

Agenda Item	<b>6.9</b>
Report No	<b>PLN/073/19</b>

## HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee

**Date:** 10 September 2019

19/02647/S42: Wathegar 2 Limited

**Report Title:** Land 100M NW Of Wathegar, Bilbster, Wick

**Report By:** Acting Head of Development Management – Highland

### 1. Purpose/Executive Summary

1.1 **Description:** Application under Section 42 for the Variation of condition 2 of planning permission 14/01082/S42

**Ward:** 03 - Wick and East Caithness

1.2 **Development category:** Major

**Reason referred to Committee:** Major Application

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

### 2. Recommendations

2.1 Members are asked to agree the recommendation to **Grant** planning permission as set out in section 11 of the report.

### 3. PROPOSED DEVELOPMENT

3.1 The application has been submitted under Section 42 of the Planning Act and seeking approval for non-compliance with Condition 2 (operational period) of planning permission 14/01082/S42 granted on 16 June 2014. The original planning permission 11/03671/FUL granted on 23 March 2012.

3.2 Condition 2 of the existing planning permission (14/01082/S42) states:

*The permission granted shall endure for a period of 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid network ("First Export Date"). Written confirmation of the First Export Date shall be provided to the Planning Authority within 1 month of the First Export Date.*

**Reason:** *The application is for a temporary period of 25 years.*

The First Export Date was 19 October 2017.

3.3 Wathegar Wind Farm 2 was approved in 2012 and has satisfied the suspensive planning conditions set out in the planning permission. The First Export Date of the wind farm, when electricity was first exported to the national grid on a commercial basis, was 19 October 2017. This application for non-compliance with conditions seeks to extend the operational period of Wathegar 2 Wind Farm from 25 years to 40 years from the First Export Date. This permission would seek an extension date to operate the wind farm until 18 October 2057 rather than 18 October 2042 as currently permitted.

3.4 Wathegar 2 Wind Farm has a generating capacity of 21.9MW. It comprises of the following main elements:-

- 9 Wind Turbines (each 2.43MW and 110m height to tip with a rotor diameter of 92.5m);
- External transformer housing;
- Crane hard standings for each turbine;
- Permanent access tracks, passing places and 5 watercourse crossings to gain access to the site and between the turbines;
- A combined substation, control building, site office and store;
- An overhead line / buried cable from the substation to the local 33kV distribution network;
- Buried electrical and fibre-optic cabling.

3.4 Pre Application Consultation: No formal pre-application consultation undertaken.

3.5 Supporting Information: Supporting Statement

3.6 Variations: None

#### **4. SITE DESCRIPTION**

- 4.1 Wathegar Wind Farm 2 lies approximately 8.4km west of Wick, 4km east of Watten and to the south side of the A882 public road that runs from Wick to Thurso. The total area of the site is 379ha, although the developed footprint only amounts to approximately 3.3ha. The site lies between 90m AOD to the southwest and 25m AOD at the most northerly extent (at the A882). The entire area slopes gently to the northeast.
- 4.2 At Lower Wathegar there is an unoccupied house and agricultural building. There are several disused buildings in the environs. Those at Upper Wathegar are within the site area and those at Thuster lie 250m to the north of the site boundary. In the areas around the Flex Hill and Achairn wind farms there are a number of properties in close proximity of operational turbines. With regard to the consented Wathegar 2 wind farm consideration, amongst other matters, was given in the assessment and determination of that application to properties situated along the A882 public road including Lealands, Roadside Cottage and Schoolhouse.

#### **5. PLANNING HISTORY**

- |     |  |                    |            |
|-----|--|--------------------|------------|
| 5.1 | 11/03671/FUL Construction of wind farm consisting of nine wind turbines with an overall capacity of 18mw, a height to hub of 60m and a rotor diameter of 80m, associated site access tracks, connection building and associated removal of plantation woodland and habitat restoration | Permission Granted | 23.03.2012 |
| 5.2 | 13/04347/SCRE Amendment to 11/03671/FUL to increase height of wind turbines from 101m to 110m, increase rotor diameter from 82m to maximum 92.5m with MW remaining at 2.05MW   | EIA not required   | 02.12.2013 |
| 5.3 | 14/01082/S42 Consent to amend the wording of Condition 1 attached to the existing consent to increase the consented tip height to 110m and the consented rotor diameter to 92.5m and extend the expiry date to three years from the approval of the amendment                          | Permission Granted | 16.06.2014 |

#### **6. PUBLIC PARTICIPATION**

- 6.1 Advertised: Section 34 Schedule 3 Development  
Date Advertised: 28.06.2019  
Representation deadline: 12.07.2019  
Timeous representations: 0  
Late representations: 0

## **7. CONSULTATIONS**

- 7.1 Tannach and District Community Council – no response.
- 7.2 Transport Planning – has no objection or comment to make.
- 7.3 SEPA – has no objection to seeking to extend the operational period of the wind farm from 25 to 40 years.
- 7.4 SNH – has no objection or comment to make on this proposal.

## **8. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

### **8.1 Highland Wide Local Development Plan 2012**

- 28 - Sustainable Design
- 29 - Design Quality and Place-making
- 30 - Physical Constraints
- 31 - Developer Contributions
- 55 - Peat and Soils
- 58 - Protected Species
- 59 - Other important Species
- 60 - Other Importance Habitats
- 61 - Landscape
- 67 - Renewable Energy Developments
- 72 - Pollution
- 77 - Public Access

### **8.2 Caithness and Sutherland Local Development Plan 2018**

No specific policies apply.

### **8.3 Highland Council Supplementary Planning Policy Guidance**

- Developer Contributions (November 2018)
- Flood Risk and Drainage Impact Assessment (Jan 2013)
- Highland Historic Environment Strategy (Jan 2013)
- Highland's Statutorily Protected Species (March 2013)
- Onshore Wind Energy: Supplementary Guidance (November 2017)
- Sustainable Design Guide (Jan 2013)

## **9. OTHER MATERIAL POLICY CONSIDERATIONS**

### **9.1 Scottish Government Planning Policy and Guidance**

- Scottish Planning Policy (June 2014)
- National Planning Framework for Scotland 3 (June 2014);
- Scottish Energy Strategy (December 2017);
- Onshore Wind Energy Statement (December 2017);

- Pan 1/2011 – Planning and Noise;
- Plan 60 – Planning for Natural Heritage; 20202
- 2020 Routemap of Renewable Energy;
- Onshore Wind Turbines;
- Wind Farm developments on Peat Lands;
- Siting and Designing wind farms in the landscape;

## **10. PLANNING APPRAISAL**

10.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

### **Determining Issues**

10.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

### **Planning Considerations**

10.3 The principle of the development has been established through the previous permission. This is an application to modify a condition. In order to address the determining issues therefore, Committee must consider the extent to which the proposal continues to comply with development plan policy and take into consideration any other material considerations. The key considerations in this case are:

- a) compliance with the development plan and other planning policy;
  - b) modification of Condition 2;
- any other material considerations.

### **Development plan and other planning policy**

10.4 Development Plan Policy has changed since the time of the determination of the original application as the Caithness Local Plan is no longer in force in relation to this site and the Onshore Wind Energy Supplementary Guidance has replaced the Highland Renewable Energy Strategy. The Development Plan comprises the adopted Highland-wide Development Plan (HwLDP), the Caithness and Sutherland Local Development Plan (CaSPlan), and all statutorily adopted supplementary guidance. There are no site specific allocations for this site within the CaSPlan.

10.5 The principal HwLDP policy on which the application needs to be determined is Policy 67 – Renewable Energy and the associated Onshore Wind Energy Supplementary Guidance. The other HwLDP policies listed at 8.1 of this report are also relevant and the application must be assessed against all these matters and considered in the round.

- 10.6 Policy 67 highlights that the Council will consider the contribution of the project towards renewable energy targets, positive and negative contribution of the project towards renewable energy targets, positive and negative effects on the local and national economy and other material considerations including making effective use of existing and proposed infrastructure and facilities. In that context the Council will support proposals where it is satisfied they are located, sited and designed such as they will not be significantly detrimental overall individually or cumulatively with other developments. If the Council is satisfied on these matters then the amending application will accord with the Development Plan.
- 10.7 National planning policy remains supportive of onshore wind energy development with the framework for assessing wind farm proposals set out in Scottish Planning Policy (SPP). SPP sets out that areas identified for wind farms should be suitable for use in perpetuity, it also allows for consents to be time limited. The time limit on a wind farm does not negate the need to ensure the wind farm is sited and designed to ensure impacts are minimised. In determining the original application, it was considered that in the round the impacts had been minimised. Consideration of any increase in the length of any permission that may be granted should be on the bases that the turbines continue to operate efficiently and effectively for the duration of the permission and that any turbines which become redundant within the permission period will be appropriately decommissioned.
- 10.8 The key issue therefore is whether the amendment of the condition applied for would result in the development being incompatible with the Development Plan or national planning policy. If the Council is satisfied that there will be no significant adverse impact from the proposal as tabled within this amending submission then the application can be supported.

### **Modification of Condition 2**

- 10.9 The application seeks an extended operational period for the wind farm. This does not raise material planning considerations beyond those assessed when the original permission was determined. Temporary planning permission for wind farm developments across Scotland have historically been made in line with turbine warranty. These time limited decisions also allow for the decommissioning and restoration of sites earlier should the turbines suffer serious sustained technical failures within the operational period of the consent.
- 10.10 The Council is satisfied that there is no reason to suppose that turbines could not have a useful extended life after a manufacturer's warranty expires. The key thing would be to ensure that any approval for an extended period of planning permission has sufficient safeguards to ensure that:
- the turbines continue to operate effectively;
  - all mitigation is sustained for the full operational life of the wind farm; and
  - the provisions for turbine failures and final removal are continued.
- 10.11 The Wathegar Wind Farm 2 planning permission is subject to a number of planning conditions. The following conditions are particularly relevant should a longer operational period be supported:

- Conditions 1 – provides the basis that the development shall be undertaken in accordance with the planning permission reference 11/03671/FUL, approved plans and the environmental statement.
- Conditions 2 – provides the basis for “project end” date.
- Conditions 3 – provides for the removal of any turbine that fails to supply electricity for a continuous period of 6 months.
- Conditions 6 – provides for the decommissioning and site restoration of the site.
- Condition 7 – provides a financial guarantee for decommissioning and site restoration.

10.12 Any permission granted would require the above conditions to remain in place to ensure: mitigation continues to be secured; the operation life of the wind farm is clear; and the decommissioning of the wind farm is secured at the end of the operational life of the wind farm.

10.13 The applicant has proposed wording to modify Condition 2. As set out above subject to other conditions remaining in force this is broadly acceptable. A further modification is however proposed to ensure the timescale for decommissioning and restoration of the site is clearly defined. This will be defined as a 3 year period from the end of the operational life of the wind farm.

#### **Other material considerations**

10.14 All suspensive planning conditions as previously applied have been satisfied, some of these require ongoing application of mitigation or are operational requirements. As this is the case these require to remain in force. It is worth highlighting that an application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity, as part of the process in considering the proposed variation, to amend any, or each of the original conditions previously applied which it considers necessary to regulate the development proposed. This can ensure the wording is in line with current good practice and ensure the conditions are suitable to regulate the proposed development. All of the conditions have been reviewed given the scheme is now operational. The conditions have been reworded to reflect the operational status of the scheme.

10.15 The original application was supported by an Environmental Statement which is applicable to the current application. In this regard, given that the existing development is supported by an Environment Statement, a new decision being issued following an approval of the S42 will require any schedule of mitigation to be highlighted within the Decision Notice in compliance with EIA Regulations 2017.

10.15 There are no other material considerations.

#### **Non-material considerations**

10.16 The development provides community benefit provision in line with corporate policies of the Council and Scottish Planning Policy. This currently applies for the 25 years of wind farm operation / electricity generation. Should this application be

supported then there should be a continuance of community benefit payments for the extended years of operation. This will require relevant agreements to be updated to reflect any grant of this Section 42 application.

### **Matters to be secured by Legal Agreement**

- 10.17 The existing development is subject to an agreement under Section 69 of the Local Government (Scotland) Act 1973 (As Amended). This requires a financial bond to be lodged with the Council to cover decommissioning and site restoration. The provisions of the bond are reviewed every five years allowing indexation of the bond in line with inflation. Should the application be supported then the legal agreement will need to be updated to reflect the longer period of operation.
- 10.18 The applicant has four months from the date that the Council's solicitor writes to the Applicant/Applicant's solicitor indicating the terms of the legal agreement, to deliver to the Council a signed legal agreement to which the applicant, the Council and any other interested parties are signatories. Should an agreement not be delivered within four months, the application shall be refused under delegated powers.

## **11. CONCLUSION**

- 11.1 The Council is broadly supportive of renewable energy projects in line with national policy. The impact of this wind farm has been deemed to be acceptable in this location and the development is operational. There have been no objections raised in respect of this amendment to the application from third parties or statutory consultees.
- 11.2 It is considered that sufficient safeguards are in place through the conditions which would remain in force on the permission to ensure that should the turbines fall into disrepair or fail, remedial measures can be put in place.
- 11.3 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

## **12. IMPLICATIONS**

- 12.1 Resource: Not applicable.
- 12.2 Legal: Amend Legal Agreement
- 12.3 Community (Equality, Poverty and Rural): Not applicable.
- 12.4 Climate Change/Carbon Clever: Not applicable.
- 12.5 Risk: Not applicable.
- 12.6 Gaelic: Not applicable.



### 13. RECOMMENDATION

**Action required before decision issued** Y

Conclusion of Section 75 Obligation Y

**Subject to the above**, it is recommended that planning permission be **GRANTED**, subject to modification of the Legal Agreement under Section 69 of the Local Government (Scotland) Act 1973 (As Amended) and the following:

#### **Conditions and Reasons**

1. The development shall be undertaken in accordance with the planning permission reference 11/03671/FUL, approved plans and the environmental statement except in so far as amended by the terms of this consent or as subsequently agreed in writing by the Planning Authority in consultation with Scottish Natural Heritage and Scottish Environmental Protection Agency.

**Reason:** To ensure the development is carried out in accordance with the submitted documentation.

2. The Planning Permission is granted for an operational period of up to 40 years from the date when electricity was first exported from the wind turbines to the electricity grid network, defined as the First Export Date (17 October 2017). At the end of the operational period decommissioning and restoration shall be completed within 43 years of the First Export Date in line with the provisions of Condition 6 of this planning permission.

**Reason:** The application is for a temporary period of 40 years.

3. If any wind turbine fails to supply electricity to the grid for a continuous period of 6 months then, unless otherwise agreed in writing with the Planning Authority, a scheme for the removal of that wind turbine and any surface ancillary works solely relating to that wind turbine shall be submitted in writing for the approval of the Planning Authority. The scheme shall then be implemented as approved.

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

4. The turbines to be erected on site shall be the RePower MM92 wind turbine in accordance with the design as shown on the approved drawing Figure 5. The external colour of each turbine shall be a non-reflective semi-matt pale grey colour (RAL colour 7035) unless otherwise agreed in writing with the Planning Authority. No name, sign or other logo shall be displayed on any external surfaces of the wind turbines save as required by law. For the avoidance of doubt, all wind turbine blades shall rotate in the same direction, consistent with existing Turbines at Wathegar 1, Achairn and Flex Hill wind farms.

**Reason:** In the interests of visual amenity and to comply with the Council's Highland Renewable Energy Strategy.

5. Turbines and tracks may be micro-sited within 50 metres of the positions shown on approved layout submitted with the application.

**Reason:** To allow areas of deep peat and wetlands to be avoided in the final design.

6. Not later than 12 months before the end of the consent period, a decommissioning and site restoration scheme shall be submitted for the written approval of the Planning Authority, such scheme to include the removal of above-ground elements of the development, management and timing of any works, environmental management provisions and a traffic management plan to address any traffic impact issues during the decommissioning period. The scheme shall be implemented as approved.

**Reason:** To ensure the decommissioning and removal of the development in an appropriate and environmentally acceptable manner and the restoration of the site, in the interests of safety, amenity and environmental protection.

7. The applicant shall ensure that the approved bond or any other financial provision which may be put in place at the review dates to cover all decommissioning and site restoration costs is maintained throughout the duration of this consent. For the avoidance of any doubt the bond or other financial provision shall include an element to address an appropriate wear and tear agreement with the local Roads Authority to ensure no net detriment to the local road network as a result of decommissioning works. The bond or other financial provision will be subject to a five yearly review from the commencement of the development, to be conducted by a competent independent professional who has relevant experience within the wind energy sector.

**Reason:** To ensure that the restoration of the site is achieved after decommissioning, and safeguard the local road network from the impact of these works.

8. Prior to any further development or works on the site, inclusive of decommissioning and any maintenance that requires provision of new or improved tracks, or replacement of any turbine components (defined as towers, blades or nacelles), a Construction Traffic Management Plan shall be submitted to and agreed in writing by the Planning Authority. The Construction Traffic Management Plan shall include proposals for construction vehicle routing, the location and design of accesses from the public highway onto the site, management of traffic at junctions to and crossings of the public highway and other public rights of way, the scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, temporary removal or replacement of highway infrastructure and street furniture, off-site road works and banksman details etc. The approved Construction Traffic Management Plan shall be implemented as approved in writing by the Planning Authority. For the avoidance of any doubt this will include details to advise the public including road users on the A882 and those living along the access route of the expected abnormal loads associated with the delivery of turbine parts.

**Reason:** In order to protect highway safety and the amenity of other users of the public highway and rights of way.

9. Prior to any further development or works on the site, inclusive of decommissioning and any maintenance that requires provision of new or improved tracks, or replacement of any turbine components (defined as towers, blades or nacelles), an agreement dealing with liability for remedial work required as a result of any damage to the local road network directly attributable to the Wind Farm construction and providing for pre and post construction surveys of the said local road network has been submitted to and agreed in writing with the Planning Authority in consultation with the local Roads Authority.

**Reason:** In order to protect highway safety and the amenity of other users of the public highway and rights of way.

10. The Community Liaison Group established by the developer, in collaboration with Highland Council and local Community Council's, to allow views on the phased delivery of all road mitigation measures required for the development and decommissioning of the wind farm to be shared and taken into account and to keep under review the timing of the delivery of turbine parts (blades turbine tower sections and hubs) using the local road network shall remain in place until decommissioning of the site has been completed.

**Reason:** To assist with the delivery of the development and its decommissioning.

11. Prior to any further development or works on the site, inclusive of decommissioning and any maintenance that requires provision of new or improved tracks, or replacement of any turbine components (defined as towers, blades or nacelles), a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority in consultation with SNH, SEPA and other Council Services. Construction of the development shall proceed in accordance with the approved CEMP, unless otherwise agreed in writing by the Planning Authority. The CEMP should include information on the following matters: -

- Environmental Policy - Statement of responsibility for all environmental features, safeguards and mitigation.
- Appointment and scope of work for an Ecological Clerk of Works (ECoW) who shall have responsibility for monitoring compliance with the provisions of the approved CEMP and who shall report all breaches of the approved CEMP to the Planning Authority.
- Details of construction works, the construction methods and surface treatment of all hard surfaces and tracks.
- Details of temporary site compounds for storage of materials and machinery (including areas designated for car parking).
- Details of the timing of works and methods of working for cable trenches and foundation works.
- Details of the timing of works and construction of the substation/ control buildings and anemometry masts.
- Details of the bridges and culverts for all new water crossings.

- Pollution control arrangements, including protection of water courses and ground water and soils, bunding of fuel storage areas, and sewage disposal.
- Dust management.
- Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to / from the site to prevent spillage or deposit of any materials on the highway.
- Disposal arrangements of surplus materials.
- Post construction restoration / reinstatement of the temporary working areas.
- Construction noise management plan (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise in the event of complaints).

**Reason:** To protect highway safety, amenity and control pollution of air, land and water.

12. The approved "Forestry and Nature Conservation Management Plan" (submitted to the Planning Authority on 02 June 2016) shall be implemented as approved throughout the operational life of the wind farm.

**Reason:** To protect and enhance local woodland, wetlands and nature conservation interests.

13. Prior to any further development or works on the site, inclusive of decommissioning and any maintenance that requires provision of new or improved tracks, or replacement of any turbine components (defined as towers, blades or nacelles), survey work and all necessary mitigation shall be undertaken in respect of the interests of protected species within and adjacent to the application site as agreed in writing with the Planning Authority in respect of all construction and site restoration associated with this project. The earlier noted Ecological Clerk of Works shall oversee the construction and decommissioning phase of the development and that that individual shall be given the power to stop construction works if necessary to safeguard protected species and their habitats.

**Reason:** To protect the interests of European and other Protected Species which prevail within the area of the proposed construction works.

14. The approved scheme of mitigation for shadow flicker (submitted to the Planning Authority on 05 April 2016) shall be implemented in accordance with the details contained therein. Any variation to the approved scheme shall be submitted to and approved in writing by the Planning Authority.

**Reason:** To protect the occupiers of residential units from the effects of shadow flicker.

15. The approved Television and Radio Mitigation Plan (submitted to the Planning Authority on 05 April 2016) shall be implemented and be effective for a period of 12 months from the 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 and the results submitted to the planning authority. Should any impairment to the

TV signal be attributable to the wind farm, 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 that any effect on TV or radio reception is rectified.

16. The applicant provided both the Ministry of Defence and the Defence Geographic Centre (AIS Information Centre) with a statement on 29 March 2016, copied to the Planning Authority and Highland and Islands Airport Authority Ltd, containing the following information:

- The date of commencement of the construction;
- The exact position of the turbine towers in latitude and longitude;
- A description of all structures over 300 feet high.
- The maximum extension height of any construction equipment;
- The height above ground level of the tallest structure; and
- The lighting schemes for relevant turbines, taking account of existing turbine lighting, as agreed with aviation interests and the Planning Authority.

Shall any of the above matters change in the course of the operation or decommissioning of the development a further statement containing the above information shall be submitted to Ministry of Defence and the Defence Geographic Centre (AIS Information Centre), copied to the Planning Authority and Highland and Islands Airport Authority Ltd.

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

17. The approved scheme for measuring and assessing the levels of noise emission from the development cumulatively with the Achairn 04/00366/FULCA; Flex Hill 04/00017/FULCA and Wathegar 10/00042/FULCA wind farms submitted to the Planning Authority in May 2016 shall be implemented. The submitted scheme details the measurement methodology, proposed measurement locations, relevant wind speeds and directions and reporting procedures.

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

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

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

c) 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 farm operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the 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.

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

e) Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the Local Planning Authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the Local Planning Authority for the complainant's dwelling.

f) The wind farm operator shall provide to the Local Planning Authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the Local Planning Authority. The assessment shall include all data collected for the

purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Local Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

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

**Table 1** - Between 07:00 and 23:00 - Noise limits expressed in dB LA90,10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods												
	1	2	3	4	5	6	7	8	9	10	11	12	
Achair Cottage	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.9
Achair Farm	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.9
Basquary	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.9
Flex Cottage	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.0	50.5	55.1	59.6	63.9
Housequoy	35.0	35.0	35.0	35.0	35.0	36.8	39.6	42.3	44.8	47.2	49.4	49.4	51.2
Lealands	35.0	35.0	35.0	35.0	35.0	35.4	38.3	41.3	44.1	46.5	48.4	48.4	49.4
Roadside Farm	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.5	48.4	49.4
Rowangarth	35.0	35.0	35.0	35.0	35.0	36.8	39.6	42.3	44.8	47.2	49.4	49.4	51.2
Schoolhouse	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.5	48.4	49.4
Gardeners Cottage	35.0	35.0	35.0	35.0	35.0	38.0	41.8	46.0	50.5	55.1	59.6	59.6	63.9
Thuster*	45.0	45.0	45.0	45.0	45.0	45.4	45.0	45.0	45.0	45.0	46.5	48.4	49.4

\* Includes Stockman's Cottage; Thuster Mains; Thuster House; Thuster Bungalow

**Table 2** - Between 23:00 and 07:00 - Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Achair Cottage	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.9
Achair Farm	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.9
Basquary	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.9
Flex Cottage	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.0	50.5	55.1	59.6	63.9
Housequoy	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.8	44.3	47.7	50.9	53.5
Lealands	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.5	43.4	46.2	48.7
Roadside Farm	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.2	48.7
Rowangarth	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.8	44.3	47.7	50.9	53.5
Schoolhouse	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.2	48.7
Gardeners Cottage	38.0	38.0	38.0	38.0	38.0	38.0	41.8	46.0	50.5	55.1	59.6	63.9
Thuster *	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	46.2	48.7

\* Includes Stockman's Cottage; Thuster Mains; Thuster House; Thuster Bungalow



**Table 3** - Coordinate locations of the properties listed in Tables 1 and 2.

<b>Property</b>	<b>Easting</b>	<b>Northing</b>
Achairn Cottage	329887	949878
Achairn Farm	330341	950138
Basquary	330674	950348
Flex Cottage	326344	951562
Housequoy	330994	950369
Lealands	328700	952575
Roadside Farm	329075	952405
Rowangarth	331015	952076
Schoolhouse	329475	952269
Gardeners Cottage	326016	952056
Stockman's Cottage, Thuster Farm	330048	951920
Thuster Mains	329940	951961
Thuster House	330117	951868
Thruster Bungalow	330261	951863

Note to Table 3: The geographical coordinate references are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies.

**Reasons:** In the interests of the amenity of existing residents in the area.

### **REASON FOR DECISION**

It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

## **TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION**

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

## **FOOTNOTE TO APPLICANT**

### **Initiation and Completion Notices**

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

### **Accordance with Approved Plans and Conditions**

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

### **Flood Risk**

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

## **Scottish Water**

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

## **Septic Tanks and Soakaways**

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

## **Local Roads Authority Consent**

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

[http://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/101/permits\\_for\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2)

## **Mud and Debris on Road**

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

**Construction Hours and Noise-Generating Activities:** You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on

Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

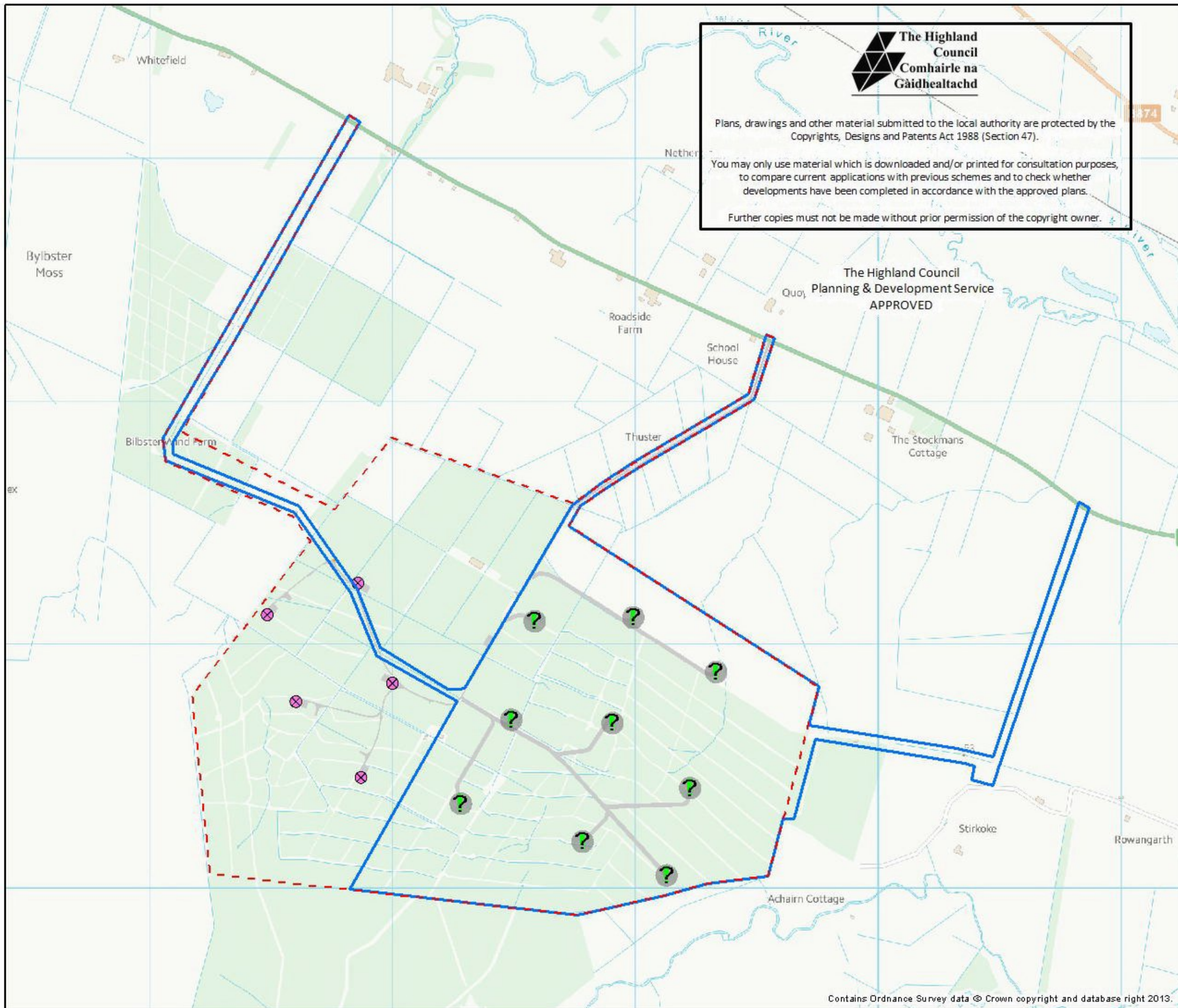
Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact [env.health@highland.gov.uk](mailto:env.health@highland.gov.uk) for more information.

### **Protected Species – Halting of Work**

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: [www.snh.gov.uk/protecting-scotlands-nature/protected-species](http://www.snh.gov.uk/protecting-scotlands-nature/protected-species)

Designation:	Acting Head of Development Management – Highland	
Author:	Claire Farmer	
Background Papers:	Documents referred to in report and in case file.	
Relevant Plans:	Plan 1	Location Plan
	Plan 2	Site Layout



Wathegar 2

Figure 1  
Site Layout

- ▬ Application Area
- ▬ Approved Application Area / Land Within Control of Applicant
- ? Wathegar 2 Turbine
- 92.5m Rotor Swept Area
- ▬ Access Track
- ? Wathegar Turbine
- Electrical Control Building

PROJECT ION SYSTEM OSGB 1906 BNG	AUTHOR J HARPER
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**SCALE**

0 60 120 240 360 480 m

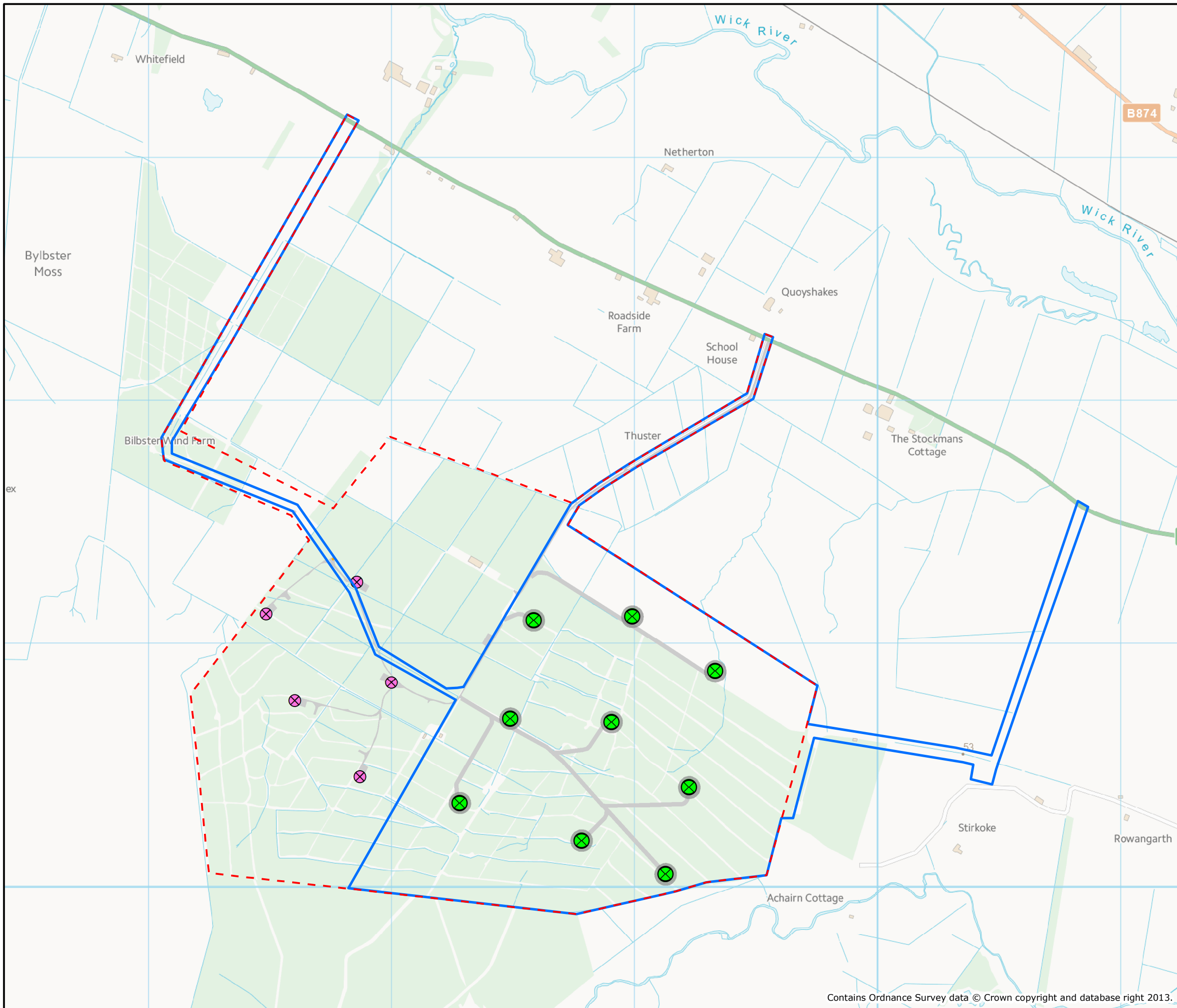
**1:15,000**

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**Whirlwind**  
Renewables

THE MEDIA CENTRE  
7, NORTHUMBERLAND STREET  
HUDDERSFIELD  
HD1 1RL

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## Wathegar 2

### Figure 1 Site Layout

- ▬ Application Area
- ▬ Approved Application Area / Land Within Control of Applicant
- ⊗ Wathegar 2 Turbine
- ▬ 92.5m Rotor Swept Area
- ▬ Access Track
- ⊗ Wathegar Turbine
- Electrical Control Building

PROJECTION SYSTEM  
OSGB 1936 BNG

AUTHOR  
J HARPER

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#### SCALE

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