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Decision by Padraic Thornton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2154
- Site address: Hill of Lychrobbie, Dunbeath, Caithness. KW6 6EH
- Appeal by Mr Magnus Henderson against the decision by The Highland Council
- Application for planning permission dated 7 November 2013 refused by notice dated 30 March 2016
- The development proposed: Erection of 3 turbines and associated infrastructure
- Application drawings: Ly/SP/1, Ly/SP/2, Ly/TD/1, Ly/BP/01 and Ly/AC/01.
- Date of site visit by Reporter: 25 and 26 October 2016

Date of appeal decision: 26 January 2017

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## Decision

I allow the appeal and grant planning permission subject to the 22 conditions listed at the end of the decision notice. Attention is drawn to the 4 advisory notes at the end of the notice.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. The proposed development would consist of 3 wind turbines and associated facilities including crane pads, component laydown areas, substation and temporary construction compound. The turbines, as indicated on plans and detailed in the Environmental Statement, would have a hub height of 50 metres and would have a 3 bladed 48 metre diameter rotor. It is proposed to connect to the electricity grid through an existing electricity line serving a telecommunications mast on the site. Access from the public road would generally be along an existing track which would be upgraded. The wind turbines would be located on a ridge known as the Hill of Lychrobbie above and to the north-east of the village of Dunbeath. They would also be elevated above the village of Latheronwheel which is to the east/north-east of the site of the proposed development. There are some existing large wind farms in the general area including Buolfruich and Burn of Whilk referred to in the councils reasons for refusal and Causeymire located close to the A9 about 15 kilometres to the north. There are also some individual turbines located on the hill to the north and south of the proposed scheme. A high voltage electricity line on pylons crosses the A9 about 4 kilometres north of the junction with the A99. These features impact on the landscape

character of the area and can be seen from a number of the viewpoints identified in the Environmental Statement

3. Having regard to the provisions of the development plan the main issues in this appeal are the impact of the development on the landscape and on visual amenity and impact on air traffic radar systems including RAF systems.

4. The planning authority refused planning permission for 3 reasons. The first 2 reasons are related to impacts on the landscape and visual amenities. The first reason relates to the visual impact of the proposed development on its own and the second relates to its cumulative impact when viewed with the operational wind farm at Buolfruch and the then under construction Burn of Whilk wind farm. Both reasons state that the development would be contrary to Policy 67 of the Highland-wide Local Development Plan. Reason number 3 also states that the development would be contrary to Policy 67. The issue in this reason is that the development would have a detrimental impact on the RAF radar at Lossiemouth.

5. The visual impact of the wind farm is dealt with in part 4 of the Environmental Statement. I agree with the conclusion that the extent of significant visual effect is relatively low. This arises due to the ground contours. Figure 4.3, Drawing Ly/ZTV, indicates a relatively restricted zone of theoretical visibility up to 25 kilometres. Due to the size of the turbines proposed I consider that the visual impact would not be significant beyond about 5 kilometres. I accept that there would be moderate significant impacts at viewpoints 1 (Badnagie), 3 (Latheronwheel), 4 (Leodebest), as stated in paragraph 4.7.13 of the Environmental Statement. I also consider that the impact on the view from viewpoint 5 (Balnabruich) would be moderate rather than moderate-low as stated in the Environmental Statement. I am not convinced that the impact on the view at viewpoint 4 is such as to fall into the higher category moderate-major as stated in the Environmental Statement. Of the viewpoints in question only 3 and 5 are located on the A9 trunk road. The other viewpoints are generally located on minor roads with little traffic and few receptors. I consider also that viewpoints 3 and 5 are the locations of greatest impact from the perspective of traffic on the A9. The view from viewpoint 5 is relevant to north bound traffic and that from viewpoint 3 is relevant to southbound traffic. The view from viewpoint 3 is also representative of views from within the village of Latheronwheel.

6. The area where the development is proposed is not one of special or exceptional scenic amenity value. The area has not been designated as of national, regional or local landscape value. The nearest such designated area is a locally designated Special Landscape Area (SLA) referred to as the Flow Country and Berriedale Coast about 4.5 kilometres to the north. The nearest designated wild land area (the Causeymire-Knockfin Flows Wild Land Area) is about 4 kilometres away to the north-west. Having regard to the distances involved and the presence of other man-made developments, as referred to in paragraph 2, I consider that the development proposed would not have any significant impact on the designated landscape or wild land areas.

7. The turbines would be located in a landscape character type area described as Sweeping Moorland. This landscape type is located at a higher level and above areas visible in the photomontages and described as Small Farms and Crofts. The scale of the individual landscape features in the latter type landscape areas is smaller than in the

Sweeping Moorland area. Having regard however to the location of the proposed turbines on top of the ridge I consider that the clearly ordered unified group of medium sized turbines involved would be seen as visually balanced elements in the broad views available and they would not be significantly out of character in the landscape or significantly detrimental to the visual amenities of the area. In arriving at this conclusion I have had regard to the existence of the other developments referred to in paragraph 2 above.

8. In considering the impact of the development on the visual amenities of the area it is necessary to have regard to the context within which the turbines will be seen by receptors. As indicated above, in many views, (including those from which photomontages have been presented), developments referred to in paragraph 2 above are visible. An example of this is viewpoint number 1 (Badnagie). There is an electricity sub-station and pylons in the immediate vicinity at this location although not visible on the photograph towards the proposed development. These however impact on the local visual environment. There are also buildings on the skyline in the view and these similarly impact on landscape quality and visual amenity. In the view from the A9 at Balnabruich (viewpoint 5) there are houses and other man made features extending up the hillside above Dunbeath. Due to the landform the turbines proposed would not be visible from the majority of the properties in Dunbeath. In the view from Achorn (viewpoint 6) Buolfruch wind farm is visible to the left, there are 2 smaller turbines visible above the top of the ridge on which the proposed turbines would be located (one on each side of those proposed) and the wind farm at Burn of Whilk is visible in the distance. The area is already a landscape with turbines and I do not consider that it would be significantly altered to become a landscape of turbines if the proposed development proceeds.

9. Having regard to my assessment as set out above I do not consider that the development proposed would, of its own, be out of character in the landscape or significantly detract from the visual amenities of the area. In the circumstances I do not consider that the development on its own would be contrary to Policy 67 of the local development plan in so far as that policy refers to visual impact and impact on the landscape of the surrounding area. These issues are referenced in the third bullet point of the policy and are the relevant ones in so far as reason number 1 of the planning authority's decision is concerned.

10. The second reason for refusal refers to cumulative impacts with the two nearest now constructed wind farms. The 2 wind farms referred to are Buolfruch and Burn of Whilk. The reason refers specifically to views from the A9 which is stated to be a key tourist route. The proposed wind farm would be located closer to the A9 than Buolfruch which is located about 3.5 kilometres north of the proposed development or Burn of Whilk which is located close to the A99 about 15 kilometres to the north-east.

11. Figures 2 and 3 (Drawing nos. Ly/ZTV/02 and Ly/ZTV/03) of the visual assessment indicate the cumulative theoretical zone of visibility for Buolfruch and the proposed development combined. The 2 schemes would be visible from large areas to the west, north and south-west in particular. This area is largely an uninhabited upland area. The larger Buolfruch scheme would be the predominant impact on the wider landscape from most of these areas. The large Causeymire wind farm close to the A9 to the north is widely visible in the northern part of this area. The Buolfruch and proposed schemes would be visible from a section of the A9 to the south of Dunbeath and Balnabruich. The

photomontage from viewpoint 5 at Balnabruich indicates the proposed development from the A9 at this location. Persons travelling north would see the proposed development on the sky-line in views northwards from the road but would have to look towards the left to see the Buolfruich development which is visible on the skyline in this view. A photomontage showing the wider angle view has been submitted. The proposed development would be seen as a separate stand-alone evenly spaced development which would not in my opinion be significantly out of character in the landscape or significantly injurious to visual amenities of itself or cumulatively with Buolfruich in the view from the A9 travelling northwards.

12. Figure 3 indicates that there would not be cumulative impact from the Buolfruich wind farm and that proposed in the section of the A9 to the north of and close to the junction with the A99. There would however be cumulative visibility from locations further north. Impact from this area would be on persons travelling south on the A9 with no visibility of the proposed development to persons travelling north. Viewpoint no 7 is towards the proposed development from near the A9. As with the view northwards from Balnabruich the development proposed would be seen on the sky-line as an evenly spaced separate development from this location with Buolfruich visible in this view projecting over the hills to the right. There is also an existing single turbine and a high voltage electricity line with pylons in the space between Buolfruich and the proposed development. I do not consider that the cumulative impact with Buolfruich in views from the A9 would be such as to justify a refusal of permission on the basis of impact on landscape or visual amenity.

13. It is stated, in the visual assessment submitted with the grounds of appeal, that from viewpoints 6 (Achnorn) and 7 (A9 at location to north-east of proposed development) there would be a significant detrimental cumulative effect between the proposed development and Buolfruich wind farm. I noted on inspection that Burn of Whilk wind farm and 2 individual turbines are also visible from viewpoint 6. Viewpoint 6 is located on a minor road with relatively few receptors impacted upon. The proposed development would be located between the 2 individual turbines and whilst extending the influence of wind turbines the scheme would not in my opinion drastically alter the landscape to such an extent as to justify a refusal of planning permission. The high voltage line with pylons crosses the A9 near viewpoint 7. There are pylons and an individual turbine visible on the skyline between Buolfruich and the proposed development in the view from this location. I do not consider that the proposed development, cumulatively with Buolfruich, would have such an impact on the landscape or visual amenity as to justify refusal of permission due to impact on views from this or other locations. I also accept that the assessment of cumulative impact on landscape must have regard to the combined effect even if the schemes are not cumulatively visible from particular viewpoints. I do not consider, having regard to the landscape character of the area and the extent of existing developments, that the additional 3 turbines proposed would radically alter the landscape although the turbines would be prominent in some views.

14. Figure 5 Drawing No. Ly/ZTV/05 submitted by the applicant indicates that the A9 in the vicinity of Dunbeath, Latheronwheel and the junction with the A99 is generally not within the zone of theoretical visibility of the Burn of Whilk wind farm. This wind farm is located about 15 Kilometres to the northeast of the site of the proposed development. It is located close to the A99 and some distance from the A9. Figure 6 Drawing No. Ly/ZTV/06 indicates that the A9 contains only very limited areas where the zone of theoretical visibility of the

proposed and Burn of Whilk schemes overlap. There are some short sections of road south of Dunbeath and part of the road located further north near the Causeymire wind farm where the zones overlap. In the northern area the views are dominated by the nearby Causeymire scheme and Burn of Whilk and the proposed scheme would be in different directions. My inspection confirmed for me the limited extent of potential cumulative impact. I agree with the applicants submission that any significant cumulative impact would arise for persons travelling north on the approach towards Dunbeath, but not in the village itself. Having regard to the distance between the developments, the short sections of road where cumulative impacts would occur and the nature of the landscape as discussed above I do not consider that the cumulative impact of the 2 schemes would be so significant as to justify a refusal of permission for reason number 2 of the planning authority's decision.

15. Reason number 2 of the planning authority's decision states that the development would be in conflict with Policy Number 67 of the local development plan due to cumulative impacts with the developments referred to in the previous paragraphs. As discussed above I consider that the proposed development, although prominent in some views, would not be significantly detrimental to landscape character or visual amenity when considered cumulatively with the other schemes referred to in reason number 2 of the planning authority's decision. I accordingly do not consider the development to be contrary to Policy 67 of the local development plan.

16. Policy number 67 of the Highland-wide local development plan is a broad policy relating to renewable energy. It is stated in the policy that subject to compliance with various criteria the council will support renewable energy projects which are located, sited and designed so as not to be significantly detrimental to the listed criteria, including the landscape and visual amenity criteria on which the planning authority found against the development. Having found that the development would not be significantly detrimental on landscape and visual amenity grounds I consider that the development is generally in compliance with and supported by policy 67.

17. Policy 68 of the local development plan deals with the issue of "Community Renewable Energy Developments". It is stated that whilst the same tests will be applied to a community project, where a community takes a share in a project and where it is the only community impacted by the project this will be a material consideration. In such circumstances, subject to compliance with other relevant policies, the council may grant consent for renewable energy projects with greater impact on the amenity of the community's area than would otherwise be the case. In the current case there is an agreement between the future operators of the wind farm and the Berriedale and Dunbeath Community Council to pay to the Community Council the distributable profits of 2 of the turbines. The Community Council undertakes to utilise the funds for the benefit of people in the local post code areas. (The Community Council area does not appear to include all properties in the vicinity from which the turbines would be clearly visible). This does not imply or indicate that all residents in the area are in favour of the development. It is however a material consideration to be factored into the balance in arriving at a decision. Policy 67 also states that the council will consider any positive or negative effects the energy proposal is likely to have on the local or national economy. The current proposal would have some positive effects on the local economy due to financial income for the landowners and payments to the Community Council.

18. Reason number 3 of the reasons for refusal given by the council has now been overcome. The representation from the Ministry of Defence submitted following the appeal states that the Ministry has received a technical proposal from the applicant and no longer objects subject to a condition, agreed with the applicant, being imposed. The condition, with an amendment suggested by the planning authority, has been included in my decision although not included in the planning authority's suggested conditions. The Ministry of Defence also requests a condition requiring that details of date of commencement of development, height of construction equipment and the longitude and latitude of the turbines be submitted to the Ministry. These issues are covered in the conditions being imposed.

19. Scottish Planning Policy contains policies supportive of a low carbon economy and the use of renewable energy resources to generate electricity. It is policy that the planning system should support national objectives of deriving 100% of electricity demand from renewable resources by 2020. The policy document also contains a presumption in favour of sustainable development. There is accordingly general support for such development in the policy. Paragraph 169, however, sets out the detailed criteria including landscape and visual impacts which must be considered. These issues have been dealt with above.

*Environmental Impact Assessment:*

20. The development in question here is one for which an Environmental Statement has been submitted and which has been notified to the public under the Environmental Impact Assessment Regulations. The development is accordingly EIA development. I have taken account of the Environmental Statement and all relevant information and comment submitted by the applicant and in representations and by consultees in my environmental impact assessment and decision.

21. The greatest impact on the environment which would arise in this case is the impact on the landscape and on visual amenity. This issue has been considered in detail above. My conclusion is that whilst prominent in local views the turbines would not dominate the area or significantly adversely impact on the landscape or detract significantly from the visual amenities of the area. There would be significant visual impacts on some views but these impacts are not of such significance as to justify refusal of permission when other material considerations are taken into account.

22. One of the issues to be considered in an Environmental Impact Assessment is the impact on human beings or on population and human health in the revised Directive. Impacts from wind turbines can arise due to noise and shadow flicker. The issue of noise is dealt with in Chapter 5 of the Environmental Statement. The nearest house to the turbines is at a distance of 785 metres. The predicted noise level at this house is 32.75 dB LA90 which is below the level of 35 given in the guidance document ETSU-R-97 for low noise areas. There are not many houses in the vicinity and I consider that the development would not have any significant impact on residential amenity due to noise emissions. This issue can be adequately covered by way of condition. Having regard to the distance of the turbines from residential properties I consider that there would be no significant adverse impact due to shadow flicker which is generally considered not to be significant more than 10 times the blade diameter from the turbine. That distance would be 480 metres in this case.

23. Having regard to the upland location and the presence of some designated natural heritage areas in the vicinity the impact on flora and fauna must be considered. These issues are considered in the ecology survey and ornithological report prepared by Peak Ecology Ltd. which are contained in the Environmental Statement. None of the statutory consultees, including Scottish Natural Heritage, object to the proposed development. The access to the site crosses the Knockinnon Heath Site of Special Scientific Interest and the site is located about 1 kilometre from the East Caithness Cliffs Special Protection Area and about 5 kilometres from the Caithness and Sutherland Peatlands Special Protection Area. The surveys carried out also identified a range of bird, some of which are relatively rare, breeding in the lands close to the proposed turbines. Those noted include lapwing, curlew, skylark and meadow pipit.

24. Scottish Natural Heritage has concluded that the proposal could be progressed with mitigation measures controlling impacts on the dry heath through which the access track runs. (Some widening of the existing track would be required). A number of conditions including the preparation of a Construction Management Plan and a Habitat Management/Restoration Plan are recommended. These requirements are contained in the conditions being imposed in this decision. Scottish Natural Heritage also recommended that ideally construction should be scheduled outside the breeding season. If construction is planned for the breeding season pre-construction surveys and species protection plans are recommended. I consider that these issues are adequately covered by the conditions attached and subject to compliance with the conditions the development would not have significant adverse impact on flora, fauna or biodiversity.

25. There are a number of archaeological sites in the vicinity of the site of the proposed development. The most obvious and significant of these are 4 brochs (iron-age round-houses) referred to in the consultation report from Historic Scotland, which does not object to the proposed development. I do not consider that the development proposed would significantly detract from the setting or cultural integrity of these features or of any other designated built heritage structure. I note that the Historic Environment Team in the Highland Council recommended that a condition be imposed requiring the preparation of a programme of archaeological works. The Team had recommended that some features, including a traditional stone built structure near the proposed construction compound, should be preserved. I have included a condition along the lines recommended in relation to archaeology. This would be adequate to ensure that any historical structures or features of heritage interest which exist in the area of the development will be satisfactorily dealt with during construction.

*Appropriate Assessment:*

26. Scottish Natural Heritage has concluded that an appropriate assessment, as referred to in Article 6(3) of the European Union Habitats Directive, is required. Having regard to the proximity of the site to the 2 Special Protection Areas referred to in paragraph 23 and to the ornithological surveys carried out, I consider this conclusion to be reasonable. Scottish Natural Heritage has concluded that the impact on peregrine falcon, herring gull and greater black headed gull, which are qualifying interests of the East Caithness Cliffs SPA and on golden plover, which is a qualifying interest of the Caithness and Sutherland Peatlands SPA must be assessed. Following assessment, taking account of fatalities due to collisions, to

disturbance and possible displacement Scottish Natural Heritage concluded that the development would not result in significant adverse impacts on the populations of the species for which the assessment was carried out. On the basis of the evidence contained in the documentation this conclusion is reasonable. (The birds identified as being breeding in the vicinity of the proposed turbines are not qualifying interests for the Special Protection Areas in question). The proposed development would not accordingly adversely impact on the integrity of the 2 SPA's identified as ones on which the development would be likely to have a significant effect.

27. I note that the applicant has not raised any objection to the list of suggested conditions submitted by the planning authority. I have modified some of the conditions to take account of Circular 4/1998. I have also added a condition to take account of the submission from the Ministry of Defence. I have specified the time scale for the development to be 25 years from the date of first commissioning rather than a timescale of 30 years for the permission as stated in the first part of the planning authority's condition number 1. I consider that referring to a time scale of 30 years in addition to 25 years, in the condition, would cause confusion. The planning authority's condition requires decommissioning and removal after 25 years and also states that the turbines have a projected lifespan of 25 years. It would appear that the reference to a 30 year time scale is to allow for construction and removal following the 25 year period.

28. I conclude that, taking account of the various issues relevant to the determination of this case, the proposed development, subject to the conditions imposed, would not be contrary to the provisions of the development plan including the policies referred to in the planning authority's decision. I consider that there are no material considerations which would justify refusing to grant planning permission. I have considered all issues raised and there are none which convince me to alter my conclusion.

*Padraic Thornton*

Reporter

## Conditions

1. This planning permission allows for the operation of the wind turbines for a period of 25 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 being undertaken in accordance with the terms of condition 4 of this permission unless planning permission for their further retention shall have been granted prior to the end of that period. 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.



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

(a) The make, model, design, power rating and sound power levels of the turbines to be erected.

(b) 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.

The development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the planning authority and, with reference to part (b) 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. All wind turbine blades shall rotate in the same direction.

Reason: in the interests of visual amenity.

3. No development shall commence until full details of the location, layout, external appearance, dimensions and surface materials of all control and/or substation 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 SNH and SEPA. Thereafter, development shall be carried out in accordance with these approved details.

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

4. 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:

(a) 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

(b) 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.

The DRP shall include the removal of all above-ground elements of the development, the treatment of 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 the decommissioning of the development and restoration of the site are carried out in an appropriate and environmentally acceptable manner.

5. No development shall commence until:

- (a) 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 draft Decommissioning and Restoration Plan approved under condition 4 of this permission has been submitted to, and approved in writing by, the planning authority,
- (b) Confirmation in writing by a suitably qualified independent professional that the amount of financial provision proposed under part (a) 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
- (c) Documentary evidence that the bond or other financial provision approved under parts (a) and (b) 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:

- (a) Ensure that the bond or other financial provision is maintained throughout the duration of the permission and
- (b) 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:

- (a) Be conducted by a suitably qualified independent professional,
- (b) Be circulated within three months of each five year period ending, with a copy submitted upon its completion to both the landowner(s) and the planning authority and
- (c) Be 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 that the decommissioning of the development and restoration of the site are carried out in an appropriate and environmentally acceptable manner.

6. No development shall commence until a Construction Environmental Management Document (CEMD), in accordance with The Highland Council's Guidance Note on Construction Environmental Management Process for Large Scale Projects, August 2010, as amended, has been submitted to and approved in writing by the planning authority, in consultation with SEPA, SNH and Highland Council Community Services. The CEMD shall be submitted at least two months prior to the intended start date of construction works on site and shall include all the measures required by SNH as detailed in its submission dated 16th October 2014, including, the following:

- (a) An updated Schedule of Mitigation (SM) drawing together with all approved mitigation proposed in support of the application and other agreed mitigation (including that required by agencies and relevant planning conditions attached to this permission);
- (b) Change control procedures to manage/action changes from the approved SM, CEMD and Construction Environmental Management Plans;
- (c) Construction Environmental Management Plans (CEMPs) for the construction Phase covering;
  - (i) Habitat and Species Protection;
  - (ii) Pollution Prevention and Control;
  - (iii) Dust Management;
  - (iv) Noise and Vibration Mitigation;
  - (v) Site Waste Management;
  - (vi) Surface and Ground Water Management including drainage and sediment management measures from all construction areas, including access track improvements and mechanisms to ensure that construction will not take place during periods of high surface water flow or high rainfall.
  - (vii) Water Course Management;
  - (viii) Public and Private Water Supply Protection Measures;
  - (ix) Emergency Response Plans and
  - (x) Other environmental management as may be relevant to the development.
- (d) Special Study Area plans for;
  - (i) Species habitats identified within the Environmental Statement and/or raised by consultees and
  - (ii) Any other specific issue identified within the Environmental Statement, Schedule of Mitigation and/or conditions attached to this permission;
- (e) Post-construction restoration and reinstatement of temporary working areas, compounds and borrow pits;
- (f) Details for the appointment, at the developer's expense, of a suitably qualified Environmental Clerk of Works (ECoW), including roles and responsibilities and any specific accountabilities required by conditions attached to this permission;
- (g) A statement of responsibility to 'stop the job/activity' if a breach or potential breach of mitigation or legislation occurs; and

(h) Methods for monitoring, auditing, reporting and the communication of environmental management on site and with client, planning authority and other relevant parties.

Thereafter, development shall be carried out in accordance with the approved Schedule of Mitigation, Construction Environmental Management Document and any Construction Environmental Management Plans approved thereunder.

Reason: to ensure that the construction of the wind farm is carried out appropriately and does not have an adverse effect on the environment.

7. No development shall commence until the developer has provided the Ministry of Defence (MoD), the Defence Geographic Centre (AIS Information Centre), National Air Traffic Services (NATS) and Highlands & Islands Airports Ltd (HIAL) (copied to the planning authority) with the following information in writing:

- (i) The dates that construction will commence on site and is expected to be complete;
- (ii) The maximum height of each wind turbine, mast and construction-related equipment (such as cranes);
- (iii) A description of all structures exceeding 90 metres in height;
- (iv) The height above ground level of the tallest structure within the site;
- (v) The latitude and longitude of each proposed wind turbine;
- (vi) The number of rotor blades on each turbine; and
- (vii) The total generation capacity of the wind farm.

Thereafter, the wind farm shall not be commissioned until full details of any changes to information previously provided in relation to the items listed above (including any micro-siting alterations, if allowed under the terms of this permission) have been submitted in writing to the MoD, Defence Geographic Centre, NATS and HIAL.

Reason: to ensure that the MoD and NATS are aware of the details of the development, in the interests of aviation safety.

8. No development shall commence unless and until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind turbines upon air safety has been submitted to and approved in writing by the Planning Authority in consultation with the Ministry of Defence.

The Air Traffic Control Radar Mitigation Scheme is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Lossiemouth ("the Radar") and the air traffic control operations of the Ministry of Defence (MOD) which is reliant upon the Radar. The Air Traffic Control Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the operational life of the development provided the Radar remains in operation.

No turbines shall become operational unless and until all those measures required by the approved Air Traffic Control Radar Mitigation Scheme to be implemented prior to the operation of the turbines have been implemented and the Planning Authority has confirmed

this in writing. The development shall thereafter be operated fully in accordance with the approved Air Traffic Control Radar Mitigation Scheme.

Reason: In the interest of air safety

9. No wind turbine shall be erected until a scheme of aviation lighting (to be infrared unless technically impracticable) has been submitted to, and approved in writing by, the planning authority in consultation with the Ministry of Defence, CAA and Highlands & Islands Airports Ltd (HIAL). Thereafter, the approved scheme of aviation lighting shall be fully implemented on site, and remain operational throughout the duration of the development, unless otherwise agreed in writing with the planning authority.

Reason: in the interests of air safety.

10. No development shall commence until a Traffic Management Plan (TMP) has been submitted to, and approved by, the planning authority in consultation with the relevant Roads Authority(s). The TMP, which shall be implemented as approved, shall include:

- (a) A description of all measures to be implemented by the developer in order to manage traffic during the construction phase (including routing strategies), with any additional or temporary signage and traffic control undertaken by a traffic management consultant as agreed with the planning authority;
- (b) The identification and delivery of all upgrades to the public road network to ensure that it is to a standard capable of accommodating construction-related traffic (including the formation or improvement of any junctions leading from the site to the public road) to the satisfaction of the Roads Authority, including,
  - (i) A route assessment report for abnormal loads, including swept path analysis and details of the movement of any street furniture, any traffic management measures and any upgrades and mitigation measures necessary;
  - (ii) An assessment of the capacity of existing bridges and other structures along the construction access route(s) to cater for all construction traffic, with upgrades and mitigation measures proposed as necessary; and
  - (iii) Should the assessment at part (i) result in the identification of pinch points, a videoed trial run to confirm the ability of the local road network to cater for turbine delivery. Three weeks' notice of this trial run must be given to the local Roads Authority, who must be in attendance during transport of abnormal loads;
- (c) Drainage and wheel washing measures to ensure water and debris are prevented from discharging from the site onto the public road; and
- (d) A concluded agreement in accordance with Section 96 of the Roads (Scotland) Act 1984 under which the developer is responsible for the repair of any damage to the public road network that can reasonably be attributed to construction-related traffic. This agreement will include pre-start and post-construction road condition surveys to be carried out by the developer, to the satisfaction of the Roads Authority(s).

Reason: to protect road safety and the amenity of other users of the public road and rights of way.

11. 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 the development.

12. No development shall commence until an Access Management Plan has been submitted to, and approved in writing by, the planning authority. This shall include;

(a) Details of land on which public access will be restricted during the construction of the development and any ground where access rights may be restricted during the operation of the wind farm and;

(b) Details of control infrastructure (gates etc.) to be installed and any permanent signage aimed at the visiting public.

Reason: to maintain public access to the site during construction and operation of the wind farm.

13. No development shall commence until pre-construction surveys and mitigation measures for legally protected species have been submitted to, and approved in writing by, the planning authority in consultation with SNH. The surveys shall be carried out by a suitably experienced and licensed (if required) surveyor using recognised methods at the appropriate time of year for the species, in the 8 months period prior to construction commencing. The surveys shall include, but may not be limited to, otter, water vole and breeding birds.

Reason: to ensure that the construction of the wind farm is carried out appropriately and does not have an adverse effect on legally protected species.

14. No development shall commence until a Habitat Management/Restoration Plan has been submitted to, and approved in writing by, the planning authority in consultation with SNH. The development, including modifications to the access track shall be implemented in accordance with the agreed Habitat Management/Restoration Plan.

Reason: to ensure that the construction of the wind farm is carried out appropriately and does not have an adverse effect on the environment.

15. No development shall commence until a site specific pollution prevention plan is submitted for approval to the planning authority, in consultation with SEPA, at least two

months prior to the proposed commencement of development. The plan shall contain the following

- (a) A plan showing the location of any culvert and any field drains draining into it;
- (b) Details of proposed pollution prevention measures to prevent surface water run-off from the construction sites getting directly into any culvert; and
- (c) Details of any proposed de-culverting that would enable a watercourse to return to a more natural state.

The proposed development shall be implemented in accordance with the agreed pollution prevention plan.

Reason: to prevent pollution of the water environment.

16. No development shall commence until a programme of work for the evaluation, protection, preservation and recording of any archaeological and historic features affected by the proposed development, including a timetable for investigation, has been submitted to and agreed in writing by the planning authority. The development shall be carried in accordance with the agreed programme and timetable for investigation.

Reason: to protect any items of historic interest which exist in the site of the proposed development.

17. All of the wind turbine transformers shall be located within the tower of the wind turbine to which they relate unless otherwise agreed in writing by the planning authority.

Reason: to ensure that the wind turbine transformers do not adversely impact upon the setting, character, integrity or general amenity of the application site.

18. 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 any wind turbine installed and commissioned fails to supply electricity on a commercial basis to the grid, for a continuous period of 6 months, 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 the approved detailed Decommissioning and Reinstatement Plan (DRP) (or, should the detailed DRP not have been approved at that stage, in accordance with other decommissioning and reinstatement measures, based upon the principles of the approved draft DRP, as may be specified to and agreed 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.

19. 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, 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 wind farm is not used for advertising, in the interests of visual amenity.

20. Where ground conditions specifically require it, wind turbines, areas of hardstanding and tracks may be micro-sited within the application site boundary. However, unless otherwise approved in writing by the planning authority in consultation with SEPA and SNH, micro-siting is subject to the following restrictions:

(a) No wind turbine foundation shall be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on the original approved plans;

(b) No wind turbine, hardstanding or track shall be moved:

(i) more than 25 metres from the position shown on the original approved plans;

(ii) so as to be located within 250 metres (for turbine foundations) or 150 metres (for hardstanding, tracks or trenches) of Groundwater-dependent Terrestrial Ecosystems;

(iii) to a position closer to and within 50 metres of any watercourse;

(iv) to a position with peat of a depth exceeding 1.5 metres; or

(v) so as to be located within 50 metres of any tree or woodland.

All micro-siting permissible under this condition without requiring the approval of the planning authority must be approved by the development's Environmental Clerk of Works (ECoW). A written record shall be kept of any such ECoW approval and shall be maintained for a period extending to no less than four years following the First Export Date.

Within one month of the wind farm being commissioned, the developer shall submit an updated site plan to the planning authority showing the final position of all wind turbines, areas of hardstanding, tracks and associated infrastructure within the site. The plan shall also highlight areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW or planning authority's approval, as applicable.

Reason: to allow appropriate micro-siting within the site to enable the developer to respond to site-specific ground conditions, while enabling the planning authority to retain effective control over any changes to layout that may have ramifications for the environment and/or landscape and visual impacts.



21. All wires and cables between the wind turbines, control buildings, sub-stations and welfare buildings shall be located underground within the verge of the access tracks or within 3 metres of the access tracks, unless otherwise agreed in writing by the planning authority. Thereafter, and within three months of the completion of cable laying, the ground shall be reinstated to a condition comparable with that of the adjoining land, to the satisfaction of the planning authority.

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

22. The level of noise from the wind turbines, including the application of any tonal penalty, when determined in accordance with best practice as set out in ETSU-R-97 and the Institute of Acoustics Good Practice Guide and Supplementary Guidance Notes, shall not exceed the following: -

45dB LA90 (10 minutes) at the curtilage of any dwelling occupied by the owner of the turbines

35dB LA90 (10 minutes) at the curtilage of any other dwelling which is lawfully existing or has planning permission at the date of this permission

Noise limits expressed in dB LA90, 10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined at the turbine location averaged over 10 minute periods. Noise limits to apply at wind speeds up to and including 10m/s.

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

The assessment of the level of noise shall be undertaken by an independent noise consultant in accordance with best practice as set out in ETSU-R-97 and the Institute of Acoustics Good Practice Guide and Supplementary Guidance Notes over the relevant range of conditions.

The turbine operator shall provide to the Local Planning Authority the independent consultant's assessment of the level of noise within 2 months of the date of the written request of the Local Planning Authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the Planning Authority on request.

Time periods referred to above may only be extended following written agreement by the Planning Authority.

If the assessment concludes that noise from the turbines is not complying with the limits stipulated in this condition, the turbines shall cease operation immediately until a mitigation scheme, approved in writing by the Planning Authority, is implemented.

In the above condition:

"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 present within the environment at the relevant location (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.

Reason: to protect the amenities of residential properties in the vicinity.

### Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. 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)).
- 3. 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)).
- 4. 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).