requirements. Assisted by advice from SNH and FCS, the council sought to identify which areas of the forest were best suited to restoration and which would, in the ordinary course of events, be more suitable for restocking. Although the 2005 Forest Design Plan reflected the young age of the forestry, and forestry policy and practice had moved on since then, it did provide some assistance in considering these matters. Guidance on woodland planting on peatland suggested that peat depth would be a reasonable proxy – with peat depth of less than 1m being more suited to replanting and therefore requiring compensatory planting. This produced a requirement for 222 hectares of compensatory planting.

22. However, with the benefit of all the evidence before me, the use of 1m peat depth as a proxy indicator does not appear to me to have a strong basis. Firstly, such an approach does not appear consistent with the advice in an email dated 15 May 2013 from SNH to the council which expresses the view that, if the forest were to be restocked, the presence of deep peat and other natural heritage considerations mean that only a very small area would be suitable for replanting. Of greater significance is SNH's response to my first request for further evidence. SNH's view is that, currently, the site supports a total of about 96 hectares of priority habitats, predominantly blanket bog. Just under 600 hectares is coniferous woodland. Technical Appendix A8.1 Integrated Forestry Redesign, Habitat Restoration and Peat Reuse Strategy (2012) of the appellant's Addendum to the Environmental Statement (ES) for the proposed wind farm sets out the draft habitat restoration proposals. SNH is satisfied that the restoration targets in that document are achievable, leading to an overall total of around 700 hectares of UKBAP priority habitats (comprising the existing priority habitats plus the restored area of former conifer plantation). This would mostly be blanket bog, transitioning into areas of wet and dry heath – all of which are priority habitats. SNH also states that the restoration work would be beneficial to the neighbouring Caithness & Sutherland Peatlands SPA and SAC. This would, in SNH's view, deliver 'significant environmental benefits' although SNH says that FCS would be

better placed to advise on whether this would deliver the 'significant and clearly defined additional public benefits' as set out in the CWR. The council also draws attention to this distinction.

23. SNH advises that some areas of habitat would take longer to restore than others. Using the fairly broad UKBAP definitions, areas of shallower peat could be expected to be restored to heathland habitats within around 10 years. Deeper peat could generally be expected to take between 15 and 30 years to be considered 'restored' to blanket bog, although small areas could be restored more quickly than that. These estimates could be higher or lower depending on the intensity of the method of restoration.

24. The method of restoration would be subject to the agreement of the council, in consultation with SNH and SEPA. The appellant states that its proposed methods are high-intensity, and its experience at other sites indicates that restoration to priority habitats across the site could be expected in 5-15 years. Although peatland restoration can be challenging, it is being carried out at other wind farm sites and the appellant advises that practices are evolving and improving with experience. SNH makes a similar point.

25. It has not been argued that restoration to priority habitat cannot be achieved across the site, indeed the technical evidence from the ES and from SNH indicates that it can be. In this context it seems to me that, if it takes a longer time to restore parts of the habitat because of the intrinsic nature of ground conditions, then such a period may still be reasonable. The periods which SNH estimates would be required would mostly be within the operational life of the wind farm. In my view this is, in the circumstances of this case, a reasonable timeframe. And, subject to the agreement and implementation of the restoration methods, restoration may be quicker than SNH estimates.

26. FCS does not expressly offer a view on whether the restoration, as described in the ES and by SNH, would constitute significant and clearly defined additional public benefits as set out in the CWR. The advice of SNH is that there would be 'significant environmental benefits' from the restoration of around 600 hectares of land to priority habitat and benefits to the adjacent SPA and SAC. The Royal Society for the Protection of Birds (RSPB) Scotland says that the proposal would deliver significant environmental benefits, including increased protection for the hydrological regime in the adjacent SAC and benefit to the qualifying bird species in the SPA. The conclusion which naturally follows is, in my view, that benefits of this scale and nature would make a significant contribution to enhancing priority habitats and their connectivity, and amount to significant and clearly defined additional public benefits, all as envisaged in the CWR.

27. I note the contents of the FCS advice to the council on 23 August 2013, in which it sets out its position that 155 hectares of compensatory planting would be required. FCS explains that part of the area excluded from the need for compensatory planting is the extent of habitat within the woodland that can be shown to have the potential for peatland restoration. But SNH's advice is that all of the forest is capable of being restored to priority habitats – either to blanket bog or to associated heathland habitats. The technical advice in the ES (which I acknowledge FCS did not initially examine) reaches the same conclusion. Therefore I see no strong basis to support the FCS position that 155 hectares of compensatory planting is required.

28. The FCS guidance says that, when assessing the potential benefits of existing woodland, consideration should be given to its potential future development, as well as its current attributes. In an even-aged/single-species, first rotation plantation (in essence the situation at Halsary) this will normally require a forward look to its post-restructuring potential. Annex 5 of the guidance provides a framework to calculate the area of compensatory planting required. It says that compensation should equal the net area of woodland that would - in the absence of the woodland removal - have been expected to remain on the site through an approved long-term forest plan. The annex goes on to focus on wind farm development and recommends that developers prepare two forest plans – one with the wind farm and one without. It is then stated that these will support the calculations for ‘any’ compensatory planting which may be required. This advice does, to a degree, support the contention that there should be some consideration of what the future replanting proposals would be in the absence of wind farm development.

29. Annex 3 of the FCS guidance covers woodland removal without a requirement for compensatory planting. In respect of enhancing priority habitats and their connectivity, it is stated that woodland presence within or adjacent to open ground priority habitats is not, in itself, a justification for woodland removal. It is the nature and degree of the woodland's impact on the priority habitat and the benefit that would be gained by woodland removal that will inform the need or otherwise for removal.

30. I consider now the impacts of the removal of the woodland. It is accepted that this (associated with the proposed habitat restoration) would bring ecological benefits. As I found during my site inspection, there is little opportunity for public access to the forest and impacts on recreation would be minimal.

31. It is on the economic value of the forest that the council places greatest weight. In this respect, the council's view is supported by FCS, which advises that strong demand for wood fibre is likely to continue and the forest has good transport links to both wood processing businesses and to ports for onward transportation. The site is economic, says FCS, if marginal.

32. I recognise that one of the principal aims of the CWR is to support the maintenance and expansion of forest cover in Scotland (in line with the aspiration of the Scottish Forestry Strategy), not to facilitate woodland removal. One of the guiding principles is a strong presumption in favour of protecting woodland resources. However, I have found that the habitat restoration could be expected to deliver the kind and degree of benefit which the CWR says is most likely to be appropriate without the need for compensatory planting. I accept that the woodland has an economic value. This value has to be weighed in the balance. But there is no clear indication, from a fair reading of the policy, that the forestry-related economic benefits which would be lost in this case are such that there would be a need for compensatory planting. Given the kind and degree of environmental benefits which may be expected from the habitat restoration in this case, I find that off-site compensatory planting would not be required by the CWR.

33. I turn now to consider whether the proposal would accord with the development plan.

34. Policy 67 Renewable Energy of HwLDP does not specifically list the loss of woodland as a consideration, although it does say that the economic impacts of a proposal

are to be considered. I find that Policy 67 is therefore of limited relevance in considering whether the wind farm should be developed without off-site compensatory planting. But I must also consider whether, more generally, the proposed wind farm would be in accordance with the development plan. I take account of the economic impacts which would follow from the loss of productive forestry. But, and with reference to the wider evidence before me, I note the renewable energy and climate change benefits of the proposal, the ecological benefits from the proposed habitat restoration and the limited landscape and visual effects of the turbines. The recommendations of SNH (including in relation to my findings at paragraphs 43 and 44 below), SEPA and other consultees can be addressed in planning conditions. Bearing all this in mind, my view is that the proposed wind farm would not be significantly detrimental, overall, and that the benefits of the development are such that it is supported by Policy 67. This is consistent with the conclusion reached by the council in granting the initial consent and then again in allowing an increase in the height of the turbines.

35. Policy 51 Trees and Development supports development which protects trees in and around development sites. However, Policy 52 Principle of Development in Woodland appears to me to be more directly relevant to the appeal proposal. The benefits of the proposal, reflected in my reasoning above, are such that they would, in my view, result in the 'clear and significant public benefits' Policy 52 requires when development in woodland is proposed. I take account of the impacts on the forest industry locally and of the economic maturity of the forestry. Although these factors count against the proposal, I consider that, in line with my findings above, they are outweighed by the benefits of the development.

36. Policy 52 says that applicants will need to demonstrate the need for a woodland site, and that compensatory planting will 'usually' be required. However it also says that all proposals are to be assessed against conformity with the CWR. I find above that the proposal (due to the benefits of habitat restoration) draws support from the CWR which does not, in this case, imply a need for compensatory planting. In such circumstances, I find that there is a justified exception to the usual need for compensatory planting which the policy envisages. Overall, I therefore conclude that the development of the wind farm without off-site compensatory planting would generally accord with Policy 52.

37. In respect of woodland removal, much of the detailed advice in the council's Trees, Woodland and Development supplementary guidance is based on the content of the CWR and Policy 52 of HwLDP. Consistent with my conclusions above in respect of those policies, I find that the proposal would generally accord with the supplementary guidance.

38. Overall, therefore, I conclude that the development, without off-site compensatory planting, would be in accordance with the development plan.

39. FCS, in answer to my information request, makes the point that woodland removal should only be considered as a last resort when other approaches (such as changes to forest design or management) have been considered. This may be so, but the evidence before me does not indicate a view from the council or FCS that woodland removal associated with the development of the wind farm would be inappropriate. FCS did not object to the woodland removal. The key issue at dispute is about any subsequent need for compensatory planting.

40. SPP says that woodland removal should only be permitted where it would achieve significant and clearly defined additional public benefits, in essence repeating the key requirements of CWR. Where woodland is removed, compensatory planting will generally be required. In concluding that the proposal accords with CWR, I am satisfied that it also accords with SPP.

41. The appellant points to the cost of planting (said to be over £1.5 million) at a time when there is uncertainty about the future market support for wind energy development in the UK. However the appellant does not go so far as to assert that this would make the project unviable, and the limited weight I place on this consideration does not have a significant bearing on my conclusion.

42. On the basis of my findings above, I therefore conclude that condition 19 is not needed, thereby failing one of the required tests set out in Circular 4/1998: The Use of Conditions in Planning Permissions.

43. SNH advised (in its updated consultation response of February 2013 to the initial application for consent) that there would be likely to be a significant effect on the River Thurso SAC, the Caithness & Sutherland Peatlands SAC and the Caithness & Sutherland Peatlands SPA. However, provided that a condition requires that the appellant's restoration proposals are refined to the satisfaction of SNH then there would not be an adverse effect on the integrity of these sites. As part of this, SNH notes requirements in relation to a number of protection and management plans, a construction method statement and the role of an Ecological Clerk of Works. The planning conditions on the 2015 consent cover this ground. I impose these again. It is not appropriate that the conditions require these elements of the proposal to be to the satisfaction of SNH. It is for the planning authority to agree these details. The conditions allow for the planning authority to consult with SNH as appropriate, and I have no reason to conclude that the planning authority would be likely to agree to proposals which would lead to a significant effect on the integrity of any of these sites. SNH also notes that the proposal would have a significant effect on the Caithness Lochs SPA, but that this would not have an adverse effect on the integrity of the site.

44. Noting the above, and having considered the technical evidence in the ES, I am satisfied that the proposal would not have an adverse effect on the integrity of any SPA or SAC. SNH also says the proposal would have impacts on otter and water vole but that it would appear to be a relatively straightforward matter to revise the restoration proposals so that impacts would be avoided or minimised.

45. The appellant is critical of the differing requirements which the council (222 hectares initially and then 371 hectares) and FCS (155 hectares) calculate for compensatory planting. My attention is also drawn to a more recent draft plan for the forest (prepared by Forestry Enterprise Scotland) which indicates a potential restocking level of just over 80 hectares. The appellant also states that, in any event, it has no control over the land at Strathgarve (identified as a location for compensatory planting in condition 19) and that the condition is therefore inappropriate in this respect. RSPB Scotland also raised concerns about the potential impacts on birds of further woodland planting on open farmland in Caithness. However, as I am allowing the appeal and deleting condition 19, which I find not

to be needed, I have no need to consider whether the condition is appropriate in other respects.

46. The appellant has made no comment in relation to the other conditions in the 2015 consent. However, in allowing this appeal, it is open to me to vary these, and to add and/or remove conditions. I make only a number of minor edits, simply to aid clarity and consistency. I have also added a time limit condition, as the standard duration of a planning permission that is imposed by section 58(1) of the Town and Country Planning (Scotland) Act 1997 does not apply to temporary permissions.

47. I therefore conclude, for the reasons set out above, that the proposed development (without off-site compensatory planting) accords overall with the relevant provisions of the development plan and that there are no material considerations which justify refusing to grant planning permission.

48. I have considered all other matters raised and the full range of the evidence before me, none which alters my conclusions.

David Liddell

Reporter

Conditions

1. For the avoidance of doubt the development shall be constructed and operated in accordance with the provisions of the application, the submitted plans, and the Environmental Statement. This permission shall be for a maximum of 15 turbines up to 112m in height from ground level and 1 anemometer mast, to be sited as shown on the site layout drawing (Figure 4.1) contained within Chapter 4 of the Halsary wind farm ES, December 2012. The prior written approval of the planning authority, in consultation with SNH and SEPA, shall be required for the siting of any wind turbine or access track more than 50 metres from the approved location. Any such submission shall include a revised site layout for the location of all turbines and access roads.

Reason: In order to clarify the terms of permission and ensure that development does not infringe on watercourses.

2. This planning permission shall expire and cease to have effect after a period of 30 years from the date when electricity is first exported from any of the approved wind turbines to the electricity grid network (the "First Export Date"). Upon the expiration of a period of 25 years from the First Export Date, the wind turbines shall be decommissioned and removed from the site, with decommissioning and restoration works undertaken in accordance with the terms of Condition 3 of this permission. Written confirmation of the First Export Date shall be submitted in writing to the planning authority within one month of the First Export Date.

Reason: Wind turbines have a projected lifespan of 25 years, after which their condition is likely to be such that they require to be replaced, both in terms of technical and environmental considerations. This limited consent period also enables a review and, if

required, reassessment to be made of the environmental impacts of the development and the success, or otherwise, of noise impact, species protection, habitat management and mitigation measures. The 30 year cessation date allows for a 5 year period to complete commissioning and site restoration work.

3. No development shall commence until a draft Decommissioning and Restoration Plan (DRP) for the site has been submitted to, and approved in writing by, the planning authority, in consultation with SNH and SEPA. Thereafter:

i. No later than 3 years prior to the decommissioning of the development, the draft DRP shall be reviewed by the Wind Farm Operator and a copy submitted to the planning authority for their written approval, in consultation with SNH and SEPA; and

ii. No later than 12 months prior to the decommissioning of the development, a detailed DRP, based upon the principles of the approved draft plan, shall be submitted to, and approved in writing by, the planning authority, in consultation with SNH and SEPA.

For the avoidance of doubt, the DRP shall include the removal of all aboveground elements of the development, all new access tracks, the treatment of disturbed ground surfaces, management and timing of the works, environmental management provisions and a traffic management plan to address any traffic impact issues during the decommissioning period. The detailed DRP shall be implemented as approved.

Reason: To ensure that all wind turbines and associated development is removed from the site should the wind farm become largely redundant; in the interests of safety, amenity and environmental protection.

4. No development shall commence until:

i. Full details of a bond or other financial provision to be put in place to cover all of the decommissioning and site restoration measures outlined in the DRP approved under Condition 3 of this permission have been submitted to, and approved in writing by, the planning authority; and

ii. Confirmation in writing by a suitably qualified independent professional that the amount of financial provision proposed under part (i) above is sufficient to meet the full estimated costs of all decommissioning, dismantling, removal, disposal, site restoration, remediation and incidental work, as well as associated professional costs, has been submitted to, and approved in writing by, the planning authority; and

iii. Documentary evidence that the bond or other financial provision approved under parts (i) and (ii) above is in place has been submitted to, and confirmation in writing that the bond or other financial provision is satisfactory has been issued by, the planning authority.

Thereafter, the Wind Farm Operator shall:

i. Ensure that the bond or other financial provision is maintained throughout the duration of this permission; and

ii. Pay for the bond or other financial provision to be subject to a review five years after the commencement of development and every five years thereafter until such time as the wind farm is decommissioned and the site restored.

Each review shall be:

- a) Conducted by a suitably qualified independent professional; and
- b) Published within three months of each five year period ending, with a copy submitted upon its publication to both the landowner(s) and the planning authority; and
- c) Approved in writing by the planning authority without amendment or, as the case may be, approved in writing by the planning authority following amendment to their reasonable satisfaction.

Where a review approved under part (c) above recommends that the amount of the bond or other financial provision should be altered (be that an increase or decrease) or the framework governing the bond or other financial provision requires to be amended, the Wind Farm Operator shall do so within one month of receiving that written approval, or within another timescale as may be agreed in writing by the planning authority, and in accordance with the recommendations contained therein.

Reason: To ensure financial security for the cost of the restoration of the site to the satisfaction of the planning authority.

5. The Wind Farm Operator shall, at all times after the First Export Date, record information regarding the monthly supply of electricity to the national grid from each turbine within the development and retain the information for a period of at least 12 months. The information shall be made available to the planning authority within one month of any request by them. In the event that:

- i. Any wind turbine installed and commissioned fails to supply electricity on a commercial basis to the grid for a continuous period of 6 months, then the wind turbine in question shall be deemed to have ceased to be required. Under such circumstances, the wind turbine, along with any ancillary equipment, fixtures and fittings not required in connection with retained turbines, shall, within 3 months of the end of the said continuous 6 month period, be dismantled and removed from the site and the surrounding land fully reinstated in accordance with this condition; or
- ii. The wind farm fails to supply electricity on a commercial basis to the grid from 50% or more of the wind turbines installed and commissioned and for a continuous period of 12 months, then the Wind Farm Operator must notify the planning authority in writing immediately. Thereafter, the planning authority may direct in writing that the wind farm shall be decommissioned and the application site reinstated in accordance with this condition. For the avoidance of doubt, in making a direction under this condition, the planning authority shall have due regard to the circumstances surrounding the failure to generate and shall only do so following discussion with the Wind Farm Operator and such other parties as they consider appropriate.

All decommissioning and reinstatement work required by this condition shall be carried out in accordance with the approved detailed DRP or, should the detailed DRP not have been approved at that stage, other decommissioning and reinstatement measures, based upon the principles of the approved draft DRP, as may be specified in writing by the planning authority.

Reason: To ensure that any redundant or non-functional wind turbines are removed from the site, in the interests of safety, amenity and environmental protection.

6. No development shall commence until full details of the proposed wind turbines have been submitted to, and approved in writing by, the planning authority. These details shall include:

- i. The make, model, design, power rating and sound power levels of the turbines to be used; and
- ii. The external colour and/or finish of the turbines to be used (including towers, nacelles and blades) which should be non-reflective pale grey semi-matt.

Thereafter, development shall progress in accordance with these approved details and, with reference to part (ii) above, the turbines shall be maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned. For the avoidance of doubt, all wind turbine blades shall rotate in the same direction.

Reason: To ensure that the turbines chosen are suitable in terms of visual, landscape, noise and environmental impact considerations.

7. No development shall commence until full details of the location, layout, external appearance, dimensions and surface materials of all control buildings, welfare facilities, compounds and parking areas, as well as any fencing, walls, paths and any other ancillary elements of the development, have been submitted to and approved in writing by the planning authority, in consultation with SEPA and SNH as necessary. Thereafter, development shall progress in accordance with these approved details. For the avoidance of doubt, details relating to the control, substation and welfare buildings shall include additional architectural design, LVIA and other relevant assessment work, carried out by suitably qualified and experienced people, to ensure that they are sensitively scaled, sited and designed.

Reason: To ensure that all ancillary elements of the development are acceptable in terms of visual, landscape, noise and environmental impact considerations.

8. Unless otherwise agreed in writing by the planning authority, all of the wind turbine transformers shall be located within the tower of the wind turbine to which they relate. Agreement for external transformers will only be given if the developer can, through detailed design work and additional landscape and visual impact assessment, demonstrate, to the satisfaction of the planning authority, that they would not adversely affect the character, integrity or general amenity of the application site, its setting or any designations located close by.

Reason: To ensure ancillary elements of the development, such as external transformers, are only permissible if, following additional design and LVIA work, they are demonstrated to be acceptable in terms of visual, landscape, noise and other environmental impact considerations.

9. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (as amended), and unless there is a demonstrable health and safety or operational reason, none of the wind turbines, anemometers, power performance masts, switching stations or transformer buildings/enclosures, ancillary buildings or above ground fixed plant shall display any name, logo, sign or other advertisement without express advertisement consent having been granted on application to the planning authority.

Reason: To ensure that the turbines are not used for advertising, in the interests of visual amenity.

10. No tree felling works shall commence until a further attempt to locate the Scheduled Standing Stone (Site 2: MHG1273) and possible shieling hut (Site 5: MHG20197) has been made. In the event that survey work does not ascertain their presence, a qualified archaeologist must be present during felling operations to supervise the work and ensure the protection of the features of archaeological importance.

Reason: In order to protect any features of archaeological importance.

11. No development shall commence until a Construction Environmental Management Document is submitted to and agreed in writing by the planning authority in consultation with SNH and SEPA. The Document shall include:

- An updated Schedule of Mitigation including all mitigation proposed in support of the planning application, other relevant agreed mitigation (e.g. as required by agencies) and set out in the relevant planning conditions
- Processes to control/action changes from the agreed Schedule of Mitigation.
- The following specific Construction and Environmental Management Plans (CEMP):
 - i. Peat management plan – to include details of all peat stripping, excavation, storage and reuse of material
 - ii. Pollution prevention plan
 - iii. Drainage and surface water management plan - to address both construction and post construction with specific regard to protection of the Caithness and Sutherland Peatlands SAC and River Thurso SAC
 - iv. Chemical pollution plan
 - v. Species protection plan

- vi. Fisheries protection plan
- vii. Site waste management plan
- viii. Noise and vibration mitigation plan
- ix. Traffic management plan - providing details on the proposed route for any abnormal loads, any accommodation measures required and any additional signing or temporary traffic control measures deemed necessary
 - Details of the appointment of an appropriately qualified Environmental Clerk of Works with roles and responsibilities which shall include but not necessarily be limited to:
 - i. Providing training to the developer and contractors on their responsibilities to ensure that work is carried out in strict accordance with environmental protection requirements;
 - ii. Monitoring compliance with all environmental and nature conservation mitigation works and working practices approved under this consent;
 - iii. Advising the developer on adequate protection for environmental and nature conservation interests within, and adjacent to, the application site;
 - iv. Directing the placement of the development (including any micro-siting, if permitted by the terms of this consent) and the avoidance of sensitive features; and
 - v. The power to call a halt to development on site where environmental considerations warrant such action.
 - Details of any other methods of monitoring, auditing, reporting and communication of environmental management on site and with the client, planning authority and other relevant parties.
 - Statement of any additional persons responsible for 'stopping the job/activity' if a potential breach of a mitigation or legislation occurs.

Unless otherwise agreed in writing by the planning authority the development shall proceed in accordance with the agreed Document.

Reason: To protect the environment from the construction and operation of the development.

12. No development shall commence until a Habitat Management Plan (HMP) has been submitted to, and approved in writing by, the planning authority in consultation with SNH and SEPA, providing for measures to protect and manage habitat and species within the site. The HMP, which shall be implemented in full and in accordance with any timescales outlined therein unless otherwise agreed in writing by the planning authority, shall include the following elements:

- Measures to minimise any impact of the development on statutorily protected species and other species of nature conservation interest (including hen harrier, otters, bats, water vole and wild cat) and their respective habitats
- The enhancement, restoration and future management of the site to its blanket bog/heath habitat

Reason: To protect and enhance the nature conservation interests of the area, including the management of vegetation and peatland within the site, mitigate any effects on statutorily protected species and their habitat and avoid adverse effects on other species of nature conservation interest.

13. No development shall commence, including tree felling works, until a pre-commencement survey to locate the presence or absence of water vole, otter and wild cat is undertaken and a report of survey has been submitted to, and approved in writing by, the planning authority. The survey shall be carried out in the year preceding the commencement of development and the report of survey shall inform any mitigation measures identified in the species protection plan required as part of the Construction Environmental Management Document/Plan(s) approved under condition 11.

Reason: To protect and enhance nature conservation from construction activities.

14. No development shall commence, including tree felling works, until a pre-commencement bird survey has been undertaken and a report of survey has been submitted to, and approved in writing by, the planning authority. The survey shall be carried out within 500m of all development and associated works over the application site, be carried out in the year preceding the commencement of development, and the report of survey shall inform any mitigation measures identified in the Species Protection Plan required as part of the Construction Environmental Management Document/Plan(s) approved under Condition 11.

Reason: In order to safeguard birds and breeding birds present within the site during the construction phase.

15. No development shall commence on site until the applicant has provided the Ministry of Defence (Defence Estates-Safeguarding) with the following information, a copy of which shall be submitted to the planning authority:

- a proposed date of commencement of the construction;
- estimated date of completion of the construction;
- height above ground level of the tallest structure;
- maximum extension height of any construction equipment;
- position of the turbines in latitude and longitude plus eastings and northings.

Reason: In order to ensure the safety of low flying military aircraft.

16. No development shall commence until a Noise Measurement and Mitigation Scheme has been submitted to, and approved in writing by, the planning authority. The scheme shall include:

- i. A framework for the measurement and calculation of noise levels to be undertaken in accordance with "The Assessment & Rating of Noise from Wind Farms", September 1996, ETSU report number ETSU-R-97, having regard to paragraphs 1-3 and 5-11 inclusive, of The Schedule, pages 95 to 97; and Supplementary Guidance Notes to the Planning Obligation, pages 99 to 109. Wind speeds shall be determined using the methods in the IOA Good Practice Guide to the application of ETSU-R-97.
- ii. Mitigation measures to be enacted, along with a timetable(s) for implementation, should noise emissions exceed the limits prescribed under this planning permission.

Reason: To ensure that the noise impact of the built turbines can be assessed, if necessary following a complaint, in order to demonstrate that they do/do not exceed the predicted noise levels set out within the supporting Environmental Statement, and where excessive noise is recorded, suitable mitigation measures can be undertaken.

17. No development shall commence until a detailed Access Management and Recreation Plan of public access across the site (as existing, during construction and following completion) has been submitted to, and approved in writing by, the planning authority. The plan shall include details showing:

- i. All existing access points, paths, core paths, tracks, rights of way and other routes (whether on land or inland water), and any areas currently excluded from statutory access rights under Part one of the Land Reform (Scotland) Act 2003, within and adjacent to the application site;
- ii. Any areas proposed for exclusion from statutory access rights, for reasons of privacy, disturbance or effect on curtilage related to proposed buildings or structures;
- iii. All proposed paths, tracks and other routes for use by walkers, riders, cyclists and any other relevant outdoor access enhancement i.e. car park (including construction specifications, signage, information leaflets, proposals for on-going maintenance etc.);
- iv. Any diversion of paths, tracks or other routes (whether on land or inland water), temporary or permanent, proposed as part of the development (including details of mitigation measures, diversion works, duration and signage).

The approved Access Management and Recreation Plan, and any associated works, shall be implemented in full to a timescale to be set out in the approved plan.

Reason: To safeguard and maximise the opportunities for continued public access to the countryside during the construction and operation of this wind farm.

18. No development shall commence until a TV and radio reception mitigation plan has been submitted to, and approved in writing by, the planning authority. The plan shall provide for a baseline TV reception survey to be carried out prior to the commencement of

turbine installation, the results of which shall be submitted to the planning authority. Within 12 months of the Final Commissioning of the development, any claim by any individual person regarding TV picture loss or interference at their house, business premises or other building shall be investigated by a qualified engineer appointed by the developer and the results shall be submitted to the planning authority. Should any impairment to the TV signal be attributable to the development, the developer shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline TV reception.

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

19. For the avoidance of doubt, the crane hard standing required to service Turbine 10 shall not be constructed using the 'peat displacement method' proposed unless otherwise agreed in writing by the planning authority, in consultation with SEPA, following sufficient assurance that Ground Water Dependant Ecosystems will not be adversely affected.

Reason: In the interest of protecting Ground Water Dependant Ecosystems.

20. No development shall commence until a scheme for aviation lighting, including the timing for its implementation, has been submitted to, and approved in writing by, the planning authority, in consultation with MoD and Highlands and Islands Airports Ltd. The scheme shall be implemented in accordance with the approved details.

Reason: In the interest of air safety.

21. Access to the site by heavy goods vehicles and any noisy construction activity (e.g. piling, blasting, rock-breaking) shall be restricted to 07.00 to 19.00 on Mondays to Fridays and from 07.00 to 13.00 on Saturdays with no such access on Sundays unless otherwise agreed in advance in writing by the planning authority.

Reason: In order to control noise in the interest of amenity.

22. Visibility splays shall be provided and maintained on each side of the new access to the satisfaction of the planning authority. These splays are the triangles of ground bounded on 2 sides by the first 4.5 metres of the centreline of the access driveway (the set-back dimension) and the nearside trunk road carriageway measured 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road. In a vertical plan, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2.00 metres positioned at the set-back dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension.

Reason: To ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road.

23. The Wind Turbine Noise Levels, including the application of any tonal penalty specified in ETSU-R-97 at pages 99-109, shall not exceed the values specified for the locations listed in Tables 1 and 2 below.

For Noise-Sensitive Premises not listed in Tables 1 and 2, but which on the date of this planning permission lawfully exist or are yet to exist but benefit from extant planning permission, noise limits shall be taken from the listed location that is closest matching in terms of background noise.

This condition shall apply at wind speeds not exceeding 12m/s, as calculated at a height of 10m above ground level in accordance with the methods described in the IOA Good Practice Guide to the application of ETSU-R-97.

Table 1 – Daytime Noise Limits

	Noise levels (dB _{LA90}) at standardised 10 meter height wind speeds (m/s)								
Location	4	5	6	7	8	9	10	11	>=12
Mybster	21.5	27.5	32.5	35.5	36.5	36.5	36.5	36.5	36.5
Corner Cottage	25.0	25.0	25.0	26.5	28.6	30.6	32.3	33.8	34.8
Tacher	25.6	27.6	29.6	31.4	33.1	34.8	36.3	37.6	38.8
Shielton	20.0	26.0	31.0	34.0	35.0	35.0	35.0	35.0	35.0

Table 2 – Night Time Noise Limits

	Noise levels (dB _{LA90}) at standardised 10 meter height wind speeds (m/s)								
Location	4	5	6	7	8	9	10	11	>=12
Mybster	21.5	27.5	32.5	35.5	36.5	36.5	36.5	36.5	36.5
Corner Cottage	28.0	28.0	28.0	28.0	28.0	28.9	30.0	30.9	31.7
Tacher	28.0	28.0	28.4	29.5	30.5	31.5	32.5	33.7	35.2
Shielton	20.0	26.0	31.0	34.0	35.0	35.0	35.0	35.0	35.0

Reason: To ensure that the noise impact of the built turbines does not exceed the predicted noise levels in the interest of amenity.

24. The Wind Farm Operator shall, beginning with the first day upon which the wind farm becomes operational, log wind speed and wind direction data continually and shall retain the data for a period of at least 12 months from the date that it was logged. The data shall include the average wind speed, measured in metres per second, over 10 minute measuring periods. These measuring periods shall be set to commence on the hour and at 10 minute consecutive increments thereafter. Measurements shall be calculated at 10m above ground level using the methods described in IOA Good Practice Guide to the application of ETSU-R-97. All wind speed data shall be made available to the planning authority on request in Microsoft Excel compatible electronic spreadsheet format.

Reason: To ensure that the noise impact of the built turbines can be assessed, if necessary, following a complaint, in order to demonstrate that they do/do not exceed the predicted noise levels set out within the supporting Environmental Statement.

25. At the reasonable request of the planning authority, the Wind Farm Operator shall assess, at its own expense and using a suitably qualified consultant(s) not involved in the original noise assessment, the level of noise emissions from the Wind Turbines.

Assessment shall be carried out in accordance with the Noise Measurement and Mitigation Scheme approved under this planning permission and a report of assessment shall be submitted to the planning authority within two months of a request under this condition, unless an alternative timescale is otherwise agreed in writing by the planning authority.

If noise emissions are found to exceed limits prescribed under this planning permission then the Wind Farm Operator shall implement mitigation measures in full accordance with the approved Noise Mitigation Scheme, or alternative equal or better mitigation measures as may first be approved in writing by the planning authority, in order to reduce noise levels to comply with prescribed limits. The time period for implementing mitigation measures shall be as outlined in the approved Noise Mitigation Scheme or as otherwise may be specified in writing by the planning authority.

Reason: To ensure that, following a complaint, noise levels can be measured to assess whether or not the predicted noise levels set out within the supporting Environmental Statement have been breached, and where excessive noise is recorded, suitable mitigation measures are undertaken.

26. No work to form the construction compound area shall commence until the following details in respect of Halsary Farmstead (identified as Site 6 within the ES) have been submitted to, and approved in writing by, the planning authority:

- i. A comprehensive photographic survey of the interior of the building;
- ii. Details of which of the existing fittings will be retained in situ and which will be removed;
- iii. Details of all internal fitting out work (including any internal signage); and
- iv. Details of how the building will be secured while the work is being carried out.

Thereafter, development and work shall progress in accordance with these approved details.

Reason: In order to record its condition and importance before development affects its setting and/or character.

27. Any archaeological features associated with Halsary Farmstead (identified as Site 6 within the ES) including the sheepfold and enclosure adjacent to Turbine 18 shall be preserved in-situ.

Reason: In order to protect the archaeological and historic interest of the site.

28. Before the First Export Date, as defined within Condition 2, a copy of all information that informed the archaeological assessment submitted in support of the application, including any descriptions, plans and photographs gathered as part of the desk top analysis and/or site survey, shall be submitted to the planning authority.

Reason: In order to assist the Council with maintaining an accurate and current record of the historic environment.

29. A community liaison group shall be established by the developer prior to development commencing, in collaboration with The Highland Council and local Community Councils. The group shall act as a vehicle for the community to be kept informed of project progress and, in particular, should allow advanced dialogue on the provision of all transport-related mitigation measures and to keep under review the timing of the delivery of turbine components. This should also ensure that local events and tourist seasons are considered and appropriate measures to coordinate deliveries and work to ensure no conflict between construction traffic and the increased traffic generated by such events/seasons. The liaison group, or element of any combined liaison group relating to this development, shall be maintained until the wind farm has been completed and is operational.

Reason: To assist with the provision of mitigation measures to minimise the potential hazard to road users, including pedestrians travelling on the road networks.

30. The development shall be begun no later than three years from the date of this permission.

Reason: In accordance with section 58(4)(c) of the Town and Country Planning (Scotland) Act 1997.

Definitions

"Wind Turbine Noise Level" means the rated noise level due to the combined effect of all the Wind Turbines, excluding existing background noise level but including any tonal penalty incurred under the methodology described in ETSU-R-97, pages 99-109.

"Wind Farm Operator" means the individual(s), organisation(s) or company(ies) responsible for the day-to-day operation of the wind farm, who may or may not also be the owner of the wind farm.

"Background Noise Level" means the ambient noise level already present within the environment (in the absence of noise generated by the development) as measured and correlated with Wind Speeds.

"Wind Speeds" means wind speeds measured or calculated at a height of 10 metres above ground level on the site at a specified Ordnance Survey grid reference agreed in writing by the planning authority.

"Night hours" means 23:00 - 07:00 hours on all days.

"Noise-Sensitive Premises" means any building, structure or other development that, on the date of this planning permission, exists or is yet to exist but benefits from extant planning permission, the lawful use of which falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended) or is as a flat or static residential caravan. Where such documents exist, this definition also includes any other premises defined as being noise-

sensitive within any Environment Statement or other assessment or survey submitted in support of the planning application. For the purposes of this definition, 'premises' includes any relevant curtilage.

Advisory notes

- 1. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).