

Agenda Item	6.3
Report No	PLN/053/23

HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 09 August 2023

Report Title: 23/02726/S42 : Gresham House
Land At Wathegar, Bilbster, Wick

Report By: Area Planning Manager - North

Purpose/Executive Summary

Description: Application for non-compliance with Condition 2 (duration of temporary wind farm operational period) of planning permission 10/00042/FULCA (Wathegar Wind Farm Erection of 5 wind turbines with a maximum height of 101m to blade tip, associated infrastructure, and formation of vehicle access)

Ward: 03 - Wick And East 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 11 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 This application has been submitted under Section 42 of the Planning (Scotland) Act 2019 and relates to Condition 2 of planning permission 10/00042/FULCA for Wathegar Wind Farm. The wind farm development was constructed in 2013 and has been operational for 10 years. The application seeks to extend the operational life of the existing wind farm from 25 years to 50 years.
- 1.2 Wathegar Wind Farm has a generating capacity of approximately 10 MW. It consists of the following physical elements:
- 5 wind turbines (each 101m to blade tip and of 2.05MW generating capacity);
 - access tracks;
 - an electrical control building; and
 - an anemometry mast of 60m in height.
- 1.3 Pre-Application Consultation: None
- 1.4 Supporting Information: Supporting Statement
- 1.5 Variations: None

2. SITE DESCRIPTION

- 2.1 The site is located approximately 8km west of Wick and 23km south east of Thurso. There are isolated residential properties and housing groups surrounding the site, the closest being those at Flex, 1.4km to the west.
- 2.2 The application site covers 325 hectares, although the developed area is substantially smaller. The land is predominantly flat open moorland with surrounding agricultural fields.
- 2.3 The site is not subject to any natural heritage designations. At the closest point, the site is located approximately 4km from Loch Watten and 3km from the area surrounding the Loch of Killimster, which are the nearest parts of the Caithness Lochs Special Protection Area (SPA), protected for its wide diversity of aquatic and wetland vegetation and the support it provides to populations of European importance of Whooper Swan, Greenland White Fronted Goose and Greylag Goose. The site is also approximately 9km distant from the East Caithness Cliffs SPA, which is of special nature conservation and scientific importance within Britain and the European Community for supporting very large populations of breeding seabirds.
- 2.4 Wathegar Wind Farm forms part of a larger cluster of operational and consented wind farms as listed below. Given the nature of this application for an operational life extension, a wider cumulative study beyond the confines of the site is not warranted.

Site Name	No. of Turbines	Tip Height (m)	Distance and Direction from the Proposed Development
Operational Sites			
Bilbster	3	93	0km W
Wathegar 2	9	110	0km E
Achairn	3	100	0km E
Camster	25	100	3.4KM SW
Consented			
Camster II	11	126.5	0km S

3. PLANNING HISTORY

- 3.1 23 Jun 2011 11/02330/FUL Amendment of Condition 21 Permission attached to existing consent ref 10/00042/FULCA Granted
- 3.2 21 May 2010 10/00042/FULCA Erection of five wind turbines with a maximum height of 101m to blade tip and associated infrastructure, formation of vehicular access, Permission Granted
- 3.3 25 Feb 2010 10/01054/FUL Erection of a temporary anemometer mast of up to 70m in height. Permission Granted

4. PUBLIC PARTICIPATION

- 4.1 Advertised: John O’Groat Journal – Schedule 3 Development / Unknown Neighbour
Date Advertised: 23 June 2023
Representation Deadline: 14 July 2023
- 4.2 Timeous representations: 0
- 4.3 Late representations: 0

5. CONSULTATIONS

- 5.1 **Latheron, Lybster and Clyth Community Council** do not object to the application. It takes a neutral view regarding the application.
- 5.2 **Tannach and District Community Council** do not object to the application. It

queries the community benefit funding which may arise.

- 5.3 **Access Officer** does not object to the application. Queries if the conditions relating to public access from the A836. He notes the lack of a pedestrian gate at the site access and notes that the use of tracks within the site appear lower compared to other nearby wind farms and seeks confirmation that there are no field gates which are locked within the development which were intended to be accessible for public use.
- 5.4 **Ecology Officer** does not object to the application. She has no further comment.
- 5.5 **Historic Environment Team (Archaeology)** does not object to the application. It has no further comment.
- 5.6 **Contaminated Land** does not object to the application. It has no further comment.
- 5.7 **Development Plans Team** does not object to the application. It provides an update on the planning policy position.
- 5.8 **Environmental Health** does not object to the application. It has no further comment.
- 5.9 **Flood Risk Management Team** do not object to the application. It notes that the submitted site plan shows a Wathegar turbine directly on top of a land drain. It would have preferred an 'as built' plan for this application to show where the turbines are actually sited or drains re-routed.
- 5.10 **Landscape Officer** does not object to the application. A condition is recommended to secure the maintenance of the turbine external finishes.
- 5.11 **Transport Planning Team** do not object to the application. It has no further comment.
- 5.12 **Defence Infrastructure Organisation** do not object to the application. It has no further comment.
- 5.13 **Highlands and Islands Airport Authority** do not object to the application. It has no further comment.
- 5.14 **Historic Environment Scotland** do not object to the application. It has no further comment.
- 5.15 **National Air Traffic Services (NATS)** do not object to the application. It has no further comment.
- 5.16 **Scottish Environment Protection Agency** do not object to the application. It has no further comment.
- 5.17 **Transport Scotland** do not object to the application. It has no further comment.
- 5.18 **NatureScot** do not object to the application. It advises that the continued operation of the wind farm beyond the originally consented lifespan might have a

significant effect on greylag goose within the Caithness and Lochs Special Protection Area (SPA) and on herring gull and great black backed gull within the East Caithness Cliffs SPA. An appropriate assessment is required on the part of the Planning Authority in relation to these effects. NatureScot also recommended further Post Construction Monitoring (PCM) in respect of herring gull and great black backed gull.

6. DEVELOPMENT PLAN POLICY

6.1 The following documents comprise the adopted Development Plan are relevant to the assessment of the application.

National Planning Framework 4 (NPF4) (2023)

6.2 The NPF4 policies of most relevance to this proposal include:

- 1 – Tackling the climate and nature crisis
- 2 – Climate mitigation and adaptation
- 3 – Biodiversity
- 4 – Natural places
- 5 – Soils
- 7 – Historic assets and places
- 11 – Energy
- 13 – Sustainable transport
- 22 – Flood risk and water management
- 23 – Health and safety
- 25 – Community wealth benefits
- 33 – Minerals

Highland Wide Local Development Plan (HwLDP) (2012)

- 6.3
- 28 - Sustainable Design
 - 29 - Design Quality and Place-making
 - 31 - Developer Contributions
 - 53 - Minerals
 - 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
 - 62 - Geodiversity
 - 63 - Water Environment
 - 64 - Flood Risk
 - 66 - Surface Water Drainage
 - 67 - Renewable Energy Developments
 - 68 - Community Renewable Energy Developments
 - 72 - Pollution
 - 73 - Air Quality
 - 74 - Green Networks
 - 77 - Public Access

78 - Long Distance Routes

Caithness and Sutherland Local Development Plan (CaSPlan) (2018)

- 6.4 The Plan confirms the boundaries of the Special landscape Areas. No site specific policies apply.

Onshore Wind Energy Supplementary Guidance (OWESG) (2016)

- 6.5 The Onshore Wind Energy Supplementary Guidance (OWESG) provides additional guidance on the principles set out in HwLDP Policy 67 for renewable energy developments. The Guidance sets out the Council's agreed position on onshore wind energy matters, and, although reflective of Scottish Planning Policy at the time of its adoption prior to the adoption of NPF4, the document remains an extant part of the Development Plan and is therefore a material consideration in the determination of onshore wind energy planning applications. Nevertheless, the Spatial Framework included in the document is no longer relevant to the assessment of applications as in effect, the policies of NPF4 (specifically Policy 11, Energy) removes Group 2 Areas of significant protection from consideration by effectively making all land in Scotland either Group 1 Areas where wind farms will not be acceptable, or Group 3, Areas with potential for wind farm development.
- 6.6 The OWESG also contains the Loch Ness Landscape Sensitivity Study, the Black Isle, Surrounding Hills and Moray Firth Coast Sensitivity Study, and, the Caithness Sensitivity Study which the site falls within.

Other Highland Council Supplementary Guidance

- 6.7 Developer Contributions (Mar 2018)
Green Networks (Jan 2013)
Highland Historic Environment Strategy (Jan 2013)
Highland's Statutorily Protected Species (Mar 2013)
Highland Renewable Energy Strategy and Planning Guidelines (May 2006)
Physical Constraints (Mar 2013)
Roads and Transport Guidelines for New Developments (May 2013)
Special Landscape Area Citations (Jun 2011)
Sustainable Design Guide (Jan 2013)

7. OTHER MATERIAL POLICY CONSIDERATIONS

- 7.1 Onshore Wind Energy Policy Statement (2022)
Draft Energy Strategy and Just Transition Plan (2023)
Scottish Energy Strategy (2017)
2020 Routemap for Renewable Energy (2011)
Energy Efficient Scotland Route Map, Scottish Government (2018)

8. PLANNING APPRAISAL

- 8.1 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. 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

- 8.2 The key considerations in this case are:
- a) compliance with the development plan and other planning policy
 - b) any other material considerations.

Development Plan / Other Planning Policy

- 8.3 The Development Plan comprises National Planning Framework 4 (NPF4), the adopted Highland-wide Local Development Plan (HwLDP), the adopted Caithness and Sutherland Local Development Plan (CaSPlan), and all statutorily adopted supplementary guidance.
- 8.4 NPF4 forms part of the Development Plan and was adopted in February 2023. The Spatial Strategy sets out that we are facing unprecedented challenges and that we need to reduce greenhouse gas emissions and adapt to future impacts of climate change. It sets out that that Scotland's environment is a national asset which supports our economy, identity, health and wellbeing. It sets out that choices need to be made about how we can make sustainable use of our natural assets in a way which benefits communities. The spatial strategy reflects legislation in setting out that decisions require to reflect the long term public interest. However, in doing so it is clear that we will need to make the right choices about where development should be located ensuring clarity is provided over the types of infrastructure that needs to be provided and the assets that should be protected to ensure they continue to benefit future generations.
- 8.5 NPF4 Policies 1, 2, and 3 apply to all development proposals Scotland-wide, which means that significant weight must be given to the global climate and nature crises when considering all development proposals, as required by NPF4 Policy 1. Specific to this proposal, as well as the support in Policy 1 (significant weight will be given to the global climate and nature crisis when considering development), NPF4 Policy 11 supports all forms of proposals for renewable, low-carbon and zero emission technologies including wind farms. Critical to the consideration of this proposal is NPF4 Policy 11, part f) which establishes that although consents for development proposals may be time limited, areas identified for wind farms are however to be suitable for use in perpetuity.
- 8.6 The principal HwLDP policy on which the application needs to be determined is Policy 67 - Renewable Energy. HwLDP Policy 67 sets out that renewable energy development should be well related to the source of the primary renewable resource needed for operation, the contribution of the proposed development in meeting renewable energy targets and positive/negative effects on the local and national economy as well as all other relevant policies of the Development Plan and other relevant guidance.
- 8.7 The Onshore Wind Energy Policy Statement supersedes the previously adopted Onshore Wind Energy Policy Statement which was published in 2017. The document sets out a clear ambition for onshore wind in Scotland and for the first

time sets a national target for a minimum level of installed capacity for onshore wind energy, 20GW. This is set against a currently installed capacity of 8.7GW. Therefore, a further 11.3GW of onshore wind requires to be installed to meet the target. It is however acknowledged that targets are not caps. In delivering such a target Scotland would play a significant role in meeting the requirement of 25-30GW of installed capacity across the UK identified by the Climate Change Committee.

- 8.8 The continued operation of the wind farm will contribute towards meeting onshore renewable energy targets with NPF4 making it clear that wind farms are expected to be suitable for use in perpetuity. The principle of the development is in conformity with the Development Plan and other national guidance.

Other Material Considerations

- 8.9 There is no reason to suppose that turbines could not have a useful extended life beyond that originally consented through planning permission. Key is to ensure that in any approval for an extended period of planning permission, proper regard is taken to ensure that:

- the turbines continue to operate effectively;
- that all mitigation is sustained for the full operational life of the wind farm; and
- that the provisions for turbine failures and final removal are continued.

- 8.10 The operation of Wathegar Wind Farm is subject to a number of planning conditions. These are relevant to the consideration of any extended operation period being sought under this application. The four conditions below are particularly relevant in respect of the longer operational period:

- Condition 2 – provides the basis of the project life span and is the focus of the current application.
- Condition 3 – provides a framework for ‘project end’, particularly in terms of decommissioning and restoration arrangements.
- Condition 4 – provides for the removal of a failed turbine, or the entirety of the wind farm, should it not supply energy to the grid for a period of 9 consecutive months.
- Condition 12 – provides for a financial guarantee for site decommissioning and restoration.

- 8.11 It is worth highlighting that an application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity, as part of the process in considering the proposed variation, to amend any, or each of the original conditions previously applied which it considers necessary to regulate the development proposed. This can ensure the wording is in line with current good practice and ensure the conditions are suitable to regulate the proposed development. All of the original conditions have been reviewed given the scheme is now operational and where relevant, reworded to reflect the operational status of the scheme. While all suspensive planning conditions as previously applied

have been satisfied, some of these require ongoing application of mitigation or are operational requirements. As this is the case these require to remain in force should the S42 application be granted.

- 8.12 The original parent planning permission 10/00042/FULCA was accompanied by a financial bond to secure decommissioning and restoration of the site at the end of the project's lifespan. As this application seeks to increase the wind farm's lifespan further, an additional condition is attached to review this bond in light of the longer operational timeframe.
- 8.13 A condition is attached in order to maintain the appearance and grey finish for the turbines, as originally approved through the conditions of permission 10/00042/FULCA.
- 8.14 An appropriate assessment of the proposals has been carried out by the Planning Authority. It is considered, following the receipt of advice from NatureScot that it is unlikely the proposals will affect the integrity of the Caithness and Lochs or East Caithness Cliffs Special Protection Areas (SPA's). A condition is attached to secure an updated Nature Conservation Management Plan in line with Nature Scot's consultation response.
- 8.15 The extant planning permission was also the subject of an Environmental Statement. Having screened the proposed life extension of the wind farm, this is not considered by the Planning Authority to give rise to any new significant environmental effects over and above those previously assessed, and therefore is not regarded to constitute EIA Development. Note that any subsequent proposal for a revised scheme involving the repositioning or enlargement of any turbines on site would trigger the need for a new application with this S42 application only relating to the life extension of the existing wind farm.

Non-Material Considerations

- 8.16 Tannach and District Community Council have queried the level of community benefit which may arise from this application. Prior to the publication of NPF4, Council policy and practice was for community benefit to be considered separately and outwith the planning application determination process. NPF4 Policy 25 Community Wealth Building has however introduced an avenue for planning support to be given to proposals which either: a) contribute to local or regional community wealth building strategies and are consistent with local economic priorities; or b) are linked to community ownership and management of land. In the absence of the Council having a Community Wealth Building Strategy, and no community ownership being proposed, the proposal cannot receive an additional weight NPF4 Policy 25. As such community benefit is not a material consideration in the determination of this application. That said, it is expected that the development shall continue to meet the Scottish Government's recommended community benefit contribution of £5,000 per installed MW per annum.

Matters to be Secured by Section 75 Agreement / Upfront Payment

- 8.17 None.

9. CONCLUSION

- 9.1 In essence this application seeks to extend of the existing wind farm from 25 years to 50 years. The principle of the wind farm at this location has already been established. The Council is supportive of renewable energy projects as is the Scottish Government which in particular has challenging targets for the country to meet in terms of electricity supply from renewable resources. Support is given on the basis of developments being in the right place and with appropriate protection for the environment. The impact of the wind farm has already been deemed to be acceptable in this location and development has been operational for several years. There have been no objections raises from third parties or concerns raised in respect of the established pattern of wind farm development in this location.
- 9.2 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.

10. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: The proposal has the ability to make a meaningful contribution toward the production of renewable energy.
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued

Notification to Scottish Ministers	N
Conclusion of Section 75 Obligation	N
Revocation of previous permission	N

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

1. The development shall be undertaken in accordance with the planning permission reference 10/00042/FULCA approved plans, the original Environmental Statement, except in so far as amended by the terms of this consent or as subsequently agreed

in writing by the Planning Authority.

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

2. Planning Permission is granted for a period of 52 years from the date of Final Commissioning (27 March 2013), comprising an operational period of up to 50 years from the date of Final Commissioning and a period of up to 2 years for decommissioning and site restoration to be completed.

Reason: To clarify the terms of the permission as the permission sought is temporary and to define the duration of the consent.

3. The Wind Farm Operator shall, at all times after the Final Commissioning Date, record information regarding the monthly supply of electricity to the national grid from the site as a whole and electricity generated by each individual turbine within the development and retain the information for a period of at least 12 months. The information shall be made available to the planning authority within one month of any request by them.

In the event that:

- i. any wind turbine hereby permitted fails to supply electricity to the grid for a continuous period of 12 months then, unless otherwise approved in writing by the planning authority, a scheme for the removal of that wind turbine and any surface ancillary works solely relating to that wind turbine shall be submitted in writing for the approval of the planning authority. The scheme shall be implemented as approved.
- ii. the wind farm fails to supply electricity on a commercial basis to the grid from 50% or more of the wind turbines installed and commissioned and for a continuous period of 12 months, then the Wind Farm Operator must notify the planning authority in writing immediately. Thereafter, the planning authority may direct in writing that the wind farm shall be decommissioned and the application site reinstated in accordance with this condition. For the avoidance of doubt, in making a direction under this condition, the planning authority shall have due regard to the circumstances surrounding the failure to generate and shall only do so following discussion with the Wind Farm Operator and such other parties as they consider appropriate.

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

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

4. 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.

5. 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 NatureScot and SEPA. 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.

6. 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), ecological 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 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.

7. 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 all existing and any replacement 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.

8. Prior to any further development or works on the site and / or any maintenance that requires the replacement of the control building, and or ancillary infrastructure until final details of the location, layout, external appearance, dimensions and surface materials of all buildings, compounds, parking areas, as well as any external lighting (excluding aviation lighting), fencing, walls, paths and any other ancillary elements of the development, have been submitted to, and approved in writing by, the planning authority. Thereafter, development shall progress in accordance with these approved details.

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

9. Within six months of the date of this Planning Permission details of a financial

guarantee, bond or other financial provisions to cover the cost for any and all decommissioning and site restoration at the end of the operational life of the wind farm shall be submitted to and approved in writing to the Planning Authority, this shall include:

- i. Full details of a guarantee, bond or other financial provision to be put in place to cover all of the decommissioning and Site restoration measures outlined in the Decommissioning and Restoration Plan approved under Condition 11 of this permission have been submitted to, and approved in writing by, the planning authority. For the avoidance of doubt the bond must be able to be called upon by The Highland Council and be enforceable against the operator and landowner and/ or leaseholder; and
- ii. Confirmation in writing by a suitably qualified independent professional that the amount of financial provision proposed under part (i) above is sufficient to meet the full estimated costs of all decommissioning, dismantling, removal, disposal, Site restoration, remediation and incidental work, as well as associated professional costs, has been submitted to, and approved in writing by, the planning authority; and
- iii. Documentary evidence that the guarantee, bond or other financial provision approved under parts (i) and (ii) above is in place has been submitted to, and confirmation in writing that the financial provision is satisfactory has been issued by, the planning authority.

Thereafter, the Operator, and Leaseholder and/or Landowner, shall:

- i. Ensure that the guarantee, bond or other financial provision is maintained throughout the duration of this permission; and
- ii. Pay for the guarantee, bond or other financial provision to be subject to a review five years after the commencement of development and every five years thereafter until such time as the wind farm is decommissioned and the Site restored.

Each review shall be:

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

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

Reason: To ensure financial security for the cost of the restoration of the site to the satisfaction of the Planning Authority.

10. Within six months of the date of this Planning Permission a Habitat Management Plan (HMP) shall be submitted to and approved in writing by the Planning Authority in consultation with NatureScot and SEPA. The HMP shall set out the proposed habitat management of the wind farm during operation and decommissioning, restoration and aftercare to the site. The approved HMP shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to better meet the habitat enhancements. Unless otherwise agreed in advance in writing with the Planning Authority, the approved HMP shall be implemented in full.

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

11. Within six months of this consent an Interim Decommissioning and Restoration Plan (IDRP) for the site should be submitted to, and approved in writing by, the Planning Authority in consultation with NatureScot and SEPA. Thereafter:

- i. not later than 3 years prior to the decommissioning of the Development, 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 its written approval, in consultation with NatureScot and SEPA; and
- 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 interim plan, shall be submitted to, and approved in writing by, the Planning Authority, in consultation with NatureScot and SEPA. The IDRP and subsequent DRP shall include, unless otherwise agreed in writing with the Planning Authority and in accordance with legislative requirements and published best practice at time of decommissioning, details about the removal of all elements of the Development, relevant access tracks and all cabling, including where necessary details of:
 - 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 stock piles, 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;
- m) details of measures to protect any cultural heritage assets and archaeological remains; and
- n) plan to address any traffic impact issues during the decommissioning period.

The DRP shall be implemented as approved. In the event that the Final DRP is not approved by the Planning Authority in advance of the decommissioning, unless otherwise agreed by the Planning Authority, the Interim IDRPs shall be implemented.

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

12. Within six months of the date of this Planning Permission an updated Schedule of Mitigation shall be submitted to, and approved in writing by, the Planning Authority in consultation with NatureScot and SEPA. The document shall include provision for
- i. An updated Schedule of Mitigation (SM) including all mitigation identified in the Environmental Statement and any additional mitigation otherwise included as conditions on this planning permission;
 - ii. A timetable for the implementation of each element of mitigation; and
 - iii. Processes to control / action changes from the agreed Schedule of Mitigation.

Thereafter all mitigation identified in the approved document shall be implemented in full in accordance with the timescales included in the schedule of mitigation.

Reason: To ensure the delivery of required mitigation to ensure the impacts of the proposed development on the receiving environment are managed.

13. Within six months of the date of this Planning Permission an updated Nature Conservation Management Plan will be submitted to and approved in writing by the Local Planning Authority in consultation with NatureScot. This scheme shall include provision for ornithological Post Consent Monitoring and be implemented as approved throughout the further operational life of the wind farm.

Reason: To protect and enhance local nature conservation interests.

14. The wind turbines shall be maintained in a non-reflective pale grey semi-matt colour, RAL 7035 light grey. None of the wind turbines, transformer buildings, any 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. At wind speeds not exceeding 12 m/s, as standardised to a height of 10m above ground level at the wind farm, the Wind Turbine Noise Level at dwellings or other Noise Sensitive Premises lawfully existing and occupied or capable of occupation at the time of this notice shall not exceed:
- a) During Night Hours (2300-0700), 38 dB LA90 or the Night Hours Prevailing Background Noise Level plus 5 dB, whichever is the greater; and
 - b) At all other times, 35 dB, LA90 or the Quiet Waking Hours Prevailing Background Noise Level plus 5 dB, whichever is the greater.

At properties where the occupier has a financial interest in the Development, the above limits shall be increased to 45 dB LA90 or the relevant prevailing background noise level plus 5 dB, whichever is the greater.

“Wind Turbine Noise Level” means the rated noise level due to the combined effect of all the Wind Turbines at the Wind Farm, 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 and shall be those reported for the geographically nearest property in the relevant ES.

“Standardised” means converted from hub height to 10 metres height as described in ETSU-R-97 at page 120 using a ground roughness factor of 0.05m. Wind speeds to be measured at hub height using a free-standing mast or averaged over the turbine nacelle anemometers, duly corrected for the rotating blades.

“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

Should the noise levels in the forgoing condition be exceeded, the Wind Turbine Operator shall take steps forthwith, to ensure that noise emissions from the wind farm are reduced to the aforementioned noise levels or less.

At the request of the Planning Authority, following a valid complaint to the Planning Authority relating to noise emissions from the Wind Turbines, the Wind Farm Operator 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 and 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. In

comparing measured Wind Turbine Noise Levels with Background Noise Levels, regard shall be had to the prevailing Background Noise Levels as measured at specific properties and shown by the best fit curves in the Environmental Statement submitted with this planning application. In the event of a complaint from a property other than one of the specified properties in the Environmental Statement, the measured Wind Turbine Noise Levels at the other property shall be compared to the prevailing Background Noise Levels at the specified property which is the most likely to have similar background noise levels.

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

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.

INFORMATIVES

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.

Flood Risk

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

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection

to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Septic Tanks and Soakaways

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

Local Roads Authority Consent

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

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

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

Mud and Debris on Road

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

Construction Hours and Noise-Generating Activities: You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

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

If you wish formal consent to work at specific times or on specific days, you may

apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

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>

Designation: Area Planning Manager - North

Author: Michael Kordas

Background Papers: Documents referred to in report and in case file.

Relevant Plans:

Document Type	Document No.	Version No.	Date Received
Location / Site Layout Plan	Figure 3.2	-	6 June 2023

Appendix 1 – Letters of Representation

No representation received.

Appendix 2 – Appropriate Assessment

APPROPRIATE ASSESSMENT Caithness Lochs Special Protection Area (SPA) 23/02726/S42

CONSIDERATION OF PROPOSALS AFFECTING EUROPEAN SITES

The status of the Caithness Lochs Special Protection Area means that the requirements of the Conservation (Natural Habitats, and c.) Regulations 1994 as amended (the ‘Habitats Regulations’) apply or, for reserved matters the Conservation of Habitats and Species Regulations 2017 as amended apply.

This means that where the conclusion reached by the Council on a development proposal unconnected with the nature conservation management of a Natura 2000 site is that it is likely to have a significant effect on those sites, it must undertake an Appropriate Assessment of the implications for the conservation interests for which the areas have been designated. The need for Appropriate Assessment extends to plans or projects out with the boundary of the site in order to determine their implications for the interest protected within the site.

This means that the Council, as competent authority, has a duty to:

- Determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- Determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- Make an Appropriate Assessment of the implications (of the proposal) for the site in view of that site’s conservation objectives.

The competent authority can only agree to the proposal after having ascertained that it will not have an adverse effect on the integrity of the sites. If this is not the case and there are not alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.

APPROPRIATE ASSESSMENT

While the responsibility to carry out the Appropriate Assessment rests with the Council, advice contained within Circular 6/1995 is that the assessment can be based on the information submitted from other agencies. In this case, the Appropriate Assessment is informed by details supplied by NatureScot and the applicant.

HIGHLAND COUNCIL APPRAISAL OF THE PROPOSAL

- The proposal is not directly connected with or necessary to site management for conservation:
- Consultation with NatureScot has provided information in relation to qualifying interests and the likelihood of significant effects on the designations and concludes there would be no adverse impact on the integrity of the SPA.

Appraisal Summary

The Caithness Lochs SPA is protected for its wide diversity of aquatic and wetland vegetation. It provides support to populations of European importance of Whooper Swan, Greenland White Fronted Goose and Greylag Goose.

It is the view of the Planning Authority, following the receipt of advice from NatureScot that it is unlikely the proposal will affect the integrity of the SPA. The above conclusion was reached having considered the following:

- The proposal is to extend the operational lifespan of the development only and no changes to the site boundary, site infrastructure or other planning conditions are required. The proposal is therefore unlikely to lead to additional disturbance and/or displacement to SPA birds.
- The development was constructed in 2013 and has been operational for 10 years. There are also other wind farms in close proximity to Wathegar (i.e. Wathegar 2, Flex Hill and Camster) and NatureScot consider birds will have become somewhat habituated to the presence of turbines in this area.
- However, the development will continue to pose a collision risk to SPA birds and contribute to ongoing cumulative impacts with other developments affecting the SPA.
- Post Construction Monitoring (PCM) has been undertaken during the bird breeding season and therefore does not cover the winter period when greylag geese are present in Caithness. Low levels of flight activity have been recorded in other survey work in this area, which has allowed us to complete our assessment.
- No Collision Risk Modelling (CRM) of greylag geese is available for this development. However, during pre-construction surveys, the original planning application assessed that due to the low numbers of geese recorded near Wathegar, potential impacts were insignificant. Available CRM data from nearby wind farms appears to confirm a low collision risk to greylag geese in this area.
- Based on this information and the high avoidance rate for greylag geese (99.8%), NatureScot consider the proposal will not result in a significant collision risk to SPA greylag geese either as a single development or cumulatively with other developments affecting the SPA.

APPROPRIATE ASSESSMENT
East Caithness Cliffs Special Protection Area (SPA)
23/02726/S42
CONSIDERATION OF PROPOSALS AFFECTING EUROPEAN SITES

The status of the East Caithness Cliffs Special Protection Area means that the requirements of the Conservation (Natural Habitats, and c.) Regulations 1994 as amended (the 'Habitats Regulations') apply or, for reserved matters the Conservation of Habitats and Species Regulations 2017 as amended apply.

This means that where the conclusion reached by the Council on a development proposal unconnected with the nature conservation management of a Natura 2000 site is that it is likely to have a significant effect on those sites, it must undertake an Appropriate Assessment of the implications for the conservation interests for which the areas have been designated. The need for Appropriate Assessment extends to plans or projects out with the boundary of the site in order to determine their implications for the interest protected within the site.

This means that the Council, as competent authority, has a duty to:

- Determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- Determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- Make an Appropriate Assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

The competent authority can only agree to the proposal after having ascertained that it will not have an adverse effect on the integrity of the sites. If this is not the case and there are not alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.

APPROPRIATE ASSESSMENT

While the responsibility to carry out the Appropriate Assessment rests with the Council, advice contained within Circular 6/1995 is that the assessment can be based on the information submitted from other agencies. In this case, the Appropriate Assessment is informed by details supplied by NatureScot and the applicant.

HIGHLAND COUNCIL APPRAISAL OF THE PROPOSAL

- The proposal is not directly connected with or necessary to site management for conservation.
- Consultation with NatureScot has provided information in relation to qualifying interests and the likelihood of significant effects on the designations and concludes there would be no adverse impact on the integrity of the SPA.

Appraisal Summary

The East Caithness Cliffs SPA is of special nature conservation and scientific importance within Britain and the European Community for supporting very large populations of breeding seabirds.

It is the view of the Planning Authority, following the receipt of advice from NatureScot that it is unlikely the proposal will affect the integrity of the SPA. The above conclusion was reached having considered the following:

- The development lies within foraging range for SPA gulls which are known to travel regularly between coastal colonies and inland feeding sites.
- A relatively low level of flight activity was recorded during Post Consent Monitoring (PCM) and other available survey information covering this area. Based on this information, we consider the proposal will not adversely affect the SPA herring gull or great black-backed gull population either as a single development or cumulatively with other developments affecting the SPA.

NatureScot further advise herring gull and great black-backed gull are considered as target species in future PCM for this development, given the connectivity with this SPA. This is to be secured within the Nature Conservation Management Plan condition and providing this mitigation is applied, it can be therefore concluded that while likely significant effects have been identified, there will not be an adverse effect on site integrity.

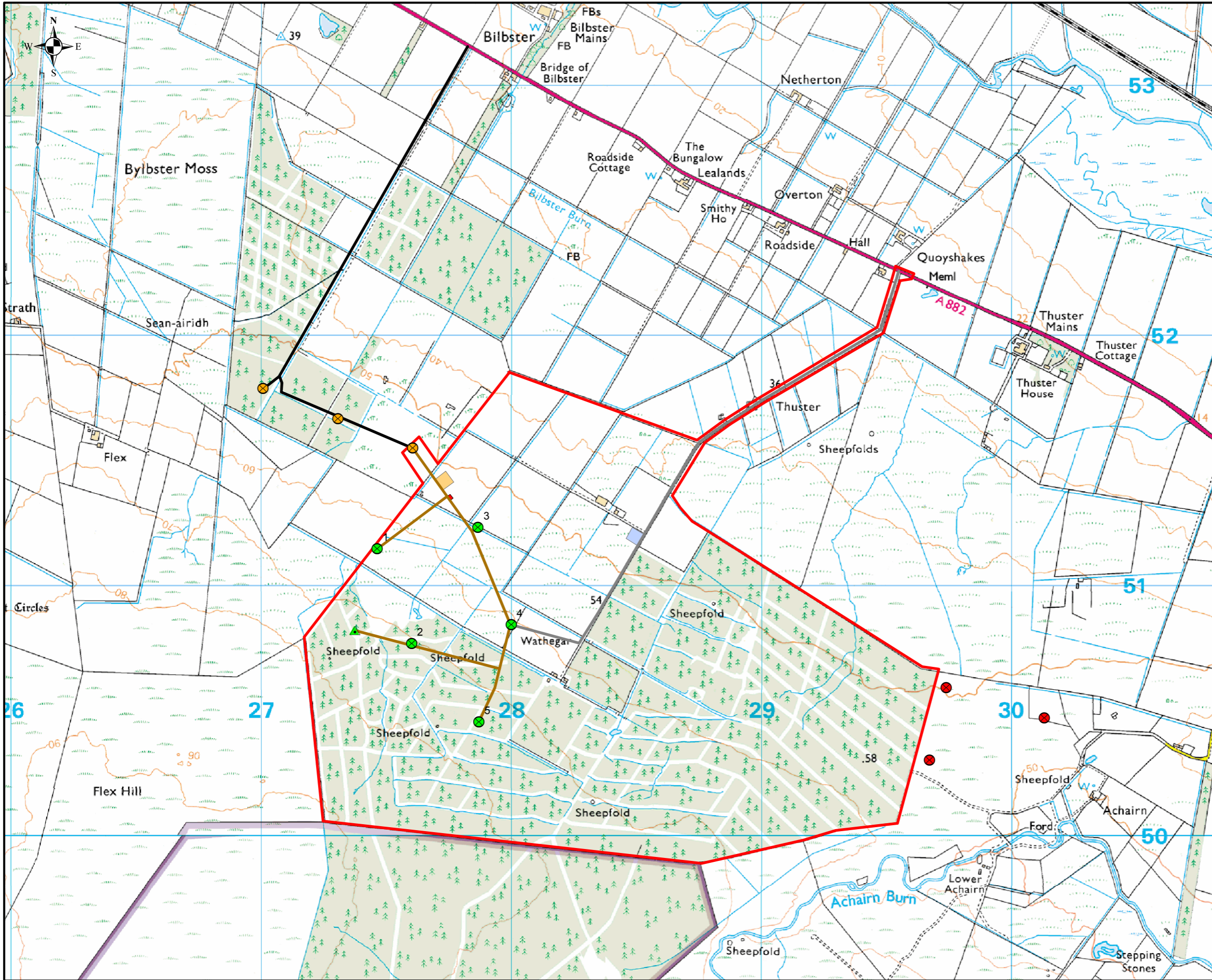


Figure 3.2

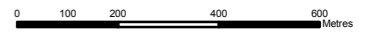
Site Layout

- Achairn Turbine
- Flex Hill Turbine
- Wathegar Turbine
- ▲ Permanent Anemometer Mast
- Site Boundary
- Existing Access Tracks
- New Access Tracks
- Alternative Access Route
- Construction Compound
- Alt. Construction Compound
- Electrical Control Building

PROJECTION SYSTEM OSGB 1935 BNG	AUTHOR TC
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SCALE



1:15,000



**THE MEDIA CENTRE
7, NORTHUMBERLAND STREET
HUDDERSFIELD
HD1 1RL**

Drawing Number	
Date Of Drawing	28/01/10

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