



Supplementary Report of Inquiry into application under section 36 of the Electricity Act 1989 and deemed application for planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 (as amended)

The construction and operation of Shepherds' Rig Wind Farm at Carsphairn, Dumfries and Galloway

- Case reference WIN-170-2005
- Case type Section 36 application
- Reporters Karen Heywood, Rosie Leven
- Applicant SETT Wind Development Limited
- Planning authority Dumfries and Galloway Council
- Other inquiry parties Mountaineering Scotland
Carsphairn Community Council
Ben Ade
Fiona Clubb
- Date of application Original application: 17 December 2018
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Written submissions
Additional Hearing session: 7 February 2023
- Dates of site visits Unaccompanied site inspections: 8 to 10 June 2021, 25 to 26 August 2021 and 21 October 2021
- Date of supplementary report 2 March 2023
- Reporters' original recommendation Refuse section 36 consent and deemed planning permission
- Reporters' recommendation in this supplementary report Grant section 36 consent and deemed planning permission

CONTENTS

	Page
Updated summary of report	3
Preamble	7
Chapters	
1. Updated legislative and policy context	8
2. Updated policy evidence and conclusions	14
3. Overall conclusions and recommendation	28
Appendices	
A. Updated core documents	33
B. Additional hearing - appearances and link to webcasts.	33
C. Conditions	34

Updated summary of report

The site

The application site is located within the Smittons and Craigengillan North plantations near Carsphairn and mainly comprises commercial forestry. The site is bounded to the north and north-east by further forestry and to the west, east and south-east by open moorland. Vehicular access is available from the B729.

Background to the proposal

The application was submitted in 2018. Amendments in 2019 comprised a revised site layout and the deletion of two turbines. Consultation on the revised scheme was carried out in December 2019. Consultation on further additional information was carried out in April – May 2021, relating to: road impacts; the cumulative impact of the proposed Lorg Grid Connection (separate application); and an updated cumulative landscape and visual impact assessment. Dumfries and Galloway Council objected to this application resulting in it being the subject of this inquiry.

Supplementary report

On 8 November 2022, a draft revised National Planning Framework 4 (NPF4) was laid in Parliament. On 22 November 2022, the Scottish Ministers asked that we reopen the inquiry process to allow the parties to make submissions regarding the implications of NPF4. In December 2022, Scottish Ministers published a draft Scottish Biodiversity Strategy and the Onshore Wind Policy Statement (OWPS). In January 2023, they published the draft Energy Strategy and Just Transition Plan. We subsequently held a virtual hearing on 7 February 2023 to consider the parties' comments on the implications of these documents for the proposal. Following on from our original report, submitted to Scottish Ministers on 6 April 2022, this supplementary report contains a summary of the evidence presented and our overall conclusions and recommendation.

Description of the development

The proposals include the following elements:

- 15 turbines - maximum tip height 149.9 metres;
- 2 turbines - maximum tip height 125 metres;
- anemometer mast - height 100 metres;
- battery storage facility;
- substation and control buildings;
- formation of temporary construction compound;
- two borrow pits;
- new access and access tracks; and
- associated works.

The applicant's case

The proposed development is a well sited and appropriately designed wind farm. It would not give rise to any unacceptable significant landscape and visual impacts, either alone or in combination with other built, consented and in-planning schemes. While some local landscape and visual effects are acknowledged in the Environmental Impact Assessment Report, these residual effects are highly localised. NPF4 and OWPS recognise that where impacts are localised and/or appropriate design mitigation has been applied, they will generally be considered to be acceptable. No significant effects were identified on any national designated

areas, or upon the special qualities of the Galloway Hills Regional Scenic Area. In line with the applicant's comprehensive environmental assessment, no unacceptable effects arise from other matters, including recreation, socio-economics, transport and cultural heritage. Very substantial weight should be given to the proposal's contribution to help Scotland and the UK attain Net Zero, helping to meet the Government's 2030 renewable energy and 2045 net zero targets. The up-to-date policy set out in NPF4 and the OWPS, and the draft Energy Strategy, provide increased and very considerable support for the grant of consent for the proposed development.

Dumfries and Galloway Council's case

Shepherd's Rig would cause significant adverse landscape and visual effects. The proposed wind farm, by virtue of its location, siting, extent, scale and inappropriate design would appear as a visually dominant and incongruous development. Shepherd's Rig is an ill-conceived scheme which represents inappropriate development in a sensitive location. The proposal is contrary to the development plan. NPF4 and OWPS place significant weight on the contribution of proposals to renewable energy generation targets and on greenhouse gas emission reduction targets. Where landscape and visual impacts are localised and/or appropriate design mitigation has been applied such effects will generally be considered acceptable. In this instance, there are strategic and regional impacts over and above those localised ones. The renewable energy benefits and other socio-economic benefits of Shepherd's Rig do not outweigh the considerable unacceptable significant effects including significant effects on the factors taken into account in designating the area as part of the Galloway Hills RSA. This is the wrong place for this development.

Mountaineering Scotland's case

Mountaineering Scotland objects to the proposed development because of its landscape and visual impact in relation to Cairnsmore of Carsphairn, the Rhinns of Kells and the perceived visual relationship between them across the upper Glenkens basin. It believes that this impact would unacceptably diminish the quality of the mountaineering experience enjoyed by its members and others who hill-walk in the area. It considers that this would bring a consequential negative impact on the level of hill-walking recreation and tourism activity locally. NPF4 reweights the formal planning balance heavily in favour of development, but Mountaineering Scotland had already taken such imbalance into account. It considers that the level of adverse visual impact outweighs any possible benefits from the proposed development. NPF4 requires prospective harms and anticipated benefits to be weighed and the harms from Shepherds' Rig outweigh the benefits by a considerable margin.

Ben Ade's case (on behalf of Carsphairn Community Council)

The proposals would have an enormous detrimental effect on the residents of this rural parish, putting undue pressure on an already strained community and economy, particularly in terms of roads and transport impacts. The roads in the area are not fit for the purpose intended by the applicant. The central and prominent location of the proposed site would, in effect, transform the upper Glenkens into an industrial park, rather than the widely appreciated area of outstanding natural beauty that it is today. To construct mammoth electricity generators upon such a spot goes against all previous and sensible landscape planning for wind farms, it is quite possibly one of the most poorly chosen and inappropriate sites currently in planning. NPF4 is required to contribute to increasing the population of rural areas of Scotland

and improving the health and wellbeing of people. While the OWPS aim of raising generation up to 20 gigawatts (GW) by 2030 is recognised, sites should not be clustered in one area such as Carsphairn, in effect clearing out a rural community and its future potential.

Fiona Clubb's case

The proposal would have adverse effects on the landscape, which would adversely affect the local economy and tourist sector as well as various active travel routes in the local area. The area could be a liveable place, as per NPF4's aims, but there must be a stop button and, with the consent of Cornharrow wind farm and others, that boundary of acceptability has been crossed. It is likely that the proposed turbines rely on the crutch of economic gain for their value, while on the other hand Cairnsmore of Carsphairn stands in glory, delivering wellbeing entirely for free. Cairnsmore is a symbol of place and time which connects the whole community, past, present and future. If the landscape is to change at Shepherds' Rig from forestry, to turbines with forestry, there would undoubtedly be global beneficiaries, but at the direct expense of the local economy. The local tourist sector which relies on scenic value and an active travel network cannot survive another blow without serious acts of mitigation, by way of conditions imposed by the authority and/or Scottish Ministers. OWPS and NPF4 have been heavily influenced by funded lobbyists who seek benefits, while those who are negatively affected have had reasonable contributions dismissed without valid explanation. Despite NPF4 and the OWPS, the proposed development continues to be very much not the right development in the right place.

Reporters' conclusions

Overall, having regard to our findings, we conclude that the proposed development would have significant adverse landscape and visual effects in relation to views to and from Cairnsmore of Carsphairn, especially from the Stroanfreggan and upper Glenkens area and the Southern Upland Way between Culmark Hill and Benbrack. The adverse landscape and visual effects would adversely affect the special qualities of the Galloway Hills Regional Scenic Area. Given that the Cairnsmore of Carsphairn (and associated hills), the Southern Upland Way and the Galloway Hills Regional Scenic Area form key parts of the regional recreational resource, we find that the adverse landscape and visual impacts are greater than localised.

We find that there would be inevitable traffic disruptions and inconvenience resulting from the construction and decommissioning phases of the proposed development, but that the range of proposed mitigation measures would ensure that impacts are minimised. We have considered other matters raised, including effects on: forestry; ecology; ornithology; cultural heritage; geology and peat; hydrology and hydrogeology; noise; socio-economics, tourism and recreation; shadow flicker; aviation; telecommunications and utilities; health and safety; and climate change and carbon balance. We have not found that the proposed development would have any significant effect in these respects, subject to mitigation that can be secured by condition where necessary.

The applicant has undertaken reasonable mitigation in designing the proposed development in respect of its effects upon the natural beauty of the countryside and in respect of other matters Ministers are required to take into account by Schedule 9 of the Electricity Act. Further design changes to mitigate the significant landscape

and visual effects would not be possible due to the particular location and visibility of the site. The proposed development has very strong support in principle from national energy and planning policy. Overall, we find that the proposal's benefits, in particular its contribution to renewable energy targets, now clearly outweigh its significant landscape and visual effects.

Recommendation

We recommend that consent under section 36 of the Electricity Act 1989 and deemed planning permission under section 57 of the Town and Country Planning (Scotland) Act 1997 should be granted, subject to the conditions in Appendix C of this supplementary report.

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Planning and Environmental Appeals Division
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File reference: WIN-170-2005

The Scottish Ministers
Edinburgh

Ministers

In accordance with our minute of appointment dated 8 December 2020 we conducted a public inquiry in connection with an application to construct and operate a wind farm at Shepherds' Rig, Carsphairn, within Dumfries and Galloway Council area. Dumfries and Galloway Council as planning authority has lodged an objection to the proposal which has not been withdrawn.

Our report and recommendation arising from that process was submitted to Scottish Ministers on 6 April 2022.

On 22 November 2022, the Scottish Ministers asked that we reopen the inquiry process to allow the parties to make submissions regarding the implications of the Fourth National Planning Framework that had been placed before parliament on the 8 November 2022. There was also a possibility that the Onshore Wind Energy Policy refresh could be published in its final form around this time.

We therefore made arrangements to reopen the inquiry to allow the submission of further evidence on these two policy matters. The Onshore Wind Energy Policy Statement 2022 was subsequently published on 21 December 2022. The scope of the session also included evidence around the Scottish Government's draft Scottish Biodiversity Strategy (December 2022) and its draft Energy Strategy and Just Transition Plan and related Ministerial Statement (both January 2023). A virtual hearing was held on 7 February 2023, involving the applicant, the council, Mountaineering Scotland and Ben Ade. Fiona Clubb did not attend the hearing but submitted a hearing statement and made further comments following the hearing.

This supplementary report takes the form of an updated summary reflecting the results of our further assessment of the issues. It includes three chapters: an update to the legislative and policy context (to be read alongside chapter 2 of original report); an update to the policy evidence and conclusions (to be read alongside Chapter 7 of original report); and a new overall conclusion and recommendation (to replace Chapter 8 of our original report).

CHAPTER 1

UPDATED LEGISLATIVE AND POLICY CONTEXT

Introduction

1.1 In December 2022, Scottish Ministers asked us to reopen the inquiry for the proposed Shepherd's Rig Wind Farm at Carsphairn, Dumfries and Galloway. This was to allow parties to comment on the revised draft National Planning Framework 4 (NPF4), published in November 2022.

1.2 Following Scottish Ministers instruction to reopen the inquiry, we gathered evidence on the updated legislative and policy context through an additional hearing session on 7 February 2023. The hearing included consideration of the revised draft NPF4 and other Scottish Government documents which were published shortly after NPF4's publication. The scope of the hearing therefore focussed on:

- revised draft National Planning Framework 4 (November 2022) (CD005.021);
- Onshore Wind Policy Statement (December 2022) (CD007.057);
- draft Scottish Biodiversity Strategy (December 2022) (CD007.058); and
- draft Energy Strategy and Just Transition Plan (CD007.059) and the related Ministerial Statement (January 2023) (CD007.060).

1.3 On 11 January 2023, prior to the additional hearing on 7 February 2023, the Scottish Parliament approved the revised draft NPF4 with no changes. Scottish Ministers then went on to adopt the NPF4 on 13 February 2023, as approved. As evidence on the framework has already been received through the hearing statements and the hearing session, we have not sought further comments from the parties on the implications of the adopted NPF4 for the proposal.

1.4 Chapter 2 of our original report set out the legislative and policy context for this proposal. This chapter of the supplementary report now sets out what the parties consider to be the updated policy and guidance relevant to the proposal. It identifies which parts of chapter 2 of the original report are changing and which remain in place. Appendix A of this supplementary report includes a link to an updated list of core documents relevant to the proposal.

1.5 Parties' views on the application of the updated legislative and policy context to the proposal are set out in chapter 2 of this supplementary report, to be read in conjunction with the relevant summaries of evidence in chapter 7 of the original report (which go beyond the scope of matters in paragraph 1.2 above). Our conclusions on the legislative and policy context are set out in paragraphs 2.53 to 2.77 of chapter 2 below, which replace paragraphs 7.48 to 7.70 of our original report. Our overall conclusions are set out in chapter 3 of this supplementary report, which replaces in its entirety chapter 8 of our original report.

Legislative context

1.6 All matters covered in paragraphs 2.1 to 2.5 of our original report remain unchanged. Since the submission of our original report, section 24 of the Town and Country Planning (Scotland) Act 1997 has been amended by section 13 of the Planning (Scotland) Act 2019. That makes NPF4 part of the statutory development

plan. In so far as it is relevant to this section 36 application, changes to section 13 also mean that, as the most recent part of the development plan, NPF4 would take precedence over the adopted Dumfries and Galloway Local Development Plan 2 (CD005.005) in the event of any incompatibility between the two.

Policy context

1.7 Paragraph 2.6 of our original report remains relevant, pointing to the original submissions on the relevant policy framework from the applicant and the council.

Renewable energy policy and climate change targets

1.8 Paragraphs 2.7 to 2.9 of our original report remain relevant. Paragraphs 2.10 to 2.12 of our original report are replaced with paragraph 1.9 to 1.12 below.

1.9 Parties agree that key renewable energy policy documents and relevant material considerations are set out as follows:

International Context

- Conference of Parties 21 United National Paris Agreement (2015) (CD007.005); and
- the relevance of EU policy provisions and targets.

UK Context

- Net Zero, the UK's Contribution to Stopping Global Warming, Committee on Climate Change (May 2019) (CD007.007);
- Annual Report to UK Parliament, Committee on Climate Change (2020) (CD007.014);
- Response to Committee on Climate Change Progress Report, UK Government (2020) (CD007.044);
- Achieving Net Zero, National Audit Office (2020) (CD007.027);
- UK Energy White Paper: Powering our net zero future, UK Government (2020) (CD007.028);
- Ten Point Plan for a Green Industrial Revolution, UK Government (2020) (CD007.024); and
- Sixth Carbon Budget, Committee on Climate Change (2020) (CD007.026).

Scottish Context

- 2020 Route map for Renewable Energy in Scotland, Scottish Government (2015 update) (CD007.034);
- Letter to all Heads of Planning in relation to energy targets and Scottish Planning Policy, Chief Planner (2015) (CD005.009);
- Scottish Energy Strategy, Scottish Government (2017) (CD007.002);
- Climate Change Plan, Scottish Government (2018) (CD007.004);
- Programme for Government, Scottish Government (2020) (CD007.020);
- Advice to the Scottish Government on recovery from the COVID-19 crisis, Committee on Climate Change (May 2020) (CD007.013);

- Towards a robust, resilient wellbeing economy for Scotland, Report of the Scottish Government's Advisory Group on Economic Recovery (June 2020) (CD007.015);
- Eight policy packages for Scotland's Green Recovery, Report of the Scottish Government's Climate Emergency Response Group (July 2020) (CD007.018);
- Securing a green recovery on a path to net zero, update to the Climate Change Plan 2018-2032, Scottish Government (December 2020) (CD007.025);
- Press release, Intergovernmental Panel on Climate Change (2021) (CD007.046);
- Climate change 2021 - Summary for Policymakers, Intergovernmental Panel on Climate Change (2021) (CD007.047);
- Statement on release of Intergovernmental Panel on Climate Change report, UK Government Chief Scientific Advisers (2021) (CD007.048);
- Statement on Intergovernmental Panel on Climate Change report, United Nations Secretary-General (2021) (CD007.049);
- Climate Change emergency – representation from Scottish to UK Government, Scottish Government (2021) (CD007.050);
- Draft Shared Policy Programme (Bute Agreement), Scottish Government and Scottish Green Party (2021) (CD007.051);
- Extracts from Scottish Energy Statistics Hub, Scottish Government (accessed 1 September 2021) (CD007.052);
- Net Zero Strategy, UK Government (2021) (CD007.054);
- Emissions Gap Report, United Nations Environment Programme (2021) (CD007.055);
- Report on proposals and policies to reduce greenhouse gas emissions following annual target for 2019 not being met, Scottish Government (2021) (CD007.056);
- Onshore Wind Policy Statement (December 2022) (CD007.057);
- draft Energy Strategy and Just Transition Plan (CD007.059) and the related Ministerial Statement (January 2023) (CD007.060);
- Progress in Reducing Emissions in Scotland, 2022 Report to Parliament, Committee on Climate Change (December 2022) (CD007.061); and
- Scottish Emissions Targets – first five-yearly review, Committee on Climate Change (December 2022) (CD007.062).

1.10 The key message communicated in the above documents is the seriousness of: the declared climate emergency; the need to cut carbon dioxide emissions; the Scottish Government's intentions regarding deployment of renewable energy generation; and the increasingly urgent action required in order to meet the legal commitment to net zero emissions.

1.11 In particular, the Onshore Wind Policy Statement (OWPS) is of key relevance to the proposal. It confirms the Scottish Government's ambition to achieve a minimum installed capacity of 20 GW of onshore wind in Scotland by 2030. Deployment of onshore wind is stated as being mission-critical for meeting the climate targets and progress must go further and faster to protect future generations from irreversible climate damage. Onshore wind must be deployed at greater volume over the coming decade, and the economic, social and environmental benefits must

be maximised in a way that meets the needs of Scottish citizens and future generations. The OWPS provides more detailed guidance on balancing certain environmental considerations including peat, forestry, biodiversity, landscape and visual amenity and noise.

1.12 The draft Energy Strategy and Just Transition Plan published shortly after the OWPS reiterates the ambition to deliver a minimum of 20 GW additional capacity. It also recognises the potential for increased contributions from other forms of renewable energy (including solar, hydro and marine) and supports generation of surplus energy to allow for the exporting of energy across Europe. It includes a vision for a just energy transition that benefits communities and workers across Scotland, provides economic benefits and protects our environment and energy security.

Scottish Government planning policy

1.13 Paragraphs 2.13 to 2.16 of our original report relate to National Planning Framework 3 and Scottish Planning Policy and are no longer relevant. They are replaced by paragraphs 1.14 to 1.17 below.

1.14 NPF4 (CD005.021) supersedes National Planning Framework 3 (CD005.003) and Scottish Planning Policy (CD005.002). It forms part of the statutory development plan (see also paragraphs 1.20 to 1.24 below). It is supported by an explanatory note (CD005.022) which primarily sets out the changes from the draft to the revised draft NPF4. NPF4 sets out a national spatial strategy to 2045, alongside a comprehensive set of national planning policies, aimed at supporting the planning and delivery of sustainable places, liveable places and productive places. It designates eighteen national developments to support the strategy, including strategic renewable electricity generation and transmission infrastructure.

1.15 The letters from the Chief Planner and Minister for Public Finance, Planning and Community Wealth dated 16 January 2023 (CD005.023) and 8 February 2023 (CD005.024) advise on the approval of NPF4 and the related transitional arrangements. The letter of 8 February 2023 provides some more specific advice on individual policies.

1.16 The parties agree that the following NPF4 policies are relevant to the proposal:

- policy 1 – Tackling the climate and nature crises
- policy 2 – Climate mitigation
- policy 3 – Biodiversity
- policy 4 – Natural places
- policy 7 – Historic assets and places
- policy 11 – Energy
- policy 13 – Sustainable transport
- policy 22 – Flood management
- policy 29 – Rural development
- policy 33 – Minerals

1.17 Of the above list of relevant policies, parties agree that policies 1, 3, 4 and 11 are key to the assessment of the proposal. Policy 1 is an overarching policy requiring significant weight to be given to the global and nature crises. Policy 3 seeks to protect and enhance biodiversity, requiring national developments to provide significant biodiversity enhancements, in addition to mitigation. Policy 4 seeks to protect, restore and enhance natural assets including the protection of locally, regionally, nationally and internationally important natural assets. Policy 11 encourages, promotes and facilitates all forms of renewable energy development, onshore and offshore, with detailed criteria for demonstrating how impacts are addressed. The council considers that policy 30 on tourism is also relevant, while the applicant considers that it is more relevant to tourism-related development.

National planning and other guidance

1.18 Paragraphs 2.17 and 2.18 of our original report remain relevant.

1.19 In January 2023, the Scottish Government published a draft Scottish Biodiversity Strategy (CD007.058). It sets out an ambition for Scotland to be nature positive (to reverse biodiversity loss and once again increase it) by 2030 and to have restored and regenerated biodiversity across the country by 2045. It cross-refers to the need to secure positive effects for biodiversity through NPF4. Parties agree that the document would be a material consideration but that, as a draft strategy, it carries little weight in the assessment of the proposal.

The development plan

1.20 Paragraph 2.19 of our original report remains relevant.

1.21 The title to paragraph 2.20 is no longer necessary and is deleted. In paragraph 2.20, reference to the current development plan shall include the National Planning Framework 4.

1.22 Paragraphs 2.21 to 2.23 and 2.25 to 2.26 of our original report discuss the relevant policies in the Dumfries and Galloway Local Development Plan 2 (CD005.005) and the related supplementary guidance (CD005.007) and are retained. Parties agree that following the adoption of NPF4, the local development plan and the Dumfries and Galloway Wind Farm Capacity Study remain relevant to the proposal. Paragraph 2.24 on spatial frameworks is deleted.

1.23 Paragraph 2.27 of our original report is replaced by paragraph 1.24 below.

1.24 The application of development plan policies was discussed at the policy hearing in November 2021 and the additional policy hearing in February 2023. In chapter 2 of this supplementary report, we address any disagreements and reach our conclusions on the policies that are most applicable to the proposed development.

Reporters' conclusions

1.25 Paragraph 2.28 of our original report is amended to reflect the updated legislative and policy context and the changing chapter references. For ease of reference, it is set out here in full. Taking into account the updated context, we therefore consider that the main issues in this case can be summarised as:

- the significant landscape and visual effects and any mitigation, including effects on the Regional Scenic Area (Chapter 3 of our original report);
- the effects on traffic and transport (Chapter 4 of our original report);
- the benefits of the proposal in terms of energy generation and battery storage (chapter 7 of the original report and chapter 2 of the supplementary report);
- the contribution to national energy policy and consistency with national and local planning policy (chapter 7 of the original report and chapter 2 of the supplementary report); and
- the overall conclusions taking into account all of the above (chapter 3 of the supplementary report).

CHAPTER 2 UPDATED POLICY EVIDENCE AND CONCLUSIONS

Introduction

2.1 Chapter 7 of our original report set out the parties' evidence and our conclusions on the legislative and policy context at that time. The parties' evidence in that chapter should be read alongside the updated evidence in this chapter. The reporters' conclusions in chapter 7 of the original report are deleted and replaced with our conclusions set out in paragraphs 2.53 to 2.77 below. Our conclusions reflect all of the policy and guidance relevant to the proposal, as set out in chapter 2 of the original report as updated by chapter 1 of this supplementary report.

2.2 To help inform our conclusions, an additional hearing was held on policy matters on 7 February 2023, with the applicant, the council, Mountaineering Scotland and Mr Ade. A list of the participants and a link to the webcast of the hearing is available in Appendix B of this supplementary report. Ms Clubb did not attend the hearing but submitted a hearing statement and made further comments following the hearing, which were circulated to the parties. The parties' additional hearing statements on policy matters are as follows:

Applicant – [additional policy statement](#)
Council – [additional policy statement](#)
Mountaineering Scotland – [additional policy statement](#)
Mr Ade – [additional policy statement](#)
Ms Clubb – [additional policy statement](#) and [post-hearing comments](#)

Summary of the applicant's position

2.3 NPF4 is part of the development plan for the first time and the document as a whole should be given significant weight. The climate emergency and nature crises are expressly stated as forming the foundations of the national spatial strategy in NPF4. Tackling climate change and the nature crises is an overriding imperative which is key to the outcomes of almost all policies within NPF4. As a national development, the proposed development is of national importance for the delivery of the national Spatial Strategy, which requires a large and rapid increase in electricity generation from renewables with significant progress by 2030.

2.4 Policy 1 is a radical departure from the usual approach to policy and weight and clearly denotes a step change in planning policy response to climate change. The matter of weight is no longer left entirely to the discretion of the decision maker.

2.5 Policy 3 is a new policy requiring biodiversity enhancements, but further guidance is still to come and the form of the Government's final biodiversity strategy is not yet known. No evidence has been presented by the council thus far on concerns around biodiversity and it is too late in the process to bring forward further evidence. Nevertheless, the applicant offers biodiversity enhancements on land within its control, the details of which could be addressed via an agreed amendment to the relevant condition requiring the submission of a biodiversity plan.

2.6 Policy 4 supports landscape protection but this needs to be viewed in terms of the Government's objectives on energy. NatureScot did not identify any nationally significant landscape and visual impacts from this proposal that would justify an objection. In relation to the regional scenic area (RSA), the applicant's position is that the proposed development would not have an adverse effect on the integrity of the RSA nor its special qualities. However, should it be considered that there is an adverse effect on the integrity of the RSA, the second limb of NPF4 policy 4(d) applies. The benefits of the proposed development are clearly of national importance and the policy supports the proposed development.

2.7 Policy 11 is considered the lead policy for consideration of wind energy development. In a change from Scottish Planning Policy, policy 11 now states a position of express "support" for wind farm development. The intent and desired outcome of the policy is expressly clear – the expansion of renewable energy, through encouragement, promotion and facilitation which the proposed development, as a nationally important development, would help further. This is corroborated by the statement of need for the relevant national development in Part 3, Annex B of NPF4.

2.8 Policy 11(c) requires socio-economic benefits to be maximised, rather than just taken into account. Given the scale of the proposed development, its economic benefits will be considerable, driven by a capital cost/investment of some £103 million.

2.9 The references in policy 11(e) to impacts being 'addressed' means that they need to have been satisfactorily addressed or given proper attention by the applicant through project design and mitigation. It does not mean that significant effects must be eliminated. Policy 11 expressly recognises that significant effects are to be expected. In terms of what might constitute more than localised impacts in policy 11(e)ii, this is considered to mean that a proposal would give rise to the sort of spatial impacts that you would not expect. By virtue of the wording at the end of policy 11(e), it is then for the decision-maker to consider the impacts and place significant weight on the contribution of the proposal to the relevant climate change targets.

2.10 Looking to the OWPS, the Ministerial Foreword makes it explicitly clear that seeking greater security of supply and lower cost electricity generation are now key drivers alongside the need to deal with the climate emergency. It also states that onshore wind has the ability to be deployed quickly, is good value for consumers and is also widely supported by the public.

2.11 The Scottish Government has made clear that the 20 GW ambition of installed capacity is a minimum. There is a substantial hill to climb to attain the 20 GW figure and projects that are not yet in the planning system are unlikely to provide installed capacity by 2030. Updating the evidence presented in paragraph 7.15 of our original report, the applicant accepts the figures in paragraph 1.1.5 of the OWPS - that there are 5.53 GW in planning/consenting process, 4.56 GW awaiting construction and 1.17 GW under construction. However, the applicant agrees with the footnote to that table which suggests that even the identified capacity in the table

may not be deliverable. For example, not all projects that have consent will proceed and not all projects in the planning system will be granted consent.

2.12 This underlines the importance of the benefits that the proposed development can deliver – namely near-term delivery of a substantial volume of installed capacity. In addition, the proposed development contains battery storage and can therefore also contribute to the Government’s policy objectives in relation to balancing demand and supply, resilience to the energy system and security of supply.

2.13 The Scottish Government’s ambition is essentially to increase the installed capacity of onshore wind in Scotland by a minimum amount equivalent to about 130% of the entire installed capacity of all current operational onshore wind farms in Scotland in a period of around eight years. The proposed development, and the contribution of this single development, must be considered in the context of the sheer scale and urgency of the stated Scottish Government’s position.

2.14 The OWPS expressly recognises that meeting the ambition of a minimum installed capacity of 20 GW of onshore wind in Scotland by 2030 will require taller and more efficient turbines and that this will change the landscape. Paragraph 3.6.2 of the OWPS, in cross-referencing NPF4, makes it clear that outside of National Parks and National Scenic Areas the criteria for assessing proposals have been updated, including stronger weight being afforded to the contribution of the development to the climate emergency, as well as community benefits. There is therefore express direction of greater weight being placed on the benefits of the development in terms of how it contributes to tackling the climate emergency.

2.15 The OWPS refers back to NPF4 policy 11 criteria with regard to energy development, stating that where impacts are localised and/or appropriate design mitigation has been applied, they will generally be considered to be acceptable. Landscape Sensitivity Studies are not to be used in isolation to determine matters of acceptability but can be a useful tool in assessing specific sensitivities within an area. The use in the OWPS of the term “mission critical” is very strong language and indicates onshore wind is crucial and extremely important to the attainment of the Government’s policy and legislative objectives. This is fundamentally different policy language to that contained within NPF3 and SPP.

2.16 The draft Energy Strategy and Just Transition Plan cross refers to NPF4 and the recently published OWPS and reiterates the new ambition for deployment of a minimum further 12 GW of onshore wind by 2030. It reaffirms the crucial role that onshore wind will play in response to the climate crisis which is at the heart of all these policies.

2.17 Looking at the relevant policies in the Dumfries and Galloway Local Development Plan 2, the applicant considers that overarching policies OP1 and OP2 continue to have fairly limited relevance to the proposal. There is no significant difference between policies IN1 and IN2 and NPF4, apart from the omission of tourism. There is however no direct reference in the local development to the weight to be attached to those policies, which is a difference from NPF4.

2.18 As per the evidence presented in paragraph 7.28 of our original report, the applicant considers that policy NE2 includes no balancing mechanism and strongly disagrees with the council's position that the balancing mechanism involves balancing between all the policies (rather than just internally within one). Rather, NPF4 policy 4 specifically requires a weighing exercise to be carried out. If under policy 4(d) there are considered to be significant adverse effects, then these may be outweighed by social, environmental or economic benefits. Therefore there is a clear incompatibility between policy NE2 and NPF4. The legal requirement for NPF4 to prevail in the event of any incompatibility with the local development plan is not a high bar – NPF4 policy 4 should therefore prevail over policy NE2.

2.19 Overall, NPF4 and the OWPS should be afforded very considerable weight in decision-making. They are unambiguous as regards the policy imperative to combat climate change, the crucial role of further onshore wind in doing so, and the scale and urgency of onshore wind deployment required. In considering the identified impacts of the proposed development, significant weight must be placed on its very substantial contribution to renewable energy generation and greenhouse gas emissions reduction targets. An appropriate set of conditions has been drafted to further ensure that the project can be implemented in an environmentally acceptable way. The applicant's position is that the right balance has been struck in this case such that the proposed development is acceptable.

Summary of the council's position

2.20 While NPF4 gives in principle support for renewable electricity generation and transmission infrastructure, projects still need to be considered at a project level against the provisions of the development plan, of which NPF4 is a part.

2.21 Policy 1 is the overarching policy which feeds into all other NPF4 policies. It is consistent with the aims of local development plan policy IN1.

2.22 Policy 3 represents a major change to national policy, with proposals only being supported where they enhance biodiversity, amongst other things. The applicant has not addressed these increased requirements under policy 3(b). A change to the relevant condition could address the issue (subject to agreement on the specific wording) although without seeing the details of the enhancement it would not be possible to say whether a positive gain could be demonstrated and therefore whether the policy was met.

2.23 There is direct support for local development plan policy NE2: Regional Scenic Areas within policy 4 of NPF4, given the proposal's impacts on the Galloway Hills Regional Scenic Area. Both policy 4 and policy NE2 support development only in circumstances where there are no significant impacts on the qualities that led to designation of the landscape area and their integrity.

2.24 Policy 4(d)ii states that this effect on integrity can effectively be set aside where significant adverse effects on the integrity of the area are clearly outweighed by social, economic or environmental benefits of at least local importance. Policy 4 therefore ties into the balance of the overall benefits of the scheme and is in lockstep with local development plan policies NE2, IN1 and IN2.

2.25 In this case, the qualities of the landscape and its integrity are key, and NPF4 policy 4 only strengthens the council's view of the unacceptable nature of the significant impacts on the Galloway Hills Regional Scenic Area, and weakens the appellant's view that qualities of designation are of lesser value. Through policy 4 and the national strategy on page 7, NPF4 has a greater emphasis on landscape protection, providing protection at the national level rather than leaving it to the local level.

2.26 Turning to policy 11, the weight to be given to each of the considerations in policy 11 is a matter for the decision maker – it is not just for the applicant to say that they have been addressed. NPF4 is clear that significant weight will require to be placed on the contribution of the proposal to renewable energy generation targets and on greenhouse gas emission reduction targets. In relation to landscape and visual impacts it advises that where impacts are localised and/or appropriate design mitigation has been applied such effects will generally be considered acceptable (policy 11 e) ii). In this instance, there are strategic and regional impacts over and above those localised ones. The importance and susceptibility to change of an area are important factors in considering whether effects are more than localised.

2.27 Policy 11 does not change the balance of local development plan policies IN1 and IN2 that was applied to consideration of the proposal, and it highlights the consistency of the approaches between these local development plan policies and NPF4 policy 11 when they are read as a whole.

2.28 In relation to rural development, NPF4 policy 29 is considered consistent with the aims and objectives of both local development plan policies OP1(c) and OP2 and is considered to strengthen the council's conclusions on the acceptability of the overall proposal. NPF4 policy 30 on tourism aims to encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with net zero and nature commitments, and inspires people to visit Scotland. Nevertheless, the criteria within Policy 30 do not materially affect the council's case in this instance. NPF4 policy 33 on Minerals is also relevant, particularly paragraph e) in light of the development's proposals for borrow pits. However, policy 33 does not materially alter the council's case.

2.29 Page 98 of NPF4 explains how to balance the matters within the document and emphasises that the policies must be read as whole. While NPF4 sets out that where developments are to be supported (including wind energy developments), that support is in principle, and it is for the decision maker to take account of all other relevant policies. The Scottish Government gives considerable commitment to renewable energy and encourages planning authorities to support the development of wind farms where they can operate successfully and are situated in appropriate locations. This is not, however, blanket support without qualification.

2.30 In the relevant policy areas, it is clear that the emerging policies of NPF4 are consistent with those of the local development plan and that the two are in lockstep in a number of key considerations, such that it is considered that NPF4 offers no additional support that would have led the council to make an alternative decision had it been in front of it at the time. In particular, the impact on the visual amenity of

the area and landscape resource is considered to outweigh the benefits of the development in relation to contribution towards energy targets, the economic benefits and limited social impacts, in conflict with NPF policies 4 and 11.

2.31 While the OWPS sets ambitions to increase onshore wind generation and to achieve a minimum target of 20 GW installed capacity by 2030, the OWPS and NPF4 continue to place an emphasis on the importance of place making and ensuring the right developments are located in the right place. In addition, onshore wind is not considered to be the solus driver in the Government's ambitions, with other renewable technologies also in the wider mix.

2.32 The use of landscape sensitivity studies is suggested, to provide suitable guidance, both in terms of identifying areas less sensitive to development and to provide assistance in compiling landscape and visual impact assessments. This approach is consistent with that taken by the council and the use of the Dumfries and Galloway Wind Farm Landscape Capacity Study, which still provides an important tool in helping to provide guidance and advice to developers in respect of identifying the right sites for developments.

2.33 The OWPS does not introduce a shifting balance whereby the Government's ambitions and targets for onshore wind are placed above that of the right developments in the right place. There is nothing in it to suggest that onshore wind developments considered to be unacceptable at present should now be considered acceptable and consented. The OWPS supports the council's position that balanced decision making in these matters is key and that there are no overriding factors contained within it that would have altered the councils decision had it been in front of it at the time.

2.34 It appears that the draft Energy Strategy and Just Transition Plan is intended to form part of the Scottish Government's new policy approach alongside the OWPS and NPF4 as an overarching document. The draft strategy does not focus on any one kind of renewable energy development as being predominant in the overall mix, rather it takes the approach of upscaling all those technologies in the mix. In the case of this development, it simply reiterates the role that onshore wind has to play and nothing more. It could be inferred from page 8 of the draft strategy that offshore wind is to hold the more vital role in meeting Scotland's targets and tackling the climate emergency. Nevertheless, whilst the draft strategy provides a clear and ambitious vision of the country's energy landscape up to 2045, it is considered that as a consultative draft, it is entitled to extremely limited, if any, weight.

Summary of Mountaineering Scotland's position

2.35 Mountaineering Scotland did not anticipate the full extent to which the Scottish Government would surrender national planning policy to developer interests, particularly around the wording on landscape and visual impacts being expected and acceptable if localised. While NPF4 removes discussion around the need for wind farms, this does not mean that every development is needed, provided a sufficient level of proposed developments is coming forward in aggregate. The generic benefits from onshore wind development can be obtained from development in many locations across Scotland. Both NPF4 and OWPS contain the sentence 'this means

ensuring the right development happens in the right place.’ Shepherd’s Rig is not considered the right place for the proposed development.

2.36 Policy 11(e) surely intends that developments must be found to be acceptable on a site-specific basis. The proposed development would cause harms at a level not outweighed by the anticipated benefits, contrary to NPF4, particularly in relation to policy 11(e)ii and xiii.

2.37 NPF4 reweights the formal planning balance heavily in favour of development, but Mountaineering Scotland had already taken such imbalance into account. It was considered that the level of harm at a regional level was unacceptable regardless of political and policy enthusiasm for onshore wind development, albeit that this enthusiasm is now much more trenchantly stated in policy.

2.38 The Scottish Government has policies on nature, environment, climate change and energy, amongst others. But it does not appear to have a policy on landscape as a public good in its own right. Indeed, given the scant regard paid in NPF4 to the need to protect our ‘stunning landscapes’ (p.25), which are often mountainous – and the virtual dismissal of landscape impacts as a concern in the OWPS – it might be concluded that the Scottish Government does not see landscape as a public good but only as terrain on which to implement energy, nature, forestry and other policies. While policy 11 now sets out a clear statement on energy, on the other side of the balance, the policy on landscape is fragmented.

2.39 Ninety per cent of section 36 wind farm applications determined in the past three years have been consented, under National Planning Framework 3 and Scottish Planning Policy. It is clear that the intention of NPF4 is to make it even easier for section 36 consent to be granted across a wider swathe of Scotland, but nowhere is it stated that the intention is for all applications to be consented. If there was not a continuing requirement for planning decisions to balance the potential benefits and harms, and sometimes to decide that the latter outweigh the former, there would be no need for proposed onshore wind farms to go through the planning system except to agree conditions. Policy 11(e)ii would not use the word ‘generally’ if the intention was ‘always’. The landscape around Cairnsmore of Carsphairn is already changing with lots of change in the views north and east from there, and lots more change to come. But the policy should not intend that everywhere should be changed in that way.

2.40 The draft Energy Strategy and Just Transition Plan is of little relevance to the decision. This is because OWPS takes precedence as an established policy and the inclusion of onshore wind as a National Development in NPF4 means that need is not an issue to be considered in individual proposals. Similarly, the draft Scottish Biodiversity Strategy is of no direct relevance, in light of other related statements in the OWPS and NPF4.

2.41 Overall, Mountaineering Scotland is dismayed that NPF4 and OWPS are not more balanced. However, NPF4 still requires prospective harms and anticipated benefits to be weighed and the harms from Shepherd’s Rig outweigh the benefits by a considerable margin.

Summary of Mr Ade's position

2.42 The main policy priorities in NPF4 include Part 1, 'Liveable places' which highlights that many people need better places to support their lifelong health and wellbeing and that everyone must have an opportunity to help shape their local neighbourhoods. The 'Sustainable places' section states that we should protect and enhance the natural environment, enhance biodiversity, protect natural heritage, and benefit nature and people. Also, the 'Productive places' section states that the natural environment is fundamental to our health and wellbeing from the benefits we get from being in nature to the design and delivery of blue and green infrastructure.

2.43 The majestic glen is not a suitable place for large scale industrial developments. It is a place of tranquillity, outdoor pursuits and low impact rural life, nestled between an already over proportionate number of windfarms which are so far mostly situated a safe distance away from inhabitants. This proposal will have hugely detrimental impacts on the mental health and wellbeing of residents, now and for generations to come, even the prospect of it possibly going ahead is stressful to many. This is directly against the hopes of NPF4 policies.

2.44 Part 2 of NPF4 highlights that major developments will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks, so they are in a demonstrably better state than without intervention. Shepherd's Rig is not considered to fit with this aim. The only way to enhance biodiversity would be to not develop the site.

2.45 Part 2 also discusses cumulative impacts, which are very relevant to this proposal given the other windfarm proposals nearby. This effects mental health and wellbeing of people, as well as impacting on roads. There have recently been notifications of three new wind farm proposals within three miles of Shepherd's Rig, including at Cornharrow and Lorg. These are better positioned and some are a continuation of existing wind farms.

2.46 Part 2 points to consideration of impacts on communities and individual dwellings, including residential amenity, visual impact, noise and shadow flicker, which would all be directly experienced by households surrounding the proposed site. Part 2 also looks at impacts on long distance walking and cycling routes and scenic routes. The proposal is close to the Southern Upland Way and the Carsphairn Community Woodland. Support is given to the concept of the right development in the right place – care needs to be taken over positioning of wind farms in the landscape – turbines sticking up over the skyline above Cairnsmore of Carsphairn would be out of place.

2.47 NPF4 is required to contribute to increasing the population of rural areas of Scotland and improving the health and wellbeing of people. A specific priority for the South of Scotland is to increase the population by improving local liveability. Part 3 highlights that the government wants to reverse past depopulation and the proposed development could, conversely, result in depopulation. While the OWPS aim of raising generation up to 20 GW by 2030 is recognised, not every development can

be supported. Sites should not be clustered in one area such as Carsphairn, in effect clearing out a rural community and its future potential.

Summary of Ms Clubb's position

2.48 NPF4 is a document closer to fantasy than to reality. It is assumed that we are currently in an 'unjust emergency' – a global-national-public emergency where some stakeholders must be sacrificed, and which would traditionally evoke public blight compensations, compulsory purchases and realistic payments such as those made in the pandemic emergency for furlough. However, net zero is considered unjust as the Carsphairn population is treated as a liability to be pacified, while the region's natural capital and the developers are called government partners.

2.49 NPF4 supports proposals only where they maximise net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities. It is considered that renewable employees, developers, landowners and contractors should live in the local area, to boost the local housing market and allow those in the area to relocate. The burden is currently all on locals, which is unjust.

2.50 The area could be a liveable place, as per NPF4's aims, but there must be a stop button and, with the consent of Cornharrow wind farm and others, that boundary of acceptability has been crossed. The developers have not considered how they may contribute to the Ken community in its capacity as a liveable place or as a productive place. There is concern over how the community can engage with NPF4 and the idea of local living and 20 minute neighbourhoods, when it has been battling to stop the closure of the local primary school. NPF4 is overpowered by the onshore wind policy and is pure fantasy.

2.51 There are concerns about the validity of NPF4 and OWPS as reasonable guides to decision making. OWPS and NPF4 have been heavily influenced by funded lobbyists who seek benefits, while those who are negatively affected have had reasonable contributions dismissed without valid explanation. While the Onshore Wind Policy Statement talks of delivering opportunities for 'all', it is questioned whether those citizens who love nature and wish to be stewards of the land can qualify as part of the 'all'. Wind farms contribute to the energy network but cannot work full time and other types of energy are needed too. Overall, the proposed development continues to be very much not the right development in the right place.

Reporters' policy conclusions

2.52 The following policy conclusions supersede those in paragraphs 7.48 to 7.70 of our original report.

National energy policies

2.53 Chapter 1 of this supplementary report sets out the updated energy policy context. We agree with the parties that current renewable energy policy is a matter that should be afforded significant weight in this case. There is a very strong need case for the ongoing delivery of renewable energy and we recognise that this need is

intensifying, in light of the Scottish Government's stated Climate Emergency in 2019 and legally binding targets introduced in 2020 for net zero greenhouse gas emissions by 2045, including a 75% reduction by 2030.

2.54 Shepherd's Rig has a proposed generating capacity of 70.2 MW of renewable energy and a modest 6 MW of battery storage. We find that this would make a useful and significant contribution towards the delivery of renewable energy targets, help to reduce carbon emissions and help to tackle the climate change emergency, with an acceptable carbon payback period of 2.4 years (assessed at 25 years).

2.55 While national energy policy does not specify that onshore wind is the only way to meet the targets (recognising the development of other generating technologies and innovations, and the decarbonisation of heat, transport and industrial processes) we find that it plays a crucial part. The ambition in the OWPS and the draft energy Strategy and Just Transition Plan to deliver 20 GW of capacity by 2030 is a minimum target and we recognise that delivering this scale of growth in this timescale is a very significant challenge.

2.56 The description in the OWPS of onshore wind deployment as 'mission-critical' is a further indication of the urgency of the challenge and of the key importance Ministers place on it in the journey to net-zero. Nevertheless, OWPS indicates that a balance must be achieved to maximise the environmental and economic benefits. There is recognition that meeting the 20 GW ambition will require taller and more efficient turbines and that the landscape will change. However, the concept of the right development happening in the right place remains a part of current national energy and planning policy.

2.57 Further discussion during the original inquiry, around whether and when the current Eskdalemuir constraints discussed in the draft Onshore Wind Policy Refresh (CD007.053) would be lifted, was inconclusive. The updated position in the OWPS indicates that work is ongoing and that a final approach is not yet agreed. We agree that there is some cause for optimism in this regard, but without any agreed timescale for removal of this constraint, there is no certainty that further wind farm development will be allowed in that area in the short, medium or long term. We therefore do not rely on the council's suggestion that this may provide more wind farm capacity in this area, reducing pressure on the Ken unit of LCT 19A.

National planning policies

2.58 In the determination of Section 36 cases, the development plan does not have the status attributed to it under Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) but may be a material consideration. NPF4 now forms part of the development plan. As it has been recently adopted, we find that, alongside OWPS, it should also be afforded significant weight.

2.59 There is very strong support for renewable energy developments in NPF4. Renewable energy developments are now designated as national developments, for which there is in-principle support. Decision makers for applications for consent for national developments must still take into account all relevant policies. While we have considered NPF4 as a whole, and have considered the relevance of all its

policies, we agree with the parties that policies 1, 3, 4 and 11 are key to our assessment.

2.60 We do not agree with the council that policy 30 is relevant to the proposal and find that it is instead more relevant to tourist-related development, including tourist facilities and accommodation. Chapters 3 and 5 of our original report discuss the proposal's effects on tourism. We have no concerns around the proposal's compliance with other NPF4 policies and therefore focus on policies 1, 3, 4 and 11.

2.61 NPF4 policy 1 is an overarching policy, requiring significant weight to be given to the global climate and nature crises, while having key connections to all other policies. In applying it to the scheme, we give significant weight to the contribution that the proposed turbines would have towards meeting climate change targets and the Government's ambition of delivering 20 GW installed capacity.

2.62 With regard to the nature crisis, policy 3, for the first time, requires proposals to contribute to the enhancement (in addition to conservation and restoration) of biodiversity. NPF4 was adopted some time after the proposal's original submission to Ministers. As a result, the applicant acknowledges that the proposal does not include measures to enhance biodiversity. It proposes an alteration to the proposed condition relating to the submission of a biodiversity plan, to require enhancement measures to be considered alongside the proposals for the monitoring, restoration and management of the site's peatland habitat.

2.63 There is no detailed evidence on what the enhancement measures might involve. We share the council's concerns that without these details, we cannot be certain whether the proposed measures would deliver significant biodiversity enhancements as required by policy 3, or would themselves have any significant impacts. Nevertheless the applicant and the council have agreed a change to the wording of the relevant condition to include 'enhancement' (see Appendix C below, proposed condition 25). Given the timing of the new policy, and the fact that no significant issues were raised in relation to biodiversity during our earlier consideration of the proposal, we consider that an amendment to the condition would reasonably allow for further consideration and agreement with the council. We consider that the risk of suitable measures not being agreed is low. However, at this stage, we cannot say definitively that the proposal would be in line with policy 3 and therefore no additional weight can be given under policy 1 to its contribution to the nature crisis.

2.64 Policy 4 relates, amongst other things, to proposals affecting local nature conservation sites or landscape areas. This would include the Galloway Hills Regional Scenic Area. In our original report (paragraph 3.187) we note that the proposed site lies partly within the Regional Scenic Area (RSA) and partly directly adjacent to it and found that the site is an important part of the setting of the RSA.

2.65 In such areas, we agree with the parties that policy 4 makes it possible for social, environmental or economic benefits to outweigh significant adverse effects. Policy 4 requires us to consider the effects on the integrity of the area or the qualities for which it has been identified. We therefore look to the Regional Scenic Area Technical Paper (to which the local development plan refers us) for further

explanation on the designation process. There is some disagreement between the main parties on the extent to which the Technical Paper (CD005.018) effectively defines the special qualities of the RSA. However, we find that the Technical Paper provides in narrative form a description of the relevant factors which make up those special qualities and we find little difference between the parties on what those factors comprise.

2.66 As set out in Chapter 3 of our original report, we find that the position of the proposed turbines directly in front of key views of Cairnsmore of Carsphairn and associated hills, in some cases in relatively close proximity, would significantly adversely affect the sweeping and dramatic views of those hills, as well as diminishing their scale and interfering with the distinctive skyline formed by the sculptural peaks of the hill group. As a result, contrary to the applicant's opinion, we have found that the identified significant adverse effects on the RSA would also adversely affect the special qualities of the RSA, contrary to policy 4(d)i. Whether we find that these effects are clearly outweighed by social, environmental or economic benefits in terms of policy 4(d)ii is set out as part of our overall conclusions in chapter 3.

2.67 There is express support for wind farm proposals under policy 11, with the exception of proposals in National Parks and National Scenic Areas (policy 4, as discussed above, relates to proposals affecting locally designated areas). We agree with the parties that policy 11 expects significant landscape and visual impacts for some renewable energy proposals. Such impacts are considered acceptable where the impacts are localised and/or appropriate mitigation has been applied – our assessment on this is set out in our overall conclusions in chapter 3. Policy 11(c) supports proposals only where they maximise net economic impact.

Local planning policies

2.68 Sitting alongside NPF4, the Dumfries and Galloway Local Development Plan 2 from 2019 is also part of the development plan, along with the supplementary guidance on Wind Energy Development: Development Management Considerations, and within it at Appendix C, the Dumfries and Galloway Wind Farm Landscape Capacity Study. The parties consider, and we agree, that the local development plan, including the landscape capacity study, remain relevant to our assessment.

2.69 Local development plan policy IN1 is an overarching policy, under which policy IN2 sits, providing specific guidance on the assessment of wind energy proposals (as opposed to other types of renewable energy). Policy IN2 requires a number of factors to be balanced including: renewable energy benefits; socio-economic benefits; landscape and visual impacts; cumulative impact; impact on local communities and residential interests; impact on infrastructure; impact on aviation and defence interests; and other impacts and considerations (including how the proposal addresses any other significant adverse impact on the natural environment, including biodiversity, forests and woodland, carbon-rich soils, hydrology, the water environment and flood risk, the historic environment, cultural heritage, tourism and recreational interests and public access.

2.70 Chapters 3, 4 and 5 of our original report contain an assessment of the proposed development against the detailed considerations in policies IN1 and IN2. We continue to find that the proposal would comply with the considerations in policies IN1 and IN2, with the exception of landscape and visual impacts.

2.71 The council's supplementary guidance on Wind Energy Development: Development Management Considerations (CD005.006) provides detailed guidance to support assessment against the provisions of policy IN2. While we consider it is not a checklist and not all aspects must be achieved in all proposals, it nevertheless helps us to establish whether the proposal would generally meet the requirements of policy IN2. Of particular relevance to this case are parts C and D of section 3, dealing with landscape and visual impacts and cumulative impacts respectively.

2.72 As set out in chapter 3 of our original report, we find that the proposed siting of the turbines would affect sensitive receptor locations and the setting of the Cairnsmore of Carsphairn and associated hills, and that these effects would conflict with the advice in C14 of the supplementary guidance. We also find that the adverse impacts on the special qualities of the RSA and the proposal's cumulative impacts would not comply with the approach in C6 for proposals in RSAs, or with the criteria in D11 for cumulative impacts on patterns of development.

2.73 Further guidance is provided in the Dumfries and Galloway Wind Farm Landscape Capacity Study (CD005.007). This forms Appendix C to the supplementary guidance and is accepted by the parties as forming part of the local development plan. In light of the assessment in chapter 3 of our original report, we find that the study provides very limited support for large or very large typology turbines in the proposed location and that significant adverse effects would occur on the host landscape character type (LCT) and the adjacent LCTs. The proposed location would be inconsistent with the study's recommended landscape strategy to direct wind turbine development away from designated landscapes and to promote a clear pattern of larger wind farm development associated with less sensitive upland landscapes. Taking into account the considerations in policy IN2 and the related guidance, we therefore find that the proposals would not comply with the landscape and visual aspects of policy IN2.

2.74 Given the location of proposed turbines in and adjacent to the RSA, we find that policy NE2 would be relevant. Nevertheless, we find that policy NE2 is not entirely compatible with policy 4 of NPF4 under which it is now possible for significant adverse effects on the integrity of the area to be outweighed by social, environmental or economic benefits of at least local importance. As the later policy of the two, policy 4 therefore prevails (see above our assessment against policy 4).

2.75 Looking to other development plan policies, policies OP1 and OP2 are relevant but we find that they are not key to the decision, because policy IN2 and the related supplementary guidance provides sufficient detailed criteria, alongside specific consideration of the RSA in policy NE2 (as superseded by NPF4, policy 4). Beyond these policies, we find that any related aspects of other local development plan policies, for example on protection of cultural or natural heritage, are encapsulated in the detailed considerations of policy IN2.

Other matters

2.76 We have been pointed to and have considered the relevance of other decisions on wind farm proposals both in Dumfries and Galloway and beyond. In particular, we find that the decision to dismiss the Longburn appeal (CD009.040), adjacent to the proposed site, is directly relevant. We share the reporter's concerns as expressed in that decision regarding the impacts on views from the east towards Cairnsmore of Carsphairn. In terms of location, Shepherd's Rig would sit further to the west than Longburn and therefore closer to Cairnsmore. It would also lie in the direct line of view between the more intimate, lower lying area at Stroanfreggan, for example, from near Stroanfreggan Cairn and around Smittons Farm (post-felling) and Cairnsmore/Beninner, to the extent that it would detract from key views of Cairnsmore, as set out in chapter 3 of our original report.

2.77 NPF4 policy 11 requires us to consider cumulative impacts. Our consideration of the cumulative effects of the proposal with existing and planned schemes is also found in chapter 3 of our original report. As set out there, we find that other recent consents in the surrounding area, including those nearby at Troston Loch, Cornharrow and Glenshimmeroch (revised tip) would reflect and consolidate the existing wind farm pattern of turbines at higher elevations, set back from the lower lying smaller scale landscape, in a way that we find Shepherd's Rig would not. However, we recognise that the existing pattern of wind farms has developed under a policy framework which has now been superseded and therefore we no longer place significant weight on this conclusion.

CHAPTER 3 OVERALL CONCLUSIONS AND RECOMMENDATION

3.1 Chapter 8 of our original report set out our overall conclusions and recommendations. That entire chapter should be deleted and replaced with the contents of this chapter of our supplementary report.

3.2 This chapter draws together all of the considerations, having regard to the requirements of Schedule 9 of the Electricity Act 1989. By virtue of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, Scottish Ministers decision notices are required to provide, in the event that consent is granted, a reasoned conclusion on the significant effects of the development on the environment.

3.3 Our main report and supplementary report together set out an assessment of the relevant environmental information and the required mitigation in so far as it applies to the main issues and potential significant effects. The Environmental Impact Assessment Report (and AEI and AEI II) covers a range of matters with sections on: forestry; landscape and visual; ecology; ornithology; cultural heritage; geology and peat; hydrology and hydrogeology; noise; traffic and transport; aviation; socio-economics; tourism and recreation; shadow flicker; telecommunications and utilities; health and safety; and climate change and carbon balance. Our conclusions on significant effects, reflected in our original report and updated by this supplementary report, are up-to-date at the time of submission of this report. The table below provides a summary of the relevant matters.

Report Chapter	Description	Comment
Chapter 1: Background (original report)	Description of the development, summary of consultation responses and representations.	The Environmental Impact Assessment Report (EIAR) was advertised and consulted on. Additional Information was published for consultation in October 2019 and March 2021. There is nothing in the submitted information to indicate any insufficiency in the arrangements for the public to participate in the process. All of the relevant environmental information was considered as part of this assessment.
Chapter 3: Landscape and visual impacts (original report)	Environmental information and conclusions on potential effects and mitigation.	This chapter summarises the relevant effects drawing on the information contained in chapter 8 of the EIAR and the Additional Environmental Information (AEI), chapter 2 (and sections 3.3 and 4.3) of the Additional Environmental Information II (AEI II), the submissions to the inquiry, as well as consultation responses and representations.

		Our conclusions identify a number of significant residual effects which cannot be mitigated.
Chapter 4: Traffic and transport (original report)	Environmental information and conclusions on potential effects and mitigation.	<p>This chapter draws on information contained in chapter 15 of the Environmental Impact Assessment Report and the AEI, Chapter 3 of the AEI II, further written submissions and hearing statements.</p> <p>The potential for adverse transport effects can be mitigated through the use of planning conditions and careful traffic management guided by an agreed Traffic Management Plan and monitored by a Traffic Management Officer.</p>
Chapter 5: Other relevant matters (original report)	Environmental information and conclusions on potential effects and mitigation.	<p>This chapter draws on information contained in chapters 7, 9, 14 and 16-21 of the EIAR and AEI, the position statement submitted by the applicant and further written submissions.</p> <p>Subject to the application of a number of conditions, no residual significant environmental effects are identified in these areas.</p>
Chapter 6: Planning conditions (original report) and paragraphs 2.62 - 2.63 (supplementary report)	Recommended mitigation to be secured by condition in the event that consent is granted.	<p>These sections draw on the conclusions elsewhere in the report regarding mitigation and monitoring. In the event that consent is granted, it is recommended that a series of conditions should apply, as set out in Appendix C to this supplementary report.</p> <p>Some of the recommended conditions include provisions for monitoring.</p>
Chapter 7: Policy evidence and conclusions (original report) and Chapter 2: Updated policy evidence and conclusions (supplementary report)	Consideration of the relevant policies.	This chapter draws on information contained in chapters 5 of the EIAR and the AEI, in hearing statements and closing submissions. In reaching our overall policy conclusions, we have considered and had regard to the matters which are listed in Schedule 9 of the Electricity Act as being desirable to preserve. In doing so, we have been assisted by the detailed policy and guidance available in the National Planning Framework 4 and in the local development plan. This is because the matters listed in Schedule 9 as being

		desirable to preserve are all also concerns of the development plan.
Chapter 3: Overall conclusions and recommendation (supplementary report)	Overall conclusions.	This section takes account of the assessed environmental effects, the potential for mitigation, the relevant policy considerations and the benefits of the proposal to arrive at an overall conclusion and recommendation.

Overall conclusions

3.4 Taking into account the above evidence, the updated legal and policy framework, and considering the development plan as a whole, there is very strong support for renewable energy developments in national energy and planning policy and in legally binding targets for increased renewable energy and reduced carbon emissions. National policy specifically designates renewable energy projects as national developments. Support is not unqualified and while national energy policy expects the landscape to change, national and local policies continue to require detailed consideration of renewable energy proposals against a range of environmental considerations. National policy has a clear expectation that more renewable energy proposals may be granted consent, focusing down on a tighter set of circumstances under which proposals would not be supported. For this proposal, we find that the relevant considerations focus on the extent to which the impacts are localised, whether appropriate design mitigation has been applied and whether adverse effects can be outweighed by the social, environmental or economic benefits.

3.5 Looking first at the scale and nature of the adverse impacts, we find that by virtue of its siting and design it would not protect or enhance the landscape. Although these impacts might be expected from such a scale and type of development, we find that the proposal would significantly and adversely affect views to and from the Cairnsmore of Carsphairn and associated hills, including views from parts of the Southern Upland Way and the Stroanfreggan Heritage Trail, as well as having significant adverse effects on the Galloway Hills Regional Scenic Area, all of which are key recreational resources in the wider area. The significant adverse effects on views from the Cairnsmore hills would add turbines into views where currently none are visible. Given the prominence of the Cairnsmore hills and their key role in designation of this part of the Regional Scenic Area, the significant landscape and visual effects would adversely affect the special qualities of the Regional Scenic Area, in particular the sweeping and dramatic views of the hills.

3.6 In our original report we found that the proposed location would be out of step with the general pattern of wind farm development in this area. Taking into account the updated policy framework, we no longer find that this is a significant factor in our conclusions. Nevertheless, we continue to share the views of the council and Mountaineering Scotland that the significant landscape and visual effects as a whole are more than localised. NPF4 policy 11(e)i states that a proposal's impacts may be

acceptable where appropriate design mitigation has been applied. In this case, the significant adverse impacts derive from the particular location and visibility of the proposed site in relation to key views to and from Cairnsmore of Carsphairn. Given the open views and the position of the site, we find that design changes such as moving turbine positions within the site boundary would not fully mitigate the impacts.

3.7 In light of the above, we find that the proposal would not be in line with NPF4 policy 11(e)ii or with policy 4(d)i. For the same reasons, it would not comply with policy IN2 in the local development plan or with the related supplementary guidance, and as a result, neither would it comply with policy IN1. We also find that it is not in line with policy NE2 but policy 4 of NPF4 would in any case prevail, with the requisite balancing exercise.

3.8 In relation to that balancing exercise in NPF4 policy 4(d)ii, the applicant argues that even if we were to find that there were significant adverse effects on a local landscape area, such effects would be outweighed by the benefits of the scheme.

3.9 We therefore consider the benefits of the proposal in more detail, taking into account our consideration of benefits in chapter 7 of our original report. The benefits include: the efficient use of the wind resources of the land in question; the delivery of energy infrastructure in the short to medium term to help meet the Government's urgent ambitions to increase installed capacity; support for climate change mitigation by increasing renewable energy and reducing carbon emissions; protection of cultural heritage and the quality of water, air and soil; and protection of the aspects of natural heritage relating to the protection of flora and fauna. There are some concerns about the effect on areas that are important for hillwalking but we find that opportunities for social interaction and physical activity would be protected.

3.10 Traffic and transport issues are likely to cause some inconvenience, focused on the construction phase and the delivery of abnormal indivisible loads. However, a range of measures are proposed through conditions to help mitigate such effects to the extent that they should not prevent the proposal going ahead. No significant adverse effects have been identified on any other matters.

3.11 We have looked again at the expected economic benefits of the proposal. Figures in paragraph 5.67 of our original report refer in error to the original proposal and should be amended down to reflect the reduction in proposed output from 78.6 MW to 70.2 MW as per paragraphs 17.4.1 to 17.4.4 of the Additional Environmental Information Report (CD001.012). The expected economic impact for Dumfries and Galloway from the construction and development phase is therefore revised from £19 million and 204 job years, to £16.8 million and 150 job years. For Scotland, the figures would be £46 million and 425 job years. During the operation and maintenance phase, the benefits for Dumfries and Galloway would be £2.3 million and 43 job years, and £3.7 million and 69 job years for Scotland. The Additional Environmental Information Report continues to describe the benefits as low for Dumfries and Galloway and negligible for Scotland. The annual contribution to the proposed community benefit fund would be £351,000 not £393,000, as set out in paragraph 17.4.5 of the Additional Environmental Information Report.

3.12 By virtue of policy 4(d)ii the benefits of the scheme must not just outweigh, but clearly outweigh, the adverse effects. We take this to mean that we must very carefully consider the extent to which the significant effects on the integrity or special qualities of a designated area can be outweighed. We assume that the possible economic benefits from the scheme have been maximised (without additional detailed evidence on this matter), although such benefits remain modest and not significant at a regional or national scale. The turbines are not expected to be manufactured in Scotland so no wider economic benefit can be derived there. No significant direct social benefits have been identified (a community benefit fund and potential shared ownership arrangement are not material planning matters). At the same time, local residents remain concerned that the proposal could lead to further depopulation of the area and have negative health and wellbeing effects.

3.13 Looking at the environmental benefits, the proposal's benefits in relation to the nature crisis and the enhancement of biodiversity are unclear and cannot be relied upon. However, delivery of renewable energy, a national development, would clearly be a significant benefit, and one which gains significant weight from NPF4 policy 1 in relation to the climate crisis. In relation to NPF4 policy 11(e)ii, despite there being significant landscape and visual effects, the penultimate paragraph of policy 11(e) reiterates that significant weight should be placed on the contribution to renewable energy. Furthermore, while we have identified inconsistency with policy 4(d)i on the effects on the Regional Scenic Area, in terms of policy 4(d)ii, we conclude that the benefits overall are of more than local importance.

3.14 Taking into account all of the above, we recognise the urgent policy imperative in OWPS and NPF4 to deliver additional installed wind farm capacity. These recently published policy statements demonstrate a significant strengthening of policy support for renewable energy developments, to which the proposal would make an obvious contribution. In our original report, we found that the significant effects on the area's recreational resources should be given significant weight, to the extent that they outweighed the aims of delivering renewable energy. In the updated policy context, we find that the proposal's obvious contribution to renewable energy targets causes the benefits as a whole to now clearly outweigh the significant landscape and visual effects.

Recommendation

3.15 We therefore recommend that consent under section 36 of the Electricity Act 1989 and deemed planning permission should be granted. We recommend that the conditions proposed in Appendix C to this supplementary report should be attached to the consent. This includes all the proposed conditions from our original report, with an amendment to proposed condition 25 on the biodiversity plan.

Karen Heywood
Assistant Chief Reporter

Rosie Leven
Reporter

APPENDIX A: UPDATED CORE DOCUMENTS

A [core document list](#) was compiled by the applicant, in consultation with other parties. The core document list is divided into document types with each document given a unique reference number. These are the documents that parties referred to during proceedings and in closing submissions. The list has been updated by the applicant to include the additional documents discussed in the supplementary report.

APPENDIX B: ADDITIONAL APPEARANCES AND WEBCAST

Oral sessions and links to webcast	Topic	Participating parties	
Hearing 7 February 2023	Policy	<u>Applicant</u> Marcus Trinnick KC David Bell	<u>Dumfries and Galloway Council</u> Douglas Armstrong KC Chris McTier
		<u>Other parties</u> Dave Gordon, Mountaineering Scotland Ben Ade	

APPENDIX C: RECOMMENDED CONDITIONS

Section 36 conditions

1. Duration of the consent

The section 36 consent is for a period of 30 years from the date of final commissioning. Written confirmation of both the date of first commissioning and the date of final commissioning shall be provided to the planning authority and Scottish Ministers no later than one calendar month after those dates.

Reason: to define the duration of the consent.

2. Commencement of development

(1) The commencement of the 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 the planning authority and Scottish Ministers 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 Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.

3. Non-assignation

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

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

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.

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

Deemed planning permission conditions

5. Duration of deemed planning permission

The deemed planning permission for the construction and operation of the development is granted from the date of the decision notice for a period which will expire 30 years from the date of final commissioning.

Reason: To ensure the deemed planning permission is subject to a duration that aligns with the section 36 consent.

6. Commencement of development

(1) The commencement of development shall not occur later than five years from the date of this deemed planning permission, or in substitution, 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 the planning authority and Scottish Ministers no later than one calendar month before that date.

Reason: To avoid uncertainty and ensure that the consent is implemented within a reasonable period and in accordance with the time period for commencement set within the section 36 consent.

7. Approved details

Except as otherwise required by the terms of the section 36 consent and deemed planning permission, the development shall be undertaken in accordance with:

(a) Environmental Impact Assessment Report Table 4.8: Summary of Mitigation and Enhancement Measures; and

(b) Additional Environmental Information Report Table 4.4: Summary of Mitigation and Enhancement Measures.

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

8. Radar mitigation

(1) No part of any turbine shall be erected above ground until a Primary Radar Mitigation Scheme agreed with the Operator has been submitted to and approved in writing by the Scottish Ministers, in order to avoid the impact of the development on the primary radar of the operator located at Great Dun Fell and associated air traffic management operations.

(2) No part of any turbine shall be erected above ground until the approved Primary Radar Mitigation Scheme has been implemented and the development shall thereafter be operated fully in accordance with such approved scheme.

Reason: in the interest of air safety.

9. Redundant turbines

If any wind turbine(s) fails to produce an electricity supply to the grid for a continuous period of 6 months then, unless otherwise agreed in writing by the planning authority, the wind turbine and any associated above ground infrastructure solely required for that turbine(s), together with turbine foundations to a depth of 1 metre below ground level shall be dismantled and removed from the site and the area around the turbine restored in accordance with a scheme to be submitted to, and approved in writing by, the planning authority. The scheme shall be submitted to the planning authority within 3 months of the expiry of the 6 month period and shall include a timetable for its implementation.

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

10. Design and operation of wind turbines

No development shall commence unless and until full details of the proposed wind turbines hereby permitted, including each turbine number and specific height of that turbine (as stated in Additional Environmental Information Volume 2 Figure 4.1 (Revised Development Layout)) have been submitted and approved in writing by the planning authority. The approved details shall be implemented.

Reason: to ensure that the planning authority is aware of the wind turbine details and to protect the visual amenity of the area.

11. Signage

No anemometer, power performance mast, switching station, transformer building or enclosure, ancillary building or above ground fixed plant 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

No development shall commence on the sub-station unless and until 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. The approved details shall be implemented.

Reason: to safeguard the visual amenity of the area.

13. Site decommissioning, restoration and aftercare

(1) The development shall cease to generate electricity by no later than the date falling 30 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 from which the development ceases to generate electricity without the prior written approval of the Scottish Ministers in consultation with the planning authority.

(2) No development shall commence unless and until a decommissioning, restoration and aftercare strategy has been submitted to, and approved in writing by, the planning authority (in consultation with NatureScot and SEPA). The strategy shall outline measures for the decommissioning of the development and restoration and aftercare of the site, and shall include without limitation, proposals for the removal of the above ground elements of the development, the treatment of ground surfaces, the management and timing of the works, and environmental management provision.

(3) Unless otherwise approved in writing by the planning authority, no later than 18 months before decommissioning of the development or the expiration of this consent (whichever is the earlier), a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved decommissioning, restoration and aftercare strategy, shall be submitted for the written approval of the planning authority in consultation with NatureScot and SEPA. The detailed decommissioning, restoration and aftercare plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of the development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include (but is not limited to):

- a) site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
- b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- c) a dust management plan;
- d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network, including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- f) details of measures for soil storage and management;
- g) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- h) details of measures for sewage disposal and treatment;
- i) temporary site illumination;

- j) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- k) details of watercourse crossings; 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 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 (in consultation with NatureScot and SEPA).

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.

14. Financial guarantee

(1) Development shall not commence until full details of a bond or other financial provision to be put in place to cover all the decommissioning and site restoration measures outlined in the decommissioning, restoration and aftercare plan approved under condition 13, have been submitted to and approved in writing by the planning authority. Following such approval, documentary evidence shall be provided to the planning authority to confirm that financial provision is in place and that provision (or any replacement provision pursuant to paragraphs (2) and (3) below) must be kept in place until site decommissioning and restoration is complete in accordance with condition 13.

(2) The value of the financial provision shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations approved under the terms of condition 13. Subject to paragraph (3) below, the value of the financial provision shall thereafter be reviewed by a suitably qualified independent professional at least every five years from the date of final commissioning (unless there is agreement between the company and the authority over the value and/or an alternative review frequency) and thereafter increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations.

(3) Unless otherwise agreed by the company and the planning authority, within 6 months of the final written approval of the decommissioning, restoration and aftercare plan by the planning authority in accordance with condition 13, the value of the financial provision shall be reviewed by a suitably qualified independent professional and thereafter increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations as set out in the approved decommissioning, restoration and aftercare plan.

(4) Where the value of the financial provision has been reviewed and adjusted to reflect the final approved decommissioning, restoration and aftercare plan in accordance with paragraph (3) above, it will not be necessary to carry out any subsequent periodic review that might otherwise be required pursuant to paragraph (2) above.

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.

15. Ecological Clerk of Works

(1) No development shall commence unless and until the terms of appointment of an independent and suitably qualified Ecological Clerk of Works (ECoW) by the company have been submitted to, and approved in writing by the planning authority (in consultation with NatureScot and SEPA). The terms of appointment shall:

(a) impose a duty to monitor compliance with the ecological, ornithological and hydrological commitments provided in the Environmental Impact Assessment Report dated November 2018 and Additional Environmental Information dated October 2019 and Additional Environmental Information (II) dated March 2021 lodged in support of the application and the Construction Environmental Management Plan, Peat Management Plan, Biodiversity Plan, Species Protection Plan(s), Breeding Bird Protection Plan, Water Construction Environmental Management Plan, Biosecurity Plan and other plans approved in terms of the conditions of this permission (the ECoW Works);

(b) advise on micro-siting proposals issued pursuant to condition 16;

(c) require the ECoW to report to the nominated construction project manager any incidences of non-compliance with the ECoW Works at the earliest practical opportunity and stop the job where any breach has been identified until the time that it has been reviewed by the construction project manager; and

(d) 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 during the establishment of the Habitat Management Plan and throughout the period from commencement of Development to completion of post construction restoration works and aftercare phase of the development.

(3) No later than eighteen 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 for the written approval of the planning authority.

(4) The ECoW shall be appointed on the approved terms throughout the 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.

16. 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 Additional Environmental Information Figure 4.1 within the Additional Environmental Information. However, 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, building, mast, track or hardstanding shall be moved more than 50 m from the position shown on plan reference Additional Environmental Information Figure 4.1;

(b) no micro-siting shall take place to a position where: i) the peat depth is greater than the location shown on Additional Environmental Information Figure 4.1; and ii) the peat depth at the proposed new location is more than 1.5 m, without the prior written approval of the planning authority;

(c) no micro-siting shall result in any infrastructure being moved within areas hosting ground water dependent terrestrial ecosystems; and

(d) all micro-siting permissible under this condition shall be approved in advance in writing by the Ecological Clerk of Works. Where possible, further design changes through micro-sitting should reduce the risk of displacement of birds.

(2) No later than one month after the date of first 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 Ecological Clerk of Works or planning authority's approval, as applicable.

(3) Any proposed micro-siting that does not meet the criteria set out in part (1) of this condition may be permitted with the prior written approval of the planning authority.

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

17. Borrow pits – scheme of works

No works to excavate a borrow pit shall commence unless the following borrow pit details have been submitted to and approved in writing by the planning authority:

(a) precise location, extent and means of working;

(b) proposed volume of material to be extracted;

(c) storage of overburden;

(d) assessment of the potential for air over pressure or ground vibration to disturb nearby buildings as a result of any aspect of use of the borrow pits, with proposals for mitigating any nuisance that might arise;

- (e) details of any need for blasting and, if proposed, a scheme for publicising the times and dates of any such blasting; and
- (f) a fully detailed restoration scheme with landscaping, planting and timescale information.

Thereafter, the excavation works shall be implemented in accordance with the approved details. Rock crushing will at all times be confined to inside the borrow pits.

Reason: to ensure that excavation of materials from the borrow pit(s) is carried out in a manner that minimises the impact on road safety, amenity and the environment, and to secure the restoration of borrow pit(s) at the end of the construction period.

18. Borrow pits – blasting

Blasting shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 13.00 on Saturdays, with no blasting taking place on a Sunday or on a Public Holiday.

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

19. Construction Environmental Management Plan

(1) No development shall commence unless and until a Construction and Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority (in consultation with NatureScot, HES, SEPA, the roads authority and the council's Environmental Health Officer). The CEMP shall integrate best practice methods for the Scottish / UK wind farm industry with the mitigation measures identified in the EIA and AEI reports.

The CEMP shall include the following matters:

- (a) a site waste management plan;
- (b) a sustainable drainage system (SUDS) design concept including run-off and sediment control measures and flood risk management;
- (c) details of foul drainage arrangements;
- (d) details of proposed temporary site compound for storage of materials, machinery, and designated car parking;
- (e) a pollution prevention plan (PPP);
- (f) an environmental management plan (EMP);
- (g) details of ecological monitoring to be implemented over the construction period including all necessary pre-construction surveys as detailed in the species protection plan(s);
- (h) details of any tree felling, felling waste and replacement planting;
- (i) details of on-site storage of materials, including fuel and other chemicals;
- (j) details of on-site storage and off-site disposal of excavated material;
- (k) details and timetable for phasing of construction works;
- (l) details of turning arrangements for vehicles on site, cleaning of site entrance, site tracks and the adjacent public road and the sheeting of all heavy goods vehicles

taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the public road,

(m) details of all internal access tracks, including accesses from the public road and hardstanding areas.

(n) details and timetable for post construction restoration and/or reinstatement of the working areas and any other temporary works (including those carried out within the public road boundary);

(o) details of the management of noise and vibration during construction;

(p) the height and location of all stockpiles of aggregate;

(q) a groundwater dependant terrestrial ecosystem protection plan; and

(r) a water construction environmental plan, including a water quality monitoring programme;

(s) a construction biosecurity plan in relation to identified invasive species; and

(t) a peat management plan.

Thereafter, the construction of the development shall be carried out in complete accordance with the approved CEMP, unless otherwise agreed in writing with 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.

20. Hours of construction

(1) Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 18.00 on Saturdays, with no construction work taking place on a Sunday or on a Public Holiday. Outwith these specified hours, construction activity shall be limited to concrete pours, wind turbine erection and delivery, maintenance, emergency works, dust suppression, and the testing of plant and equipment. In addition, access for security reasons, emergency responses or to effect any necessary environmental controls is permitted outwith these hours.

(2) HGV movements to and from the site (excluding abnormal loads) during construction of the wind farm shall be limited to 07.00 to 19.00 Monday to Friday, and 07.00 to 16.00 on Saturdays, with no HGV movements to or from site taking place on a Sunday or on a Public Holiday.

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

21. Traffic management plan

(1) No development shall commence unless and until a Traffic Management Plan (TMP) has been submitted to and approved in writing by the planning authority, in consultation with the roads authority. The TMP shall include details of:

(a) construction vehicle routeing, management of contractors and sub- contractors;

- (b) vehicle numbers, signing and lining arrangements;
- (c) arrangements for emergency vehicle access;
- (d) measures to minimise traffic impacts on existing road users, including voluntary Heavy Good Vehicle speed limits; and
- (e) measures to accommodate pedestrians and cyclists and a nominated road safety person.

(2) Prior to the commencement of delivery of 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 QA traffic management consultant, to be approved by Transport Scotland.

(3) Prior to the movement of any abnormal load, the proposed route for any abnormal loads on the trunk road network must be approved by the trunk roads authority and Police Scotland. Any accommodation measures required including the removal of street furniture, junction widening and traffic management must similarly be approved. Thereafter, the development shall be carried out in full accordance with the approved TMP, unless agreed otherwise in writing with the planning authority.

Reason: in the interests of road safety and to ensure that abnormal loads access the site in a safe manner.

22. Abnormal Load Route – trailer type

No development shall commence for the delivery of abnormal indivisible loads to the site until a scheme has been submitted to and approved in writing by the planning authority. The scheme, which shall be implemented as approved, shall include provisions for minimising conflict with other traffic movements.

Reason: in the interests of road safety and to minimise delays for local residents and businesses.

23. Abnormal Load Route – offsite roadworks

No development shall commence on offsite roadworks until a scheme of landscape mitigation has been submitted to and approved in writing by the planning authority. The scheme shall be implemented as approved unless otherwise agreed in writing by the planning authority.

Reason: in the interests of landscape and visual amenity.

24. Floating Roads

Floating roads shall be installed in areas where peat depths are in excess of 1 metre. Prior to the installation of any floating road, the detailed location and cross section of

the floating road to be installed shall be submitted to and approved in writing by the planning authority. The floating road shall then be implemented as approved, unless otherwise agreed in writing by the planning authority.

Reason: to ensure peat is not unnecessarily disturbed or destroyed.

25. Biodiversity plan

(1) No development shall commence until a biodiversity plan has been submitted to the planning authority. The biodiversity plan shall be implemented as approved.

(2) The biodiversity plan shall set out proposals for the monitoring, restoration, enhancement and management of the peatland habitat of the site during construction, operation and decommissioning.

Reason: to promote net biodiversity gain from the development.

26. Access

No development shall commence unless and until an access management plan has been submitted to and agreed in writing by the planning authority. The access management plan should ensure that public access is retained in the vicinity of Shepherds' Rig wind farm during construction, and thereafter that suitable public access is provided during the operational phase of the wind farm. The plan as agreed shall be implemented in full.

Reason: in the interests of securing public access rights.

27. Archaeology

No development shall commence unless and until the company has secured the full implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the planning authority. This written scheme shall include the following components:

(a) an archaeological evaluation to be undertaken in accordance with the agreed WSI;

(b) an archaeological recording programme, the scope of which will be dependent upon the results of the evaluation and will be in accordance with the agreed WSI; and

(c) the programme of archaeological work will include a scheme of forest felling and replanting in the vicinity of Craigengillan Cairn as described in paragraph 11.7.6 of the Additional Environmental Information (AEI) submitted on 4 December 2019 and shown on AEI Figure 11.14.

Reason: to protect and/or record features of archaeological importance on this site.

28. Air Safety

No development shall commence unless and until the company has provided the planning authority, MoD, Defence Geographic Centre and National Air Traffic Services with the following information, and has provided evidence to the planning authority of having done so:

- (a) the date of the expected commencement of each stage of construction;
- (b) the height above ground level of the tallest structure forming part of the Development;
- (c) the maximum extension height of any construction equipment; and
- (d) the position of the wind turbines and masts in latitude and longitude.

Reason: in the interests of aviation safety.

29. Hydrology

No development shall commence unless and until full details of all surface water drainage provision within the application site (which should accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Third Edition, or any superseding guidance prevailing at the time) have been submitted to, and approved in writing by, the planning authority. Thereafter, only the approved details shall be implemented and all surface water drainage provision shall be completed prior to the date of first commissioning.

Reason: to ensure that surface water drainage is provided timeously and complies with the principles of SUDS, in order to protect the water environment.

30. Noise (*see guidance notes below)

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

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

- (b) no electricity shall be exported until the company has submitted to the planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the planning authority;

(c) within 21 days from receipt of a written request from the planning authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the company shall, at its expense, employ a consultant approved by the planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached guidance notes. The written request from the planning authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component;

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

(e) where a dwelling to which a complaint is related is not listed in the table attached to these conditions, the company shall submit to the planning authority for written approval proposed noise limits selected from those listed in the table to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the table specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached guidance notes shall not exceed the noise limits approved in writing by the planning authority for the complainant's dwelling;

(f) the wind farm operator shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the guidance notes within 2 months of the date of the written request of the planning authority for compliance measurements to be made under paragraph (c), 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). The instrumentation used to undertake the measurements shall be calibrated in accordance with guidance note 1(a) and certificates of calibration shall be submitted to the planning authority with the independent consultant's assessment of the rating level of noise immissions; and

(g) where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to guidance note 4(c), the company shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (d) above unless the time limit has been extended in writing by the planning authority.

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.

31. Breeding Bird Protection Plan

(1) No development shall commence unless and until a breeding bird protection plan (BBPP) has been submitted to and approved in writing by the planning authority, in consultation with NatureScot and Royal Society for the Protection of Birds.

(2) The BBPP shall set out survey methods for the identification of sites used by protected and sensitive birds during construction and shall detail operational protocols to prevent or minimise disturbance of birds during construction of the development.

(3) The BBPP approved under part (1) shall be implemented during construction works.

Reason: to minimise impacts on birds during the construction phase.

32. Roads post-construction work

No development shall commence unless and until a scheme of the extent and detail of 'post construction' carriageway, verge and public road boundary restoration works within the public road boundary have been submitted to and approved in writing with the planning authority (in consultation with the relevant roads authority).

Reason: in the interests of road safety.

33. Roads post-construction work – compliance

That within 3 months of the completion of construction work hereby granted, the works approved in respect of condition 32 above shall be fully implemented to the satisfaction of the planning authority (in consultation with the relevant roads authority).

Reason: in the interests of roads safety.

34. Roads – extra-ordinary damage

Development shall not commence until the wind farm operator has entered into a Section 96 agreement with the council as roads authority.

Reason: in the interests of road safety; in order to ensure that there is sufficient provision to cover any extraordinary damage caused to the public road infrastructure during construction works.

35. Compensatory Planting

Prior to the commencement of development, a scheme to compensate for the removal of 62.72 hectares of existing woodland (the scheme) shall be submitted to and approved in writing by the planning authority in consultation with Scottish Forestry. Thereafter the scheme should be implemented.

Reason: to secure replanting and protect Scotland's woodland resources in accordance with the Scottish Government's policy on the Control of Woodland Removal.

36. Transport Monitoring Officer

(1) No development shall commence unless and until the terms of appointment by the company of an independent and suitably qualified consultant as Transport Monitoring Officer (TMO) 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 Traffic Management Plan approved in accordance with condition 21 of this permission;

(b) require the TMO to submit a monthly report to the planning authority summarising works undertaken in accordance with the Traffic Management Plan approved in accordance with condition 21 of this permission; and

(c) require the TMO to report to the planning authority any incidences of non-compliance with the terms of the Traffic Management Plan approved in accordance with condition 21 of this permission at the earliest practical opportunity.

(2) The TMO shall be appointed on the approved terms throughout the period from commencement of development to completion of post construction restoration works.

Reason: to ensure compliance with the approved Traffic Management Plan.

37. Community Liaison Group

(1) Prior to commencement of development, a plan for the establishment of a Community Liaison Group shall be submitted to and approved by the planning authority.

(2) The Community Liaison Group plan shall set out provision for the group to act as a vehicle for the community to be kept informed of project progress, should it wish to be so informed, and, in particular, to allow discussion on the provision of relevant transport-related mitigation measures as set out in the Traffic Management Plan approved in accordance with condition 21.

(3) The Community Liaison Group plan will provide for the maintenance of the Community Liaison Group, should the community wish such a group to be set up, until the wind farm construction has been completed and is fully operational.

(4) The Community Liaison Group plan shall be implemented as approved.

Reason: 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.

38. Shadow Flicker

Prior to the erection of the first wind turbine, a scheme for the avoidance of shadow flicker effects caused by the operation of the development shall be submitted to, and approved in writing by the planning authority. The scheme shall be implemented as approved.

Reason: to offset impacts of shadow flicker on residential amenity.

*** Table of Noise Limits Relating to Noise Condition**

Table 1: Noise Level in dB LA90, 10-min at all times

Receptor	Standardised Wind Speed at 10 m AGL, ms ⁻¹								
	4	5	6	7	8	9	10	11	12
	Apportioned Noise Limits, dB, L _{A90,10min}								
Quiet Daytime									
1 Muirdrochwood	35.0	35.0	35.7	38.1	40.3	42.3	44.0	45.2	46.0
2 Muirdrochwood	35.0	35.0	35.7	38.1	40.3	42.3	44.0	45.2	46.0
Blackmark	35.7	37.6	39.9	42.5	45.4	48.7	52.3	52.3	52.3
Craigengillan	44.6	45.4	46.3	47.1	48.3	49.5	50.8	52.4	54.2
Craigengillan Cottage	44.6	45.4	46.3	47.1	48.3	49.5	50.8	52.4	54.2
Furmiston	36.3	38.6	40.9	43.1	45.3	47.4	49.3	51.1	52.7
Marbrack	41.9	43.6	45.4	47.3	49.2	51.2	53.2	55.3	57.6
Marshalloch Cottage	38.1	39.1	40.2	41.2	42.4	43.6	44.9	46.3	47.8
Moorbrock	35.8	37.7	39.2	41.1	43.1	44.7	46.2	47.3	47.9
Nether Loskie	38.1	39.1	40.2	41.2	42.4	43.6	44.9	46.3	47.8
Smittons	37.2	38.2	39.2	40.1	41.3	42.5	43.7	45.1	46.6
Strathanna farm	36.0	37.9	39.6	41.5	43.4	44.9	46.3	47.4	48.0
Stroanpatrick	35.7	37.6	39.9	42.5	45.4	48.7	52.3	52.3	52.3
Night-time									
1 Muirdrochwood	43.0	43.0	43.0	43.0	43.0	43.0	44.3	46.2	47.6
2 Muirdrochwood	43.0	43.0	43.0	43.0	43.0	43.0	44.3	46.2	47.6
Blackmark	43.0	43.0	43.0	43.4	46.6	49.9	53.6	53.6	53.6
Craigengillan	44.3	45.2	46.3	47.5	48.8	50.2	51.6	53.1	54.7
Craigengillan Cottage	44.3	45.2	46.3	47.5	48.8	50.2	51.6	53.1	54.7
Furmiston	43.0	43.0	43.0	43.0	43.6	46.2	48.6	50.8	52.6
Marbrack	43.0	43.0	44.5	46.7	49.0	51.3	53.4	55.3	56.8
Marshalloch Cottage	43.0	43.0	43.0	43.0	43.0	43.3	44.4	45.5	46.5
Moorbrock	42.9	42.9	42.7	42.6	42.5	44.0	45.6	46.9	47.8
Nether Loskie	43.0	43.0	43.0	43.0	43.0	43.3	44.4	45.5	46.5
Smittons	43.0	43.0	43.0	43.0	43.0	43.0	43.7	45.1	46.6
Strathanna farm	43.0	43.0	42.9	42.9	42.8	44.3	45.8	47.0	47.9
Stroanpatrick	43.0	43.0	43.0	43.4	46.6	49.9	53.6	53.6	53.6

Note to Table 1:

“Quiet Daytime” means 18:00 – 23:00 every day; 13:00 – 18:00 on Saturdays; and 07:00 – 18:00 on Sundays.

“Night-time” means all periods between 23:00 and 07:00.

Table 2: Coordinate locations of the properties listed in Table 1

Location	Easting	Northing
1 Muirdrochwood	261850	591137
2 Muirdrochwood	261826	591121
Blackmark	265286	591687
Craigengillan	263690	594831

Craigengillan Cottage	263628	594937
Furmiston	260307	592302
Marbrack	259697	593259
Marscalloch Cottage	260374	591371
Moorbrock	262939	596644
Nether Loskie	260023	591717
Smittons	263295	591702
Strahanna Farm	264550	595867
Stroanpatrick	264309	591961

**** Guidance Notes for Noise Conditions**

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

Guidance Note 1

(a) The LA90,10 minute noise statistic should be measured at the complainant’s property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the planning authority, and placed outside the complainant’s dwelling. Measurements should be made in “free field” conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the 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 and operational data logged in accordance

with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the Company shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the planning authority, such as direct measurement at a height of 10 metres, this wind speed, averaged across all operating wind turbines, and corrected to be representative of wind speeds measured at a height of 10 m, shall be used as the basis for the analysis. It is this 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

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

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

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

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

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

Guidance Note 3

(a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a

tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

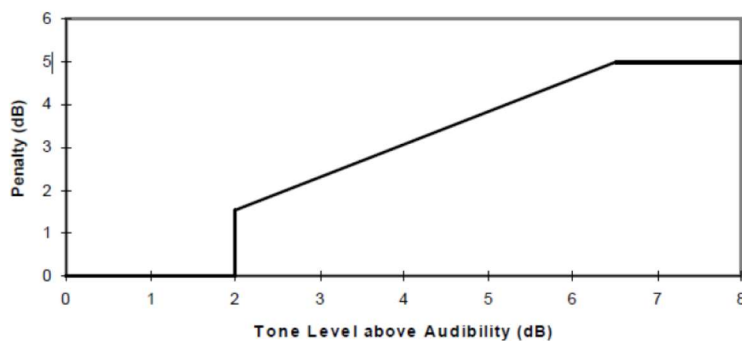
(b) For each 10 minute interval for which LA90,10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

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

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

(e) The average tone level above audibility shall be calculated for each wind speed bin, each bin being 1 metre per second wide and centred on integer wind speeds. 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.



Guidance Note 4

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

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

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

(d) The 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.

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

(f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

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

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

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

Definitions	
Commencement of Development	means 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.
Company	means SETT Wind Development Limited (Company Number 10988810), having its registered office at 16 West Borough, Wimborne, Dorset, BH21 1NG or such other person for the time being entitled to the benefit of the consent under section 36 of the Electricity Act 1989.

Consent	means 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.
Construction period	means the period from the Commencement of Development until the approved site compound areas have been reinstated in accordance with the conditions of this consent.
Development	means 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.
the Development	means the development and/or site described in Annex 1;
EIA Report	means the Environmental Impact Assessment Report submitted by the Company on 7 December 2018.
Final Commissioning	means 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.
First Commissioning	means 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.
Planning Authority	means Dumfries and Galloway Council.
Primary radar mitigation scheme	means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all times the impact of the Development on the Great Dun Fell primary radar and air traffic management operations of the Operator.
Public holiday	means New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January. <ul style="list-style-type: none"> • 2nd January, if it is not a Sunday or, if it is a Sunday, 3rd January. • Good Friday. • Easter Monday. • The first Monday in May. • The fourth Monday in May. • The first Monday in August. • The third Friday and fourth Monday in September • 30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following that day. • Christmas Day, if it is not a Sunday or, if it is a Sunday, 27th December. • Boxing Day, if it is not a Sunday or, if it is a Sunday, 27th December.

Annex 1

Section 36 Electricity Act 1989 Consent - Description of Development

The construction and operation of a wind powered generating station with an installed capacity of over 50 MW known as Shepherds' Rig Wind Farm situated within the Smittons and Craigengillan North plantations, approximately 5 km east of Carsphairn in the administrative area of Dumfries and Galloway Council. The Ordnance Survey grid reference for the Site is 262319E, 593591N. The location of the development is shown on Figure 2.1 within the Environmental Impact Assessment Report submitted in December 2018.

The development includes:

- up to 17 three-bladed horizontal axis wind turbines;
- associated turbine foundations, wind turbine hard-standings and crane pads;
- site tracks;
- underground electricity cables;
- substation;
- battery energy storage and control building compound;
- two borrow working areas;
- temporary construction compound;
- operational anemometry mast; and
- associated works/infrastructure.

Deemed Planning Permission under Section 57(2) of the Town and Country Planning (Scotland) Act 1997 – Description of Development

The erection and operation of a wind farm of up to 17 wind turbines and associated development on land situated within the Smittons and Craigengillan North plantations, approximately 5 km east of Carsphairn within the planning jurisdiction of Dumfries and Galloway Council. The site of the wind farm and location of the proposed development and the location of the proposed development within the site is shown edged red attached on the attached plan (being AEI Figure 4.1).