

Agenda Item	<b>6.5</b>
Report No	<b>PLN/084/21</b>

## HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee  
**Date:** 19 October 2021  
**Report Title:** 21/03686/S42 : Highland Wind Limited  
 Development Site 9KM NW Of Dounreay Nuclear Research Establishment, Dounreay

**Report By:** Area Planning Manager North

### Purpose/Executive Summary

**Description:** Dounreay Tri Wind Farm - Application for non-compliance with Conditions 23 (Commencement of Development), 25 (Design of substation and ancillary development), 27 (Traffic and Transport), 29 (Onshore Construction Method Statement), 30 (Onshore Environmental Management Plan) and 31 (Onshore Cable Plan) of deemed planning permission 16/04775/S36

**Ward:** 02 - Thurso And North West Caithness

**Development category:** Major

**Reason referred to Committee:** 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 **GRANT** the application as set out in section 10 of the report.

## 1. PROPOSED DEVELOPMENT

1.1 This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 (As Amended) and relates to Conditions 23 (Commencement of Development), 25 (Design of substation and ancillary development), 27 (Traffic and Transport), 29 (Onshore Construction Method Statement), 30 (Onshore Environmental Management Plan) and 31 (Onshore Cable Plan) attached to deemed planning permission 16/04775/S36 which was consented by Scottish Ministers on 16 March 2021 in respect of the Dounreay Tri Floating Wind Farm and associated onshore infrastructure. The off-shore turbines are located approximately 9km north west of the Dounreay Nuclear Facility and the onshore elements are located to the west of the Dounreay Nuclear Facility. The original conditions attached to the Section 36 consent and deemed planning permission is available at:

<https://marine.gov.scot/data/dounreay-tri-floating-wind-demonstration-project-eia-consent-decision>

1.2 The Dounreay Tri project comprises:

- construction of two offshore wind turbines on a single floating platform with a blade tip height of up to 201m and a maximum generating output of 6MW per turbine and associate onshore infrastructure.
- Offshore infrastructure including:
  - a floating foundation;
  - mooring clump weight;
  - mooring chain and/or steel lines;
  - drag embedment anchors; and
  - scour protection for the anchors and export cable.
  - installation of a single 33kV export cable
- Onshore infrastructure including:
  - Cable landing point;
  - a cable joint transition bay
  - erection of onshore electricity substation or switchgear; and
  - Laydown area

1.3 The consent for the Dounreay Tri proposal was assigned to Highland Wind Limited on 3 March 2021 and in July 2021 Scottish Ministers agreed, via Marine Scotland, an extension of time to implement the consent until 15 March 2025. The applicant had sought this extension to This extension was requested to allow the applicant to develop a single turbine demonstrator project as part of this proposal and it anticipates that this will commence construction in April 2023. The applicant is currently preparing a separate proposal for the development which comprises an increased number of wind turbines at a larger blade tip height. This is not however affected by this application and that proposal will be submitted to Marine Scotland for consideration in due course. The Highland Council will be a consultee on that application which will be submitted under Section 36 of the Electricity Act 1989 (As Amended).

- 1.4 This application is related to the conditions attached to the deemed planning permission for the Dounreay Tri Off-shore Wind Farm and requests the removal of Condition 23 (Commencement of Development). This condition states:

*The Commencement of the Development must be no later than 5 years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct in writing. Written confirmation of the intended date of Commencement of Development must be provided to the Local Authority and Scottish Ministers no later than one calendar month before that date.*

*Reason: In accordance with s.58 of the Town and Country Planning (Scotland) Act 1997. To avoid uncertainty and ensure that the consent is implemented within a reasonable period.*

- 1.5 The application also seeks to reword Conditions 25 (Design of substation and ancillary development), 27 (Traffic and Transport), 29 (Onshore Construction Method Statement), 30 (Onshore Environmental Management Plan) and 31 (Onshore Cable Plan) as the wording of these conditions requires the conditions to be satisfied by Scottish Ministers not The Highland Council. The wording of these conditions, as included on the consent issued by Scottish Ministers, are included below for ease of reference:

Condition 25 – Design of Sub-station and ancillary development

*There must be no Commencement of Development before final details of the external appearance, dimensions, and surface materials of the onshore substation building, associated compounds, any construction compound, welfare facilities, any areas of hard standing, turning areas, access tracks, material stockpiles, oil storage, boundary fencing, walls external lighting, parking areas landscaping, screening, bunding paths and any other ancillary elements of the development, have been submitted to, and approved in writing by, the Scottish Ministers. Such approval may only be granted following consultation by the Scottish Ministers with the THC and HES and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. All onshore Development must be constructed in accordance with the approved details.*

*Reason: To ensure that the environmental impacts of the sub-station forming part of the Development conform to the impacts assessed in the environmental statement and in the interests of the visual amenity of the area.*

27 (Traffic and Transport)

*The Company must, at least 6 months prior to the Commencement of the Development submit a Traffic and Transportation Plan ("TTP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with THC and any such other advisors as may be required at the discretion of the Scottish Ministers. The TTP must set out a mitigation strategy for the impact of road based traffic and transportation associated with the construction of the Development. The Development must be constructed and operated in accordance with the approved TTP.*

*Reason: To maintain the free flow and safety of the Trunk Road network*

## 29 (Onshore Construction Method Statement)

*The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers, submit an Onshore Construction Method Statement (“OnCMS”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, SEPA, THC and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.*

*The OnCMS must include, but not be limited to, the following:*

- a) the construction procedures and good working practices for installing the Development;*
- b) details of the roles and responsibilities, chain of command and contact details of company personnel, any contractors or sub-contractors involved during the construction of the Development;*
- c) details of how the construction related mitigation steps proposed in the ES are to be delivered; and*
- d) a waste management plan for the construction phase of the Development.*

*The OnCMS must adhere to the construction methods assessed in the Application and in the ES. The OnCMS must also, so far as is reasonably practicable, be consistent with the DS and all other onshore Plans. Reason: To mitigate any potential impacts on the environmental interests during construction and operation.*

## 30 (Onshore Environmental Management Plan)

*The Company must, no later than 6 months or at such a time as agreed with the Scottish Ministers, prior to the Commencement of the Onshore Works, submit an Onshore Construction Environmental Management Plan (“OnEMP”), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with THC, SEPA, SNH, DSRL and any such other advisors as may be required at the discretion of the Scottish Ministers.*

*The OnEMP must include, but must not be limited to, the following:*

- a) a site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, reuse and recycle should be encouraged;*
- b) continuous monitoring of radioactive particles;*
- c) acknowledgement that the Company have registered with SEPA to receive flood alerts for the Caithness area;*
- d) a Flood Risk Assessment;*

- e) *environmental management - identification of mechanisms to ensure subcontractors are well controlled and are aware of relevant environmental issues. This must include details of on-going monitoring and emergency procedures / pollution response plans and the provision of spillage kits;*
- f) *a pollution prevention and control method statement, including arrangements for the storage and management of oil, fuel and chemicals on the site which must comply with the Water Environment (Oil Storage) (Scotland) Regulations 2006;*
- g) *a drainage management strategy, demonstrating the use of sustainable drainage systems (SUDs) in line with Scottish Planning Policy for all surface water runoff or details of the means whereby surface water will discharge directly to coastal waters;*
- h) *sewage disposal and treatment in the event of permanent toilet facilities or kitchen which are connected to the public sewer;*
- i) *temporary site illumination; and*
- j) *timing of works.*

*Reason: To mitigate any potential impacts on the environmental interests during construction and operation.*

#### 31 (Onshore Cable Plan)

*The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers submit an Onshore Cable Plan ("OnCaP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, SEPA, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The OnCaP must be in accordance with the ES.*

*The OnCaP must include, but not be limited to, the following:*

- a) *the location and cable laying techniques for the cables;*
- b) *the results of monitoring or data collection work (including geophysical, geotechnical information) to help inform cable routing;*
- c) *technical specification of cables;*
- d) *a burial risk assessment to ascertain burial depths and, where necessary, alternative protection measures;*
- e) *methodologies for surveys and monitoring of the cables through the operational life of the wind farm where protection of cables is deployed; and*
- f) *methodologies for cable inspection with measures to address and report to the Scottish Ministers any exposure of cables.*

*Any consented cable protection works must ensure that safe navigation is not compromised.*

*Reason: To mitigate any potential impacts on the environmental interests during construction and operation.*

- 1.6 The application is supported by a statement which outlines the reason why Condition 23 should be deleted, and the other conditions modified.

- 1.7 No variations have been made to the application following validation of the application.
- 1.8 The applicant has had informal pre-application discussions with the Planning Service in relation to procedure related to this application. It is understood that the applicant also discussed

## 2. PLANNING HISTORY

- 2.1 01 March 2016 16/00362/SCOP - Proposed section 36 application and marine application for Dounreay Tri Floating Wind Demonstration Project Scoping Opinion Issued
- 2.2 16 March 2017 16/04775/S36 - Construction of two offshore wind turbines on a single floating platform, each with an installed capacity of up to 6MW (max rotor tip of 201m and max hub height of 124m above the lowest astronomical tide), installation of export cable and deemed planning permission for erection of onshore electricity substation Consent Granted by Scottish Ministers
- 2.3 05 February 2021 20/05164/SCOP - Pentland Floating Offshore Wind Farm - Construction and operation of a floating wind farm comprising between 6 and 10 floating structures and turbines with a maximum blade tip height of 270m and associated supporting onshore infrastructure Scoping Opinion Issued

## 3. PUBLIC PARTICIPATION

- 3.1 Advertised: Unknown Neighbour and Schedule 3 Development  
Date Advertised: 27.08.2021  
Representation deadline: 10.09.2021  
Timeous representations: 0  
Late representations: 0

## 4. CONSULTATIONS

- 4.1 **Caithness West Community Council** did not respond to the consultation.
- 4.2 **Castletown Community Council** did not respond to the consultation.
- 4.3 **Halkirk and District Community Council** did not respond to the consultation.
- 4.4 **Melvich Community Council** did not respond to the consultation.
- 4.5 **Strathy and Armadale Community Council** did not respond to the consultation.

- 4.6 **Thurso Community council Community Council** did not respond to the consultation.
- 4.7 **Environmental Health Officer** does not object to the application and have no further comments.
- 4.8 **Flood Risk Management Team** do not object to the application and have no further comments.
- 4.9 **Historic Environment Team** do not object to the application and have no further comments.
- 4.10 **Transport Planning** do not object to the application.
- 4.11 **Civil Aviation Authority** did not respond to the consultation.
- 4.12 **Highlands and Islands Airports Limited** do not object to the application. In notes that the development will not impinge on the safeguarding criteria for Wick Airport.
- 4.13 **Historic Environment Scotland** do not object to the application. It notes that the application will not lead to changes to the previously assessed effects on the historic environment identified through the original application.
- 4.14 **Marine Scotland Marine Licensing** responded to advise that they will not be commenting on the application.
- 4.15 **Ministry of Defence** did not respond to the consultation.
- 4.16 **NatureScot** did not respond to the consultation
- 4.17 **Scottish Environmental Protection Agency** do not object to the application. It recommends that: reference to SEPA can be removed from Condition 29 as SEPA no longer provide advice on construction method statements; sub-conditions a, c, and d of Condition 30 could be removed and sub-condition h could be modified to set out clearer wording related to sewage treatment and disposal.
- 4.18 **Scottish Forestry** do not object to the application and have no further comments.
- 4.19 **Scottish Water** do not object to the application. It highlights that the proposal does not affect any drinking water protected areas and it will not be able to connect surface water drainage into Scottish Water's combined sewer system.
- 4.20 **Transport Scotland** do not advise against the granting of planning permission.
- 4.21 As required by The Town and Country Planning (Notification of Applications) (Applications under Section 42) (Scotland) Direction 2020, the submission of the application was notified to Scottish Ministers. Marine Scotland confirmed (as per their response at paragraph 4.14 above) that it did not have any comments on the application.

## **5. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

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

- 28 - Sustainable Design
- 29 - Design Quality and Place-making
- 30 - Physical Constraints
- 31 - Developer Contributions
- 51 - Trees and Development
- 53 - Minerals
- 54 - Mineral Wastes
- 55 - Peat and Soils
- 56 - Travel
- 57 - Natural, Built and Cultural Heritage
- 58 - Protected Species
- 59 - Other important Species
- 60 - Other Importance Habitats
- 61 - Landscape
- 63 - Water Environment
- 64 - Flood Risk
- 65 - Waste Water Treatment
- 66 - Surface Water Drainage
- 67 - Renewable Energy Developments:
- 68 - "Community" Renewable Energy Developments
- 69 - Electricity Transmission Infrastructure
- 72 - Pollution
- 73 - Air Quality
- 77 - Public Access

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

- 5.2 No policies or allocations relevant to the proposal are included in the adopted Local Development Plan. It does however confirm the boundaries of Special Landscape Areas within the plan's boundary.

### **Supplementary Guidance**

- 5.3 The following Supplementary Guidance also forms a statutory part of the Development Plan and is considered pertinent to the determination of this application:
- Developer Contributions (Nov 2018)
  - Flood Risk and Drainage Impact Assessment (Jan 2013)
  - Highland Historic Environment Strategy (Jan 2013)
  - Highland's Statutorily Protected Species (Mar 2013)
  - Managing Waste in New Developments (Mar 2013)
  - Physical Constraints (Mar 2013)
  - Special Landscape Area Citations (Jun 2011)



- Standards for Archaeological Work (Mar 2012)
- Trees, Woodlands and Development (Jan 2013)

## **6. OTHER MATERIAL CONSIDERATIONS**

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

National Planning Framework 3 (2014)

Scottish Planning Policy (2014)

PAN 50 - Controlling the Effects of Surface Mineral Workings (1996)

PAN 51 - Planning, Environmental Protection and Regulation (2006)

PAN 60 - Planning for Natural Heritage (2000)

PAN 63 - Waste Management Planning (2002)

PAN 64 - Reclamation of Surface Mineral Workings (2002)

PAN 79 - Water and Drainage (2006)

PAN 1/2011 - Planning and Noise (2011)

PAN 2/2011 - Planning and Archaeology (2011)

National Planning Framework 4 Position Statement (2021)

## **7. PLANNING APPRAISAL**

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

### **Determining Issues**

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

### **Planning Considerations**

- 7.3 The principle of the development has been established through the Section 36 Consent and associated deemed planning permission. This is an application to modify conditions. In order to address the determining issues therefore, Committee must consider the extent to which the proposal continues to comply with development plan policy and take into consideration any other material considerations.

### **Development plan/other planning policy**

- 7.4 Development Plan policy has changed since the time of the determination of the original application for the construction of the . The Highland-wide Local Development Plan (2012) remains in force however the Caithness Local Plan is no

longer in force and has been superseded by the Caithness and Sutherland Local Development Plan. However, given the type of development, there are no implications for this development arising from this update to the Development Plan.

- 7.5 While national planning policy has not changed since the decision of the original application, The Scottish Government has published a position statement in relation to National Planning Framework 4. This gives an indication of the direction of future national policy on a range of different development types including mineral developments. The Position Statement holds little weight in the decision making process and makes it clear that until National Planning Framework 4 is published, Scottish Planning Policy and National Planning Framework 3 remain the current national policy documents against which development should be assessed. With that said, the Position Statement indicates that terrestrial and marine planning come together with NPF4 aligning with Scotland's National Marine Plan and renewable energy developments will continue to be supported, including the re-powering and extension of existing wind farms. Further, the Position Statement includes a proposal for a "Plan for Net-Zero Emissions". It is of note that the Scottish Government expects that the Global Climate Emergency should be a material consideration in considering applications for appropriately located renewable energy developments (page 9). This continues to support the aim of the presumption in favour of sustainable development set out in para 28 of SPP 2020 of achieving the right development in the right place; not allowing development at any cost.
- 7.6 The key issue therefore is whether the removal of condition 23 (Commencement of Development) and modification of conditions 25 (Design of substation and ancillary development), 27 (Traffic and Transport), 29 (Onshore Construction Method Statement), 30 (Onshore Environmental Management Plan) and 31 (Onshore Cable Plan) applied for would result in the development being incompatible with the Development Plan. The remainder of this report will consider the removal and modifications proposed and assess the compatibility with the Development Plan.

#### **Modification of Condition 23 (Commencement of Development)**

- 7.7 The applicant has requested that this condition 23 which stipulates the timescale for commencement of development for the deemed planning permission. In March 2021 Marine Scotland, on behalf of Scottish Ministers, extended the timescale for commencement of development to allow for a meaningful start to the demonstrator project which involves the erection of a single floating turbine. It is not necessary to repeat such conditions on both the Section 36 consent and the deemed planning permission as one can not be implemented without the other. Further there is an anomaly in the condition attached to the deemed planning permission as the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (As Amended) do not apply as the overall consent is time limited.

- 7.8 Following a notification to Scottish Ministers, via the Scottish Government Energy Consents Unit and Marine Scotland, as required by The Town and Country Planning (Notification of Applications) (Applications under Section 42) (Scotland) Direction 2020, Marine Scotland confirmed it did not wish to comment on the application.
- 7.9 As a result of the above, it is considered that it is reasonable to remove Condition 23. The removal of the condition will not conflict with any provisions of the Development Plan as the remaining conditions attached to the consent ensure appropriate mitigation is in place through the construction, operation and decommissioning of the development. Further, the presence of a commencement of development condition on the associated Section 36 consent ensures that the development is required to commence within a fixed period and will lapse if the development is not commenced within the period defined by Scottish Ministers,

**Conditions 25 (Design of substation and ancillary development), 27 (Traffic and Transport), 29 (Onshore Construction Method Statement), 30 (Onshore Environmental Management Plan) and 31 (Onshore Cable Plan)**

- 7.10 For the above conditions, as currently worded, the final approval of detail to be submitted is the responsibility of Scottish Ministers. The applicant is seeking to vary the above conditions to ensure that The Highland Council, as Planning Authority approve the details required by the conditions. Having the Planning Authority as the determining authority for deemed planning permission conditions, is in line with current practice on conditions attached to deemed planning permissions and it would also provide the Planning Authority with greater certainty over the outcome. Approval of such matters by the Planning Authority, is particularly important when it comes to monitoring and enforcement of conditions as that is the responsibility of the Planning Authority, not Scottish Ministers, in relation to conditions attached to deemed planning permissions.
- 7.11 With regard to condition 29, the Scottish Environment Protection Agency (SEPA) have recommended that the requirement to consult SEPA as set out by the condition can be removed as it is no longer something that as an organisation it advises on. Given the wealth of experience which exists within the Planning Authority related to Construction Method Statements, this is considered reasonable. SEPA further recommend that condition 30 is streamlined in relation to SEPA's interests. This includes the removal of sub-conditions condition a (Site Waste Management Plan), c (registration for flood risk alerts), and d (submission of a flood risk assessment). While it is reasonable for SEPA to request their removal within their interests, there are aspects of these sub-conditions which may have wider implications for the local area (for example implications for the local road network as a result of removal of waste) and the deemed planning permission. It is therefore recommended that these remain. SEPA have requested that sub-condition h is reworded to clarify the wording which is in place. In doing so it would ensure that the focus is on sewage treatment rather than disposal. This is accepted.

- 7.12 It is considered reasonable to reword conditions 25, 27, 29 and 31. The modifications to the conditions will not conflict with any provisions of the Development Plan and will continue to secure the same level of mitigation through the construction, operation and decommissioning of the development.

### **Other material considerations**

- 7.16 Through the processing of this application it has been identified that the site of the onshore infrastructure associated with the proposal conflicts with a planning permission which was subsequently granted by The Highland Council for the Dounreay Substation in favour of SSE Transmission. This matter has been raised with the applicant who has held discussions with SSE Transmission. Through these discussions the applicant is reviewing the final design of their onshore infrastructure (in particular the substation and cable routing) in light of the proposed layout of the SSE Transmission substation to avoid conflict between the developments. The final designs in relation to the infrastructure will be submitted in due course to satisfy the relevant conditions attached to the planning permission.
- 7.17 It is worth highlighting that an application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity, as part of the process in considering the proposed variation, to amend any, or each of the original conditions previously applied which it considers necessary to regulate the development proposed. Following consideration of the conditions attached to the extant deemed planning permission, it is considered that additional conditions are required to ensure the development can be appropriately managed. In this regard, it is considered appropriate to have conditions to secure the decommissioning and restoration of the offshore and onshore elements of the project along with an appropriate financial guarantee. These additional conditions can be applied to any revised consent which may be granted however there would also be the need for minor changes to other conditions to ensure the decommissioning provisions are cross referenced. All other conditions applied to the deemed permission granted in 2017 remain appropriate to manage the development. For the avoidance of doubt the conditions attached to the Section 36 consent are not being varied by this application and remain in force.

### **Matters to be secured by Section 75 Agreement**

- 7.18 Restoration of the site and associated financial guarantees can be secured by condition therefore a legal agreement is not required.

## **8. CONCLUSION**

- 8.1 The Development Plan is supportive of onshore wind energy development subject to it being appropriately sited, designed and the effects of the development not being significantly detrimental overall. Through consideration of the Section 36 application for the development, the Planning Authority considered that this was an appropriate site for this type of development. This was confirmed through the granting of the Section 36 consent and deemed planning permission by Scottish Ministers. The proposed removal of condition 23 and rewording of conditions 25, 27, 29, 30 and 31 are not considered to conflict with the Development Plan. In

addition, the condition can also be more meaningfully managed at the decommissioning phase due to the provisions for decommissioning and restoration of the site which is recommended by officers.

- 8.2 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.

## 9. IMPLICATIONS

9.1 Resource: Not applicable

9.2 Legal: Not applicable

9.3 Community (Equality, Poverty and Rural): Not applicable

9.4 Climate Change/Carbon Clever: The wider project will make a contribution to meeting energy targets and provide renewable energy.

9.5 Risk: Not applicable

9.6 Gaelic: Not applicable

## 10. RECOMMENDATION

**Subject to the above actions**, it is recommended to **GRANT** the application subject to the following conditions and reasons

### 23. **Implementation in accordance with approved plans and requirements of this consent**

Except as otherwise required under this consent and deemed planning permission, the Development must be undertaken in accordance with the Application, the ES, and other documentation lodged in support of the application.

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

### 24. **Design of sub-station and ancillary development**

There must be no Commencement of Development before final details of the external appearance, dimensions, and surface materials of the onshore substation building, associated compounds, any construction compound, welfare facilities, any areas of hard standing, turning areas, access tracks, material stockpiles, oil storage, boundary fencing, walls external lighting, parking areas landscaping, screening, bunding paths and any other ancillary elements of the development, have been submitted to, and approved in writing by, the Planning Authority. Such approval may only be granted following consultation with Historic Environment Scotland.

Thereafter, all onshore development must be constructed in accordance with the approved details.

**Reason:** To ensure that the environmental impacts of the sub-station forming part of the Development conform to the impacts assessed in the environmental statement and in the interests of the visual amenity of the area.

25. **Construction Hours**

Construction work which is audible from any noise-sensitive receptor must only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work permitted to take place on a Sunday or on national public holidays. Outwith these specified hours, only works relating to turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, may take place without the need for prior approval to be given, in writing, by the planning authority (THC). Other works may take place outwith these specified hours, but only following prior approval being given, in writing, by the Local Planning Authority (THC).

HGV movements to, and from, the site (excluding abnormal loads) during construction of the wind farm is only permitted between 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements (other than abnormal loads) permitted to, or from, the site taking place on a Sunday or on national public holidays.

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

26. **Traffic and Transportation Plan**

The Company must, at least 6 months prior to the Commencement of the Development submit a Traffic and Transportation Plan ("TTP"), in writing, to the Planning Authority for their written approval. The TTP must set out a mitigation strategy for the impact of road based traffic and transportation associated with the construction of the Development. The Development must be constructed and operated in accordance with the approved TTP.

**Reason:** To maintain the free flow and safety of the Trunk Road network

27. **Noise**

The rating level of noise emissions from the wind farm, including the application of any tonal penalty when determined in accordance with best practice as set out in ETSU-R-97 and the Institute of Acoustics Good Practice Guide and Supplementary Guidance Notes, must not exceed 35dB LA90 10 minute at wind speeds up to and including 10m/s at the curtilage of any dwelling which is lawfully existing or has planning permission at the date of this permission. Noise limits expressed in dB LA90, 10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined at the turbine location averaged over 10 minute periods.

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

The assessment of the rating level of noise emissions must be undertaken by an independent noise consultant in accordance with best practice as set out in ETSU-R97 and the Institute of Acoustics Good Practice Guide and Supplementary Guidance Notes over the relevant range of conditions.

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

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

If the assessment concludes that noise from the wind farm is not complying with the limit stipulated in condition 1, the wind farm must cease operation immediately until a mitigation scheme, approved in writing by the Local Planning Authority, is implemented.

Noise arising from within the operational land of the sub-station when measured and/or calculated as an Leq, 5 min, in the 100Hz one third octave frequency band must not exceed 30 dB, at noise sensitive premises.

The Rating Level of noise arising from the use of plant, machinery or equipment installed or operated within the operational land of the sub-station, hereby permitted, must not exceed the current background noise levels at noise sensitive premises. The Rating Level must be calculated in accordance with BS 4142: 2014: Methods for rating and assessing industrial and commercial sound.

**Reason:** To ensure that noise levels can be measured to assess whether or not agreed noise limits have been breached and where such noise limits have been breached, suitable mitigation is undertaken. To protect nearby residents from undue noise and disturbance. To ensure that noise limits are not exceeded and to enable prompt investigation of complaints.

28. **Onshore Construction Method Statement**

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Planning Authority, submit an Onshore Construction Method Statement (“OnCMS”), in writing, to the Planning Authority for their written approval. Such approval may only be granted following consultation with NatureScot and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers.

The OnCMS must include, but not be limited to, the following:

- a) the construction procedures and good working practices for installing the Development;
- b) details of the roles and responsibilities, chain of command and contact details of company personnel, any contractors or sub-contractors involved during the construction of the Development;
- c) details of how the construction related mitigation steps proposed in the ES are to be delivered; and
- d) a waste management plan for the construction phase of the Development.

The OnCMS must adhere to the construction methods assessed in the Application and in the ES. The OnCMS must also, so far as is reasonably practicable, be consistent with the DS and all other onshore Plans.

**Reason:** To mitigate any potential impacts on the environmental interests during construction and operation.

29. **Onshore Environmental Management Plan**

The Company must, no later than 6 months or at such a time as agreed with the Planning Authority, prior to the Commencement of the Onshore Works, submit an Onshore Construction Environmental Management Plan (“OnEMP”), in writing, to the Planning Authority for their written approval. Such approval may only be granted following consultation by the Scottish Environment Protection Agency, NatureScot, Dounreay Site Restoration Limited.

The OnEMP must include, but must not be limited to, the following:

- a) a site waste management plan (dealing with all aspects of waste produced during the construction period), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment. Wherever possible the waste hierarchy of reduce, reuse and recycle should be encouraged;
- b) continuous monitoring of radioactive particles;
- c) acknowledgement that the Company have registered with SEPA to receive flood alerts for the Caithness area;
- d) a Flood Risk Assessment;



- e) environmental management - identification of mechanisms to ensure subcontractors are well controlled and are aware of relevant environmental issues. This must include details of on-going monitoring and emergency procedures / pollution response plans and the provision of spillage kits;
- f) a pollution prevention and control method statement, including arrangements for the storage and management of oil, fuel and chemicals on the site which must comply with the Water Environment (Oil Storage) (Scotland) Regulations 2006;
- g) a drainage management strategy, demonstrating the use of sustainable drainage systems (SUDs) in line with Scottish Planning Policy for all surface water runoff or details of the means whereby surface water will discharge directly to coastal waters;
- h) sewage disposal and treatment in the event of permanent toilet facilities or kitchen which are connected to the public sewer;
- i) temporary site illumination; and
- j) timing of works.

Thereafter the approved Onshore Environmental Management Plan shall be implemented in full through the construction, operation and decommissioning of the onshore elements of the development.

**Reason:** To mitigate any potential impacts on the environmental interests during construction and operation.

### 30. **Onshore Cable Plan**

The Company must, no later than 6 months prior to the Commencement of the Development, or at such a time as agreed with the Scottish Ministers submit an Onshore Cable Plan ("OnCaP"), in writing, to the Scottish Ministers for their written approval. Such approval may only be granted following consultation by the Scottish Ministers with SNH, SEPA, and any such other advisors or organisations as may be required at the discretion of the Scottish Ministers. The OnCaP must be in accordance with the ES.

The OnCaP must include, but not be limited to, the following:

- a) the location and cable laying techniques for the cables;
- b) the results of monitoring or data collection work (including geophysical, geotechnical information) to help inform cable routing;
- c) technical specification of cables;
- d) a burial risk assessment to ascertain burial depths and, where necessary, alternative protection measures;
- e) methodologies for surveys and monitoring of the cables through the operational life of the wind farm where protection of cables is deployed; and
- f) methodologies for cable inspection with measures to address and report to the Scottish Ministers any exposure of cables.

Any consented cable protection works must ensure that safe navigation is not compromised.

**Reason:** To mitigate any potential impacts on the environmental interests during construction and operation.

### 31. **Decommissioning and Restoration Plan**

Notwithstanding the requirement for a Marine License for the decommissioning of the offshore elements of the development, no development (excluding preliminary ground investigation which shall be permitted) shall commence until an Interim Decommissioning and Restoration Plan (IDRP) for the site has been submitted to and approved in writing by the planning authority in consultation with NatureScot, Marine Scotland and SEPA.

Thereafter:

- i. Not later than 3 years prior to the decommissioning of the Development or the expiration of the section 36 consent (whichever is the earlier), the IDRP shall be reviewed by the Developer to ensure that the IDRP reflects best practice in decommissioning prevailing at the time and ensures that site specific conditions identified during construction of the site and subsequent operation and monitoring of the Development are given due consideration. A copy shall be submitted to the planning authority for their written approval, in consultation with NatureScot, Marine Scotland and SEPA.
- ii. Not later than 12 months prior to the decommissioning of the Development, a detailed Decommissioning and Restoration Plan (DRP), based upon the principles of the approved IDRP, shall be submitted to and approved in writing by the planning authority in consultation with NatureScot, Marine Scotland and SEPA.

Unless otherwise agreed in advance in writing with the planning authority, the IDRP and subsequent DRP shall outline measures for the decommissioning of the Development, restoration and aftercare of the site in accordance with commitments contained in the information lodged in support of the application for this consent and deemed planning permission, prevailing legislative requirements and published best practice prevailing at the time. The IDRP and DRP shall include details about the removal of all elements of the Development, relevant access tracks and all cabling, including where necessary details of (a) justification for retention of any relevant elements of the Development; (b) the treatment of disturbed ground surfaces; (c) management and timing of the works; (d) environmental management provisions; and (e) a traffic management plan to address any traffic impact issues during the decommissioning period. Where infrastructure is removed, provision shall be made for drainage reinstatement to achieve in perpetuity natural drainage patterns consistent with the delivery of the Habitat Management Plan.

The DRP shall be implemented as approved, unless otherwise agreed in writing with the planning authority in consultation with NatureScot, Marine Scotland and SEPA. In the event that the DRP is not approved by the planning authority in advance of the decommissioning of the Development, then unless otherwise agreed in writing by the planning authority, the Interim IDRP shall be implemented in full.

**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.

### 32. **Financial Guarantee**

No development shall commence until a legal agreement is in place securing delivery by the Developer of a financial guarantee in favour of the planning authority to secure the proper decommissioning of the wind farm and site reinstatement as set out within the approved Interim Decommissioning and Restoration Plan (IDRP) required under Condition 31 above.

The agreement shall include:

- i. The maximum sum determined by a suitably qualified independent professional as being required to decommission the Development in line with the IDRP. The value of the financial guarantee shall be reviewed by a suitably qualified independent professional at intervals of not less than five years. The financial guarantee shall be increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review.
- ii. Details of the financial guarantee in terms acceptable to the planning authority, which can either be by way of a (i) restoration bond; (ii) letter of credit (or such other suitable financial instrument with a reputable financial institution); (iii) restoration fund, or (iv) any combination of (i) (ii) and (iii) reflecting the maximum sum required to decommission the site in line with the IDRP.
- iii. Details of provisions related to continuing liability on assignment of the section 36 consent to another person in accordance with condition 3 attached to the section 36 consent.
- iv. Details of procedure in relation to resolution of disputes.

The financial guarantee shall thereafter be maintained in favour of the planning authority until the date of completion of all restoration and aftercare obligations.

**Reason:** to ensure the necessary finances are secured to guarantee site restoration.

## **REASON FOR DECISION**

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.

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

The deemed planning permission shall be implemented in accordance with the timescale set out in Condition 2 of the Section 36 consent or another alternative timescale which may otherwise be agreed by Scottish Ministers.

## **FOOTNOTE TO APPLICANT**

### **Section 36 Consent under The Electricity Act 1989 (As Amended)**

For the avoidance of doubt, this permission modifies the provisions of the deemed planning permission attached to the Section 36 Consent granted under The Electricity Act only. This permission must be read alongside the Environmental Impact Assessment Consent Decision – Dounreay Tri Floating Wind Demonstration Project issued by Marine Scotland on behalf of Scottish Ministers on 16 March 2017 and available to view at:

<https://marine.gov.scot/data/dounreay-tri-floating-wind-demonstration-project-eia-consent-decision>

### **Initiation and Completion Notices**

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

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

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

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

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those

requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

### **Flood Risk**

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

### **Scottish Water**

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

### **Local Roads Authority Consent**

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

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

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

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

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

### **Mud and Debris on Road**

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

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

You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from NatureScot: <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species>

## **Statutory Nuisance**

It is expected that the site operator will employ the best practicable measures at all times to reduce the impact of noise. In the unlikely event that noise from the proposed development gives rise to complaints, the Service has powers to investigate in terms of the Statutory Nuisance provisions of the Environmental Protection Act 1990 regardless of Planning Consent.

Designation: Area Planning Manager – North  
Author: Simon Hindson  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 – 00001 Rev A – Location Plan

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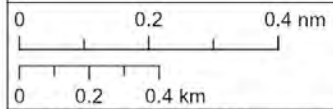
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 Onshore Site Boundary

SOURCE: OS data © Crown copyright and database right (2021)



DATE: 07/05/2021 | SCALE @ A4: 1:27,500

Drawn: JJM

MXD: A100671\_S02\_OS\_Onshore.mxd

Check: CW

CRS: WGS 1984 UTM Zone 30N

Approve: CW