

Agenda Item	6.7
Report No	PLS-063-20

HIGHLAND COUNCIL

Committee: South Planning Applications Committee
Date: 08 December 2020
Report Title: 20/03263/S36: Farr Wind Farm Limited
Farr Wind Farm, Moy, Tomatin, Inverness
Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Farr Wind Farm - Variation of Section 36 Consent under the Electricity Act 1989 to extend the operational period of Farr Wind Farm from 25 years to 35 years
Ward: 19 – Inverness South

Development category: Major Development

Reason referred to Committee: Consultation from Scottish Government on a variation to a Section 36 Wind Farm (Major Development)

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.

Recommendation

Members are asked to agree the recommendation to **Raise No Objection** to the application as set out in section 11 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 The Highland Council has been consulted by the Scottish Government's Energy Consents Unit (ECU) on an application made under Section 36C of the Electricity Act 1989 (as amended) for an extension of the operational period of Farr Wind Farm from the consented 25 years for a further 10 years, meaning the wind farm would be operational until December 2040.
- 1.2 The Farr Wind Farm was consented in 2004 and comprises of 40 wind turbines of 101m to blade tip (capable of generating up to 92MW in total) and ancillary infrastructure including approximately 18km of on-site access tracks and 2 permanent metrological masts. A copy of the original Section 36 consent is attached to this report as Appendix 2.
- 1.3 The applicant undertook a series of consultation events prior to submitting the application including virtual meetings with the affected community councils and delivery of newsletters explaining proposed extension of time application.
- 1.4 The applicant sought informal pre-application advice from The Highland Council and the Scottish Government's Energy Consents Unit on matters of procedure prior to submission of the application.
- 1.5 The application has been supported by the following information:
 - Environmental Statement with appendices related to the following matters:
 - Inspection, Servicing, Maintenance and Repair Programme;
 - Ecology and Ornithology;
 - Landscape; and
 - Noise.
 - The decision letter for the wind farm;
 - Pre-Application consultation material; and
 - A copy of the EIA Screening Opinion from Scottish Government.
- 1.6 No variations have been made to the application since it was submitted to the Energy Consents Unit.

2. SITE DESCRIPTION

- 2.1 The site is located approximately 16km south west of Inverness between Strathnairn to the north and west and Strathdearn to the south and east. The site is located at the eastern edge of the Monadhliath Mountains.
- 2.2 The site lies wholly within the Kyllachy Estate, where the Farr Wind Farm has been operational since December 2005. In 2015, Scottish Ministers granted planning permission for the Glen Kyllachy Wind Farm on land to the south of the Farr Wind Farm for a further 20 Wind Turbines which are now under construction following an appeal against the refusal of planning permission being upheld.
- 2.3 There are no known areas of archaeological significance within the application site, however the wider area is known to contain a range of historical features. General Wade's Military Road passes through the site and a number of other cultural features

are identified on the Council's Historic Environment Record including the Badachreamh farmstead, Uaigh an Duine-bheo burial monument and the Rout of Moy remains of a walled enclosure, farmstead and field system.

- 2.4 The application site and wider area is frequented by a range of birds and species. This includes otter, water vole, mountain hare, dunlin and golden plover. The National Vegetation Classification survey which accompanied the original application identified that the construction of the wind farm would have affected areas of dry and wet heath.
- 2.5 There are no national landscape designations within the site, but the nearest boundary of Cairngorms National Park is approximately 9km to the south east. The Cairngorm Mountain National Scenic Area is 22km to the south east. The Loch Ness and Duntelchaig Special Landscape Area is located approximately 3.5km to the west of the site and the Drynachan, Lochindorb and Dava Moors Special Landscape Area is 7km to the north east. The turbine area is characterised as Rolling Uplands in the Scottish Landscape Character Types Map produced by NatureScot. Wild Land Area 20 (Monadhliath) is located approximately 12km to the south.

3. PLANNING HISTORY

- | | | | |
|-----|-----------------|--|--------------------------------|
| 3.1 | 5 October 2004 | 02/00087/S36IN – Construction and Operation of a Wind powered Electricity Generating Station | Approved by Scottish Ministers |
| 3.2 | 2 Sept 2004 | 04/00517/FULIN - Construction of an access track. Amendment to alignment applied for under Electricity Act 1989 Sec 36 application ref 02/00087/S36IN | Planning permission granted |
| 3.3 | 10 Sept 2004 | 04/00816/FULIN - Construction of 132 Kv/33 Kv substation to connect proposed windfarm to existing 132 Kv tower line | Planning permission granted |
| 3.4 | 7 February 2007 | 06/01040/FULIN - Retrospective application for changes in the alignment of the access track from the A9(T) to the wind farm at Farr as approved under 04/517 & 518 | Planning permission granted |
| 3.5 | 11 June 2020 | 20/02008/SCRE - Variation of condition 3.1 - extend operational life of Farr Windfarm from 25 to 35 years | EIA Not Required |

4. PUBLIC PARTICIPATION

- 4.1 Advertised: EIA Development

Date Advertised: 04.09.2020 and 11.09.2020 in the Edinburgh Gazette, Herald and the Inverness Courier

Representation deadline: 12.10.2020

Representations Received 0
by The Highland Council

Representations Received 0
by The Scottish
Government's Energy
Consents Unit

5. CONSULTATIONS

5.1 **Strathnairn Community Council** support the extension of time of operation of Farr Wind Farm.

5.2 **Strathdearn Community Council** did not respond to the consultation.

5.3 **Access Officer** does not object to the application.

5.4 **Environmental Health Officer** does not object to the application. He notes that since the original wind farm was approved Glen Kyllachy Wind Farm was consented with cumulative noise limits. He recommends a cumulative noise limit condition.

5.5 **Flood Risk Management Team** do not object to the application.

5.6 **Transport Planning Team** do not object to the application.

Consultations Undertaken by Energy Consents Unit

5.7 **British Telecom** do not object to the application. It notes that the wind farm should not cause interference to its current and planned radio network.

5.8 **Defence Infrastructure Organisation** do not object to the application.

5.9 **Highlands and Islands Airports Limited** do not object to the application.

5.10 **Historic Environment Scotland** do not object to the application. It notes that the application will not lead to an increase in effect on the historic environment on matters within its remit and no increase in significant effects is likely.

5.11 **National Air Traffic Services** do not object to the application as it notes the development does not conflict with its safeguarding criteria.

5.12 **NatureScot** do not object to the application. It is satisfied that the proposal will not result in significant additional impacts on natural heritage.

5.13 **Scottish Water** do not object to the application. It notes that no Scottish Water drinking water catchments will be impacted by the development and explains that it will not accept any surface water connections into its combined sewer system.

5.14 **Scottish Environment Protection Agency** do not object to the application.

5.15 **Transport Scotland** do not object to the application. It is satisfied that the proposed life extension will not have any impact on the trunk road network.

6. DEVELOPMENT PLAN POLICY

6.1 The following policies are relevant to the assessment of the application

Highland Wide Local Development Plan 2012

- 6.2
- 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

Inner Moray Firth Local Development Plan

6.3 There are no site-specific policies covering the site, therefore the application requires to be assessed against the general policies of the Highland-wide Local Development Plan referred to above. However, the Inner Moray Firth Local Development Plan identifies Special Landscape Areas within the plan area.

Highland Council Supplementary Planning Policy Guidance

- 6.4 The Onshore Wind Energy Supplementary Guidance provides additional guidance on the principles set out in Policy 67 - Renewable Energy Developments of the Highland-wide Local Development Plan and reflects the position on these matters as set out in Scottish Planning Policy. This document is a material consideration in the determination of planning applications following its adoption as part of the Development Plan in November 2016.
- 6.5 The document includes a Spatial Framework, which is in line with Table 1 of Scottish Planning Policy. The site sits partially within an “area with potential for wind farm development” and “an area with significant protection”.
- 6.6 The document also contains the Landscape Sensitivity Appraisals. The majority of the site sits within the Loch Ness Sensitivity Appraisal area.
- 6.7 The following Supplementary Guidance forms a statutory part of the Development Plan and is considered pertinent to the determination of this application:
- Developer Contributions (November 2018)
 - Flood Risk & Drainage Impact Assessment (Jan 2013)
 - Highland Historic Environment Strategy (Jan 2013)
 - Highland's Statutorily Protected Species (March 2013)
 - Highland Renewable Energy Strategy & Planning Guidelines (May 2006)
 - Managing Waste in New Developments (March 2013)
 - Onshore Wind Energy: Supplementary Guidance (Nov 2016)
 - Physical Constraints (March 2013)

- Special Landscape Area Citations (June 2011)
- Standards for Archaeological Work (March 2012)
- Trees, Woodlands and Development (Jan 2013)

7. OTHER MATERIAL POLICY CONSIDERATIONS

- 7.1 The Highland-wide Local Development Plan is currently under review and is at Main Issues Report Stage. It is anticipated the Proposed Plan will be published following publication of secondary legislation and National Planning Framework 4. The Inner Moray Firth Local Development Plan is also under review but is not likely to contain provisions with regard to this type of development.
- 7.2 In addition to the above, the Council has further advice on delivery of major developments in a number of documents. This includes Construction Environmental Management Process for Large Scale Projects and The Highland Council Visualisation Standards for Wind Energy Developments.

Scottish Government Planning Policy (SPP) and Guidance

- 7.3 Scottish Planning Policy (SPP) advances principal policies on Sustainability and Placemaking, and subject policies on A Successful, Sustainable Place; A Low Carbon Place; A Natural, Resilient Place; and A Connected Place. It also highlights that the Development Plan continues to be the starting point of decision making on planning applications. The content of the SPP is a material consideration that carries significant weight, but not more than the Development Plan, although it is for the decision maker to determine the appropriate weight to be afforded to it in each case.
- 7.4 SPP sets out continued support for onshore wind. It requires Planning Authorities to progress, as part of the Development Plan process, a spatial framework identifying areas that are most likely to be most appropriate for onshore wind farms as a guide for developers and communities. It also lists likely considerations to be taken into account relative to the scale of the proposal and area characteristics (Para. 169 of SPP).
- 7.5 Paragraph 170 of SPP sets out that areas identified for wind farms should be suitable for use in perpetuity. This means that even though the consent is time limited the use of the site for a wind farm must be considered as, to all intents and purposes, a permanent one. The implication of this is that operational effects should be considered as permanent, and their magnitude should not be diminished on the basis that the specific proposal will be subject to a time limited consent.
- 7.6 Paragraph 174 of SPP sets out that proposals to repower existing wind farms which are already in suitable sites can help to maintain or enhance installed capacity, under pinning renewable energy targets. It further highlights that the current use of a wind farm site will be a material consideration in any repowering proposal.

Other Relevant National Guidance and Policy

- 7.7
- National Planning Framework for Scotland 3.
 - Scottish Energy Strategy (Dec 2017).
 - PAN 56 – Planning and Noise.
 - PAN 58 – Environmental Impact Assessment.
 - PAN 60 – Planning for Natural Heritage.
 - 2020 Routemap for Renewable Energy.
 - Onshore Wind Energy (Statement) (Dec 2017).
 - Onshore Wind Turbines.
 - NatureScot Siting and Designing wind farms in the landscape.
 - Wind Farm developments on Peat Lands.

8. PLANNING APPRAISAL

- 8.1 As explained, the application has been submitted to the Scottish Government for approval under Section 36 of the Electricity Act 1989 (as amended). Should Ministers approve the development, it will receive deemed planning permission under Section 57(2) of the Town and Country Planning (Scotland) Act 1997 (as amended). While not a planning application, the Council processes S36 applications in the same way as a planning application as a consent under the Electricity Act will carry with it deemed planning permission.
- 8.2 Schedule 9 of The Electricity Act 1989 contains considerations in relation to the impact of proposals on amenity and fisheries. These considerations mean the developer should:
- Have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and
 - Reasonably mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.
- 8.3 It should be noted that for applications under the Electricity Act 1989 that the Development Plan is just one of a number of considerations and Section 25 of the Town and Country Planning (Scotland) Act 1997 which requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise, is not engaged.

Determining Issues

- 8.4 While this is the case 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

- 8.5 The key considerations in this case are:
- a) compliance with the development plan and other planning policy
 - b) modification of time limit condition; and
 - c) any other material considerations.

Development plan/other planning policy

- 8.6 Development Plan and Scottish Planning Policy has changed significantly since the time of the determination of the original application in 2004. The Development Plan comprises the adopted Highland-wide Development Plan (HwLDP), the Inner Moray Firth Local Development Plan (IMFLDP) and all statutorily adopted supplementary guidance. There are no site specific allocations for this site or policies related to this type of development within the IMFLDP. The IMFLDP broadly sets out ongoing support for renewable projects that will release benefits from the energy sector.
- 8.7 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 6.1 of this report are also relevant and the application must be assessed against all these matters and considered in the round.
- 8.8 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 so that they will not have a significant detrimental impact either individually, or cumulatively with other developments.
- 8.9 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, Ministers considered that impacts had been minimised or mitigated.
- 8.10 While the turbines are not being replaced, the application seeks a further 10 years of operation, therefore it can be considered that the application is a repowering application under the terms of paragraph 174 of SPP. Therefore, consideration requires to be given to whether the impacts of the existing wind farm have been shown to be capable of mitigation.
- 8.11 Consideration of any increase in the length of any permission that may be granted should be on the basis that the turbines continue to operate efficiently and effectively

for the duration of the permission and that any turbines which becomes redundant within the permission period will be appropriately decommissioned.

- 8.12 The key issue therefore is whether the amendment of the condition would result in the proposal being incompatible with the Development Plan or national planning policy. If the Council is satisfied that the variation to the consent will not be significantly detrimental overall, then the application can be supported.

Modification of time limit condition

- 8.13 The application seeks an extended operational period for the wind farm. This has been the result of the developer undertaking an assessment of the existing wind farm primarily looking at the extension of its life. This confirmed that the wind farm would be viable for a further 10 years subject to a programme of works for the renewal, refurbishment and repair of turbine components. These are set out within the *Inspection, Servicing, Maintenance and Repair Programme* submitted in support of this application. This includes recommendations for additional maintenance and inspections of particular turbine components.
- 8.14 The principle of the development has been established. This is an application to modify the requirements of a condition on an existing consent. In order to address the determining issues therefore, the Council must consider the extent to which the proposal, as amended, continues to comply with policy and take into consideration any other material considerations. Consideration is required of the continued suitability of the site for use for a wind farm for a further 10 years and the associated operational impacts. The applicant has submitted an Environmental Report which focuses on the operational impacts as they relate to: Landscape and Visual Effects; Ecology and Ornithology Effects; Cultural Heritage and Archaeology Effects; and Noise Effects. These matters are addressed in turn below

1. Landscape and Visual Impacts

- 8.15 The applicant has noted that while a number of landscape designations have been identified in the vicinity of the site since the original wind farm was consented, including the Loch Ness and Duntelchaig Special Landscape area and the Cairngorms National Park, there is no noticeable change to the baseline landscape character. It does however recognise that a number of wind farm developments have been constructed in the area in proximity to the wind farm since its consent. While these additional developments have a cumulative impact with Farr Wind Farm, it is not considered that the extension of the operational period of Farr Wind Farm would be seen as having a significantly adverse impact on landscape character or landscape designations, individually or cumulatively.
- 8.16 Wild Land Areas were mapped in 2014 and descriptors of each Wild Land Area were published in 2017. While not a landscape designation, Wild Land Areas are nationally important. Wild Land Area 20 (Monadliadh) is located approximately 12km to the south. As the Farr Wind Farm has been in operation since 2005, it would have been taken into consideration in the mapping exercise which identified the Wild Land Areas. It is not considered that the proposal would adversely effect the physical or perceptual experiences of the Wild Land Area.

- 8.17 In relation to visual impact, the Farr Wind Farm has become part of the visual baseline for the area. It is predominantly viewed from elevated positions to the south west of Loch Ness and from the A9 to both the south and north of Inverness. In 2017, the Council published the Onshore Wind Energy Supplementary Guidance which included the Loch Ness Sensitivity Appraisal. The guidance includes 10 criteria against which new wind farms should be assessed against. While these criteria are not tests, they can be used to help the decision maker come to a view on the visual acceptability of a wind farm. Given the application is for an extension of operation life of the wind farm which formed part of the baseline for the Sensitivity Appraisal and as no changes to the turbine size, design or location are proposed, it is not considered that there would be value in assessing the proposal against these criteria. It is considered that while the visual impacts of the wind farm will continue for a further 10 years, the visual impacts of the proposal can continue to be accommodated.

2. Impact on Ecology and Ornithology

- 8.18 The applicant has undertaken a review of the existing ecological and ornithological information for the site. This includes the work undertaken to inform the original application, post construction monitoring work and the studies undertaken for the neighbouring Glen Kyllachy Wind Farm. This review has identified that that no further concerns have been raised in relation to bird species or ecology as a result of the ongoing operation of the wind farm. As no new infrastructure will be delivered, the scheme will not lead to any further habitat loss or impact on species. The applicant considers that it is highly likely that species have habituated to the presence of the wind farm. Overall, it is not considered that the continued operation of the wind farm for a further 10 years will lead to significant adverse effects subject to the continued application conditions which secure monitoring and mitigation.

3. Impact on Cultural Heritage and Archaeology

- 8.19 The original wind farm was required to undertake a watching brief to ensure any archaeological sites were appropriately recorded. This identified a number of features as set out in paragraph 2.3 of this report. As the turbines are not changing location and no new tracks or other infrastructure is being provided, there is no likelihood of the continued operation of the wind farm having an adverse impact on cultural heritage and archaeology. However, it will be important to ensure that such features are safeguarded in the decommissioning and restoration of the wind farm at the end of its operational life.

4. Noise Impacts

- 8.20 The original wind farm was subject to a number of conditions to limit noise and to secure an appropriate framework for investigation and mitigation if any noise complaints as a result of the wind farm arose. It is understood that no noise complaints have been made in relation to the operation of Farr Wind Farm.
- 8.21 As referenced in paragraph 2.2 of this report, Glen Kyllachy Wind Farm has now been consented and is currently under construction. The permission for Glen Kyllachy Wind Farm includes a condition which considers any cumulative noise issues at noise sensitive receptors with Farr Wind Farm. Environmental Health has set out that the cumulative condition applied to Glen Kyllachy should also be attached

to any variation to Farr Wind Farm. This is considered appropriate as to ensure consistency in approach and to enhance enforceability should the need arise.

5. Other Operational Impacts

- 8.22 Given there will be no changes to the scale of the development and no significant effects had previously been identified, the applicant scoped out the following operational issues where mitigation can continue to be secured by condition where appropriate: Aviation; Telecommunication; Geology and Soils (including peat); Hydrology and Hydrogeology; Socio-Economics; Shadow Flicker; and Climate Change. This approach is agreed.

Other material considerations

- 8.23 In terms of section 57 of the Town and Country Planning (Scotland) Act 1997 (As Amended), Ministers may on varying a section 36 consent give a direction in respect of planning permission. It is understood that any Section 36 Variation granted would include a varied deemed planning permission. As this is the case, it is considered appropriate to refresh the deemed planning permission conditions to a modern style and ensure that all relevant matters related to operation and decommissioning are addressed.

Matters to be secured by Section 75 Agreement

- 8.24 None.

9. CONCLUSION

- 9.1 The Scottish Government gives considerable commitment to renewable energy and encourages planning authorities to support the repowering of wind farms where it can be demonstrated that they are on suitable sites and environmental and other impacts have been shown to be capable of mitigation. The varied project would allow for its 92MW contribution toward Scottish Government renewable energy targets to be maintained for a further 10 years.
- 9.2 The application is supported by Strathnairn Community Council and has not attracted any technical objections. The existing wind farm has shown to be capable to being operated without unacceptable significant adverse impacts and conditions to secure ongoing mitigation can continue to be applied.
- 9.3 The Council has determined its response to this application against the policies set out in the Development Plan, principally Policy 67 of the Highland-wide Local Development Plan with its eleven tests which are expanded upon with the Onshore Wind Energy Supplementary Guidance. This policy also reflects policy tests of other policies in the plan, for example Policy 28 and those contained within Scottish Planning Policy. Given the above analysis, the application to extend the operational life of Farr Wind Farm for a further 10 years is considered acceptable in terms of the Development Plan, national policy and is acceptable in terms of all other applicable material considerations.

10. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: If an objection is raised to the proposal, the application will likely be subject to a Public Local Inquiry.
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: The application, if approved by Scottish Ministers, will allow for the generation of renewable energy on the wind farm site for a further 10 year period.
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued N

Subject to the above, it is recommended that the Council **Raise No Objection** to the application subject to the following:

Conditions and Reasons

1. The consent is for a period of 30 years from the date of Final Commissioning. Written confirmation of the date of Final Commissioning and shall expire on 31 December 2040. Thereafter the development shall be decommissioned and the site restored in accordance with a scheme to be submitted and approved under Condition 7 of this consent.

Reason: To define the duration of the consent.

2. This consent may not be assigned without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignation of the consent (with or without conditions) or refuse assignation as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The Company shall notify the Planning Authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignation having been granted.

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

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

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

4. The development shall be undertaken in accordance with the Application and Environmental Impact Assessment dated September 2002 and the Environmental Report dated August 2020, except in so far as amended by the terms of this consent.

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

5. In the event that any wind turbine installed and commissioned fails to produce electricity on a commercial basis to the public network for a continuous period of 6 months, then unless otherwise agreed in writing with the Planning Authority, after consultation with the Scottish Ministers, Scottish Environment Protection Agency and NatureScot, such wind turbine will be deemed to have ceased to be required. If deemed to have ceased to be required, the wind turbine and its ancillary equipment will be dismantled and removed from the site by the Partnership within the following 6 month period, and the ground reinstated to the specification and satisfaction of the Planning Authority after consultation with the Scottish Ministers and SNH.

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

6. In the event of the Development, not generating electricity on a commercial basis to the grid network for a continuous period of 12 months from 50% or more turbines installed and commissioned from time to time, the Company must immediately notify the Planning Authority in writing of that situation and shall, if the Planning Authority, in consultation with the Scottish Ministers, direct decommission the Development and reinstate the site to the specification and satisfaction of the Planning Authority. The Planning Authority shall have due regard to the circumstances surrounding the failure to generate and shall take the decision on decommissioning following discussions with the Scottish Ministers and other such parties as the Planning Authority consider appropriate.

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

(2) No development shall commence unless and until a decommissioning, restoration and aftercare strategy has been submitted to, and approved in writing by, the Planning Authority (in consultation with NatureScot and SEPA). The strategy shall outline measures for the decommissioning of the

Development and restoration and aftercare of the site, and shall include proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions.

(3) Not later than 2 years before decommissioning of the Development or the expiration of this consent (whichever is the earlier), a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved decommissioning, restoration and aftercare strategy, shall be submitted for the written approval of the Planning Authority in consultation with SNH and SEPA. The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include (but is not limited to):

- a) site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
- b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- c) a dust management plan;
- d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network, including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- f) details of measures for soil storage and management;
- g) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- h) details of measures for sewage disposal and treatment;
- i) temporary site illumination;
- j) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- k) details of watercourse crossings;
- l) a species protection plan based on surveys for protected species (including birds) carried out no longer than eighteen months prior to submission of the plan and
- m) details of measures to protect cultural heritage assets and archaeological remains.

(4) The Development shall be decommissioned, the site restored and aftercare undertaken in accordance with the approved plan.

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

8. (1) Within 2 months of the date of this consent a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations referred to in condition 8 is submitted to the Planning Authority.
- (2) The value of the financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in condition 8,
- (3) The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in condition 8.
- (4) The value of the financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.

Reason: to ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.

9. Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 0700 to 1900 on Monday to Friday inclusive and 0700 to 1300 on Saturdays, with no construction work taking place on a Sunday or on a Public Holiday. Outwith these specified hours, construction activity shall be limited to concrete pours, wind turbine erection and delivery, maintenance, emergency works, dust suppression, and the testing of plant and equipment.

Reason: In the interests of amenity to restrict noise impact and the protection of the local environment.

10. 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) until a concluded agreement in accordance with Section 96 of the Roads (Scotland) Act 1984 under which the Company is responsible for the repair of any damage to the local road network that can reasonably be attributed to construction related traffic. As part of this agreement, pre-start and post-construction road condition surveys must be carried out by the Company, to the satisfaction of the Roads Authority(s). It will also require the submission of an appropriate financial guarantee, bond or

alternative form of security acceptable to the planning authority in respect of the risk of any road reconstruction works.

Reason: To ensure that the road network is appropriately safeguarded from wear and tear during maintenance, decommissioning and restoration of the site.

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 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 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.

12. 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.

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. None of the wind turbines, anemometers, power performance masts, switching stations or transformer buildings / enclosures, ancillary buildings or above ground fixed plant shall display any name, logo, sign or other advertisement (other than health and safety signage) unless otherwise approved in advance in writing by the planning authority.

Reason: To in the interests of the visual amenity of the area and compliance with Town and Country Planning (control of advertisements) (Scotland) regulations 1984.

15. Prior to any further development or works on the site and / or any maintenance that requires provision of replacement of any turbine components (defined as towers, blades or nacelles) details of the proposed replacement turbine components shall be submitted to, and approved in writing by, the planning authority. These details shall include:
- i. The make, model, design, of the replacement turbine components to be used; and

ii. The external colour and/or finish of the replacement turbine components to be used which shall be non-reflective pale grey semi-matt.

Thereafter, development shall progress in accordance with these approved details and, with reference to part ii above, the turbines shall be maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned.

Reason: To ensure that only the turbines as approved are used in the development and are acceptable in terms of visual, landscape, and environmental impact considerations.

- 16.
- (1) The approved Habitat Management Plan ("HMP"), shall continue in force and include the mitigation measures described within the Environmental Impact Assessment September 2002.
 - (2) The HMP shall continue to detail proposed habitat management of the site during the period of construction, operation, decommissioning, restoration and aftercare, and shall provide for the maintenance, monitoring and reporting of habitat on site.
 - (3) The HMP shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the habitat plan objectives. In particular, the approved habitat management plan shall be updated to reflect ground condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted for the written approval of the Planning Authority in consultation with NatureScot and SEPA.
 - (4) Unless and until otherwise agreed in advance in writing with the Planning Authority, the approved HMP (as amended from time to time) shall be implemented in full.

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

- 17.
- The rating level of noise immissions from the combined effects of the wind turbines comprising the Farr wind farm (including the application of any tonal penalty) hereby permitted together with the noise immissions of the wind turbines comprising the Glen Kyllachy wind farm (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:

The rating level of noise immissions from the combined effects of the wind turbines (including the application of any tonal penalty) of Farr wind farm when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed 35dB LA90 at the consented dwelling site at grid reference 824550 275303 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 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 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 planning authority.

c) Within 21 days from receipt of a written request from the 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 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 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 planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

(d) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the planning authority pursuant to paragraph (f) of this condition shall be undertaken at the measurement location approved in writing by the planning authority.

(e) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (g) of this condition, the wind farm operator shall submit to the planning authority for written approval a proposed assessment protocol setting out the following: (i) The range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. (ii) A reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component. 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 information provided in the written request from the planning authority under paragraph (c), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the planning authority and the attached Guidance Notes.

(f) 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 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 planning authority for the complainant's dwelling.

(g) The wind farm operator shall provide to the 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 planning authority made under paragraph (c) of this condition unless the time limit is extended in writing by the planning authority. All data collected for the purposes of undertaking the compliance measurements shall be made available to the planning authority on the request of the planning authority. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the planning authority with the independent consultant's assessment of the rating level of noise immissions.

(h) 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 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 metre height (m/s) within the site averaged over 10-minute periods										
	1	2	3	4	5	6	7	8	9	10	11
Ardachy Consented Property	35.0	35.0	35.0	35.0	35.0	35.0	37.4	39.7	41.6	42.6	42.8
Asgard	36.4	36.4	36.4	36.4	36.4	36.8	37.5	38.5	39.8	41.2	41.9
Corrievorrie	35.0	35.0	35.0	35.0	35.0	35.0	37.4	39.7	41.6	42.6	42.8
Dalmagarry	46.9	46.9	46.9	46.9	48.4	49.9	51.3	52.8	54.3	55.8	56.5
Easter Woodend	35.0	35.0	35.0	35.0	35.0	35.0	37.4	39.7	41.6	42.6	42.8
Gaich	35.0	35.0	35.0	35.0	35.0	35.4	37.9	39.9	40.6	40.6	40.6
Garbole	36.4	36.4	36.4	36.4	36.4	36.8	37.5	38.5	39.8	41.2	41.9
Kennels House	35.0	35.0	35.0	35.0	35.0	35.0	35.4	38.3	40.9	43.1	44.0
Kyllachy House	35.0	35.0	35.0	35.0	35.0	35.0	37.4	39.7	41.6	42.6	42.8
Moy More House	35.0	35.0	35.0	35.0	36.1	38.3	40.8	43.3	45.7	47.8	48.7
Tomatin Consented Property	35.0	35.0	35.0	35.0	35.0	36.9	39.4	42.4	45.7	49.6	51.6
Tomatin Distillery	35.0	35.0	35.0	35.0	35.0	36.9	39.4	42.4	45.7	49.6	51.6
Wester Auchintoul Lodge	35.0	35.0	35.0	35.0	35.0	35.0	37.4	39.7	41.6	42.6	42.8
Wester Lairgs	35.0	35.0	35.0	35.0	35.0	35.0	35.3	37.0	38.9	41.1	42.3
Woodend	35.0	35.0	35.0	35.0	35.0	35.0	37.4	39.7	41.6	42.6	42.8

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 metre height (m/s) within the site averaged over 10-minute periods										
	1	2	3	4	5	6	7	8	9	10	11
Ardachy Consented Property	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.2	41.6	41.6
Asgard	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.4	39.4	39.4
Corrievorrie	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.2	41.6	41.6
Dalmagarry	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.8	39.7	39.7
Easter Woodend	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.2	41.6	41.6
Gaich	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.4	38.4
Garbole	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.4	39.4	39.4
Kennels House	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.9	38.9
Kyllachy House	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.2	41.6	41.6
Moy More House	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.2	41.2	44.8	44.8
Tomatin Consented Property	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	42.0	46.9	46.9
Tomatin Distillery	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	42.0	46.9	46.9
Wester Auchintoul	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.2	41.6	41.6
Wester Lairgs	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0
Woodend	38.0	38.0	38.0	38.0	38.0	38.0	38.0	38.0	40.2	41.6	41.6

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

Property	Easting	Northing
Asgard	275666	824218
Dalmagarry	278793	832298
Easter Woodend	279388	826364
Gaich	268940	831224
Kennels House	267617	829078
Moy More House	276649	835444
Tomatin Distillery		
Wester Lairgs	270408	834885
Corrievorrie	277304	824768
Garbole	275623	824224
Kyllachy House	278624	825925
Wester Auchintoul	278196	824492
Woodend	279124	826217
Ardachy Consented Property	277821	825138
Tomatin Consented Property	278287	829146

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.

Guidance Notes for Wind Farm Noise Conditions

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

Guidance Note 1

(a) Values of the LA90,10 minute noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the planning authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA90,10 minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the planning authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres . It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

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

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-

minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b).

(b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions the planning authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA90,10 minute noise measurements and corresponding values of the 10- minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3

(a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

(b) For each 10 minute interval for which LA90,10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R97, shall be reported.

(c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.

(d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.

(e) A least squares “best fit” linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the “best fit” line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.

Guidance Note 4

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the planning authority in its written protocol under paragraph (d) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant’s dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

(e). Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the planning authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty: $L1 = 10\log [10L2/10 - 10L3/10]$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the planning authority for a complainant’s dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached

to the conditions or the noise limits approved by the planning authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the development fails to comply with the conditions.

Designation: Area Planning Manager – South
Author: Simon Hindson, Strategic Projects Team Leader
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 - 000001 – Location Plan
Plan 2 - Figure 1 Rev 01 – Turbine Locations

Appendix 1 – Letters of Representation

None.



SCOTTISH EXECUTIVE

STANLEY

DATE: 29 OCT 2004

File ref:

Enterprise, Transport & Lifelong Learning Department
Energy and Telecommunications Division

Meridian Court
5 Cadogan Street
Glasgow G2 6AT

Mr Robert Warren
Npower Renewables Limited
North Range East Lodge
Mill Road
Stanley
Perthshire
PH1QE

I hereby certify
this is a true and
complete copy of
the original

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lesley.thomson@scotland.gsi.gov.uk

Your ref:
Our ref: IEC 3/43

Date: 05 October 2004

Date
Sign

Dear Mr Warren

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH
MINISTERS FOR THE CONSTRUCTION AND OPERATION OF A WIND
POWERED ELECTRICITY GENERATING STATION AT FARR, NEAR
TOMATIN, INVERNESS-SHIRE**

1. I am directed by the Scottish Ministers to refer to the application dated 11 September 2002 under section 36 of the Electricity Act 1989 ("the Act") by Npower Renewables Limited ("the company") for both the consent of the Scottish Ministers to construct and operate a wind-powered electricity generating station at Farr near Tomatin, Inverness-shire and their direction under section 57 (2) of the Town and Country Planning (Scotland) Act 1997 that planning permission for the development be deemed to be granted.

2. The Scottish Ministers have considered the environmental statement and subsequent submissions prepared by the company in support of the application, submissions prepared by those bodies approached as part of the formal consultation and all matters raised by other bodies. For the reasons set out below, the Scottish Ministers have decided to consent to the application and have issued a direction that planning permission is deemed to be granted.

Description and background

3. The proposed development is located on open moorland with some isolated hills to the south and west and more continuous high ground of the Monadhliath Mountains occurring to the west of the site. It is sited on an upland basin between the Findhorn and Nairn valleys at a height of 500 to 600 metres. It is situated off the A9 approximately 16 km south west of Inverness and 20 km north west of Aviemore.

4. You originally submitted a proposal for up to 45 wind turbines with a total capacity not exceeding 112.5 MW and of a blade tip height not exceeding 102 metres. In order to reduce

the visual impact of the development as viewed from the Strathnairn valley, you reduced the windfarm to 40 turbines. In terms of landscape designations, the site does not lie within any National Scenic Areas (NSAs), Regional Scenic Areas (RSAs) or Areas of Great Landscape Value (AGLVs). The site is not protected by European designations such as Special Areas of Conservation, Special Protected Areas or Ramsar sites and the nearest scenic area is the Cairngorms National Scenic Area which is located approximately 21.5 km to the south east of the site.

5. A number of organisations and departments were consulted by the Scottish Ministers. The advice from **Scottish Natural Heritage (SNH)** in this instance was that following your agreement to remove 5 turbines, and therefore limit the visual impact on the Strathnairn valley, the application for consent should be granted subject to conditions. Specifically, the concerns raised centred on the need for a peatland restoration plan, conditions governing construction methods and provision of further information on potential disturbance to otters.

6. The **Scottish Environment Protection Agency (SEPA)** also recommended that consent be granted and that the conditions drafted. Specifically, the concerns raised centred on the need for site specific construction method statements to limit risk of contamination arising from construction activities. A condition is required to ensure provision of detailed monitoring proposals and contingency plans.

7. **Historic Scotland** is content that your proposal does not compromise its statutory interests.

Planning policy and advice

8. The Director of Planning and Development at Highland Council, referred the section 36 application to the Council's Planning, Development, Europe and Tourism Committee. The Committee was of the view that whilst there are issues relating to visual and landscape impacts, local amenity and other matters, there are no substantive consultee objections to the section 36 application.

9. The Development Plan consists of the **Highland Structure Plan (March 2001)** and the **Strathnairn, Strathdean and Loch Ness Local Plan**.

10. The following references in the **Highland Structure Plan (HSP)** are of relevance:

Policy G2 identifies a number of assessment criteria on **Design for Sustainability**. Some key considerations for proposed development are:-

- maximise energy efficiency in terms of location, layout and design, including utilisation of renewable resources
- impact on individual and community residential amenity
- impact *inter alia* on habitats, landscape, species, scenery
- demonstrate sensitive siting and high quality design
- contribute to the economic and social development of the community

Developments which are judged to be significantly detrimental in terms of the above criteria shall not accord with the Structure Plan.

Policy G4 considers Community benefit and commitment

- Notes that Council will expect developments to benefit the local community and contribute to the wellbeing of the Highlands whilst recognising wider national interests
- Seeks agreements with developers
- Seeks a fund for local community initiatives where a development will have a long term impact on the environment (the developers reference their intention to establish a fund in their statement attaching)
- Seeks a financial bond for long term environmental restoration.

We note that you have reached an agreement with the Strathnairn and Strathdean Community Councils for both an index-linked capital lump sum and an annual contribution based on installed capacity.

11. Additionally, the Highland Council has a number of policies which specifically relate to renewable energy developments. Approval for such developments will normally be limited to the lifetime of the development and will be conditional on adequate provision for removal and restoration of the affected land.

Policy E2 – Wind Energy Developments states that; “Wind Energy proposals will be supported provided that impacts are not shown to be significantly detrimental. In addition to the General Strategic Policies, wind energy proposals will be assessed in respect of the following:-

- visual impact
- noise
- electro magnetic interference
- roads, bridges and traffic
- aircraft flightpaths/MOD operations
- cumulative effects”

12. The Strathnairn, Strathdean and Loch Ness East Local Plan (1997) is the currently adopted Local Plan for the area but will in due course be superseded by the Inverness Local Plan currently at Deposit Draft (see below). Relevant general policies in the Local Plan are as follows:-

The Council will encourage the sustainable use of the area’s resources and a wide distribution of employment opportunities by promoting:-

- expansion of established resource based activities;
- tourist related and service businesses;
- opportunities in the natural environment.

Additionally, the Council will encourage integrated use and management of resources in the landward area, and will continue to seek a balance between development and the conservation of features which represent the area’s outstanding natural and cultural heritage.”

13. The Inverness Local Plan Deposit Draft (September 2002), currently under revision seeks to be compatible and consistent in interpretation of the strategic policy framework of the Structure Plan which was approved by Scottish Ministers in March 2001. The Deposit Draft Local Plan sets out some general background and strategy for the area in terms of fostering prosperous and sustainable communities. The importance of tourism is recognised as well as the need to broaden the balance of economy and to develop, in sustainable terms, the natural advantages and resources of the area. In this context a map "Creating Prosperity" on page 10 of the Deposit Draft notes the upland area between Tomatin and Farr as being a potential area for wind farms.

14. The Scottish Executive sets out its planning policies through a series of national Planning Policy Guidelines and Planning Advice Notes. The following are of particular relevance to the consideration of your proposal:

Renewable Energy Developments (NPPG6) sets out the promotion of renewable sources of electricity generation as an integral part of the UK Government's energy policy. This document aims to provide guidance to support local authorities in delivering an increase in renewable energy development in Scotland; and

Planning Advice Note: Renewable Energy Technologies (PAN 45) supports the policies outlined in NPPG6 by providing information on the technologies for harnessing renewable energy for electricity generation. Additionally, this document presents advice on the issues which arise in connection with each technology.

The applicant's case

15. You have outlined the process which led to the selection of this site. This involved balancing a range of technical, environmental and planning issues. The site has a good wind resource, does not support any Sites of Special Scientific Interest (SSSI) or areas designated as of conservation importance within its boundaries. The site does not lie within a designated landscape and is at a reasonable distance from habitation. Access to the site is good and there is an available grid connection adjacent to the site.

16. You have been aware throughout the process that the landscape and visual impacts of the windfarm are a key issue in the assessment of this proposal. Your landscape and visual assessment concludes that the site will result in a prominent appearance within an area of some 6 kilometres radius. Since the deletion of 5 turbines on the western side of the site, the impact on the affected properties in Strathnairn is diminished but you accept that this may not be eliminated. Given the scale of the project, you are of the view that there will inevitably be some detrimental visual impact but find that the degree of this impact is acceptable.

17. A group opposed to your development Farr Wind Action Group (FARRWAG) has submitted two alternative layouts which move the turbines further to the east of the site and as a consequence render them invisible from Strathnairn and Strathdearn. The Scottish Ministers presented these alternatives to you for your consideration but you rejected them as they present a depleted wind yield and would lead to greater infrastructure costs.

18. In regard to deficiencies in ornithological information identified by the Scottish Ministers, you were asked to undertake further collision risk assessments, the results of which were presented to the Scottish Ministers for their consideration. Additionally, FARRWAG presented a dataset showing a significantly higher number of red kites using the site. You were asked to run the same risk analysis model on this dataset. You are of the view that the impact on the red kite population is not significant.

19. Following advice from Scottish Natural Heritage, the Scottish Ministers requested further information on ecological impacts, specifically on the potential for construction works to disturb otter and water vole populations which have been identified on the site. Water voles are an increasingly rare species and their habitat is protected under Section 9(4) of the Wildlife and Countryside Act 1981. We strongly recommend that you stay in close contact with Scottish Natural Heritage over the details of the work to be done in relation to voles to avoid any offence being committed. You are aware that otters are protected in terms of the EU Habitats Directive. Under the terms of the Conservation (Natural Habitats &c.) Regulations 1994, it is an offence to disturb or capture otters (a European Protected Species), damage or destroy their habitats, breeding sites or shelters unless a derogation is agreed by Ministers and a licence issued which would permit such actions to take place.

20. Scottish Natural Heritage had concerns that the development would have a significant impact on the blanket bog across the site. Blanket bog is a priority habitat in terms of the EU Habitats Directive and therefore carries the highest level of protection. In discharging these responsibilities, Scottish Natural Heritage have indicated that a peatland restoration plan outlining restoration methodology should be agreed between you, the landowner and Highland Council.

21. The hydrological impacts of the development have been assessed by the Scottish Environment Protection Agency (SEPA). SEPA's concerns centre on the pollution risks arising from construction activities and the creation of access roads and tracks. SEPA has requested conditions to secure detailed construction method statements, monitoring proposals and contingency plans.

22. In light of the peat slide associated with a windfarm construction at Derrybrien in Co. Galway, the Scottish Ministers asked you to undertake an analysis of peat depth across the site, from this to complete an assessment of peat slide risk, and to set out your proposals for disposal of excavated peat. You have complied with these requests and put in place measures to minimise the risk of peat slide.

23. Historic Scotland has confirmed that there are no impacts arising from the development which will affect its statutory archaeological interests.

The Scottish Ministers' Consideration

24. Following your agreement to delete 5 turbines to the east of the site, Scottish Natural Heritage was content to withdraw its objection on landscape and visual grounds. Scottish Natural Heritage accepts that the windfarm will inevitably be prominent from many local viewpoints but overall, the landscape can accommodate this development. FARRWAG asked you to consider two alternative layouts which would eliminate the visual impact at Strathnairn and Strathdearn. Given your rejection of these alternatives Scottish Natural Heritage was not asked to advise Ministers on the resultant landscape implications. The

Scottish Ministers have limited their consideration of the landscape and visual implications to the application as submitted and are accordingly content to accept the advice of Scottish Natural Heritage on this issue.

25. A cumulative visual impact has been undertaken in the context of Novar Wind Farm and the expected submission of a proposal at Dunmaglass, 10km to the south west. Scottish Ministers are content that the separation from Novar does not make cumulative impact significant. Comparisons with Dunmaglass are not appropriate as a planning application for this development has not been submitted.

26. In considering the ornithological impact of this proposal, the Scottish Ministers have had regard to their obligations in terms of the EU Directive on the Conservation of Wild Birds ("the Birds Directive"). You will be aware that the requirements of this Directive are implemented by the relevant sections of the Wildlife and Countryside Act 1981. The presence of a protected species, in this instance red kites which are listed in Annex 1 to the Birds Directive and therefore carry the highest level of protection, has been a material consideration in the assessment of this proposal. The Scottish Ministers have adopted a precautionary approach to avoid harm to the red kite population. They are convinced that there is a need for a monitoring regime specifically in relation to the red kites. This is pertinent as your dataset considered along with that presented by FARRWAG demonstrates that the red kites are not concentrated on a particular area of the site and the potential effects cannot therefore be ameliorated by the removal of a particular group of turbines. The Scottish Ministers recognise that the distance of these non-breeding birds from the breeding population on the Black Isle means that any deaths sustained as a result of the operation of the windfarm may not be replaced. To address this issue, the Scottish Ministers propose an intensive monitoring programme funded by you and overseen by a steering group chaired by the Scottish Executive comprising members representing Scottish Natural Heritage and the Royal Society for the Protection of Birds. Broadly, the parameters of this programme include:

- intensive vantage point surveys throughout 2005 and for 5 years into the operational period of the windfarm;
- wing-tag observations to quantify turnover of birds;
- search for collision casualties; and
- search and removal of carrion

The steering group will analyse the results of surveys as they emerge and consider further measures as appropriate such as; radio-tagging, establishing feeding stations and shutting down those turbines demonstrably responsible for frequent bird deaths.

27. In considering the ecological issues the Scottish Ministers have had regard to the letter of 1 October 2003 from Scottish Natural Heritage indicating that it is content that the ecological issues relating to water voles and otters have been fully addressed. You are now in receipt of a licence to disturb otters in terms of The Conservation (Natural Habitats &c.) Regulations 1994, the terms and conditions of which are outlined in the letter which accompanies the licence.

28. In considering the potential impact of your development on the blanket bog, the Scottish Ministers note that you have entered a planning agreement with the landowner and Highland Council in terms of section 75 of the Town and Country Planning (Scotland) Act.

Ministers accept the advice of Scottish Natural Heritage that this agreement secures sufficient mitigation and compensation to allow the development to proceed.

29. In assessing the hydrological impacts of the development, the Scottish Ministers accept the advice of SEPA on measures necessary to protect water quality and control pollution. In this respect they are content to apply those conditions derived from SEPA's response to the consultation.

30. In considering peat depth issues, the Scottish Ministers acknowledge that the design of this application was well advanced when the implications of the Derrybrien peat slide became apparent. It is welcome that you have conducted extensive peat depth analysis across the site and submitted the results for Ministers' consideration. Having commissioned an independent analysis of your report, Scottish Ministers are content that the risk of peat slide is generally low across the site but a precautionary approach is warranted at 4 of the turbine positions. To address this the Scottish Ministers have imposed a condition allowing a wider degree of micro-siting and requiring further analysis to inform the final positioning at the affected turbine positions.

31. You have undertaken that where disposal of excavated peat either on the shoulders of tracks, around turbine bases is not possible, it will be temporarily stored in on site borrow pits pending disposal off-site. This commitment has been secured as a condition of the consent.

32. The Scottish Ministers are content that Historic Scotland have fully and properly advised them that there are no features of this development which could compromise its statutory archaeological interests.

The Scottish Ministers' Determination

33. In terms of schedule 8 to the Electricity Act 1989 (as amended), if the local authority makes a valid objection and does not withdraw it, the Scottish Ministers must convene a PLI before determining the application. As Highland Council did not object to the Farr Windfarm proposal, in this instance, a PLI is not a statutory requirement.

34. Additionally, schedule 8 provides that where objections or copies of objections have been sent to the Scottish Ministers in pursuance of the Electricity (Application for Consent) Regulations 1990 ("the 1990 Regulations"), the Scottish Ministers "shall consider those objections together with all other material considerations" with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they shall cause a PLI to be held.

35. As stated in paragraph 33 above, the planning authority has not maintained an objection to the application and as a consequence, the Scottish Ministers are not obliged under paragraph 2(2) of Schedule 8 to the Act to cause a public inquiry to be held. Paragraph 3(2) of Schedule 8 to the Act, however, requires the Scottish Ministers to consider all the objections they have received, together with all other material considerations, with a view to determining whether a public inquiry should be held and, if they think it appropriate to do so, they shall cause a PLI to be held. The Scottish Ministers received 32 individual representations, and an objection and supporting reports and information from FARRWAG pursuant to the 1990 Regulations.

36. In reaching this decision without invoking the discretionary power to cause a PLI to be held the Scottish Ministers are content that adequate opportunity was afforded for public representation and that those with a right to make representation could have their representation properly taken into account. The Scottish Ministers are further content that they can weigh all the conflicting issues without recourse to a public inquiry.

37. The Scottish Ministers are content that the Environmental Statement is sufficient to allow them to make a determination on the application.

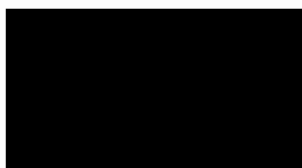
38. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations") prohibit the Scottish Ministers from granting consent unless they have fully considered the environmental information, as defined in those regulations.

39. The Scottish Ministers have considered the environmental information carefully; in addition to the Environmental Statement, they have considered the comments made by the planning authority and those designated as statutory consultees in terms of Regulation 6 of the 1990 Regulations and those of the consultative bodies in terms of the 2000 Regulations.

40. Schedule 9 of the 1989 Act places a duty on the company to have regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. It requires the company to do what it reasonably can to mitigate the effects that the development would have on these features. Schedule 9 also requires the Scottish Ministers have regard to these features and the extent to which the company has complied with this duty. The Scottish Ministers are satisfied that the company has had due regard to these features and, consequently consent for this proposal in terms of section 36 of the Electricity Act 1989 (as amended) and issue a direction that planning permission be deemed to be granted. The section 36 consent is subject to 14 conditions and the deemed planning permission is subject to 18 conditions. A copy of the consent is enclosed with this letter.

41. Copies of this letter have been sent to Highland Council as planning authority and all those consultees and individuals who made a representation about this proposal.

Yours sincerely

A solid black rectangular box redacting the signature of Lesley Thomson.

LESLEY THOMSON

A member of the staff of the Scottish Ministers

**ELECTRICITY ACT 1989
and
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH
MINISTERS FOR THE CONSTRUCTION AND OPERATION OF A WIND
POWERED ELECTRICITY GENERATING STATION AT FARR, NEAR
TOMATIN, INVERNESS-SHIRE**

I hereby certify
this is a true and
complete copy of
the original

Bond Pearce LLP
26-28
Southampton
SO15 1GA

Consent and deemed planning permission

Dated: [REDACTED]
Signed: [REDACTED]

1. The Scottish Ministers, in exercise of the powers conferred on them by the Electricity Act 1989 (as amended by section 93 of the Energy Act 2004) and section 57(2) of the Town and Country Planning (Scotland) Act 1997 and of all other powers enabling them in that behalf hereby consent to:-
 - 1.1 the construction and operation by Npower Renewables Limited ("the company"), or their permitted assignees who are in possession of a letter of authorisation from the Scottish Ministers issued in accordance with paragraph 3.2 below, of a wind-powered electricity generating station at Farr near Tomatin, Inverness-shire, as described in the application, the Environmental Statement, and maps, duly endorsed on behalf of the Scottish Ministers, accompanying the application outlined in Figure 1 ("the development");
 - 1.2 subject to the definitions set out in paragraph 6 and conditions set out in paragraph 7, the Scottish Ministers direct that planning permission for the development shall be deemed to be granted.

Description of Development

2. Subject to the conditions set out in paragraphs 3 and 7, the development shall comprise:
 - 1) up to 40 wind turbines, of overall height from base to tip not exceeding 102 metres, unless prior agreement is secured from the planning authority to a greater overall height and of a total capacity not exceeding 112.5 Megawatts;
 - 2) 3 anemometer masts;
 - 3) all necessary wind turbine transformers and housings,
 - 4) site tracks and foundations; and
 - 5) all on-site switch-gear and metering building and associated works including electrical cabling and temporary borrow areas.

Timing and assignation

- 3.1 The consent is for a period from the date of this consent until 25 years from the date of commissioning. The company is required to obtain by no later than the end of said 25 year period, written confirmation from the planning authority that all decommissioning works have been completed in accordance with the approved decommissioning scheme referred to in condition 3.4 of this consent. Written confirmation of the date of the commissioning shall

be provided to the planning authority within 1 month of the commissioning of the development, and the date of commissioning shall be no later than 5 years from the date of this consent, or such longer period as the Scottish Ministers may hereafter direct in writing. This consent shall cease to have effect after the end of 5 years from the date hereof if any material operation relevant to the development has not been substantially commenced by that date.

3.2 The company shall not be permitted to assign the consent set out in paragraph 1.1 above without the prior written authorisation of the Scottish Ministers, who may grant consent (with or without conditions) or refuse same as they may, in their own discretion, see fit. The said consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure.

3.3 The company shall decommission and restore the site, within such period as the Scottish Ministers in consultation with the planning authority may direct, and said works shall be carried out in accordance with the scheme outlined in condition 3.4. Thereafter, the company shall, on receipt of written confirmation from the planning authority that they are content that all decommissioning and restoration works are complete, undertake to maintain the site for a period of 5 years in accordance with the terms of condition 3.4 which requires an indicative scheme of reinstatement.

3.4 Before the wind farm commences operation, an indicative scheme for the ultimate reinstatement of the site, including the removal of all turbines and ground reinstatement shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. At least 12 months prior to actual decommissioning and reinstatement works, such scheme will be reviewed and amended as necessary taking into account scheme operation and monitoring.

Reason: to ensure that the scale of restoration proposed by the applicant is sufficient to meet the requirements of the planning authority

3.5 Following the completion of reinstatement as set out in condition 3.4 above a report shall be prepared by the project ecologist whose appointment is approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. This report shall set out the degree of compliance with the ecological safeguarding conditions and thereafter shall specify steps to be taken to secure any remedial action as required by the project ecologist. The remedial action set out in the report shall be implemented.

Reason: to measure compliance with the ecological safeguards built within the consent.

3.6 In the event that any wind turbine fails to produce electricity supplied to the local grid for a continuous period of 6 months, then, unless otherwise agreed in writing with the Scottish Ministers in consultation with the planning authority, it shall be deemed to have ceased to be required and the wind turbine and its ancillary equipment shall be dismantled and removed from the site by the company within the following six months, and the ground fully reinstated to the specification and satisfaction of the Scottish Ministers in consultation with the planning authority.

3.7 Turbines 10,12,13 and 40 and associated tracks shall not be erected until the company has submitted a detailed report on peat depth and stability within the 50 metres micro-siting

provision as permitted in terms of condition 7.8. The Scottish Ministers shall consider this report in consultation with the planning authority and Scottish Natural Heritage. Following this consultation, the Scottish Ministers shall approve the appropriate position for these turbines and associated tracks. The company shall erect these turbines and associated tracks in accordance with that approval. If the Scottish Ministers consider that they cannot approve a position for each or any of these, the turbines they shall not be erected. In this event, the tracks shall be re-aligned to take account of any deletion and plans submitted for the consideration of the Scottish Ministers in consultation with the planning authority. Thereafter tracks shall be constructed in accordance with any approval granted.

3.8 Prior to any work commencing on site, details of the measures to be taken to protect breeding birds, and specifically to discourage birds from breeding on those areas of the site to be worked in during that breeding season, shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. Thereafter the measures, as approved, shall be implemented.

3.9 The company shall undertake six years of monitoring of breeding birds from the date of this consent: first, annually for a period of 3 years following the final commissioning of the development, and second at five yearly intervals, at 5, 10 and 15 years after the construction phase is completed. This monitoring should be conducted to an identical standard on both the windfarm site and an appropriate reference site. The detail of this monitoring and of the reference site shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. The findings of these surveys shall be collated into two reports, after three and fifteen years, and all of the original data (in formats agreed by the Scottish Ministers in consultation with Scottish Natural Heritage), and the reports will be made available to the Scottish Ministers, the planning authority and Scottish Natural Heritage. After the first report, any mitigation measures developed and approved by Scottish Ministers in consultation with Scottish Natural Heritage shall be implemented.

3.10 A group, chaired by an officer of the Scottish Executive as appointed by the Scottish Ministers to be known as the Farr Windfarm Monitoring Group ("FWMG") shall be established. Membership of the group (apart from the Chair) shall comprise representatives of Scottish Natural Heritage and the Royal Society for the Protection of Birds and the independent ecological contractor.

3.11 Prior to any work commencing on site, the company shall identify an independent contractor whose appointment has been approved by the Scottish Ministers in consultation with Scottish Natural Heritage and the Royal Society for the Protection of Birds. If at any point in this process, the Scottish Ministers determine that the independent contractor has failed to implement these provisions, the company shall identify a replacement whose appointment shall be approved in accordance with the foregoing terms. This contractor shall undertake a programme of monitoring for a schedule of species to be agreed by FWMG. All costs relating to this programme shall be met by the company. This programme of monitoring shall include:

(1) three three-hour watches from a minimum of three vantage points each month from the date of this consent until 5 years after the commissioning of the development. These observations shall record flight-lines, any collisions or avoidance activity, narrative report as specified by FWMG; and

- (2) observations to identify individual red kites in the area from their wing-tags; and
- (3) studies of searches for collision casualties; and
- (4) searches for available carrion and its removal from the area.

The contractor shall present written reports and a full dataset to FWMG on a twice yearly-basis. These reports and datasets shall be made available to all parties expressing an interest. Following the first year of these studies, if in the opinion of FWMG a significant number of red kites use the site, FWMG shall advise the company whether a radio-tracking study of red kites in this part the of Scotland and any further mitigation measures, are required. Said mitigation measures may include temporary shutdown of turbines which have been identified as responsible for red kite mortalities. FWMG shall advise on the conditions which would lead to the consideration of shutdown and the duration of proposed shutdown. The company shall, implement the required supplementary monitoring and mitigation measures, as identified by FWMG in their entirety.

3.12 The site shall not be illuminated by lighting without the prior written approval of the Scottish Ministers in consultation with the planning authority.

3.13 Where peat is excavated from the site, it shall only be used for immediate restoration at the shoulders of roads and tracks, and around turbine bases. All peat not used for these purposes must be removed from site forthwith. Excavated peat which cannot be used within the foregoing terms, may be batched and stored for up to 3 months in the on-site borrow pits, storage beyond this period shall only be permitted with the written approval of the Scottish Ministers in consultation with the planning authority. The spreading of peat across the site and storage of peat on peatlands is not permitted.

3.14 The company shall provide a detailed plan showing all turbines, tracks and infrastructure in a format compatible with an ARC GIS Shape file to the Scottish Ministers within six months of commissioning of the development.

Determination

4. In reaching their decision, the Scottish Ministers have taken into account the environmental information submitted with the application, the views of the company, the views of the planning authority, the views of statutory consultees, objections received, and Government energy and climate change policy.

5. The Scottish Ministers have considered the objections and all other material considerations and have concluded that there is no need to conduct a public inquiry before reaching their decision. The Scottish Ministers also note that the development is consistent with Government policy on the promotion of renewable energy.

Definitions

6. In this consent and conditions, unless the context otherwise requires:-

“the application” means the application submitted by National Wind Power Limited on 11 September 2002, as amended by the letter from the company dated 30 January 2003;

“the commencement of the development” means the date on which the development shall be taken as initiated in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997;

“the commissioning of the development” means the date on which the first wind turbine generator forming part of the development first supplies electricity to the public electricity network on a commercial basis;

“the company” means Npower Renewables Limited, having their Registered Office at Reading Bridge House, Reading Bridge, Reading, Berkshire, RG1 8LS (registered company number 02550622);

“the date of final commissioning” means the date on which all wind turbine generators forming the development have supplied electricity on a commercial basis or such date as the Scottish Ministers deem the development to be complete;

“the development” means a wind-powered electricity generating station at Farr near Tomatin comprising no more than 40 wind turbines and associated works, all as more particularly described in the application;

“material operation” has the same meaning as in section 27 of the Town and Country Planning (Scotland) Act 1997;

“planning authority” means The Highland Council;

“site” means the area of land outlined in red on Figure 1 annexed hereto;

“switchgear metering building” means the area of land coloured yellow on Figure 1 annexed hereto.

Conditions

7. For the development described in paragraph 2, consent as outlined in paragraph 1 is subject to the timescales outlined in paragraph 3. Additionally, this development is subject to the following conditions:-

7.1 At least one month prior to commencement of the development, the company shall provide to the planning authority written details of the bond or other financial provision which it proposes to put in place to cover all site restoration costs on the expiry of this consent. No work shall commence on the site until written confirmation has been given by the planning authority that the proposed bond or other financial provision is satisfactory. The company shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent. Thereafter the company shall at 5-yearly intervals provide the planning authority with a review of the proposed bond or other financial provision against the decommissioning and restoration proposals. The planning authority, if

it considers it appropriate, may require the company to put in place additional financial provision to meet the decommissioning and restoration proposals.

Reason: to ensure that adequate provision is made for restoration costs once the windfarm has reached the end of its operational life.

7.2 No work shall commence on site until the company has appointed a suitably qualified project ecologist, named and approved by the planning authority in consultation and Scottish Natural Heritage. The duration of this appointment shall be determined by the planning authority in consultation with Scottish natural Heritage.

7.3 No work shall commence on site until approval has been obtained from the planning authority, of details, including means of access, fencing, design and colours/external finishes, of the turbines and all ancillary elements. No symbols, signs, logos or other lettering shall be displayed on any part of the wind turbines nor any other buildings or structures, without the prior written approval of the planning authority.

7.4 No work shall commence on site until the company has obtained written approval from the planning authority in consultation with Scottish Environment Protection Agency and Scottish Natural Heritage for detailed site specific method statements for all activities involving a scheme of works. Said method statements shall include monitoring and contingency proposals. Said method statements, as approved, shall be carried out in their entirety within timescales agreed with the planning authority. Method statements shall be lodged no later than one month prior to construction and shall cover, in particular, contractor arrangements for:

- the excavation and make-up of final and alignment internal access tracks and hardstanding;
- the source of all fill and bulk materials;
- construction arrangements for turbine foundations including concrete batching;
- cable laying within the site and in or below the public road;
- associated vehicle movements and routing for different phases of construction and the final alignment and landscape impact of access tracks;
- construction works compound and servicing arrangements;
- all details of the proposed opening and reinstatement of borrow areas;
- re-instatement of ground post construction;
- all related construction mitigation measures to avoid pollution or disturbance including ground silt traps, soak-aways and containment;
- construction management operations including proposals for working hours, site lighting, temporary servicing for workers, vehicle storage and other storage arrangements;
- arrangements for the appointment and supervision services of project archaeologist during relevant construction operations;
- arrangements for the supervision services of project ecologist during relevant construction operations; and
- proposals for phasing of operations.

Reason: to ensure compliance with all commitments made in the environmental statement and subsequent schemes developed following the consultation process.

7.5 No work shall commence on site until the company has obtained written approval from the planning authority for detailed plans, for all activities involving a scheme of works designed for mitigation and where possible enhancement. The mitigation and enhancement works shall be carried out in accordance with the approved plans and within timescales agreed with the planning authority. Thereafter, each plan, as amended by the planning authority, shall be implemented. Plans shall be lodged to cover:

- 7.5.1 site management including habitat enhancement. Prior to giving written approval for this plan, the planning authority shall consult with Scottish Environment Protection Agency and Scottish Natural Heritage;
- 7.5.2 a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation. All arrangements thereby approved shall be implemented in accordance with the approved timetable for investigation;
- 7.5.3 no work shall commence on site until the developer has carried out a survey of existing water supplies arising from and within 50 metres of the site, identifying the exact sources, premises served and distribution network. Thereafter, a mitigation plan to prevent pollution of the private water supply at Wester Lairgs, to the water catchment area above Farr, and to the area of intake for water supplies to Tomatin Distillery shall be submitted for the prior written approval of the planning authority in consultation with Scottish Water. Where said plan establishes that a supply is required to be temporarily or permanently replaced, the replacement supply shall provide sufficient quantity of water and meet relevant quality standards.

Reason: to ensure compliance with all commitments made in the environmental statement and subsequent schemes developed following the consultation process.

- 7.5.4 Temporary water supplies must be provided to those affected until permanent mitigation and replacement measures can be implemented. Such permanent measures shall be completed within one month of the erection of any mast or other works affecting the supply, as identified in the assessment, to the satisfaction of the planning authority in consultation with the TEC Services (Environmental Health).

Reason: to secure temporary supply should mitigation/replacement measures prove necessary.

Construction

7.6 Each turbine shall be erected in the positions indicated on figure 1. Variation shall only be permitted, within the following parameters:

- (1) a variation of less than 30 metres in turbine location may only be permitted following the approval of the location of both the turbine and the access road by the project ecologist and The Highland Council Archaeologist; and

(2) a variation between 30 metres and 50 in turbine location requires the written approval of the planning authority. In considering a variation within these parameters, the planning authority shall consult with Scottish Natural Heritage and both shall have regard to a revised layout presented by the company, showing the location of both the turbines and the access road.

If a proposed variation, in accordance with the preceding parameters, brings turbines numbered 3,4 or 12 within 50 metres of a watercourse, the planning authority shall consult the Scottish Environment Protection Agency before permitting the variation

Notwithstanding the provision of this condition, the position of turbines numbered 29, 30, 38, 39 and 40 shall not be varied in a northerly or westerly direction. Additionally, prior to undertaking any turbine erection works where a variation is proposed, the company shall provide to the planning authority a plan of the layout showing the proposed variation.

Reason: to ensure that any micro-siting avoids areas of high nature conservation value or archaeological value while safeguarding visual amenity and water quality. Additionally, this condition ensures that construction takes place in areas where the stability of peat is more certain.

7.7 The blades of all the turbines shall rotate in the same direction.

Reason: to reduce visual impact.

7.8 All cables between the turbines and the substation shall be laid underground and the ground thereafter reinstated in accordance with the plan as approved by the planning authority in consultation with Scottish Natural Heritage.

Reason: to ensure works are undertaken in a manner which minimises the impact on ecology and habitats.

7.9 Any spoil produced in the course of work, with the exception of peat stored in accordance with the provision of condition 3.13, shall be either wholly removed from the site or tipped and graded in locations and in a manner previously agreed with the planning authority.

Reason: to minimise visual impact and ensure compliance with pollution control legislation.

7.10 The developer shall undertake all works within the terms of the "Guidelines for Preventing Pollution from Civil Engineering Contracts" as published by SEPA.

Reason: to adhere to best practice with regard to pollution control.

Noise

7.11 Prior to the delivery to the site, full details of the wind turbines including the make, model, design, power rating and sound power levels of wind turbine to be used on site shall be submitted to the planning authority.

Reason: to provide information necessary for accurate assessment of noise impact.

7.12 The company shall log wind speed and wind direction data continually and shall retain the data which has been obtained for a period of no less than the previous 12 months. The data shall include the average wind speed in metres per second for each 10 minute period. The measuring periods shall be set to commence on the hour or in 10 minute increments thereafter. The wind speed data shall be made available to the planning authority on request. The data shall be provided on a Microsoft Excel spreadsheet in electronic format. Where the wind speed is measured at a height other than 10 m, the data shall be supplemented by adjusted values which allow for wind shear, normalised to 10m height. Details of the wind shear calculation shall be provided.

Reason: to provide information necessary for accurate assessment of noise impact.

7.13 At wind speeds not exceeding 12m/s, as measured or calculated at a height of 10m above ground level at the nearest wind monitoring mast, the wind turbine noise level at any dwelling or other noise sensitive premises shall not exceed:-

- (a) during night hours, 38dB LA90,10min, or the Night Hours LA90,10min Background Noise Level plus 5 dB(A), which ever is the greater.
- (b) during Quiet Waking Hours, 35 dB LA90,10min or the Quiet Waking Hours LA90,10min Background Noise Level plus 5 dB(A), which ever is the greater.

Reason: to protect the amenity at noise sensitive premises.

In this 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.

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

“wind speeds” means wind speeds measured or calculated at a height of 10 metres above ground level on the wind farm site at the wind monitoring mast nearest to the premises of interest by reference to Figure 3 of the Farr Wind Farm, Environmental Statement, Volume 3, Volume of Figures, September 2002.

“Night hours” means 23:00 – 07:00 hours on all days.

“Quiet Waking Hours” means 18:00 – 23:00 hours on all days, plus 07:00 – 18:00 on Sundays and 13:00 – 18:00 hours on Saturdays.

“Noise Sensitive Premises” means premises, the occupants of which could be exposed to noise from the wind farm and includes hospitals, residential homes, nursing homes, etc.

7.14 At the request of the planning authority, following a valid complaint to the planning authority relating to noise emissions from the wind turbines, the company shall measure, at its own expense, the level of noise emissions from the wind turbines. The measurement and calculation of noise levels shall be undertaken in accordance with "The Assessment & Rating of Noise from Wind Farms", September 1996, ESTU report number ETSU-R-97 having regard to paragraphs 1-3 and 5-11 inclusive, of The Schedule, pages 95 to 97; and Supplementary Guidance Notes to the Planning Obligation, pages 99 to 109.

Reason: to quantify the loss of amenity at noise sensitive premises resulting from the operation of the windfarm.

7.15 Should the noise levels in the foregoing condition be exceeded, the company shall take steps forthwith, to ensure that noise emissions from the wind farm are reduced to the aforementioned noise levels or less.

Reason: to ensure adequate mitigation is in place to protect amenity at noise sensitive premises.

7.16 Access to the site by heavy goods vehicles shall be restricted to 7.00 am to 7.00 pm on Mondays to Fridays and from 7.00 am to 12 noon on Saturdays with no such access on Sundays. Any construction activity involving audible noise from cutting, hammering or welding shall be subject to the foregoing hours, unless specific exceptions have received the prior approval of the planning authority in writing.

Reason: to minimise disturbance to local residents.

Miscellaneous Reporting Requirements

7.17 No work shall commence on site until the applicant has provided the Ministry of Defence with the detailed information requested in their letter of 17 September 2002, a copy of which is appended to this consent.

Reason: to enable military aircrew to avoid overflight of the site.

7.18 The company shall provide an 'as built' drawing to the planning authority within six months of commissioning of the development.

Reason: to have a complete record of the final development.



Head of Energy Division
A member of the staff of the Scottish Ministers

5 October 2004

COPY



SCOTTISH EXECUTIVE

STANLEY

DATE: 29 OCT 2004

File ref:

Enterprise, Transport & Lifelong Learning Department
Energy and Telecommunications Division

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Your ref:
Our ref: IEC 3/43

Date: 05 October 2004

Dear Mr Warren

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH
MINISTERS FOR THE CONSTRUCTION AND OPERATION OF A WIND
POWERED ELECTRICITY GENERATING STATION AT FARR, NEAR
TOMATIN, INVERNESS-SHIRE**

1. I am directed by the Scottish Ministers to refer to the application dated 11 September 2002 under section 36 of the Electricity Act 1989 ("the Act") by Npower Renewables Limited ("the company") for both the consent of the Scottish Ministers to construct and operate a wind-powered electricity generating station at Farr near Tomatin, Inverness-shire and their direction under section 57 (2) of the Town and Country Planning (Scotland) Act 1997 that planning permission for the development be deemed to be granted.

2. The Scottish Ministers have considered the environmental statement and subsequent submissions prepared by the company in support of the application, submissions prepared by those bodies approached as part of the formal consultation and all matters raised by other bodies. For the reasons set out below, the Scottish Ministers have decided to consent to the application and have issued a direction that planning permission is deemed to be granted.

Description and background

3. The proposed development is located on open moorland with some isolated hills to the south and west and more continuous high ground of the Monadhliath Mountains occurring to the west of the site. It is sited on an upland basin between the Findhorn and Nairn valleys at a height of 500 to 600 metres. It is situated off the A9 approximately 16 km south west of Inverness and 20 km north west of Aviemore.

4. You originally submitted a proposal for up to 45 wind turbines with a total capacity not exceeding 112.5 MW and of a blade tip height not exceeding 102 metres. In order to reduce

the visual impact of the development as viewed from the Strathnairn valley, you reduced the windfarm to 40 turbines. In terms of landscape designations, the site does not lie within any National Scenic Areas (NSAs), Regional Scenic Areas (RSAs) or Areas of Great Landscape Value (AGLVs). The site is not protected by European designations such as Special Areas of Conservation, Special Protected Areas or Ramsar sites and the nearest scenic area is the Cairngorms National Scenic Area which is located approximately 21.5 km to the south east of the site.

5. A number of organisations and departments were consulted by the Scottish Ministers. The advice from **Scottish Natural Heritage (SNH)** in this instance was that following your agreement to remove 5 turbines, and therefore limit the visual impact on the Strathnairn valley, the application for consent should be granted subject to conditions. Specifically, the concerns raised centred on the need for a peatland restoration plan, conditions governing construction methods and provision of further information on potential disturbance to otters.

6. The **Scottish Environment Protection Agency (SEPA)** also recommended that consent be granted and that the conditions drafted. Specifically, the concerns raised centred on the need for site specific construction method statements to limit risk of contamination arising from construction activities. A condition is required to ensure provision of detailed monitoring proposals and contingency plans.

7. **Historic Scotland** is content that your proposal does not compromise its statutory interests.

Planning policy and advice

8. The Director of Planning and Development at Highland Council, referred the section 36 application to the Council's Planning, Development, Europe and Tourism Committee. The Committee was of the view that whilst there are issues relating to visual and landscape impacts, local amenity and other matters, there are no substantive consultee objections to the section 36 application.

9. The Development Plan consists of the **Highland Structure Plan (March 2001)** and the **Strathnairn, Strathdean and Loch Ness Local Plan**.

10. The following references in the **Highland Structure Plan (HSP)** are of relevance:

Policy G2 identifies a number of assessment criteria on Design for Sustainability. Some key considerations for proposed development are:-

- maximise energy efficiency in terms of location, layout and design, including utilisation of renewable resources
- impact on individual and community residential amenity
- impact *inter alia* on habitats, landscape, species, scenery
- demonstrate sensitive siting and high quality design
- contribute to the economic and social development of the community

Developments which are judged to be significantly detrimental in terms of the above criteria shall not accord with the Structure Plan.

Policy G4 considers Community benefit and commitment

- Notes that Council will expect developments to benefit the local community and contribute to the wellbeing of the Highlands whilst recognising wider national interests
- Seeks agreements with developers
- Seeks a fund for local community initiatives where a development will have a long term impact on the environment (the developers reference their intention to establish a fund in their statement attaching)
- Seeks a financial bond for long term environmental restoration.

We note that you have reached an agreement with the Strathnairn and Strathdean Community Councils for both an index-linked capital lump sum and an annual contribution based on installed capacity.

11. Additionally, the Highland Council has a number of policies which specifically relate to renewable energy developments. Approval for such developments will normally be limited to the lifetime of the development and will be conditional on adequate provision for removal and restoration of the affected land.

Policy E2 – Wind Energy Developments states that; “Wind Energy proposals will be supported provided that impacts are not shown to be significantly detrimental. In addition to the General Strategic Policies, wind energy proposals will be assessed in respect of the following:-

- visual impact
- noise
- electro magnetic interference
- roads, bridges and traffic
- aircraft flightpaths/MOD operations
- cumulative effects”

12. The Strathnairn, Strathdean and Loch Ness East Local Plan (1997) is the currently adopted Local Plan for the area but will in due course be superseded by the Inverness Local Plan currently at Deposit Draft (see below). Relevant general policies in the Local Plan are as follows:-

The Council will encourage the sustainable use of the area’s resources and a wide distribution of employment opportunities by promoting:-

- expansion of established resource based activities;
- tourist related and service businesses;
- opportunities in the natural environment.

Additionally, the Council will encourage integrated use and management of resources in the landward area, and will continue to seek a balance between development and the conservation of features which represent the area’s outstanding natural and cultural heritage.”

13. The Inverness Local Plan Deposit Draft (September 2002), currently under revision seeks to be compatible and consistent in interpretation of the strategic policy framework of the Structure Plan which was approved by Scottish Ministers in March 2001. The Deposit Draft Local Plan sets out some general background and strategy for the area in terms of fostering prosperous and sustainable communities. The importance of tourism is recognised as well as the need to broaden the balance of economy and to develop, in sustainable terms, the natural advantages and resources of the area. In this context a map "Creating Prosperity" on page 10 of the Deposit Draft notes the upland area between Tomatin and Farr as being a potential area for wind farms.

14. The Scottish Executive sets out its planning policies through a series of national Planning Policy Guidelines and Planning Advice Notes. The following are of particular relevance to the consideration of your proposal:

Renewable Energy Developments (NPPG6) sets out the promotion of renewable sources of electricity generation as an integral part of the UK Government's energy policy. This document aims to provide guidance to support local authorities in delivering an increase in renewable energy development in Scotland; and

Planning Advice Note: Renewable Energy Technologies (PAN 45) supports the policies outlined in NPPG6 by providing information on the technologies for harnessing renewable energy for electricity generation. Additionally, this document presents advice on the issues which arise in connection with each technology.

The applicant's case

15. You have outlined the process which led to the selection of this site. This involved balancing a range of technical, environmental and planning issues. The site has a good wind resource, does not support any Sites of Special Scientific Interest (SSSI) or areas designated as of conservation importance within its boundaries. The site does not lie within a designated landscape and is at a reasonable distance from habitation. Access to the site is good and there is an available grid connection adjacent to the site.

16. You have been aware throughout the process that the landscape and visual impacts of the windfarm are a key issue in the assessment of this proposal. Your landscape and visual assessment concludes that the site will result in a prominent appearance within an area of some 6 kilometres radius. Since the deletion of 5 turbines on the western side of the site, the impact on the affected properties in Strathnairn is diminished but you accept that this may not be eliminated. Given the scale of the project, you are of the view that there will inevitably be some detrimental visual impact but find that the degree of this impact is acceptable.

17. A group opposed to your development Farr Wind Action Group (FARRWAG) has submitted two alternative layouts which move the turbines further to the east of the site and as a consequence render them invisible from Strathnairn and Strathdearn. The Scottish Ministers presented these alternatives to you for your consideration but you rejected them as they present a depleted wind yield and would lead to greater infrastructure costs.

18. In regard to deficiencies in ornithological information identified by the Scottish Ministers, you were asked to undertake further collision risk assessments, the results of which were presented to the Scottish Ministers for their consideration. Additionally, FARRWAG presented a dataset showing a significantly higher number of red kites using the site. You were asked to run the same risk analysis model on this dataset. You are of the view that the impact on the red kite population is not significant.

19. Following advice from Scottish Natural Heritage, the Scottish Ministers requested further information on ecological impacts, specifically on the potential for construction works to disturb otter and water vole populations which have been identified on the site. Water voles are an increasingly rare species and their habitat is protected under Section 9(4) of the Wildlife and Countryside Act 1981. We strongly recommend that you stay in close contact with Scottish Natural Heritage over the details of the work to be done in relation to voles to avoid any offence being committed. You are aware that otters are protected in terms of the EU Habitats Directive. Under the terms of the Conservation (Natural Habitats &c.) Regulations 1994, it is an offence to disturb or capture otters (a European Protected Species), damage or destroy their habitats, breeding sites or shelters unless a derogation is agreed by Ministers and a licence issued which would permit such actions to take place.

20. Scottish Natural Heritage had concerns that the development would have a significant impact on the blanket bog across the site. Blanket bog is a priority habitat in terms of the EU Habitats Directive and therefore carries the highest level of protection. In discharging these responsibilities, Scottish Natural Heritage have indicated that a peatland restoration plan outlining restoration methodology should be agreed between you, the landowner and Highland Council.

21. The hydrological impacts of the development have been assessed by the Scottish Environment Protection Agency (SEPA). SEPA's concerns centre on the pollution risks arising from construction activities and the creation of access roads and tracks. SEPA has requested conditions to secure detailed construction method statements, monitoring proposals and contingency plans.

22. In light of the peat slide associated with a windfarm construction at Derrybrien in Co. Galway, the Scottish Ministers asked you to undertake an analysis of peat depth across the site, from this to complete an assessment of peat slide risk, and to set out your proposals for disposal of excavated peat. You have complied with these requests and put in place measures to minimise the risk of peat slide.

23. Historic Scotland has confirmed that there are no impacts arising from the development which will affect its statutory archaeological interests.

The Scottish Ministers' Consideration

24. Following your agreement to delete 5 turbines to the east of the site, Scottish Natural Heritage was content to withdraw its objection on landscape and visual grounds. Scottish Natural Heritage accepts that the windfarm will inevitably be prominent from many local viewpoints but overall, the landscape can accommodate this development. FARRWAG asked you to consider two alternative layouts which would eliminate the visual impact at Strathnairn and Strathdearn. Given your rejection of these alternatives Scottish Natural Heritage was not asked to advise Ministers on the resultant landscape implications. The

Scottish Ministers have limited their consideration of the landscape and visual implications to the application as submitted and are accordingly content to accept the advice of Scottish Natural Heritage on this issue.

25. A cumulative visual impact has been undertaken in the context of Novar Wind Farm and the expected submission of a proposal at Dunmaglass, 10km to the south west. Scottish Ministers are content that the separation from Novar does not make cumulative impact significant. Comparisons with Dunmaglass are not appropriate as a planning application for this development has not been submitted.

26. In considering the ornithological impact of this proposal, the Scottish Ministers have had regard to their obligations in terms of the EU Directive on the Conservation of Wild Birds ("the Birds Directive"). You will be aware that the requirements of this Directive are implemented by the relevant sections of the Wildlife and Countryside Act 1981. The presence of a protected species, in this instance red kites which are listed in Annex 1 to the Birds Directive and therefore carry the highest level of protection, has been a material consideration in the assessment of this proposal. The Scottish Ministers have adopted a precautionary approach to avoid harm to the red kite population. They are convinced that there is a need for a monitoring regime specifically in relation to the red kites. This is pertinent as your dataset considered along with that presented by FARRWAG demonstrates that the red kites are not concentrated on a particular area of the site and the potential effects cannot therefore be ameliorated by the removal of a particular group of turbines. The Scottish Ministers recognise that the distance of these non-breeding birds from the breeding population on the Black Isle means that any deaths sustained as a result of the operation of the windfarm may not be replaced. To address this issue, the Scottish Ministers propose an intensive monitoring programme funded by you and overseen by a steering group chaired by the Scottish Executive comprising members representing Scottish Natural Heritage and the Royal Society for the Protection of Birds. Broadly, the parameters of this programme include:

- intensive vantage point surveys throughout 2005 and for 5 years into the operational period of the windfarm;
- wing-tag observations to quantify turnover of birds;
- search for collision casualties; and
- search and removal of carrion

The steering group will analyse the results of surveys as they emerge and consider further measures as appropriate such as; radio-tagging, establishing feeding stations and shutting down those turbines demonstrably responsible for frequent bird deaths.

27. In considering the ecological issues the Scottish Ministers have had regard to the letter of 1 October 2003 from Scottish Natural Heritage indicating that it is content that the ecological issues relating to water voles and otters have been fully addressed. You are now in receipt of a licence to disturb otters in terms of The Conservation (Natural Habitats &c.) Regulations 1994, the terms and conditions of which are outlined in the letter which accompanies the licence.

28. In considering the potential impact of your development on the blanket bog, the Scottish Ministers note that you have entered a planning agreement with the landowner and Highland Council in terms of section 75 of the Town and Country Planning (Scotland) Act.

Ministers accept the advice of Scottish Natural Heritage that this agreement secures sufficient mitigation and compensation to allow the development to proceed.

29. In assessing the hydrological impacts of the development, the Scottish Ministers accept the advice of SEPA on measures necessary to protect water quality and control pollution. In this respect they are content to apply those conditions derived from SEPA's response to the consultation.

30. In considering peat depth issues, the Scottish Ministers acknowledge that the design of this application was well advanced when the implications of the Derrybrien peat slide became apparent. It is welcome that you have conducted extensive peat depth analysis across the site and submitted the results for Ministers' consideration. Having commissioned an independent analysis of your report, Scottish Ministers are content that the risk of peat slide is generally low across the site but a precautionary approach is warranted at 4 of the turbine positions. To address this the Scottish Ministers have imposed a condition allowing a wider degree of micro-siting and requiring further analysis to inform the final positioning at the affected turbine positions.

31. You have undertaken that where disposal of excavated peat either on the shoulders of tracks, around turbine bases is not possible, it will be temporarily stored in on site borrow pits pending disposal off-site. This commitment has been secured as a condition of the consent.

32. The Scottish Ministers are content that Historic Scotland have fully and properly advised them that there are no features of this development which could compromise its statutory archaeological interests.

The Scottish Ministers' Determination

33. In terms of schedule 8 to the Electricity Act 1989 (as amended), if the local authority makes a valid objection and does not withdraw it, the Scottish Ministers must convene a PLI before determining the application. As Highland Council did not object to the Farr Windfarm proposal, in this instance, a PLI is not a statutory requirement.

34. Additionally, schedule 8 provides that where objections or copies of objections have been sent to the Scottish Ministers in pursuance of the Electricity (Application for Consent) Regulations 1990 ("the 1990 Regulations"), the Scottish Ministers "shall consider those objections together with all other material considerations" with a view to determining whether a PLI should be held with respect to the application and, if they think it appropriate to do so, they shall cause a PLI to be held.

35. As stated in paragraph 33 above, the planning authority has not maintained an objection to the application and as a consequence, the Scottish Ministers are not obliged under paragraph 2(2) of Schedule 8 to the Act to cause a public inquiry to be held. Paragraph 3(2) of Schedule 8 to the Act, however, requires the Scottish Ministers to consider all the objections they have received, together with all other material considerations, with a view to determining whether a public inquiry should be held and, if they think it appropriate to do so, they shall cause a PLI to be held. The Scottish Ministers received 32 individual representations, and an objection and supporting reports and information from FARRWAG pursuant to the 1990 Regulations.

36. In reaching this decision without invoking the discretionary power to cause a PLI to be held the Scottish Ministers are content that adequate opportunity was afforded for public representation and that those with a right to make representation could have their representation properly taken into account. The Scottish Ministers are further content that they can weigh all the conflicting issues without recourse to a public inquiry.

37. The Scottish Ministers are content that the Environmental Statement is sufficient to allow them to make a determination on the application.

38. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ("the 2000 Regulations") prohibit the Scottish Ministers from granting consent unless they have fully considered the environmental information, as defined in those regulations.

39. The Scottish Ministers have considered the environmental information carefully; in addition to the Environmental Statement, they have considered the comments made by the planning authority and those designated as statutory consultees in terms of Regulation 6 of the 1990 Regulations and those of the consultative bodies in terms of the 2000 Regulations.

40. Schedule 9 of the 1989 Act places a duty on the company to have regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest. It requires the company to do what it reasonably can to mitigate the effects that the development would have on these features. Schedule 9 also requires the Scottish Ministers have regard to these features and the extent to which the company has complied with this duty. The Scottish Ministers are satisfied that the company has had due regard to these features and, consequently consent for this proposal in terms of section 36 of the Electricity Act 1989 (as amended) and issue a direction that planning permission be deemed to be granted. The section 36 consent is subject to 14 conditions and the deemed planning permission is subject to 18 conditions. A copy of the consent is enclosed with this letter.

41. Copies of this letter have been sent to Highland Council as planning authority and all those consultees and individuals who made a representation about this proposal.

Yours sincerely



LESLEY THOMSON

A member of the staff of the Scottish Ministers

ELECTRICITY ACT 1989
and
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

**CONSENT AND DEEMED PLANNING PERMISSION BY THE SCOTTISH
MINISTERS FOR THE CONSTRUCTION AND OPERATION OF A WIND
POWERED ELECTRICITY GENERATING STATION AT FARR, NEAR
TOMATIN, INVERNESS-SHIRE**

Consent and deemed planning permission

1. The Scottish Ministers, in exercise of the powers conferred on them by section 36 of the Electricity Act 1989 (as amended by section 93 of the Energy Act 2004) and section 57(2) of the Town and Country Planning (Scotland) Act 1997 and of all other powers enabling them in that behalf hereby consent to:-
 - 1.1 the construction and operation by Npower Renewables Limited ("the company"), or their permitted assignees who are in possession of a letter of authorisation from the Scottish Ministers issued in accordance with paragraph 3.2 below, of a wind-powered electricity generating station at Farr near Tomatin, Inverness-shire, as described in the application, the Environmental Statement, and maps, duly endorsed on behalf of the Scottish Ministers, accompanying the application outlined in Figure 1 ("the development");
 - 1.2 subject to the definitions set out in paragraph 6 and conditions set out in paragraph 7, the Scottish Ministers direct that planning permission for the development shall be deemed to be granted.

Description of Development

2. Subject to the conditions set out in paragraphs 3 and 7, the development shall comprise:
 - 1) up to 40 wind turbines, of overall height from base to tip not exceeding 102 metres, unless prior agreement is secured from the planning authority to a greater overall height and of a total capacity not exceeding 112.5 Megawatts;
 - 2) 3 anemometer masts;
 - 3) all necessary wind turbine transformers and housings,
 - 4) site tracks and foundations; and
 - 5) all on-site switch-gear and metering building and associated works including electrical cabling and temporary borrow areas.

Timing and assignment

- 3.1 The consent is for a period from the date of this consent until 25 years from the date of commissioning. The company is required to obtain by no later than the end of said 25 year period, written confirmation from the planning authority that all decommissioning works have been completed in accordance with the approved decommissioning scheme referred to in condition 3.4 of this consent. Written confirmation of the date of the commissioning shall

provision as permitted in terms of condition 7.8. The Scottish Ministers shall consider this report in consultation with the planning authority and Scottish Natural Heritage. Following this consultation, the Scottish Ministers shall approve the appropriate position for these turbines and associated tracks. The company shall erect these turbines and associated tracks in accordance with that approval. If the Scottish Ministers consider that they cannot approve a position for each or any of these, the turbines they shall not be erected. In this event, the tracks shall be re-aligned to take account of any deletion and plans submitted for the consideration of the Scottish Ministers in consultation with the planning authority. Thereafter tracks shall be constructed in accordance with any approval granted.

3.8 Prior to any work commencing on site, details of the measures to be taken to protect breeding birds, and specifically to discourage birds from breeding on those areas of the site to be worked in during that breeding season, shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. Thereafter the measures, as approved, shall be implemented.

3.9 The company shall undertake six years of monitoring of breeding birds from the date of this consent: first, annually for a period of 3 years following the final commissioning of the development, and second at five yearly intervals, at 5, 10 and 15 years after the construction phase is completed. This monitoring should be conducted to an identical standard on both the windfarm site and an appropriate reference site. The detail of this monitoring and of the reference site shall be submitted to and approved by the Scottish Ministers in consultation with the planning authority and Scottish Natural Heritage. The findings of these surveys shall be collated into two reports, after three and fifteen years, and all of the original data (in formats agreed by the Scottish Ministers in consultation with Scottish Natural Heritage), and the reports will be made available to the Scottish Ministers, the planning authority and Scottish Natural Heritage. After the first report, any mitigation measures developed and approved by Scottish Ministers in consultation with Scottish Natural Heritage shall be implemented.

3.10 A group, chaired by an officer of the Scottish Executive as appointed by the Scottish Ministers to be known as the Farr Windfarm Monitoring Group ("FWMG") shall be established. Membership of the group (apart from the Chair) shall comprise representatives of Scottish Natural Heritage and the Royal Society for the Protection of Birds and the independent ecological contractor.

3.11 Prior to any work commencing on site, the company shall identify an independent contractor whose appointment has been approved by the Scottish Ministers in consultation with Scottish Natural Heritage and the Royal Society for the Protection of Birds. If at any point in this process, the Scottish Ministers determine that the independent contractor has failed to implement these provisions, the company shall identify a replacement whose appointment shall be approved in accordance with the foregoing terms. This contractor shall to undertake a programme of monitoring for a schedule of species to be agreed by FWMG. All costs relating to this programme shall be met by the company. This programme of monitoring shall include:

- (1) three three-hour watches from a minimum of three vantage points each month from the date of this consent until 5 years after the commissioning of the development. These observations shall record flight-lines, any collisions or avoidance activity, narrative report as specified by FWMG; and

“the application” means the application submitted by National Wind Power Limited on 11 September 2002, as amended by the letter from the company dated 30 January 2003;

“the commencement of the development” means the date on which the development shall be taken as initiated in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997;

“the commissioning of the development” means the date on which the first wind turbine generator forming part of the development first supplies electricity to the public electricity network on a commercial basis;

“the company” means Npower Renewables Limited, having their Registered Office at Reading Bridge House, Reading Bridge, Reading, Berkshire, RG1 8LS (registered company number 02550622);

“the date of final commissioning” means the date on which all wind turbine generators forming the development have supplied electricity on a commercial basis or such date as the Scottish Ministers deem the development to be complete;

“the development” means a wind-powered electricity generating station at Farr near Tomatin comprising no more than 40 wind turbines and associated works, all as more particularly described in the application;

“material operation” has the same meaning as in section 27 of the Town and Country Planning (Scotland) Act 1997;

“planning authority” means The Highland Council;

“site” means the area of land outlined in red on Figure 1 annexed hereto;

“switchgear metering building” means the area of land coloured yellow on Figure 1 annexed hereto.

Conditions

7. For the development described in paragraph 2, consent as outlined in paragraph 1 is subject to the timescales outlined in paragraph 3. Additionally, this development is subject to the following conditions:-

7.1 At least one month prior to commencement of the development, the company shall provide to the planning authority written details of the bond or other financial provision which it proposes to put in place to cover all site restoration costs on the expiry of this consent. No work shall commence on the site until written confirmation has been given by the planning authority that the proposed bond or other financial provision is satisfactory. The company shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent. Thereafter the company shall at 5-yearly intervals provide the planning authority with a review of the proposed bond or other financial provision against the decommissioning and restoration proposals. The planning authority, if

7.5 No work shall commence on site until the company has obtained written approval from the planning authority for detailed plans, for all activities involving a scheme of works designed for mitigation and where possible enhancement. The mitigation and enhancement works shall be carried out in accordance with the approved plans and within timescales agreed with the planning authority. Thereafter, each plan, as amended by the planning authority, shall be implemented. Plans shall be lodged to cover:

- 7.5.1 site management including habitat enhancement. Prior to giving written approval for this plan, the planning authority shall consult with Scottish Environment Protection Agency and Scottish Natural Heritage;
- 7.5.2 a programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation. All arrangements thereby approved shall be implemented in accordance with the approved timetable for investigation;
- 7.5.3 no work shall commence on site until the developer has carried out a survey of existing water supplies arising from and within 50 metres of the site, identifying the exact sources, premises served and distribution network. Thereafter, a mitigation plan to prevent pollution of the private water supply at Wester Lairgs, to the water catchment area above Farr, and to the area of intake for water supplies to Tomatin Distillery shall be submitted for the prior written approval of the planning authority in consultation with Scottish Water. Where said plan establishes that a supply is required to be temporarily or permanently replaced, the replacement supply shall provide sufficient quantity of water and meet relevant quality standards.

Reason: to ensure compliance with all commitments made in the environmental statement and subsequent schemes developed following the consultation process.

- 7.5.4 Temporary water supplies must be provided to those affected until permanent mitigation and replacement measures can be implemented. Such permanent measures shall be completed within one month of the erection of any mast or other works affecting the supply, as identified in the assessment, to the satisfaction of the planning authority in consultation with the TEC Services (Environmental Health).

Reason: to secure temporary supply should mitigation/replacement measures prove necessary.

Construction

7.6 Each turbine shall be erected in the positions indicated on figure 1. Variation shall only be permitted, within the following parameters:

- (1) a variation of less than 30 metres in turbine location may only be permitted following the approval of the location of both the turbine and the access road by the project ecologist and The Highland Council Archaeologist; and

7.12 The company shall log wind speed and wind direction data continually and shall retain the data which has been obtained for a period of no less than the previous 12 months. The data shall include the average wind speed in metres per second for each 10 minute period. The measuring periods shall be set to commence on the hour or in 10 minute increments thereafter. The wind speed data shall be made available to the planning authority on request. The data shall be provided on a Microsoft Excel spreadsheet in electronic format. Where the wind speed is measured at a height other than 10 m, the data shall be supplemented by adjusted values which allow for wind shear, normalised to 10m height. Details of the wind shear calculation shall be provided.

Reason: to provide information necessary for accurate assessment of noise impact.

7.13 At wind speeds not exceeding 12m/s, as measured or calculated at a height of 10m above ground level at the nearest wind monitoring mast, the wind turbine noise level at any dwelling or other noise sensitive premises shall not exceed:-

- (a) during night hours, 38dB LA90,10min, or the Night Hours LA90,10min Background Noise Level plus 5 dB(A), which ever is the greater.
- (b) during Quiet Waking Hours, 35 dB LA90,10min or the Quiet Waking Hours LA90,10min Background Noise Level plus 5 dB(A), which ever is the greater.

Reason: to protect the amenity at noise sensitive premises.

In this 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.

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

“wind speeds” means wind speeds measured or calculated at a height of 10 metres above ground level on the wind farm site at the wind monitoring mast nearest to the premises of interest by reference to Figure 3 of the Farr Wind Farm, Environmental Statement, Volume 3, Volume of Figures, September 2002.

“Night hours” means 23:00 – 07:00 hours on all days.

“Quiet Waking Hours” means 18:00 – 23:00 hours on all days, plus 07:00 – 18:00 on Sundays and 13:00 – 18:00 hours on Saturdays.

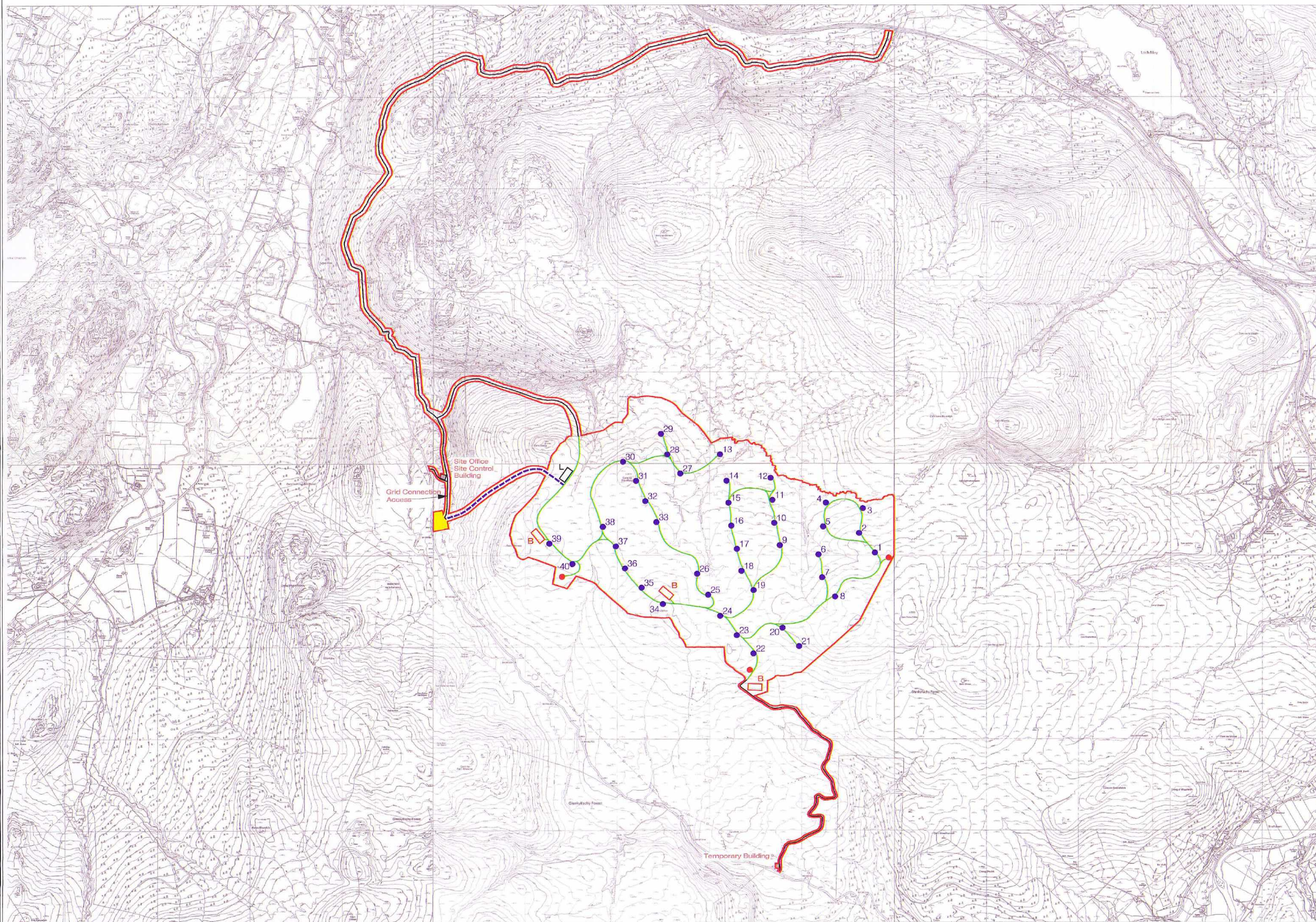
“Noise Sensitive Premises” means premises, the occupants of which could be exposed to noise from the wind farm and includes hospitals, residential homes, nursing homes, etc.

FARR
WIND FARM

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FIGURE 1

- KEY:
- Turbine Locations
 - Anemometer Masts
 - Site Boundary
 - Underground Grid Connection
 - Site Access
 - Internal Access
 - B Borrow Pit Location
 - L Laydown Area



NOTES:

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Scale: 1:20,000
0m 250m 500m 1km



ELECTRICITY ACT 1989
SECTION 36 SITE MAP
REVISED

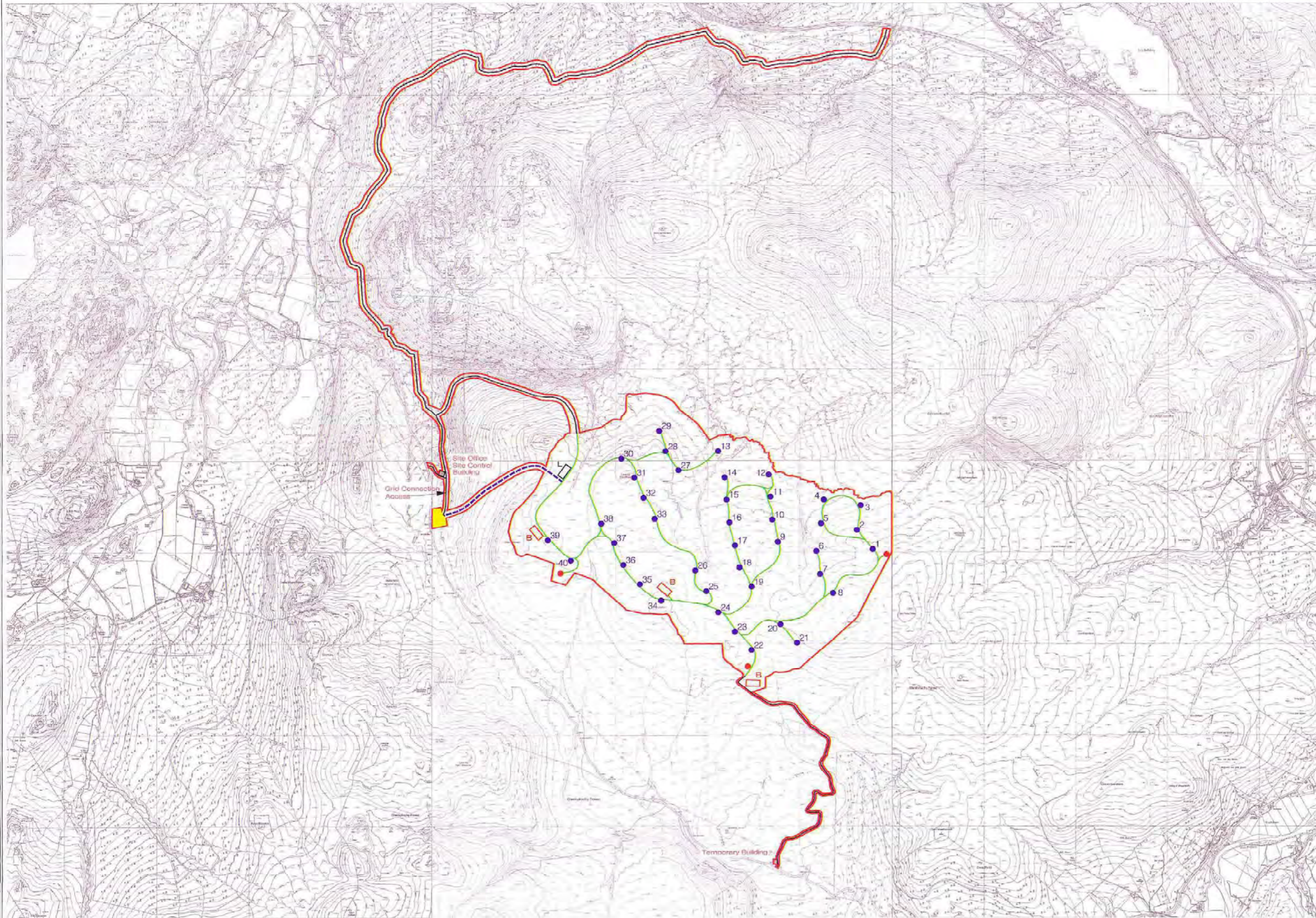
FARR
WIND FARM

FARR
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FIGURE 1

KEY:

- Turbine Locations
- Access Point Mark
- Site Boundary
- Development Grid Connection
- Site Access
- Internal Access
- ^B Reserve Pit Location
- ^L Laydown Area

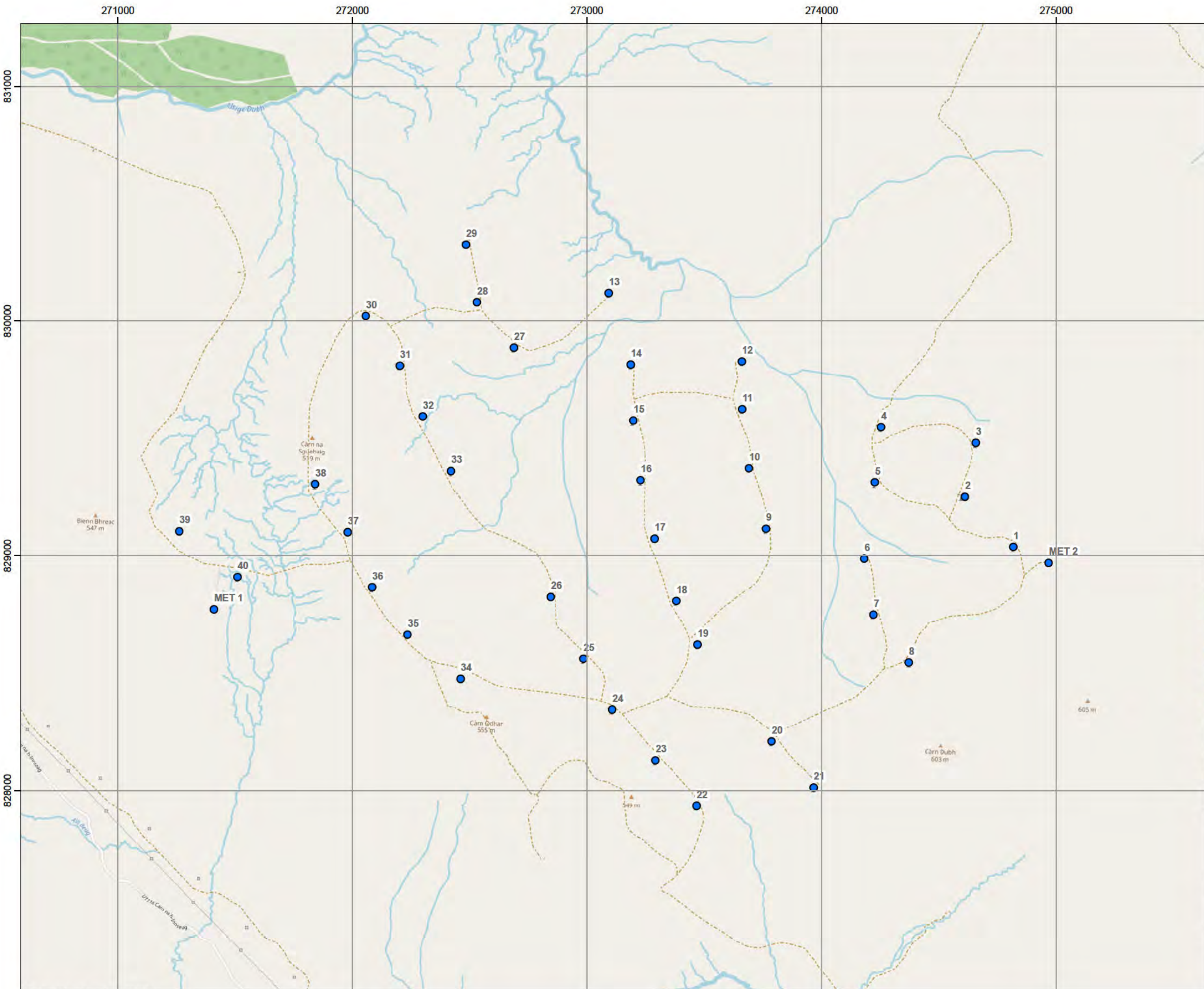


NOTES:

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Scale: 1:20,000
0m 200m 400m 1km





Legend:

- As Built Turbine Location

WTG No.	Easting	Northing
1	274819	829036
2	274613	829251
3	274659	829481
4	274254	829547
5	274228	829311
6	274184	828986
7	274223	828748
8	274373	828544
9	273764	829114
10	273692	829371
11	273663	829623
12	273661	829826
13	273094	830118
14	273187	829813
15	273199	829574
16	273230	829321
17	273289	829072
18	273382	828806
19	273472	828621
20	273789	828208
21	273967	828011
22	273468	827933
23	273293	828127
24	273109	828343
25	272986	828559
26	272847	828824
27	272689	829886
28	272532	830079
29	272485	830324
30	272058	830021
31	272203	829808
32	272301	829592
33	272421	829360
34	272462	828475
35	272236	828662
36	272085	828864
37	271981	829099
38	271842	829304
39	271263	829103
40	271511	828908
MET 1	271410	828770
MET 2	274970	828968

Notes:
 This map contains data from the following sources:
 Turbine Locations - As Built
 Coordinate System: British National Grid
 Projection: Transverse Mercator
 Datum: OSGB 1936
 Units: Meter



Rev	Date	Description	Drm	Chk	App
01	28/08/2020	Turbine Coordinates Added	DL	RB	RB
00	03/06/2020	First Draft	DL	RB	RB

Farr Wind Farm Life Extension



TITLE: Figure 1:
Turbine Locations

