



Mr Craig Smith  
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02 February 2024

Dear Mr Smith,

**CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF CAIRN DUHIE WIND FARM WITHIN THE PLANNING AUTHORITY AREA OF THE HIGHLAND COUNCIL**

**Application**

I refer to the application made on 24 March 2021 (the “Application”) under section 36 of the Electricity Act 1989 (“the Electricity Act”) made by Renewable Energy Systems Limited, a company incorporated under the Companies Acts with company number 1589961 (“the Company”) and having its registered office at Beaufort Court, Egg Farm Lane, Kings Langley, Hertfordshire, WD4 8LR for the construction and operation of Cairn Duhie Wind Farm, to be located on the Glenferness Estate, near Ferness, Nairnshire, within the Highland Council planning authority area.

The Company proposes to construct and operate (for 35 years) an electricity generating station comprising 16 wind turbines with a maximum tip height of 149.9 metres (“m”), a battery energy storage facility and associated infrastructure (“the proposed Development”). The expected overall total maximum generating capacity is 67.2 megawatts (“MW”).

**This letter contains the Scottish Ministers’ decision to grant section 36 consent for the proposed Development as described at Annex 1.**

**Planning Permission**

In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 (“the Planning Act”) the Scottish Ministers, may on granting consent under section 36 of the Electricity Act for the construction and operation of a generating station direct that

planning permission be deemed to be granted in respect of that generating station and any ancillary development.

**This letter contains the Scottish Ministers' direction that planning permission is deemed to be granted.**

### **Background**

The proposed Development is a revised application of the consented Cairn Duhie Wind Farm, and is to be located on the same site, approximately 15 km south east of Nairn and 13.5 km north/north west of Grantown-on-Spey. The consented Cairn Duhie Wind Farm was submitted in 2013 comprising 20 turbines with a maximum tip height of 110m, and received consent in October 2017 following an inquiry.

The site is predominantly a mixture of degraded bog and heath habitats with localised wooded areas and scattered mature trees, and is bounded to the west by the A939 road and the B9007 to the north; and includes Cairn Duhie, a low conical hill with land sloping down from it in all directions.

The site is not subject to any national, regional or local landscape designations, and there are no statutory or non-statutory natural heritage designations within the site.

### **Legislation and Consultation**

Under paragraph 2(1) of Schedule 8 to the Electricity Act, and the Electricity (Applications for Consent Regulations 1990 ("the Consents Regulations") made under the Electricity Act, the relevant Planning Authority, The Highland Council ("the Planning Authority") in this case, is required to be notified in respect of a section 36 consent application.

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the EIA Regulations") the Company submitted an Environmental Impact Assessment report ("the EIA report") dated 24 March 2021 describing the proposed Development and giving an analysis of its environmental effects.

In accordance with requirements the Consents Regulations and the EIA Regulations, a notice of the proposed Development was published on the Company's website and advertised in the local and national press. The Application was made available in the public domain, and the opportunity given for those wishing to make representations to do so.

In addition, to comply with the EIA Regulations, the Scottish Ministers are required to consult the relevant planning authority, as well as NatureScot (previously operating as SNH), the Scottish Environment Protection Agency ("SEPA") and Historic Environment Scotland ("HES") as well as other public bodies likely to be concerned by the proposed Development by reason of that body's specific environmental responsibilities. Notifications were sent to the Planning Authority as well as to NatureScot, SEPA and HES. A wide range of other relevant organisations were also notified and consulted.

The Scottish Ministers have had regard to the matters set out in Schedule 9 of the Electricity Act in respect of the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna and geological and physiological features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest. The Scottish Ministers shall avoid, so far as possible causing injury to fisheries or to the stock of fish in any waters.

Scottish Ministers have given consideration to the extent to which the Company has demonstrated in the Application submitted that they have done what they reasonably can to mitigate any effect, which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites buildings or objects.

In accordance with section 36(5A) of the Electricity Act, before granting any section 36 consent Scottish Ministers are also required to:

- obtain SEPA advice on matters relating to protection of the water environment; and
- have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

SEPA's advice has been considered as required by section 36(5A) with due regard given to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003. In its response to the Scottish Ministers SEPA direct the Company to the Regulations section of the SEPA website for advice on regulatory requirements and good practice advice.

The Scottish Ministers are satisfied that the EIA report and additional information have been produced in accordance with the EIA Regulations. The Scottish Ministers have assessed the environmental impacts of the proposed Development and taken the environmental information, EIA report, additional information, representations, consultation responses including those from NatureScot, SEPA, HES and the Planning Authority, and the PI Report into consideration in reaching their decision.

The Scottish Ministers consider that there is sufficient information to allow Ministers to be satisfied that the Company has had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.

The Scottish Ministers are satisfied that the Company has done what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside, or any such flora, fauna, features, sites, buildings or objects.

The Scottish Ministers are satisfied that the Company has avoided so far as possible, causing injury to fisheries or to stock of fish in any waters.

The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations, EIA Regulations and The Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020, and are satisfied the general public as well as statutory and other

consultees have been afforded the opportunity to consider the proposed Development and make representations on it.

### **Additional Information**

The Company submitted additional environmental information (“AEI”) to Scottish Ministers on 2 December 2021. The AEI related to the setting of a scheduled monument and a change to abstraction of a private water supply.

The AEI was advertised and consulted upon in accordance with the requirements of the EIA Regulations.

In advance of the public inquiry sessions, the Reporters requested the Company provide a revised cumulative landscape and visual impact assessment to take account of the latest position. The Company also sought to provide further information on the site layout, in terms of the onsite substation and its potential size. The matters included by the Company had not been requested for the purposes of the inquiry, therefore the additional environmental information (“AEI II”) was published and advertised by the Company in accordance with the requirements of the EIA Regulations in October 2022.

Further additional environmental information (“AEI III”) was provided by the Company comprising an updated Outline Habitat Management Plan, which describes the proposed habitat management at the proposed Development. The information provided in AEI III was not requested by the Reporters for the purposes of the inquiry and was therefore published and advertised by the Company in accordance with the requirements of the EIA Regulations in December 2022.

The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations and the EIA Regulations and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider and make representation on the proposed Development.

### **Public Inquiry**

In accordance with paragraph 2(2) of Schedule 8 of the Electricity Act, where the relevant planning authority objects to an application and the objection is not withdrawn the Scottish Ministers shall cause a public inquiry to be held.

The Planning Authority objected to the application and did not withdraw that objection, therefore Scottish Ministers were required to cause a public inquiry to be held.

### **Public Inquiry and Reports**

The Reporters held a virtual pre-examination meeting on 6 September 2022 to consider the arrangements and procedures for the public inquiry. Unaccompanied inspections of the appeal site, its surroundings and other locations referred to in submissions and in evidence were conducted on 4, 5 and 6 October 2022.

The inquiry session was held online on 14 December 2022, due to poor weather conditions and the requirements for safe travel. The hearing session on conditions was held on the same day, also online. The hearing session on policy matters was held online on 26 January 2023. Closing submissions on behalf of both parties were exchanged in writing, with the final closing submissions (on behalf of the Company) being lodged on 24 February 2023.

The report of that inquiry (“PI Report”) was received by Scottish Ministers on 23 June 2023.

The PI Report takes account of the precognitions, written statements, documents and closing submissions lodged by the parties, together with the discussion at the inquiry and hearing sessions. It also takes account of the original Environmental Impact Assessment Report dated 24 March 2021, and the Company’s AEI dated 2 December 2021, and the written representations made to Scottish Ministers. The chapters of the PI Report provide the following:

Chapter 1 - Background

Chapter 2 - Legislative and policy context

Chapter 3 - Landscape and visual impact

Chapter 4 - Other relevant matters:

- Cultural heritage and archaeology
- Ecology
- Ornithology
- Forestry
- Hydrology and hydrogeology
- Geology and peat
- Traffic and transport
- Noise
- Tourism interests, socio-economics and recreation
- Climate change and carbon balance

Chapter 5 – Planning conditions

Chapter 6 – Policy evidence and conclusions

Chapter 7 – Overall conclusions and recommendation.

The Reporters’ PI Report recommended to grant section 36 consent and deemed planning permission.

### **Consultation Responses**

A summary of the consultation responses is provided below and the full responses are available on the Energy Consents Unit website [www.energyconsents.scot](http://www.energyconsents.scot)

### **Statutory Consultees**

**The Highland Council** (the “Planning Authority”) **object** to the proposed Development on the basis that:

- *“the application is contrary to Policy 67 (Renewable Energy) of the Highland wide Local Development Plan, the Onshore Wind Energy Supplementary Guidance (in respect of Criterion 3, 4, 5 and 6), and Scottish Planning Policy as the development would have a significantly detrimental visual impact, from the elevated parts of the Drynachan and Lochindorb SLA, and road users on the A939 and A940, which were not outweighed by the benefits of the development”*; and
- *“while it was recognised that the principle of a wind farm was accepted on the site, the proposed variation was unacceptable in visual impact terms due to the increased height, and associated increased rotor diameter, of the proposed turbines by virtue of the siting and design of the proposed development having significantly detrimental visual and cumulative impacts with other wind energy development, and due to the development not respecting the pattern and character of existing wind farm development in the wider area.”*

**NatureScot** do not object to the proposed Development, and welcomed the mitigation and compensation measures detailed in the Company’s original outline habitat management plan, suggesting further measures in relation to removal of self-seeded trees and monitoring of the wider wind farm area to detect and address habitat loss or degradation resulting from construction and operation of the wind farm.

NatureScot view that the losses of carbon rich soil, deep peat and priority peatland habitat have been minimised, and the compensation measures proposed will adequately off-set these losses.

NatureScot advised that the proposed Development would result in significant effects on a Special Landscape Quality (vastness of space, scale and height) of the Cairngorms National Park, limited to a small number of mountain tops; the Open Rolling Uplands Landscape Character Type; and 14 viewpoint locations, including areas of Dava, part of the A939 Nairn to Tomintoul road, part of the A940 Forres to Dava road, and part of the Dava Way.

It considered that the proposed Development would not adversely affect the integrity of the Darnaway and Lethen Forest and Inner Moray Firth & Moray and Nairn Coast Special Protection Areas (SPAs), however advised that Scottish Ministers, as competent authority, are required to carry out appropriate assessments in view of the both SPA’s site conservation objectives for its qualifying interests. Appropriate assessments undertaken by Scottish Ministers are included at Annex 4.

**Scottish Environment Protection Agency (SEPA)** do not object to the proposed Development, subject to conditions in relation to minimisation of negative impacts on peat and carbon loss, adherence to a finalised habitat management plan, and adherence to the measures outlined in the application regarding construction works.

With regard to the change to the abstraction of a private water supply within the AEI, SEPA noted that the distance between the abstraction and any construction works is significant and are content that the abstraction should not be significantly affected by the proposed Development.

**Historic Environment Scotland (HES)** do not object to the proposed Development and is satisfied that the information provided in the AEI demonstrates that the impacts on the setting of the scheduled monument will not be significant enough that mitigation would be required for its interests.

#### Internal Scottish Government Advisors

**Transport Scotland** has no objection to the proposed Development, subject to conditions requiring the prior approval by the trunk roads authority of the proposed route and any accommodation measures required for any abnormal loads on the trunk road network, and requiring any additional signing or temporary traffic control measures to be undertaken by a recognised QA traffic management consultant, with the approval of Transport Scotland. Conditions are attached within Annex 2, which gives effect to Transport Scotland recommendations.

#### Non-statutory consultees

**Aberdeenshire Council Archaeologist** does not object to the proposed Development, having assessed the potential impacts on the historic environment in the Moray Council area, which falls within its remit.

**British Telecom (BT)** raised no objection, concluding that the proposed Development should not cause interference to BT's current and presently planned radio network.

**Defence Infrastructure Organisation (MOD)** do not object to the proposed Development subject to conditions in relation to a technical mitigation agreement and implementation of an Air Traffic Control Radar Mitigation Scheme, appropriate aviation lighting, and aviation charting and safety management measures.

**East Nairnshire Community Council (ENCC)** advised that although it cannot support the application, it does not object to the proposed Development as a whole. ENCC welcomed the efforts of the Company in communicating and consulting with the local community throughout, and is broadly supportive of work done since the proposal was scoped. ENCC raised concerns regarding the proximity of turbines 7 and 11 to the A939, and would prefer if these turbines could be removed.

ENCC also highlighted the reliance of the Company on screening for many receptors to be provided by current levels of planting and consider that this commercial mature coniferous plantation would be expected to be felled during the lifetime of the proposed Development, suggesting that a substantial planting regime should be required in order to mitigate loss of this screening.

ENCC opposes the B9007 for the delivery of AILs due to loss of hedges and potential damage to drainage, and recommended mitigation in order to allow this route to be used.

**Fisheries Management Scotland (FMS)** does not object, noting that the proposed Development falls within the Findhorn District Salmon Fishery Board and Findhorn, Nairn and Lossie Fisheries Trust, and advised that the proposals are conducted in full

consultation with both organisations. No comments were received from either of these organisations.

**Highlands and Islands Airports Limited (HIAL)** do not object to the proposed Development subject to imposition of an appropriately worded condition requiring an Air Traffic Control Mitigation Scheme.

**Joint Radio Company** does not object, advising that it in relation to this proposed Development, it does not foresee any potential problems based on known interference scenarios.

**Scottish Water (SW)** does not object to the proposed Development. SW stated that its records appeared to show that there is a culverted watercourse within the site and advised that the owner of the watercourse should be contacted in relation to construction in the vicinity of the culvert.

SW noted that there are no SW drinking water catchments or water abstraction sources, which are designated as Drinking Water Protected Area under the Water Framework Directive, in the area.

The following consultees have no objection to the proposed Development:

- Cairngorms National Park Authority;
- The Coal Authority;
- Crown Estate Scotland;
- Moray Council;
- Mountaineering Scotland;
- NATS Safeguarding;
- RSPB Scotland.

The following consultees did not respond: Association for the Protection of Rural Scotland; Civil Aviation Authority; Finnerne Community Council; Grantown on Spey and Vicinity Community Council; John Muir Trust; Marine Scotland; National Trust for Scotland; Ofcom; Scottish Forestry; Scottish Rights of Way and Access Society; Scottish Wildlife Trust; Scottish Wild Land Group; and Visit Scotland.

## **Representations**

A total of 12 representations from third parties were received by the Energy Consents Unit in connection with these proposals, 11 letters of objection and 1 letter of support were received.

The **letter of support** raised the following matters:

- positive economic effects and community benefit such as energy discounts; and
- positive contribution to government targets.

Those **objecting** to the development raise the following concerns:



- visual amenity;
- siting of turbines;
- shadow flicker;
- private water supplies;
- impact on property values;
- cumulative impacts with other wind farm developments in the area;
- noise;
- effects on tourist routes and tourism;
- archaeological impacts;
- aviation lighting;
- impact on satellite TV reception.

The Scottish Ministers have considered the matters raised in the consultation responses and in the representations made to them on the Application and are satisfied, having taken into account the EIA report, the AEI, AEI II and AEI III, and the PI Report that the environmental impacts have been appropriately assessed and taken into account in the determination of the proposed Development.

Having considered the PI Report and the recommendations of the Reporter for conditions to be imposed, as set out at Appendix A of the PI Report, the Scottish Ministers are satisfied that the conditions imposed by them at Annex 2 of this decision letter are necessary and reasonable, having regard to the proposed Development's likely impacts, the mitigation required in respect of those impacts and which take account of the recommendations and advice from consultees as summarised above.

The remaining impacts are considered to be acceptable in light of the overall benefits of the proposed Development. This reasoning is set out in more detail under the heading "Assessment of Determining Issues" at pages XX through to XX of this decision letter.

## **The Scottish Ministers' Considerations**

### **Main Determining Issues**

Having considered the Application, the EIA report, the additional information (AEI, AEI II and AEI III), responses from consultees and third parties, the PI Report, and Scottish Government policies, Scottish Ministers consider that the main determining issues are:

- Landscape and visual effects;
- Socio-economic effects and community issues, including tourism; and
- Scottish Government policies and local development plans.

### **Assessment of the Determining Issues**

#### **Landscape and Visual effects**

The Planning Authority objects to the proposed Development on the grounds of its adverse landscape and visual effects. In respect of landscape effects the Planning Authority considers that the proposed Development would compromise characteristics

of the Open Rolling Uplands Landscape Character Type (LCT) in addition to significantly affecting special qualities of the Drynachan, Lochindorb and Dava Moors Special Landscape Area (SLA). For visual effects the Planning Authority highlighted significant effects due to the presence of a greater number of visual receptors, particularly on the A939/A940 which are important routes linking the Cairngorms National Park and Nairnshire/Moray.

NatureScot did not object to the proposed Development, however did advise that the proposed Development would result in significant effects on: a Special Landscape Quality (vastness of space, scale and height) of the Cairngorms National Park, limited to a small number of mountain tops; the Open Rolling Uplands LCT; and 14 viewpoint locations, including areas of Dava, part of the A939 Nairn to Tomintoul road, part of the A940 Forres to Dava road, and part of the Dava Way.

The Planning Authority and NatureScot assert that the Landscape and Visual Impact Assessment (LVIA) provided by the Company has under-represented impacts of the proposed Development, particularly in relation to the effects on the LCT.

At Chapter 3 of the PI Report, the Reporters consider the position of the parties in relation to the landscape and visual impacts arising from the proposed Development, including cumulative impacts, sequential impacts and effects on residential visual amenity. A summary of the position on agreed matters between the Company and the Planning Authority in respect of the landscape and visual impacts of the proposed Development is included in Chapter 3 of the PI Report.

The Reporters' findings are set out in paragraphs 3.39 to 3.101 of the PI Report under subheadings:

- “Methodology for assessing landscape and visual effects”;
- “Landscape impacts”;
- “Visual impacts”;
- “Cumulative effects”; and
- “Reporters’ overall conclusions on landscape and visual effects”.

The Reporters have taken account of the consultation responses from The Highland Council, NatureScot, Cairngorms National Park Authority, as well as representations from other parties who raised objections and concerns in respect of the landscape and visual impacts of the proposed Development.

The Reporters referred to the wide-open landscape of the location and varying landscape character types to the north and south of the site, acknowledging that the introduction of wind turbines in the landscape would lead to a “*change in experience*”. However the Reporters found that special qualities of the SLA would remain largely unchanged and any effects as a result of the proposed Development would not negate the qualities of the SLA.

In paragraph 3.56 the Reporters set out their view in relation to the effects on the LCT, agreeing with the Planning Authority that there would be significant effects but that these would be limited to within 5 kilometres of the site and not to the extent that the openness of the moorland would be undermined.

The Reporters concluded that there would be no significant effects: on any national landscape designations, particularly Cairngorms National Park; on the Findhorn Valley and Wooded Estates SLA; on National Cycle Route 1; and on residential amenity.

The Reporters further concluded that there would be significant effects: on the Drynachan, Lochindorb and Dava Moor SLA in the vicinity of the site location and within 5 kilometres of the site; on the Open Rolling Upland LCT, but limited to within 5 kilometres of the site; on parts of the Dava Way in the vicinity of viewpoint 14; on parts of the A939 and A940; and that there would be significant cumulative effects.

The Reporters also concluded there would be significant visual effects from a number of viewpoints and agreed with the Planning Authority and NatureScot that the Company had underestimated the visual effects of the proposed Development at viewpoints 8 and 14.

The Reporters recognise that there is an existing, consented scheme in place for the site and are content that the differences between the proposed and consented schemes do not give rise to unacceptable landscape and visual effects.

The Scottish Ministers have taken account of the EIA report, the AEI, AEI II and AEI III, consultation responses and public representations alongside the Reporters' considerations and subsequent conclusions.

The Scottish Ministers agree with the findings and conclusions of the Reporters that the proposed Development would have significant adverse effects in landscape and visual terms. The Scottish Ministers note the Reporters' conclusion that although there would be significant landscape effects, these would be predominantly localised; and that although there are visual effects on more distant and cumulative views, the majority of are local and within 5 kilometres of the site.

### **Socio-economic effects and community issues, including tourism**

The Scottish Ministers note that Chapter 12 of the EIA report considers the socio-economic benefits of the proposed Development and includes estimated costs for development and construction of £62.7 million, with around 10% of the overall value of contracts potentially to be realised in the Highlands.

The Company's assessment of the proposed Development's economic impact found that there would be limited jobs created, directly and indirectly, as a result of the proposed Development but highlighted the Company's commitment to utilising local contractors, suppliers and employees wherever reasonably practicable.

The Dava Moor Residents' Association and other objectors expressed concerns that the landscape and visual effects of the proposed Development would result in direct impacts to tourism and recreation in the surrounding areas, including the A939 and A940 tourist routes and the Dava Way.

The Company's assessment found that there would be no significant impact on tourism and recreation. The Planning Authority agreed that they would not expect

adverse effects on tourism, with the exception of adverse effects from construction traffic and disruption.

The Reporters conclude that the proposed Development would bring localised benefits in terms of direct job creation, indirect support for local businesses, and contributions to the local economy through increased local expenditure and business rates.

The Reporters take account of concerns of the local community in relation to possible negative effects on tourism, however they conclude that there would be no significant adverse effects on tourism and recreation and that the localised effects of the proposed Development “*would not be sufficient to deter tourists from using the A939, A940 or the Dava Way*”.

Whilst it is always difficult to precisely quantify overall net economic benefits, the Scottish Ministers are satisfied the proposed Development has the potential to bring net positive economic benefits for the local community, the Highlands and Scotland. The Scottish Ministers are also satisfied that there would not be significant adverse impacts on tourism as a consequence of the proposed Development.

## **Scottish Government policies and local development plans**

### Contribution to Renewable Energy Policy Objectives

The seriousness of climate change, its potential effects and the need to cut carbon dioxide emissions, remain a priority of Scottish Ministers. Scottish Ministers agree with the Reporters’ view set out within the PI Report that there is very strong support for renewable energy developments in national energy and planning policy, and in legally binding national targets to increase renewable energy and to reduce carbon emissions. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (the “2019 Act”) sets a target for Scotland to be carbon-neutral, meaning net-zero emissions by 2045 at the latest. Additionally the 2019 Act sets out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040.

The Onshore Wind Policy Statement (“OWPS”), published in December 2022, reaffirms the vital role for onshore wind in meeting Scotland’s energy targets within the context of the Scottish Government’s 2045 net zero emissions commitment. The statement sets out the Scottish Government’s position for the ongoing need for additional onshore wind development and capacity in locations across Scotland where it can be accommodated in appropriate locations.

The carbon payback figures for the proposed Development are set out in Appendix 9.5 of the Company’s EIA report, referencing the approved Scottish Government carbon calculator. The proposed Development, if built, would be expected to have a payback period of approximately 1 year. Whilst noting the limitations of any such calculations, the online carbon calculator provides the best available means by which carbon calculations can be provided in a consistent and comparable format.

The Scottish Ministers have taken account of appropriate sections of the EIA report, AEI, AEI II and AEI III, consultation responses and public representations alongside the Reporter’s considerations and subsequent conclusions and agree that the

proposed Development would make an important contribution in support of Renewable Energy Policy Objectives. The Scottish Ministers are satisfied that the deployment of the amount of renewable energy from the proposed Development is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target date for net-zero emissions of all greenhouse gases by 2045, and that significant weight should be placed on such contributions.

#### Accordance with Scottish Government National Planning Policies and local development plans

Chapter 2 of the PI Report sets out the legislative and policy context against which the proposed Development should be considered and Chapter 6 of the PI Report (where relevant) sets out the Reporter's considerations and assessment of the proposed Development in the context of relevant national climate change and energy policy, national planning policy and other relevant local planning policy and guidance.

The National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13th February 2023 and sets out the spatial principles and by applying these, the national spatial strategy will support the planning and delivery of: sustainable places, liveable places, productive places.

The national spatial strategy acknowledges that meeting the climate ambition will require rapid transformation across all sectors of our economy and society. It states that this means ensuring the right development happens in the right place. NPF4 recognises that every decision on future development must contribute to making Scotland a more sustainable place.

The Scottish Government's Energy Strategy (2017) sets a 2030 target for the equivalent of 50% of Scotland's heat, transport and electricity consumption to be supplied from renewable sources (the Draft Energy Strategy and Just Transition Plan (2023) maintains this target). The OWPS acknowledged that a balance requires to be struck with environmental considerations to ensure that the right development is delivered in the right place.

The Application was submitted prior to the publication of OWPS in December 2022 and prior to the adoption of NPF4 on 13 February 2023.

The Planning Authority confirmed during inquiry that the adoption of NPF4 would not have materially changed their decision to object to the proposed Development and state it is contrary to Policy 67 (Renewable Energy) of the Highland wide Local Development Plan (LDP), the Onshore Wind Energy Supplementary Guidance (in respect of Criterion 3, 4, 5 and 6), and Scottish Planning Policy. The Planning Authority hold the view that the proposed Development would have a significantly detrimental visual impact, arising from the increase in height of the proposed turbines and associated rotor diameter from the consented scheme, from the elevated parts of the Drynachan and Lochindorb SLA, and road users on the A939 and A940.

Paragraphs 6.35 to 6.55 set out the Reporters' conclusions on national planning policies, acknowledging there is disagreement between the Planning Authority and the

Company on the incorporation of NPF4 and whether this “*constitutes a substantive change in national policy*”.

The Reporters found that support for onshore wind energy proposals is central to key aims of NPF4, tackling the declared climate and nature crises, additionally noting the classification of onshore wind energy proposals in excess of 50MW as national development since NPF4 was adopted.

Scottish Ministers agree with the Reporters’ conclusions that the proposed Development would meet the policy test at Policy 4 d) ii, as it constitutes a national development which supports the delivery of the national spatial strategy set out within NPF4; and that this national development status offers benefits of more than local importance.

Paragraphs 6.56 to 6.58 set out the Reporters’ conclusions on the proposed Developments accordance with the Highland Wide LDP. The Reporters note that Policy 67 is the key consideration in relation to the local development plan and considered that, although there would be significant landscape and visual impacts, these would be predominantly localised. The Reporters found that there would be socioeconomic benefits of a local scale and that other policy considerations can be addressed through mitigation and imposition of conditions, and were therefore satisfied that the proposed Development is capable of being compliant with Policy 67.

Scottish Ministers, in making their determination on the Application, have had regard to the balance of the above considerations, deciding what weight is to be given to each and reach a view as to where the balance of benefit lies. Scottish Ministers are content that the proposed Development is supported by Scottish Government Policies and it is considered that the proposed Development is acceptable, on balance.

## **The Scottish Ministers’ Conclusions**

### **Reasoned Conclusions on the Environment**

The Scottish Ministers are satisfied that the EIA report has been produced in accordance with the EIA Regulations, the Consents Regulations and the Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (where applicable) and that the procedures regarding publicity and consultation laid down in the those regulations have been followed.

The Scottish Ministers are satisfied that the Company has done what it reasonably can to mitigate any effect that the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites, buildings or objects.

The Scottish Ministers have fully considered the Application, including the EIA report, additional information (AEI, AEI II and AEI III), consultation responses, representations, the PI Report and all other material information and are satisfied that the environmental impacts of the proposed Development have been sufficiently assessed. Taking into account the environmental information and assessments, and subject to conditions to secure mitigation measures, the Scottish Ministers consider

the environmental effects are mostly overcome with the exception of significant local landscape and visual effects.

The Scottish Ministers are satisfied having regard to current knowledge and methods of assessment, that this reasoned conclusion addresses the likely significant effects of the proposed Development on the environment. The Scottish Ministers are satisfied that this reasoned conclusion is up to date.

#### Acceptability of the proposed Development

Scotland's renewable energy and climate change targets, energy policies and planning policies are all material considerations when weighing up this proposed Development. NPF4, the Energy Strategy, and the OWPS make it clear that renewable energy deployment remains a priority of the Scottish Government. This is a matter which should be afforded significant weight in favour of the proposed Development.

NPF4 Energy Policy 11(e)(ii) recognises that significant landscape and visual impacts are to be expected for some forms of renewable energy but that where impacts are localised and/or appropriate design mitigation has been applied they will generally be acceptable.

The Scottish Ministers acknowledge that the proposed Development would result in adverse visual and landscape impacts however are satisfied that the proposed Development has been appropriately designed and sited to minimise impacts on the environment. Although there will be some localised landscape and visual effects the Scottish Ministers consider these are acceptable in the context of the benefits that the proposed Development will bring in terms of net economic benefit and contributing to renewable energy and climate change targets.

The Scottish Ministers are also satisfied that the proposed Development will not have any significant effects on any protected species, National Scenic Areas or National Parks.

As set out above, the SES and OWPS set out targets for the increase in the supply of renewable energy. The OWPS in particular reaffirms the vital role for onshore wind in meeting Scotland's energy generation and net zero emissions targets. This is also a matter which should be afforded significant weight in favour of the proposed Development.

The Reporters' conclusions on national energy policies are set out at paragraphs 6.31 to 6.34 of the PI Report. The Reporters agreed with the parties that current renewable energy policy carries significant weight in this case and that a significant amount of onshore wind capacity will be required to meet the ambitions set out in the OWPS.

The transition to a low carbon economy is an opportunity for Scotland to take advantage of our natural resources to grow low carbon industries and create jobs. The Scottish Ministers are satisfied that the proposed Development will provide economic benefits and will provide a contribution to renewable energy targets and carbon savings that weigh in its favour.

Scottish Ministers agree with the overall findings of the Reporters on the potential benefits of the proposed Development and are satisfied that the deployment of this amount of renewable energy is entirely consistent with the Scottish Government's policy on the promotion of renewable energy and its target date for net-zero emissions of all greenhouse gases by 2045 and note that on balance this has taken precedence over the landscape and visual impacts in this particular case.

Taking all of the above into account, the Scottish Ministers are content that the proposed Development is supported by Scottish Government Policies and should be granted consent.

### **The Scottish Ministers' Determination**

Subject to the conditions set out in **Annex 2, Part 1**, the Scottish Ministers **grant consent** under section 36 of the Electricity Act 1989 for the construction and operation of the Cairn Duhie Wind Farm , in the Highland Council Planning Authority area as described in **Annex 1**.

Subject to the conditions set out in **Annex 2, Part 2**, the Scottish Ministers direct that **planning permission be deemed to be granted** under section 57(2) of the Town and Country Planning (Scotland) Act 1997 in respect of the Cairn Duhie Wind farm, as described in **Annex 1**.

### **Section 36 consent and expiry of Planning Permission**

The consent hereby granted will last for a period of 35 years from the earlier of:

- i) The date when electricity is first exported to the electricity grid network from all of the wind turbines hereby permitted; or
- ii) The date falling 18 months after electricity is generated from the first of the wind turbines hereby permitted.

Section 58(1)(a) of the Town and Country Planning (Scotland) Act 1997 requires where planning permission is deemed to be granted, that it must be granted subject to a condition that the permission will expire if has not begun within a period of 3 years.

Section 58(1)(b) of that Act enables the Scottish Ministers to specify that a longer period is allowed before planning permission will lapse. The Scottish Ministers consider that due to the constraints, scale and complexity of constructing such Developments, a 5-year time scale for the Commencement of development is typically appropriate.

The Scottish Ministers consider that 3 years is not to apply with regard to the planning permission granted above, and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction, unless the development to which the permission relates is begun before the expiry of that period. A condition has been imposed stating that development must be begun within 5 years beginning with the date on which the permission is deemed to be granted and if development has not begun at the expiration of that period, the planning permission will lapse in terms of section 58(3) of the Town and Country Planning (Scotland) Act 1997.



In accordance with the EIA Regulations, the Company must publicise notice of this determination and how a copy of this decision letter may be inspected on the application website, in the Edinburgh Gazette and a newspaper circulating in the locality in which the land to which the application relates is situated.

Copies of this letter have been sent to the public bodies consulted on the Application including the Planning Authority, NatureScot, SEPA and Historic Environment Scotland. This letter has also been published on the Scottish Government Energy Consents website at <http://www.energyconsents.scot>

Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts:

<https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=12>

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours faithfully

PP. *Temeeqa Dawson*

**Alan Brogan**  
**A member of the staff of the Scottish Ministers**

Annex 1 – Description of Development  
Annex 2 – Section 36 Conditions and Deemed Planning Conditions  
Annex 3 – Site Layout Plan  
Annex 4 – Appropriate Assessments

## **ANNEX 1**

### **Description of the Development**

The Development comprises an electricity generating station known as Cairn Duhie Wind Farm located within the Highland Council planning authority area approximately 15 km south east of Nairn and 13.5 km north/north west of Grantown-on-Spey. The principle components of the Development comprise (“the Development”).

The components of the generating station and ancillary development comprise:

- 16 wind turbines, with a maximum tip height of up to 149.9m;
- crane hard standings for each turbine measuring 35m x 40m and surfaced with coarse aggregate;
- underground electrical cables located in trenches adjacent to access tracks;
- onsite control building and substation compound;
- battery storage compound;
- two temporary construction compounds measuring 50m x 80m to provide site office facilities and storage for materials and components and 10m telecoms mast;
- onsite borrow pit to win stone for construction;
- one concrete batching plant measuring 50m x 80m;
- vehicle turning heads and junctions;
- approximately 8.3km of new permanent access tracks, including nine passing places;
- forestry management; and
- site signage.

## **ANNEX 2**

### **Part 1**

#### **Conditions Attached to section 36 Consent**

##### **1. Notification of Date of First Commissioning**

- (1) Written confirmation of the Date of First Commissioning and the Date of Final Commissioning shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month after those dates.

***Reason:** To Allow the Planning Authority and the Scottish Ministers to calculate the date of expiry of the consent.*

##### **2. Commencement of Development**

- (1) Commencement of Development shall be no later than five years from the date of this consent, or such other period as the Scottish Ministers may hereafter direct in writing.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to Scottish Ministers and the Planning Authority as soon as practicable after deciding on such a date and no later than one calendar month before that date.

***Reason:** To ensure that the consent is implemented within a reasonable period and to allow the Planning Authority and the Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.*

##### **3. Non-assignment**

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

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

##### **4. Serious Incident Reporting**

In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company will provide written notification of the nature and timing of the incident to the Scottish

Ministers, including confirmation of remedial measures taken and/or to be taken to rectify the breach, within 24 hours of the incident occurring or first becoming known to the Company.

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

## **5. Ministry of Defence Surveillance Operations**

- (1) No turbine shall be erected unless and until an Air Traffic Control Radar Mitigation Scheme (ATCRMS) to address the impact of the wind turbines upon air safety has been submitted to and approved in writing by Scottish Ministers in conjunction with the Ministry of Defence (MoD).
- (2) The ATCRMS shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the lifetime of the Development provided the Radar remains in operation. The Development shall be implemented strictly in accordance with the details set out in the approved ATCRMS.
- (3) No wind turbine erected as part of this Development shall be permitted to rotate its rotor blades about its horizontal axis, other than for the purpose of testing radar mitigation for this Development for specific periods as defined in the approved ATCRMS or otherwise arranged in accordance with provisions contained in the approved ATCRMS, until:
  - (a) those mitigation measures required to be implemented prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis as set out in the approved ATCRMS have been implemented; and
  - (b) any performance criteria specified in the approved ATCRMS and which the approved ATCRMS requires to have been satisfied prior to any wind turbine being permitted to rotate its rotor blades about its horizontal axis have been satisfied and Scottish Ministers, in conjunction with the Ministry of Defence, have confirmed this in writing.
- (4) Thereafter the Development shall be operated strictly in accordance with the details set out in the approved ATCRMS for the lifetime of the development, provided the Radar remains in operation.

For the purposes of this condition, the ATCRMS means a detailed scheme to mitigate adverse impacts of the development on the Primary Surveillance Radar at RAF Lossiemouth (“the Radar”) and the air traffic control operations of the MoD which are reliant upon the Radar. The scheme will set out the appropriate measures to be implemented to that end.

**Reason:** *In the interests of aviation safety and to secure mitigation of impacts on the Primary Surveillance Radar at RAF Lossiemouth.*

## **6. Aviation Lighting**

- (1) Prior to commencing construction of any wind turbine generators, or deploying any construction equipment or temporal structure(s) 50 metres or more in height (above ground level) the undertaker must first submit an aviation lighting scheme for the approval of the Scottish Government in conjunction with the Ministry of Defence defining how the development will be lit throughout its life to maintain military aviation safety and determined necessary for aviation safety by the Ministry of Defence. This should set out:
  - (a) Details of any construction equipment and temporal structures with a total height of 50m or greater (above ground level) that will be deployed during the construction of wind turbine generators and details of any aviation warning lighting that they will be fitted with.
  - (b) The aviation lighting scheme shall specify that MOD accredited aviation safety lighting shall be fitted to each of the perimeter turbines (those shown numbered T1, T2, T5, T7, T9, T11, T12, T15 and T16 on the Infrastructure Layout (drawing no. 02914-RES-PRO-DR-PT-001)). The lighting specified shall be MOD accredited infrared lighting, with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration, and shall be attached at the highest practicable point of each wind turbine generator.
- (2) Thereafter, the undertaker must exhibit such lights as detailed in the approved aviation lighting scheme. The lighting installed will remain operational for the lifetime of the development.

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

## **7. Aviation Charting and Safety Management**

- (1) The Company must notify the MoD, at least 14 days prior to the commencement of the works erection of the first wind turbine, in writing of the following information:
  - (a) the date of the commencement of the erection of wind turbine generators;
  - (b) the maximum height of any construction equipment to be used in the erection of the wind turbines;
  - (c) the date any wind turbine generators are brought into use;
  - (d) the latitude and longitude and maximum heights of each wind turbine generator, and any anemometer mast(s).
- (2) The MoD must be notified of any changes to the information supplied in accordance with these requirements and of the completion of the construction of the Development.

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

## 8. Civil Aviation

- (1) No wind turbine shall be operated, other than for testing and evaluation as agreed with Inverness Airport, until an Air Traffic Control Mitigation Scheme (ATCMS) is agreed and put in place, which addresses the impact of the wind turbines upon the following:
  - (a) Inverness Primary Surveillance Radar;
  - (b) Air Traffic Control Surveillance Minimum Altitude Chart;
  - (c) Instrument Flight Procedures (IFPs); and
  - (d) Crane and Lifting equipment used during construction.
  
- (2) The ATCMS shall be submitted to and approved, in writing, by the planning authority, in consultation with the operator of Inverness Airport and approved by the Civil Aviation Authority. No wind turbine(s) forming part of the Development shall be operational until and unless all measures required by the ATCMS have been fully implemented. The Development shall thereafter be operated fully in accordance with the approved ATCMS.

For the purposes of this condition, the ATCMS means a scheme comprising the appropriate measures (as varied from time to time) which when operated ensures that the impact of the development upon the aerodrome (Inverness Airport) and its surrounding airspace is not adversely affected by the development, thus ensuring the continued safety of aircraft operating at the aerodrome. The scheme shall include the appropriate measures to be implemented and that are to be in place for the operation life and any decommission of the Development.

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

## **ANNEX 2**

### **Part 2**

#### **Conditions attached to Deemed Planning Permission**

##### **9. Implementation in accordance with approved plans and requirements of the section 36 consent**

Except as otherwise required by the terms of the section 36 consent and deemed planning permission, the Development shall be undertaken in accordance with the application (including the approved drawings, Environmental Impact Assessment Report (EIAR) submitted March 2021 as supplemented by additional information submitted November 2021, October 2022 and December 2022.

**Reason:** *To ensure that the Development is carried out in accordance with the application documentation.*

##### **10. Design and operation of wind turbines**

- (1) No turbine shall be erected until details of the proposed wind turbines (including external finish and colour which should be non-reflective pale grey semi-matt) and any anemometry masts and all associated apparatus have been submitted to, and approved in writing by, the Planning Authority. The approved details shall be implemented.
- (2) The tip height of the turbines shall not exceed 149.9 metres above ground level.
- (3) The turbines shall be maintained in the approved colour, free from external rust, staining or discolouration, until such time as the wind farm is decommissioned.
- (4) All wind turbine blades shall rotate in the same direction.
- (5) All wind turbine transformers shall be located within the tower of the wind turbine to which they relate.

**Reason:** *To ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts of the candidate turbines assessed in the Environmental Impact Assessment Report and in the interests of the visual amenity of the area.*

##### **11. Signage**

No wind turbine, anemometer, power performance mast, switching station, transformer building or enclosure, ancillary building or above ground fixed plan shall display any name, logo, sign or advertisement (other than health and safety signage) unless and until otherwise approved in writing by the Planning Authority.

**Reason:** *In the interests of the visual amenity of the area.*

## **12. Design of sub-station, ancillary buildings and other ancillary development**

- (1) There shall be no Commencement of Development on the sub-station unless and until final details of the external appearance, dimensions, and surface materials of the substation building, associated compounds, construction compound boundary fencing, external lighting and parking areas have been submitted to, and approved in writing by, the planning authority.
- (2) The substation building, associated compounds, fencing, external lighting and parking areas shall be constructed in accordance with the approved details.

**Reason:** *To ensure that the environmental impacts of the sub-station and ancillary development forming part of the Development conform to the impacts assessed in the EIA Report dated March 2021 and additional information (AI) dated November 2021 and October 2022 and in the interests of the visual amenity of the area.*

## **13. Electrical Cabling**

All electrical cabling between the wind turbines and the switchgear control building shall be installed and kept underground.

**Reason:** *In the interests of visual amenity.*

## **14. Micro-siting**

- (1) Unless otherwise approved in writing by the planning authority, all wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the locations shown on plan reference Site Layout Plan Figure 4.1 (October 2022) contained within the Additional Environmental Information. Wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro-siting within the redline boundary, but micro-siting is subject to the following restrictions:
  - (a) No wind turbine shall be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on the Site Layout Plan;
  - (b) No wind turbine, building, mast or hardstanding shall be moved more than 50m from the position shown on the Site Layout Plan unless approved in writing by the Planning Authority in consultation with SEPA and NatureScot;
  - (c) No access track shall be moved more than 50m from the position shown on the Site Layout Plan unless and approved in writing by the Planning Authority in consultation with SEPA and NatureScot;
  - (d) With the exception of watercourse crossings and related tracks, no element of the Development shall be micro-sited to a location within 50 metres of a watercourse (or closer to a watercourse if approved within such distance);
  - (e) Any micro-siting changes shall respect the exclusion zones and hydrological layout constraints shown on EIAR Figure 9.4 , such that no infrastructure would be moved to the extent that impacts would be any greater than those reported in EIAR Chapter 9;



- (f) No micro-siting shall take place within areas hosting Ground Water Dependent Terrestrial Ecosystems;
  - (g) All micro-siting permissible under this condition shall be approved in advance in writing by the Ecological Clerk of Works ("ECoW").
- (2) No later than one month after the date of Final Commissioning an updated site plan showing the final position of all wind turbines, buildings, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development shall be submitted to the Planning Authority. The plan shall also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW or Planning Authority's approval, as applicable.

**Reason:** *to control environmental impacts while taking account of local ground conditions.*

#### **15. Unexploded Ordinance**

- (1) There shall be no Commencement of Development unless and until a scheme to identify and manage the risk of any unexploded ordinance on site is submitted to, and approved in writing by the Planning Authority.
- (2) The approved scheme shall be implemented.

**Reason:** *To ensure any risk of unexploded ordinance is appropriately mitigated, prior to and during the construction phase of the Development.*

#### **16. Private Water Supplies**

There shall be no Commencement of Development unless and until a method statement has been submitted to and approved in writing by the Planning Authority, detailing all mitigation measures to be taken to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of this section 36 consent and which may be affected by the Development. The method statement shall include water quality sampling methods and shall specify abstraction points. The approved method statement shall thereafter be implemented in full.

**Reason:** *To maintain a secure and adequate water supply to all properties with private water supplies which may be affected by the Development.*

#### **17. Access Management Plan**

There shall be no Commencement of Development until an Access Management Plan has been submitted to, and approved in writing by, the Planning Authority. The plan will make provision for existing levels of public access to be maintained after construction other than as may be necessary to carry out repair or maintenance works. The plan shall include details of signage to be included on the Site to warn users of the paths of any hazards. The plan as agreed shall be

implemented in full, unless otherwise approved in writing with the Planning Authority.

**Reason:** *In the interests of recreational amenity.*

## **18. Construction Hours**

The hours of operation of the construction phase of the Development hereby permitted shall be limited to 0700 hours to 1900 hours on Monday to Saturday and no work shall take place on Sundays or public holidays unless previously approved in writing by the planning authority. Out with these hours, development at the site shall be limited to turbine delivery and erection, commissioning, maintenance and pouring of concrete foundations (provided that the developer notifies the planning authority of any such works within 24 hours if prior notification is not possible). In addition, access for security reason, emergency responses or to undertake any necessary environmental controls is permitted out with these hours.

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

## **19. Construction Traffic Management Plan**

- (1) There shall be no Commencement of Development until a Construction Traffic Management Plan (CTMP) has been submitted to, and approved in writing by the Planning Authority in consultation with Transport Scotland.
- (2) The CTMP shall include information on materials, plant, equipment, components, location and labour required during construction, wheel washing arrangements, access and egress arrangements for abnormal loads, concrete wagons and heavy goods vehicles (including potential out of hours deliveries) and a local signage scheme, the scheduling, pre and post construction surveys, and a programme and methodology for any repairs as a consequence of any damage caused by construction traffic.
- (3) The CTMP shall include contact details for a community traffic liaison officer for the Company to provide information relating to the arrangements for the delivery of all road and construction traffic mitigation measures required for the Development. This should include, but not be limited to, traffic management arrangements: to be in place during any roadworks associated with the development and for the operation of local roads during delivery of abnormal loads during the construction of the development.
- (4) Prior to commencement of deliveries of abnormal loads to site the proposed route for any abnormal loads on the trunk road networks, details of escorts and any accommodation measures required including the removal of street furniture, junction widening, traffic management and the scheduling and timing of abnormal loads movements must be approved in writing by Transport Scotland and the Planning Authority.

- (5) During the delivery period of the wind turbine construction materials any additional signing or temporary traffic control measures necessary due to the size or length of any loads being delivered or removed must be undertaken by a traffic management consultant whose appointment shall be approved by Transport Scotland and the Planning Authority before delivery commences.

**Reason:** *To ensure road safety and that transportation will not have any detrimental effect on the road and structures along the route and to minimise interference with the safety and free flow of the traffic on the local and trunk roads and to minimise adverse impacts on residents and local businesses in the area.*

## **20. Additional Signing and Temporary Traffic Control Measures**

- (1) During the delivery period of the wind turbine construction materials any additional signing or temporary traffic control measures deemed necessary due to the size or length of any loads being delivered or removed must be undertaken by a recognised quality assured traffic management consultant to be approved in writing by The Highland Council in consultation with Transport Scotland before delivery commences.
- (2) Temporary signage, in the form of demountable signs or similar approved, shall be established, when required, to alert road users and local residents of expected abnormal load movements.
- (3) All such movements on The Highland Council maintained roads shall take place outwith peak times on the network, including school travel times, and shall avoid local community events.

**Reason:** *To ensure that the transportation will not have any detrimental effect on the road and structures along the route.*

## **21. Abnormal Indivisible Loads Deliveries**

No deliveries of abnormal indivisible loads shall take place until an assessment of the capacity of existing bridges and structures along the abnormal indivisible load delivery route is carried out and submitted to and approved by the Planning Authority in consultation with the Trunk Road Authority and full engineering details and drawings of any works required to such structures to accommodate the passage of abnormal indivisible loads have been submitted to and approved by the Planning Authority. Thereafter the approved works shall be completed prior to the abnormal indivisible load deliveries to the site.

**Reason:** *To ensure that the transportation will not have any detrimental effect on the road and structures along the route.*

## **22. Programme of Archaeological Works**

- (1) There shall be no Commencement of Development unless and until a programme of archaeological works to be carried out during construction of the

Development has been submitted to, and approved in writing by, the Planning Authority.

- (2) The programme of archaeological works shall include measures to be taken to protect and preserve any features of archaeological interest in situ and the recording and recovery of archaeological features which cannot be protected or preserved.
- (3) The approved programme of archaeological works shall be implemented in full.

**Reason:** *To ensure the protection or recording of archaeological features on the site.*

### **23. Construction Environmental Management Plan**

- (1) There shall be no Commencement of Development until a Construction Environmental Management Plan ("CEMP") outlining site specific details of all on-site construction works, post-construction reinstatement, drainage and mitigation, together with details of their timetabling, has been submitted to and approved in writing by the Planning Authority. The CEMP shall include:
  - (a) Adherence to the mitigation outlined in the Schedule of Mitigation (EIAR, Appendix 14.1);
  - (b) Adherence to the measures outlined in the Summary of Good Practice and Mitigation Measures (EIAR, Appendix 14.1);
  - (c) Adherence to the Outline Construction and Decommissioning Environmental Management Plan (EIAR, Appendix 4.2);
  - (d) Adherence to the Outline Borrow Pit Management Plan (EIAR, Appendix 4.1);
  - (e) Adherence to the FRA and Surface Water Management Plan (EIAR, Appendix 9.3);
  - (f) A peat management plan including peat slide hazard and risk assessment and emergency plans for peat slide;
  - (g) Any species protection plans (as required by condition 24);
  - (h) All new watercourse crossings shall be designed following the recommendations in the Watercourse Crossing Schedule (EIAR, Appendix 9.1) with single span bridges designed to pass the 1 in 200-year flood plus an allowance for climate built for WXC01, 07 and 08. All existing watercourse crossings which require to be replaced shall be designed following recognised best practice guidance.
- (2) The Development shall be implemented thereafter in accordance with the approved CEMP unless otherwise approved in advance in writing by the Planning Authority.

**Reason:** *To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the EIA Report accompanying the application, or as otherwise agreed, are fully implemented.*

## 24. Ecology

- (1) There shall be no Commencement of Development unless and until a Bird, Mammal and Fish Protection Plan (the Plan) has been submitted to, and approved in writing by, the Planning Authority in consultation with NatureScot. The Plan shall address:
  - (a) Otters;
  - (b) Badgers;
  - (c) Wildcat;
  - (d) Pine Marten;
  - (e) Water Vole;
  - (f) Bats;
  - (g) Fish within and downstream of the development area, including the River Findhorn; and
  - (h) Breeding Birds
- (2) The Plan shall contain the outcome of pre-construction surveys for these species and proposed mitigation measures to be employed.
- (3) The Plan shall provide details of water quality monitoring and mitigation measures in accordance with current best practice to protect the fish population.
- (4) The approved Plan shall include provision for regular monitoring and review to be undertaken to consider whether amendments are needed to the mitigation measures to better protect these species.
- (5) Where a review indicates that amendments are required an updated and amended Plan (the "Amended Plan") shall be submitted for the written approval of the Planning Authority in consultation with NatureScot.
- (6) The approved Plan and any subsequent approved Amended Plan shall be implemented in full.
- (7) A summary of the mitigation measures required by this condition shall be provided to the Planning Authority, together with details of the process of controlling implementation of all the mitigation measures.

**Reason:** *To ensure that appropriate surveys are carried out to understand potential impacts on birds, mammals and fish and to ensure that suitable protection and mitigation measures are put in place.*

## 25. Ecological Clerk of Works

- (1) There shall be no Commencement of Development unless and until the terms of appointment of an independent Ecological Clerk of Works ("ECoW") by the Company have been submitted to, and approved in writing by the Planning Authority. The terms of appointment shall:

- (a) Impose a duty to monitor compliance with the environmental, ecological and hydrological commitments provided in the EIAR, and the Construction Environmental Management Plan approved in accordance with condition 23, Peat Management Plan approved in accordance with condition 23(f), Habitat Management Plan approved in accordance with condition 34, any Species Surveys and Species and Bird Protection Plans approved in accordance with condition 24, Water Quality Management Plan approved in accordance with condition 24 of this permission ("the ECoW Works");
  - (b) Advise on the micro-siting proposals issued pursuant to condition 15;
  - (c) Require the ECoW to report to the nominated construction project manager any incidences of noncompliance with the ECoW works at the earliest practical opportunity;
  - (d) Require the ECoW to submit a monthly report to the Planning Authority summarising works undertaken on site; and
  - (e) Require the ECoW to report to the Planning Authority any incidences of non-compliance with the ECoW works at the earliest practical opportunity.
- (2) The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development to completion of post construction restoration works;
  - (3) No later than six months prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier), details of the terms of appointment of an ECoW by the Company throughout the decommissioning, restoration and aftercare phases of the Development shall be submitted to the Planning Authority for approval.
  - (4) The ECoW shall be appointed on the approved terms throughout the construction, decommissioning, restoration and aftercare phases of the Development.

***Reason:*** To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development during the decommissioning, restoration and aftercare phases.

## **26. Television Reception**

- (1) There shall be no Commencement of Development unless and until a Television Reception Mitigation Plan (TRMP) has been submitted to, and approved in writing by, the Planning Authority. The TRMP shall provide for a baseline television reception survey to be carried out prior to the installation of the first wind turbine. The results of the baseline television reception survey shall be submitted to the Planning Authority.
- (2) The approved TRMP shall be implemented in full.
- (3) Any claim by any person regarding television picture loss or interference at their house, business premises or other building, made during the period from installation of any wind turbine to the date falling twelve months after the date of

Final Commissioning, shall be investigated by a qualified engineer and the results of the investigation shall be submitted to the Planning Authority

- (4) Should any impairment to the television signal be attributable to the Development, the impairment shall be remedied so that the standard of reception at the affected properly is equivalent to the baseline television reception.

**Reason:** *To ensure local television services are sustained during the construction and operation of the Development.*

## **27. Financial Guarantee**

- (1) There shall be no Commencement of Development unless and until a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations referred to in condition 30 is submitted to the Planning Authority.
- (2) The value of the financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in condition 30.
- (3) The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in condition 30.
- (4) The value of the financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare.

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

## **28. Replanting of Forestry**

- (1) There shall be no Commencement of Development unless and until a finalised woodland planting scheme to compensate for the removal of woodland has been submitted for the written approval of the Planning Authority in consultation with Scottish Forestry. The scheme shall comply with the requirements set out in the UK Forestry Standard (Forestry Commission, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers, or such replacement standard as may be in place at the time of submission of the replanting scheme for approval. The replanting scheme must include:
  - (a) details of the location of the area to be planted;

- (b) the nature, design and specification of the proposed woodland to be planted;
- (c) the phasing and associated timescales for implementing the scheme;
- (d) proposals for the maintenance and establishment of the Replanting.

**Reason:** *To secure replanting to mitigate against effects of deforestation arising from the Development.*

## **29. Redundant Turbines**

- (1) Unless otherwise agreed in writing by the Planning Authority, if one or more wind turbines fails to generate electricity for a continuous period of twelve months a scheme setting out how the relevant wind turbine(s) and associated infrastructure will be removed from the site and the ground restored shall be submitted for the written approval of the Planning Authority no later than one month after the date of expiry of the twelve month period.
- (2) The approved scheme shall be implemented within six months of the date of its approval, to the satisfaction of the Planning Authority.

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

## **30. Site Decommissioning, Restoration and Aftercare**

- (1) The Development shall be decommissioned and cease to generate electricity by no later than the date falling thirty five years from the date of Final Commissioning. The total period for decommissioning and restoration of the site in accordance with this condition shall not exceed three years from the date of cessation of electricity generation by the Development without the prior written approval of the Scottish Ministers in consultation with the Planning Authority.
- (2) There shall be no Commencement of Development unless and until a decommissioning, restoration and aftercare strategy has been submitted to, and approved in writing by, the Planning Authority. The strategy shall outline measures for the decommissioning of the Development and restoration and aftercare of the site and final site restoration. It shall include proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works, and environmental management provisions.
- (3) No later than 2 years prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare strategy shall be submitted for the written approval of the Planning Authority. The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provision which shall include:
  - (a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);



- (b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns and any construction compound boundary fencing;
  - (c) a dust management plan;
  - (d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities and measures to clean the site entrances and the adjacent local road network;
  - (e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
  - (f) 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) 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; and
  - (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 finalised decommissioning plan.
- (4) The Development shall be decommissioned, the site restored and aftercare undertaken in accordance with the approved plan, unless and until otherwise agreed in writing in advance with the Planning Authority.

**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.*

### **31. Noise**

- (1) The rating level of noise emissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the levels set out in Table 1 and Table 2.
- (2) Prior to the First Export Date, the Company shall submit to the Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Planning Authority.
- (3) Within 21 days from receipt of a written request of the Planning Authority, following a complaint to it alleging noise disturbance at a dwelling, the Company shall, at its expense, employ an independent consultant approved by the Planning Authority to assess the level of noise emissions from the wind farm at the complainant's property (or a suitable alternative location agreed in writing

with the Planning Authority) in accordance with the procedures described in the attached Guidance Notes.

- (4) The written request from the Planning Authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the Planning Authority made under this paragraph (2), the Company shall provide the information relevant to the complaint to the Planning Authority in the format set out in Guidance Note 1(e).
- (5) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the Company shall submit to the Planning Authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken.
- (6) Where the proposed measurement location is close to the wind turbines, rather than at the complainants property (to improve the signal to noise ratio), then the Company's submission shall include a method to calculate the noise level from the wind turbines at the complainants property based on the noise levels measured at the agreed location (the alternative method). Details of the alternative method together with any associated guidance notes deemed necessary, shall be submitted to and agreed in writing by the Planning Authority prior to the commencement of any measurements.
- (7) Measurements to assess compliance with the noise limits of this condition shall be undertaken at the measurement location approved in writing by the Planning Authority.
- (8) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the Company shall submit to the Planning Authority for written approval a proposed assessment protocol setting out the following:
  - (a) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise emissions.
  - (b) ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.
- (9) The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the Planning Authority under paragraph (2), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise emissions shall be undertaken in accordance with the assessment protocol approved in writing by the Planning Authority and the attached Guidance Notes.
- (10) The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise emissions undertaken in

accordance with the Guidance Notes within 2 months of the date of the written request of the Planning Authority made under paragraph (2) of this condition unless the time limit is extended in writing by the Planning Authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the Planning Authority with the independent consultant's assessment of the rating level of noise emissions.

- (11) Where a further assessment of the rating level of noise emissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (10) above unless the time limit for the submission of the further assessment has been extended in writing by the Planning Authority.
- (12) The Company shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from each wind turbine shall be retained for a period of not less than 24 months. The Company shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the Planning Authority on its request within 14 days of receipt in writing of such a request.
- (13) Where it is proposed to operate any turbine in a reduced running mode in order to meet the limits, no turbine shall be erected until a curtailment plan for the turbines has been submitted and approved in writing by the local planning authority. The curtailment plan shall demonstrate how the limits will be complied with and shall include the following:
  - (a) Definition of each noise reduced running mode including sound power data;
  - (b) The wind conditions (speed & direction) at which any noise reduced running mode will be implemented;
  - (c) Details of the manner in which the running modes will be defined in the SCADA data or how the implementation of the curtailment plan can be otherwise monitored and evidenced.
- (14) The Curtailment Plan shall be implemented in accordance with the approved details.
- (15) Prior to the First Export Date, the Company shall submit to the Planning Authority for written approval, a scheme of mitigation to be implemented in the event that the rating level, after adjustment for background noise contribution and any tonal penalty, is found to exceed the conditioned limits. The scheme shall define any reduced noise running modes to be used in the mitigation together with sound power levels in these modes and the manner in which the running modes will be defined in the SCADA data.

- (16) The scheme referred to in paragraph I above should include a framework of immediate and long term mitigation measures. The immediate mitigation measures must ensure the rating level will comply with the conditioned limits and must be implemented within seven days of the further assessment described in paragraph 11 being received by the Planning Authority. These measures must remain in place, except during field trials to optimise mitigation, until a long term mitigation strategy is ready to be implemented.

**Reason:** *To protect nearby residents from undue noise and disturbance. To ensure that noise limits are not exceeded and to enable prompt investigation of complaints.*

### **Guidance Notes for Noise Condition**

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise emissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

#### **Note 1**

- (a) Values of the LA90,10-minute noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 "Electroacoustics - sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.
- (b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the Company shall submit for the written approval of the Planning Authority details

of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

- (c) The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine, arithmetic mean power generated by each turbine and any data necessary to define the running mode as set out in the Curtailment Plan, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. Each 10 minute arithmetic average mean wind speed data as measured at turbine hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardized 10 metre height wind speed data which is correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c). All 10 minute periods shall commence on the hour and in 10 minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary.
- (e) Data provided to the Planning Authority shall be provided in comma separated values in electronic format with the exception of data collected to assess tonal noise (if required) which shall be provided in a format to be agreed in writing with the Planning Authority.
- (f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level of noise emissions. The gauge shall record over successive 10 minute periods synchronised with the periods of data recorded in accordance with Note 1(d). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the Planning Authority prior to the commencement of measurements.

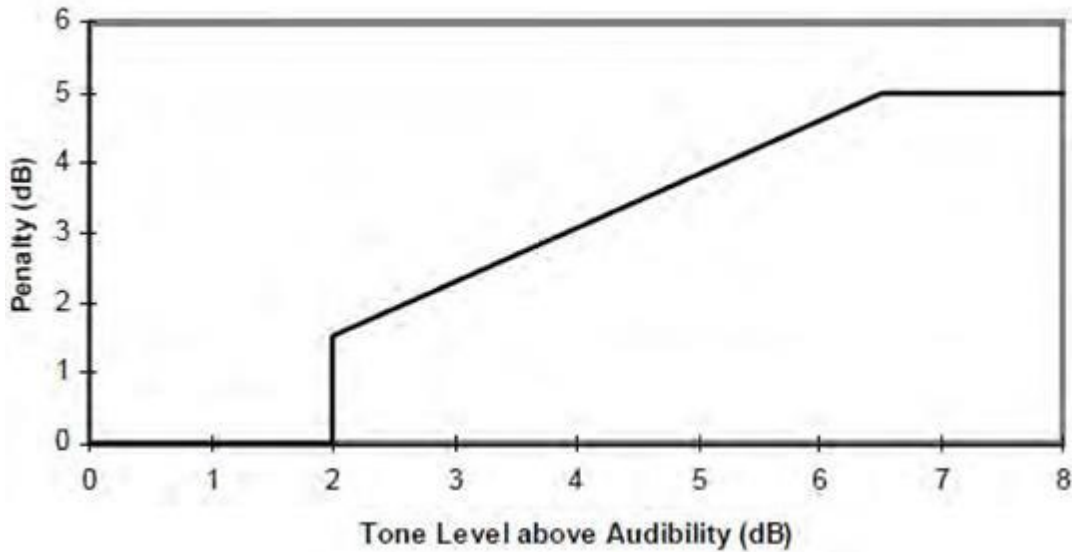
## **Note 2**

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Planning Local Authority but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the LA90,10-minute noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data

points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

### Note 3

- (a) Where, in accordance with the approved assessment protocol noise emissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which LA90,10-minute data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise emissions during 2 minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.
- (c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) A least squares "best fit" linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line fitted to values within  $\pm 0.5\text{m/s}$  of each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



**Note 4**

- (a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol.
- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.
- (c) If the rating level lies at or below the noise limits approved by the Planning Authority then no further action is necessary. In the event that the rating level is above the noise limits, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise emission only.
- (d) The Company shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
  - i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range set out in the approved noise assessment protocol.
  - ii. The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[ 10^{L_2/10} - 10^{L_3/10} \right]$$

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalty lies at or below the noise limits approved by the Planning Authority then no further action is necessary. If the rating level at any integer wind speed exceeds the noise limits approved by the Planning Authority then the development fails to comply with the conditions.

**Reason:** *To protect amenity and to ensure that noise limits are not exceeded and to enable prompt investigation of complaints.*

### **32. Finalised Peat Management Plan**

- (1) There shall be no Commencement of Development until a finalised Peat Management Plan has been submitted to and approved in writing by the Planning Authority. The details shall include:
  - (a) The mitigation measures described within the Environmental Impact Assessment Report submitted March 2021;
  - (b) All tracks on greater than 1m peat to be floated (as outlined in Appendix 4.3 of the EIA Report); and
  - (c) And demonstrate how micro-siting and other measures such as floating tracks have been used to further minimise peat and blanket bog and wet heath peat habitat disturbance. Specific attention should be taken to micro-siting T10 to minimise peat deep peat disturbance.

**Reason:** *To ensure that a plan is in place to deal with the storage and reuse of peat within the application site, including peat stability and slide risks.*

### **33. Borrow Pit – Scheme of Works**

- (1) No borrow pit shall be excavated until a site specific scheme for the working and restoration of the borrow pit forming part of the Development has been submitted to and approved in writing by the planning authority in consultation with SEPA. The scheme shall include:
  - (a) A detailed working method statement based on site survey information and ground investigations;
  - (b) Details of the handling of any overburden (including peat, soil and rock);
  - (c) Drainage, including measures to prevent surrounding areas of peatland, and Ground Water Dependant Terrestrial Ecosystems (GWDTE) from drying out;
  - (d) A programme of implementation of the works described in the scheme; and
  - (e) Provision for the reinstatement, restoration and aftercare of the borrow pit at the end of the construction period, to include provision for topographic surveys of pre-restoration profiles, and details of topographical surveys to be undertaken of the restored borrow pit profile. The approved scheme shall



thereafter be implemented in full unless otherwise approved in writing by the Planning Authority.

**Reason:** *To ensure that excavation of materials from the borrow pit is carried out in a manner that minimises the impact on road safety, amenity and the environment, and that the mitigation measures contained in the EIA Report accompanying the application, or as otherwise agreed, are fully implemented. To secure the restoration of borrow pit at the end of the construction period.*

#### **34. Borrow Pits - Blasting**

Blasting shall only take place on the site between the hours of 08.00 to 18.00 on Monday to Friday inclusive and 08.00 to 12.00 on Saturdays, with no blasting taking place on a Sunday or on national public holidays, unless otherwise approved in advance in writing by the planning authority. Ground vibration from blasting shall not exceed a peak particle velocity of 6mm/second at agreed blasting monitoring locations. The measurement shall be the maximum of three mutually perpendicular directions taken at the ground surface.

**Reason:** *To ensure that blasting activity is carried out within defined timescales to control impact on amenity.*

#### **35. Habitat Management Plan**

- (1) There shall be no Commencement of Development until a finalised Habitat Management Plan ("HMP"), has been submitted to, and approved in writing by the Planning Authority. The information shall include:
  - (a) the mitigation measures described within the EIA Report received in March 2021;
  - (b) the proposed habitat management of the site during the period of construction, operation, decommissioning, restoration and aftercare, and shall provide for the maintenance, monitoring and reporting of habitat on site;
  - (c) the delivery peatland improvement works over an area of no less than 131 ha (as proposed in Appendix 7.4 and shown in Figure 7.9);
  - (d) the removal of self-seeded trees, additionally exploring opportunities to remove the seed source or sources;
  - (e) the provision for regular monitoring and review to be undertaken in order that the approved habitat management plan shall be updated to reflect ground condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted for the written approval of the Planning Authority.
- (2) Unless and until otherwise agreed in advance in writing with the Planning Authority, the approved HMP (as amended from time to time) shall be implemented in full.

**Reason:** *In the interests of protecting ecological features.*

## Table of Noise Limits Relating to Noise Condition

### Table 1 - Day time Noise Limits relating to Condition 31

House ID	House Name	1	2	3	4	5	6	7	8	9	10	11	12
H4	DAVA SCHOOLHOUSE	15.5	15.5	15.5	18.4	22.6	26.4	28.3	28.4	28.4	28.4	28.4	28.4
H5	BRAEMORAY	16.5	16.5	16.5	19.4	23.6	27.4	29.3	29.4	29.4	29.4	29.4	29.4
H6	AITNOCH FARMHOUSE	21.6	21.6	21.6	24.5	28.7	32.5	34.4	34.5	34.5	34.5	34.5	34.5
H7	REFOUBLE	18.3	18.3	18.3	21.2	25.4	29.2	31.1	31.2	31.2	31.2	31.2	31.2
H8	LITTLE AITNOCH	26.3	26.3	26.3	29.2	33.4	35.2	38.0	39.2	39.2	39.2	39.2	39.2
H9	DRUMLOCHAN	18.0	18.0	18.0	20.9	25.1	28.9	30.8	30.9	30.9	30.9	30.9	30.9
H10	MILLTOWN	18.7	18.7	18.7	21.6	25.8	29.6	31.5	31.6	31.6	31.6	31.6	31.6
H11	KERROW FARMHOUSE	27.2	27.2	27.2	30.1	34.3	38.1	40.0	40.1	40.1	40.1	40.1	40.1
H12	KENNELS	19.0	19.0	19.0	21.9	26.1	29.9	31.8	31.9	31.9	31.9	31.9	31.9
H13	BRAEMORAY LODGE	26.9	26.9	26.9	29.8	34.0	37.8	39.7	39.8	39.8	39.8	39.8	39.8
H14	THE LODGE	22.7	22.7	22.7	25.6	29.8	33.6	35.5	35.6	35.6	35.6	35.6	35.6
H15	THE WHITE HOUSE	27.0	27.0	27.0	29.9	34.1	37.9	39.8	39.9	39.9	39.9	39.9	39.9
H16	Unknown 1	23.8	23.8	23.8	26.7	30.9	34.7	36.0	36.7	36.7	36.7	36.7	36.7
H17	1 DRUMORE COTTAGES	23.8	23.8	23.8	26.7	30.9	34.7	36.0	36.7	36.7	36.7	36.7	36.7
H18	Unknown 2	23.8	23.8	23.8	26.7	30.9	34.7	36.0	36.7	36.7	36.7	36.7	36.7
H19	ACHNABECHAN FARM	25.4	25.4	25.4	28.3	32.5	35.0	36.0	38.3	38.3	38.3	38.3	38.3
H20	CULFEARN	24.9	24.9	24.9	27.8	32.0	35.8	37.7	37.8	37.8	37.8	37.8	37.8
H21	FORESTERS COTTAGE	24.4	24.4	24.4	27.3	31.5	35.0	36.0	37.3	37.3	37.3	37.3	37.3
H22	TOMBAIN	22.3	22.3	22.3	25.2	29.4	33.2	35.1	35.2	35.2	35.2	35.2	35.2
H23	FACTORS COTTAGE	23.6	23.6	23.6	26.5	30.7	34.5	36.4	36.5	36.5	36.5	36.5	36.5
H24	TOMNARROCH	25.2	25.2	25.2	28.1	32.3	36.1	38.0	38.1	38.1	38.1	38.1	38.1
H25	TOMDOW	21.4	21.4	21.4	24.3	28.5	32.3	34.2	34.3	34.3	34.3	34.3	34.3
H26	TOMDOW COTTAGE	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H27	LEONACH COTTAGE	24.2	24.2	24.2	27.1	31.3	35.1	37.0	37.1	37.1	37.1	37.1	37.1
H28	Unknown 3	24.2	24.2	24.2	27.1	31.3	35.1	37.0	37.1	37.1	37.1	37.1	37.1
H29	BIRCH COTTAGE	24.0	24.0	24.0	26.9	31.1	34.9	36.8	36.9	36.9	36.9	36.9	36.9
H30	Unknown 4	23.8	23.8	23.8	26.7	30.9	34.7	36.6	36.7	36.7	36.7	36.7	36.7
H31	SMIDDY HOUSE	23.5	23.5	23.5	26.4	30.6	34.4	36.3	36.4	36.4	36.4	36.4	36.4
H32	ROSE COTTAGE	23.5	23.5	23.5	26.4	30.6	34.4	36.3	36.4	36.4	36.4	36.4	36.4
H33	THE OLD POST OFFICE HOUSE	23.5	23.5	23.5	26.4	30.6	34.4	36.3	36.4	36.4	36.4	36.4	36.4
H34	BUNGALOW	23.2	23.2	23.2	26.1	30.3	34.1	36.0	36.1	36.1	36.1	36.1	36.1

H35	Unknown 5	22.9	22.9	22.9	25.8	30.0	33.8	35.7	35.8	35.8	35.8	35.8	35.8
H36	MUCKLE LYNE	25.6	25.6	25.6	28.5	32.7	36.3	38.2	38.5	38.5	38.5	38.5	38.5
H37	LITTLE LYNE	25.3	25.3	25.3	28.2	32.4	36.2	38.1	38.2	38.2	38.2	38.2	38.2
H38	HEAD FORESTERS HOUSE	21.6	21.6	21.6	24.5	28.7	32.5	34.4	34.5	34.5	34.5	34.5	34.5
H39	1 FORESTRY HOUSES	21.3	21.3	21.3	24.2	28.4	32.2	34.1	34.2	34.2	34.2	34.2	34.2
H40	2 FORESTRY HOUSES	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H41	3 FORESTRY HOUSES	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H42	Unknown 6	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H43	4 FORESTRY HOUSES	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H44	5-6 FORESTRY HOUSES	21.1	21.1	21.1	24.0	28.2	32.0	33.9	34.0	34.0	34.0	34.0	34.0
H45	GLENERNIE HOUSE	17.9	17.9	17.9	20.8	25.0	28.8	30.7	30.8	30.8	30.8	30.8	30.8
H46	WESTER TILLIEGLENS	17.5	17.5	17.5	20.4	24.6	28.4	30.3	30.4	30.4	30.4	30.4	30.4
H47	BALLENRIECH	15.7	15.7	15.7	18.6	22.8	26.6	28.5	28.6	28.6	28.6	28.6	28.6
H48	TILLIEGLENS	14.5	14.5	14.5	17.4	21.6	25.4	27.3	27.4	27.4	27.4	27.4	27.4
H49	RELUGAS 1	12.5	12.5	12.5	15.4	19.6	23.4	25.3	25.4	25.4	25.4	25.4	25.4
H50	RELUGAS 2	12.6	12.6	12.6	15.5	19.7	23.5	25.4	25.5	25.5	25.5	25.5	25.5
H51	AUCHNAGAIRN	14.9	14.9	14.9	17.8	22.0	25.8	27.7	27.8	27.8	27.8	27.8	27.8
H52	TILLIDVIE HOUSE	13.9	13.9	13.9	16.8	21.0	24.8	26.7	26.8	26.8	26.8	26.8	26.8
H53	MILLS OF AIRDRIE	22.2	22.2	22.2	25.1	29.3	33.1	35.0	35.1	35.1	35.1	35.1	35.1
H54	SCORE	22.1	22.1	22.1	25.0	29.2	33.0	34.9	35.0	35.0	35.0	35.0	35.0
H55	THE MOUNT	23.1	23.1	23.1	26.0	30.2	33.9	35.9	36.0	36.0	36.0	36.0	36.0

**Table 2 – Night time Noise Limits relating to Condition 31**

House ID	House Name	1	2	3	4	5	6	7	8	9	10	11	12
H4	DAVA SCHOOLHOUSE	15.5	15.5	15.5	18.4	22.6	26.4	28.3	28.4	28.4	28.4	28.4	28.4
H5	BRAEMORAY	16.5	16.5	16.5	19.4	23.6	27.4	29.3	29.4	29.4	29.4	29.4	29.4
H6	AITNOCH FARMHOUSE	21.6	21.6	21.6	24.5	28.7	32.5	34.4	34.5	34.5	34.5	34.5	34.5
H7	REFOUBLE	18.3	18.3	18.3	21.2	25.4	29.2	31.1	31.2	31.2	31.2	31.2	31.2
H8	LITTLE AITNOCH	26.3	26.3	26.3	29.2	33.4	37.2	38.0	39.0	39.2	39.2	39.2	39.2
H9	DRUMLOCHAN	18.0	18.0	18.0	20.9	25.1	28.9	30.8	30.9	30.9	30.9	30.9	30.9
H10	MILLTOWN	18.7	18.7	18.7	21.6	25.8	29.6	31.5	31.6	31.6	31.6	31.6	31.6
H11	KERROW FARMHOUSE	27.2	27.2	27.2	30.1	34.3	38.0	38.1	39.2	40.1	40.1	40.1	40.1
H12	KENNELS	19.0	19.0	19.0	21.9	26.1	29.9	31.8	31.9	31.9	31.9	31.9	31.9
H13	BRAEMORAY LODGE	26.9	26.9	26.9	29.8	34.0	37.8	39.5	39.8	39.8	39.8	39.8	39.8
H14	THE LODGE	22.7	22.7	22.7	25.6	29.8	33.6	35.5	35.6	35.6	35.6	35.6	35.6
H15	THE WHITE HOUSE	27.0	27.0	27.0	29.9	34.1	37.9	38.1	39.2	39.9	39.9	39.9	39.9
H16	Unknown 1	23.8	23.8	23.8	26.7	30.9	34.7	36.6	36.7	36.7	36.7	36.7	36.7
H17	1 DRUMORE COTTAGES	23.8	23.8	23.8	26.7	30.9	34.7	36.6	36.7	36.7	36.7	36.7	36.7
H18	Unknown 2	23.8	23.8	23.8	26.7	30.9	34.7	36.6	36.7	36.7	36.7	36.7	36.7
H19	ACHNABECHAN FARM	25.4	25.4	25.4	28.3	32.5	36.3	38.0	38.0	38.0	38.3	38.3	38.3
H20	CULFEARN	24.9	24.9	24.9	27.8	32.0	35.8	37.7	37.8	37.8	37.8	37.8	37.8
H21	FORESTERS COTTAGE	24.4	24.4	24.4	27.3	31.5	35.3	37.2	37.3	37.3	37.3	37.3	37.3
H22	TOMBAIN	22.3	22.3	22.3	25.2	29.4	33.2	35.1	35.2	35.2	35.2	35.2	35.2
H23	FACTORS COTTAGE	23.6	23.6	23.6	26.5	30.7	34.5	36.4	36.5	36.5	36.5	36.5	36.5
H24	TOMNARROCH	25.2	25.2	25.2	28.1	32.3	36.1	38.0	38.1	38.1	38.1	38.1	38.1
H25	TOMDOW	21.4	21.4	21.4	24.3	28.5	32.3	34.2	34.3	34.3	34.3	34.3	34.3
H26	TOMDOW COTTAGE	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H27	LEONACH COTTAGE	24.2	24.2	24.2	27.1	31.3	35.1	37.0	37.1	37.1	37.1	37.1	37.1
H28	Unknown 3	24.2	24.2	24.2	27.1	31.3	35.1	37.0	37.1	37.1	37.1	37.1	37.1
H29	BIRCH COTTAGE	24.0	24.0	24.0	26.9	31.1	34.9	36.8	36.9	36.9	36.9	36.9	36.9
H30	Unknown 4	23.8	23.8	23.8	26.7	30.9	34.7	36.6	36.7	36.7	36.7	36.7	36.7
H31	SMIDDY HOUSE	23.5	23.5	23.5	26.4	30.6	34.4	36.3	36.4	36.4	36.4	36.4	36.4
H32	ROSE COTTAGE	23.5	23.5	23.5	26.4	30.6	34.4	36.3	36.4	36.4	36.4	36.4	36.4
H33	THE OLD POST OFFICE HOUSE	23.5	23.5	23.5	26.4	30.6	34.4	36.3	36.4	36.4	36.4	36.4	36.4
H34	BUNGALOW	23.2	23.2	23.2	26.1	30.3	34.1	36.0	36.1	36.1	36.1	36.1	36.1

H35	Unknown 5	22.9	22.9	22.9	25.8	30.0	33.8	35.7	35.8	35.8	35.8	35.8	35.8
H36	MUCKLE LYNE	25.6	25.6	25.6	28.5	32.7	36.5	38.0	38.0	38.5	38.5	38.5	38.5
H37	LITTLE LYNE	25.3	25.3	25.3	28.2	32.4	36.2	38.0	38.0	38.2	38.2	38.2	38.2
H38	HEAD FORESTERS HOUSE	21.6	21.6	21.6	24.5	28.7	32.5	34.4	34.5	34.5	34.5	34.5	34.5
H39	1 FORESTRY HOUSES	21.3	21.3	21.3	24.2	28.4	32.2	34.1	34.2	34.2	34.2	34.2	34.2
H40	2 FORESTRY HOUSES	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H41	3 FORESTRY HOUSES	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H42	Unknown 6	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H43	4 FORESTRY HOUSES	21.2	21.2	21.2	24.1	28.3	32.1	34.0	34.1	34.1	34.1	34.1	34.1
H44	5-6 FORESTRY HOUSES	21.1	21.1	21.1	24.0	28.2	32.0	33.9	34.0	34.0	34.0	34.0	34.0
H45	GLENERNIE HOUSE	17.9	17.9	17.9	20.8	25.0	28.8	30.7	30.8	30.8	30.8	30.8	30.8
H46	WESTER TILLIEGLENS	17.5	17.5	17.5	20.4	24.6	28.4	30.3	30.4	30.4	30.4	30.4	30.4
H47	BALLENRIECH	15.7	15.7	15.7	18.6	22.8	26.6	28.5	28.6	28.6	28.6	28.6	28.6
H48	TILLIEGLENS	14.5	14.5	14.5	17.4	21.6	25.4	27.3	27.4	27.4	27.4	27.4	27.4
H49	RELUGAS 1	12.5	12.5	12.5	15.4	19.6	23.4	25.3	25.4	25.4	25.4	25.4	25.4
H50	RELUGAS 2	12.6	12.6	12.6	15.5	19.7	23.5	25.4	25.5	25.5	25.5	25.5	25.5
H51	AUCHNAGAIRN	14.9	14.9	14.9	17.8	22.0	25.8	27.7	27.8	27.8	27.8	27.8	27.8
H52	TILLIDIVIE HOUSE	13.9	13.9	13.9	16.8	21.0	24.8	26.7	26.8	26.8	26.8	26.8	26.8
H53	MILLS OF AIRDRIE	22.2	22.2	22.2	25.1	29.3	33.1	35.0	35.1	35.1	35.1	35.1	35.1
H54	SCORE	22.1	22.1	22.1	25.0	29.2	33.0	34.9	35.0	35.0	35.0	35.0	35.0
H55	THE MOUNT	23.1	23.1	23.1	26.0	30.2	33.9	35.9	36.0	36.0	36.0	36.0	36.0

<b>Definitions</b>	
<b>AEI</b>	The Additional Environmental Information submitted by the Company dated December 2021.
<b>AEI II</b>	The Additional Environmental Information (II) submitted by the Company dated October 2022.
<b>AEI III</b>	The Additional Environmental Information (II) submitted by the Company dated November 2022
<b>Commencement of Development</b>	The initiation of the Development (or part thereof) by the carrying out of a material operation within the meaning of section 27 of the Town and Country Planning (Scotland) Act 1997 (as amended).
<b>Company</b>	Renewable Energy Systems Limited, incorporated under the Companies Acts (Company Number 1589961), and having its registered office at Beaufort Court, Egg Farm Lane, Kings Langley, Hertfordshire, or such other person for the time being entitled to the benefit of the consent under section 36 of the Electricity Act 1989.
<b>Consent</b>	The consent granted under section 36 of the Electricity Act 1989 to construct and operate the generating station, which forms part of the Development, and any reference to Consent shall not be taken to include the deemed planning permission unless otherwise stated.
<b>Construction period</b>	The period from the Commencement of Development until the approved site compound areas have been reinstated in accordance with the conditions of this consent.
<b>Development</b>	The implementation of the consent and deemed planning permission by the carrying out of a material operation within the meaning of section 27 of the Town and Country Planning (Scotland) Act 1997.
<b>the Development</b>	The development and/or site described in Annex 1;
<b>EIA Report</b>	The Environmental Impact Assessment Report submitted by the Company on 24 March 2021.
<b>Final Commissioning</b>	The earlier of (i) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (ii) the date falling eighteen months from the date of First Commissioning.
<b>First Commissioning</b>	The date on which electricity is first exported to the grid network on a commercial basis from any of the wind turbines forming part of the Development.
<b>MoD</b>	Ministry of Defence.
<b>Planning Authority</b>	The Highland Council.
<b>Public holiday</b>	New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January.

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|  | <ul style="list-style-type: none"><li>• 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January.</li><li>• Good Friday.</li><li>• Easter Monday.</li><li>• The first Monday in May.</li><li>• The fourth Monday in May.</li><li>• The first Monday in August.</li><li>• The third Friday and fourth Monday in September</li><li>• 30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day.</li><li>• Christmas Day, if it is not a Sunday or, if it is a Sunday, 27th December.</li><li>• Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December.</li></ul> |
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