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21 August 2023

Dear Mr Frost,

CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER SECTION 57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF SHEPHERDS RIG WIND FARM WITHIN THE PLANNING AUTHORITY AREA OF DUMFRIES AND GALLOWAY.

Application

I refer to the application made on 17 December 2018 (the “Application”) under section 36 of the Electricity Act 1989 (“the Electricity Act”) made by SETT Wind Development Limited, a company incorporated under the Companies Acts with company number 10988810 and having its registered office at 16 West Borough, Wimborne, Dorset, BH21 (“the Company”) for the construction and operation of Shepherds Rig Wind Farm located approximately 5 kilometres (“km”) east of the village of Carsphairn and 45 km north west of Dumfries within the Dumfries and Galloway Council planning authority area.

The Company proposes to construct and operate (for 30 years) an electricity generating station comprising 17 wind turbines, 15 wind turbines with a maximum blade tip height of 149.9 metres (“m”) and 2 wind turbines with a maximum blade tip height of 125 m, a battery energy storage facility and associated infrastructure (“the proposed Development”). The expected total maximum generating capacity is 70.2 megawatts (“MW”) for the wind turbines and battery energy storage providing a maximum further 6 MW.

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

Planning Permission

In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 (“the Planning Act”) the Scottish Ministers, may on granting consent under section 36 of the

Electricity Act for the construction and operation of a generating station direct that planning permission be deemed to be granted in respect of that generating station and any ancillary development.

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

Background

The proposed Development is to be located in the centre of the Dumfries and Galloway Council area, on land lying approximately 5 km east of the village of Carsphairn and 45 km north west of Dumfries. The wider area is characterised by an extensive landscape of open moorland, commercial forestry plantations and rolling hills. The upper part of the Water of Ken River and its associated valley passes to the east of the site and extends as far as Lorg, where it is bounded by steep sided slopes.

The site is not subject to any national landscape designation. However, the north western part of the site, on the western and south western slopes of Craigengillan Hill, lies in the Galloway Hills Regional Scenic Area. Five turbines are within the Regional Scenic Area, two of which are on the cusp of the boundary of the Regional Scenic Area. The Cairnsmore of Carsphairn, a listed Corbett, lies to the north west of the site.

Legislation and Consultation

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

In accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the EIA Regulations") the Company submitted an Environmental Impact Assessment report ("the EIA report") dated 17 December 2018 describing the proposed Development and giving an analysis of its environmental effects.

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

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

Additional Information

The Application originally proposed the construction and operation of 19 turbines however this was amended in December 2019 following submission of additional information (“AEI”) to Scottish Ministers on 4 December 2019. The AEI comprises of a revised site layout, the deletion of two turbines and provides information on peat as requested by Scottish Ministers on 27 March 2019.

Following the Scottish Ministers’ consideration to hold a Public Local Inquiry, in March 2021 the Reporters requested a revised cumulative landscape and visual impact assessment to take account of the latest position. The Company also sought to provide further information on the offsite roadworks and on matters relating to the proposed grid connection.

The Company submitted a further Additional Environmental Information report (“AEI II”) which was advertised and consulted upon in April 2021. The AEI II report comprises the following:

- an update of the cumulative landscape and visual impact assessment;
- an assessment of the offsite roadworks along the B729 between Carsphairn and the site entrance required to facilitate turbine delivery for the proposed wind farm; and
- a cumulative assessment for the proposed Lorg and Longburn Grid Connection (‘the Lorg Grid Connection’) which requires separate consent but which may traverse the narrowest central part of the wind farm application site.

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

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

Public Inquiry

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

Paragraph 2(3) of Schedule 8 of the Electricity Act states, for the purposes of paragraph 2(2) above, Scottish Ministers may make regulations limiting the time within which notification of objections may be made to the Scottish Ministers by relevant planning authorities, and providing that objections which are not notified within the time so limited, may be disregarded for those purposes.

The Planning Authority objected to the application and did not withdraw that objection. Notification of the Planning Authority’s objection was not received within the agreed

time and the Scottish Ministers were therefore not required by virtue of paragraph 2(2) to cause a public inquiry to be held.

The Scottish Ministers considered the Planning Authority's objection together with all other material considerations, with a view to determining whether a public inquiry should be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.

The Scottish Ministers did not consider it possible to overcome the objection, by way of applying conditions to give effect to the Planning Authority's objection, and caused a public inquiry to be held.

Public Inquiry and Reports

The Reporters held online inquiry sessions on 9 and 10 November 2021 and additional online hearing sessions on 11 and 12 November 2021. The Reporters conducted unaccompanied inspections of the appeal site, its surroundings and other locations referred to in evidence on 8, 9, 10 June, 25, 26 August and 21 October 2021. The report of that inquiry ("PI Report") was received by Scottish Ministers on 6 April 2022

The PI Report takes account of the precognitions, written statements, documents and closing submissions lodged by the parties, together with the discussion at the inquiry and hearing sessions. It also takes account of the original Environmental Assessment dated November 2018, the Company's two additional Environmental Information Reports, AEI and AEI II, dated October 2019 and March 2021 respectively, and the written representations made to Scottish Ministers. The chapters of the PI Report provide the following:

Chapter 1 - Background

Chapter 2 - Legislative and policy context

Chapter 3 - Landscape and visual impact

Chapter 4 - Traffic and Transport

Chapter 5 - Other relevant matters:

- Forestry
- Ecology
- Ornithology
- Cultural heritage
- Geology and peat
- Hydrology and hydrogeology
- Noise
- Aviation
- Socio economics, tourism and recreation
- Shadow flicker
- Telecommunications and utilities
- Health and safety
- Climate change and carbon balance

Chapter 6 – Planning conditions

Chapter 7 – Policy evidence and conclusions
Chapter 8 – Overall conclusions and recommendation.

The Reporters' PI Report recommended to refuse section 36 consent and deemed planning permission due to the 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.

Supplementary

Following receipt of the PI Report, and prior to the Scottish Ministers making a determination on the Application, the Revised Draft National Planning Framework 4 ("NPF4") was laid in Parliament (8 November 2022). The Revised Draft NPF4 set out the spatial strategy with a shared vision to guide future development in a way which reflects the overarching spatial principles: sustainable places, liveable places, productive places, and distinctive places. The energy policy principles encourage, promote and facilitate all forms of renewable energy development onshore and offshore, including energy generation and storage.

On 22 November 2022, Scottish Ministers asked that Reporters reopen the inquiry process to allow parties to make submission regarding the implications of the NPF4. Subsequently there was a virtual hearing held by the DPEA on 7 February 2023 to consider parties' comments on the implications of these documents for the proposal.

Following re-opening of the inquiry, the Revised Draft NPF4 was approved by Scottish Parliament on 11 January 2023 and then adopted on 13 February 2023. Upon its adoption, commencement provisions made NPF4 part of the statutory development plan. The Onshore Wind Policy Statement (2022) and the Scottish Biodiversity Strategy to 2045 were published in December 2022. The Scottish Ministers additionally published a consultation draft Energy Strategy and Just Transition Plan on 10 January 2023, it is noted that the Reporters allowed parties to refer to it.

A supplementary report ("Supplementary PI Report") was received by Scottish Ministers on 2 March 2023. The Supplementary PI Report replaces elements of the original PI Report where specified and which should otherwise be read in conjunction with it, as summarised below:

- Supplementary Report Chapter 1 provides an update to the legislative and policy context to be read alongside Chapter 2 of the PI Report.
- Supplementary Report Chapter 2 provides an update to the policy and evidence and conclusions to be read alongside Chapter 7 of the PI Report.
- Supplementary Report Chapter 3 provides a new overall conclusion and recommendation to replace Chapter 8 of the PI Report.

The Reporters' recommendation is that the Scottish Ministers grant consent under section 36 of the Electricity Act 1989 and direct that planning permission is deemed to be granted; both subject to conditions.

Consultation Responses

A summary of the consultation responses is provided below and the full responses are available on the Energy Consents Unit website www.energyconsents.scot

Statutory Consultees

Dumfries and Galloway Council (the “Planning Authority”) **object** to the proposed Development on the basis that:

- the proposal is located in a landscape incapable of accommodating the development without an unacceptable level of significant and adverse detrimental landscape and visual impacts. The design and scale of development are not appropriate to the scale and character of its setting and development does not respect the main features of the site and as such would be contrary to Local Development Plan 2 Policy IN2: Wind Energy and associated adopted Supplementary Guidance;
- the proposal would not respect the special qualities of the Galloway Hills Regional Scenic Area and as such it would be contrary to Local Development Plan 2 Policy NE2: Regional Scenic Areas;
- the proposal would not respect the landscape character, scenic qualities or scale of Landscape Character Units LCT 4, LCT 9, LCT 19 and LCT 19A and as such, would be contrary to Local Development Plan 2 Policy OP1(c): Development Considerations;
- and the proposed Development would not be of a high quality design in terms of its contribution to the natural environment, or contribute positively to the sense of place and local distinctiveness and would not relate well to the scale and character of the surrounding sensitive landscape and as such would be contrary to Local Development Plan 2 Policy OP2: Design Quality and Placemaking.

The Planning Authority considered the revised policy framework at the supplementary hearing, and a summary of its position is set out at paragraphs 2.20-2.34 of the Supplementary PI Report. The Planning Authority maintain their objection.

NatureScot has no objection to the proposed Development and is broadly content with the proposals in relation to ecology and ornithology. However, it considers that the proposals would cause significant and adverse effects across a number of sensitivities including a localised significant adverse effect on the Galloway Hills Regional Scenic Area, on smaller scale landscapes within the vicinity of the proposal and a significant and adverse cumulative landscape and visual effect on receptors within the upper Glenkens, mostly in conjunction with Longburn wind farm (which was subsequently dismissed on appeal by Scottish Ministers on 14 May 2019). Following dismissal of the Longburn appeal, NatureScot confirmed with Reporters that, with the exception of the in-combination effects of Shepherds Rig with Longburn which would now not occur, its position on the cumulative impacts from Shepherds Rig proposal remains unchanged.

Scottish Environment Protection Agency (SEPA) originally objected to the proposed Development on the basis of a lack of information on the impact on the peat environment. This was based on the original proposed location of 7 turbines positioned

in areas of deep peat (proposed turbines T4, T6, T8, T9, T10, T13 and T16). These have been adjusted where possible so that they would now lie outwith areas of deep peat and the objection has been withdrawn. SEPA supports the proposal for a biosecurity plan and recommends that this should be agreed and implemented before works commence. No concerns are raised over private water supplies, given that they are outwith the appropriate buffer distances from the proposed infrastructure.

Historic Environment Scotland initially objected to the proposed Development with regard to an adverse impact on the integrity of the setting of two scheduled ancient monuments at Craigengillan Cairn and Stroanfreggan Craig fort. HES was concerned that, contrary to paragraph 11.3.12 of the EIAR, impacts on setting should not be described as temporary and reversible and that such a description would not accord with Scottish Planning Policy which states that 'areas identified for wind farms should be suitable for use in perpetuity'. Revisions to the proposals in the AEI to remove turbines T7 and T11 and re-site turbine T9 further west, have reduced the impact on the setting of Craigengillan Cairn and Stroanfreggan Craig fort. As a result, HES has withdrawn its objection, although there remains some uncertainty around the effect on views of Craigengillan Cairn.

Internal Scottish Government Advisors

Ironside Farrar (Scottish Government advisor on peat landslide matters) advise that the Stage 1 checking report considered that the methodology of the Company's peat landslide hazard risk assessment set out in appendix 12 of the EIAR needed revision in a number of areas, including the integration of desk and field surveys, the calculations of risk and the proposed mitigation measures. It was recommended that a revised report be submitted. Following the updated risk assessment in appendix 12 of the AEI, Ironside Farrar confirms in its Stage 2 checking report that the developer has generally addressed the queries raised at Stage 1, with the exception of one point on scoring which was not considered to affect the outcome of the risk assessment.

Marine Scotland has no objection to the proposed Development. It recommends an integrated robust water quality monitoring programme takes place at selected sites potentially impacted by the proposal and at control sites (where an impact from the present proposal is unlikely). Also the Ecological Clerk of Works should carry out regular visual inspections of all watercourses. Conditions are attached within Annex 2, which gives effect to Marine Scotland recommendations.

Scottish Forestry initially had concerns over insufficient information on the compensatory planting that would be required for the permanent removal of 61.1 hectares of woodland, to enable suitable condition or legal agreements to be put in place. It confirms that only felling directly required for the construction and operation of the proposed wind farm would be consented through the planning permission. It offers to advise on suitable mechanisms for ensuring that the loss of woodland is mitigated and that management of the forest is compliant with the United Kingdom Forestry Standard. Following further written submissions, parties agreed on proposed condition 34, requiring 62.72 hectares of compensatory planting.

Transport Scotland has no objection to the proposed Development, subject to conditions requiring the prior approval by the trunk roads authority of the proposed

route and any accommodation measures required for any abnormal loads on the trunk road network, and requiring any additional signing or temporary traffic control measures to be undertaken by a recognised QA traffic management consultant, with the approval of Transport Scotland. Conditions are attached within Annex 2, which gives effect to Transport Scotland recommendations.

Non-statutory consultees

Carsphairn Community Council strongly objects to the proposed Development on behalf of those living in Carsphairn and on the B729 road. It is concerned about the effects on built heritage assets and on road safety on the B729, and effects on visual amenity, in relation to tourists and cyclists on the B729. In particular, it considers that the proposals would be out of scale with the landscape and too centrally placed, rather than tucked away. As a result, they would be seen by everyone on the approach to and from Carsphairn.

In terms of considering NPF4 for the additional inquiry hearing, Ben Ade on behalf of Carsphairn Community Council considers that the proposal will have hugely detrimental impacts on the mental health and wellbeing of residents which is contrary to the aims of NPF4. Concerns are raised over cumulative impacts, residential amenity, visual impact, noise, shadow flicker and the impact on walking and cycling routes. Shepherds Rig is not considered to fit with the aim of NPF4 to conserve, restore and enhance biodiversity and could result in rural depopulation contrary to the aims of NPF4.

Carsphairn Community Woodland considers that the proposed Development would have unacceptable impacts on the landscape, on the local economy and on tourism and is concerned about impacts on the neighbouring Muirdrochwood Forest, which it is seeking to purchase.

Mountaineering Scotland objects to the proposed Development due to a significant adverse visual impact on Cairnsmore of Carsphairn and harm to the perceived visual relationship between Cairnsmore of Carsphairn and the Rhinns of Kells. It believes that this impact would unacceptably diminish the quality of the mountaineering experience enjoyed by their members and others who hill-walk in the area. It suggests this would bring consequential impacts on the level of recreation and tourism activity locally and believes that the level of adverse visual impact is such that it outweighs any possible benefits from the proposed Development.

In terms of considering NPF4 and the OWPS for the additional inquiry hearing, Mountaineering Scotland consider the Shepherds Rig is not the right development in the right place. 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.

It is considered that the level of harm at regional level was unacceptable regardless of political and policy enthusiasms for onshore wind development, albeit this enthusiasm is now much more trenchantly stated in the policy. 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 Shepherds Rig outweigh the benefits by a considerable margin.

Royal Society for the Protection of Birds Scotland has no objection to the proposed Development, subject to the inclusion of a habitat management plan for the restoration of deep peat and associated habitat, to minimise the impact on black grouse and deep peat habitats. There were concerns around the original positioning of turbines on areas of deep peat, particularly proposed turbines T6 and T8, but this layout was subsequently revised to avoid deep peat. It also recommends a condition requiring a pre-construction survey to check for nest sites, particularly in relation to impacts on red kite and other sensitive raptor species such as goshawk. The Scottish Ministers have imposed conditions, recommended by the Reporters, at Annex 2, which give effect to the concerns of the RSPB.

Ministry of Defence (MOD) raised no objection. MOD advise that the proposed Development will occupy a Low Flying Area and to address this impact it would be necessary for the proposed Development to be fitted with MOD accredited aviation safety lighting in accordance with the Air Navigation Order 2016. The Reporters noted the typographical error in the MOD's response – the two lower turbines are proposed at 125 m height, rather than 152m and as such the Reporters are satisfied that accredited aviation safety lighting would not be required. In the interest of air safety MOD request they be informed of the dates of when construction begins and ends, the maximum height of construction equipment and the latitude and longitude of every turbine. The Scottish Ministers have imposed conditions, recommended by the Reporters within Annex 2, which gives effect to MOD's recommendation.

National Air Traffic Services (NATS) Limited initially objected to the proposed Development on the basis of its effect upon the primary radar at Great Dun Fell. The wording of a condition, to ensure that a Primary Radar Mitigation Scheme was implemented before commencement of development, has subsequently been agreed with the Company and the council. Subject to the imposition of the specified condition its objection has been withdrawn.

Visit Scotland has no objection to the proposed Development although concerns are raised about the impact on visitors and it is suggested that an independent tourism impact assessment should be prepared.

Scotways has no objection to the proposed Development, but provides details of relevant rights of way relating to the site. Scotways is concerned about impacts on recreational amenity and the impact that wind farm developments will have on the views from the Southern Upland Way. It also points to the Welsh Assembly Government's Technical Advice Note on Renewable Energy (TAN 8): Proximity to Highways and Railways which recommends setting back all wind turbines a minimum distance, equivalent to the height of the blade tip, from the edge of any public highway (road or other public right of way) or railway line.

Consultees who do not object

The following consultees have no objection to the proposed Development:

- British Horse Society
- British Telecom (“BT”)
- Crown Estate Scotland
- Fisheries Management Scotland
- Joint Radio Company (“JRC”)
- Scottish Water
- Glasgow Airport

Consultees that did not respond

Civil Aviation Authority, Galloway Fisheries Trust, John Muir Trust, Scottish Wildlife Trust, Carsphairn Heritage Group, Edinburgh Airport and Glasgow Prestwick Airport.

Representations

A total of 65 representations from third parties were received by the Energy Consents Unit in connection with these proposals. Sixty letters of objection and five letters of support were received.

The **letters of support** raise the following matters:

- benefits to the environment and tackling the climate change emergency;
- benefits to the local community, including the community benefit fund; and
- increased employment in the area and opportunities for local companies during construction.

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

- visual amenity;
- traffic and transportation;
- noise;
- natural heritage effects, including loss of flora and fauna and impacts on raptors, badgers, water voles, pine martens, wild boar and red squirrels;
- the effect on the Galloway and Southern Ayrshire Biosphere Reserve;
- cultural heritage, including impacts on listed buildings and archaeological assets, particularly in the Stroanfreggan area;
- tourism and recreation, including impacts on walkers and cyclists, users of the Southern Upland Way, Cairnsmore of Carsphairn and the other hills in the area;
- local economy, including effects on tourism accommodation;
- private water supply;
- population levels in the area; and
- cumulative impacts with other wind farms.

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

Having considered the PI Report, the Supplementary PI Report and the recommendations of the Reporter for conditions to be imposed, as set out at Appendix

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

The remaining impacts are considered to be acceptable in light of the overall benefits of the proposed Development. This reasoning is set out in more detail under the heading "Assessment of Determining Issues" at pages 12 through to 17 of this decision letter.

The Scottish Ministers' Considerations

Legislation and Environmental Matters

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

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

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

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

As required by section 36(5A) of the Electricity Act, SEPA's advice has been considered by the Scottish Ministers with due regard given to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003. SEPA originally objected to the proposed Development on the basis of a lack of information on the impact on the peat environment. This was based on the original proposed location of seven turbines positioned in areas of deep peat. These have been adjusted where possible so that they would now lie out with areas of deep peat and the objection has been withdrawn. SEPA supports the proposal for a biosecurity plan and recommends this should be agreed and implemented before works commence – see attached conditions in Annex 2. No concerns are raised over private water supplies, given they are out with the appropriate buffer distances from the proposed infrastructure.

The Scottish Ministers are satisfied that the EIA report, AEI and AEI II has been produced in accordance with the EIA Regulations. The Scottish Ministers have assessed the environmental impacts of the proposed Development and taken the

environmental information, EIA report, AEI, AEI II, representations, consultation responses including those from NatureScot, SEPA, HES and the Planning Authority, and the PI Report and Supplementary PI Report into consideration in reaching their decision.

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

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

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

The Scottish Ministers have had regard to the requirements regarding publicity and consultation laid down in the Consents Regulations, EIA Regulations and The Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020, and are satisfied the general public as well as statutory and other consultees have been afforded the opportunity to consider the proposed Development and make representations on it.

Main Determining Issues

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

- Landscape and visual effects
- The benefits of the proposal
- National and local policy

Assessment of the Determining Issues

Landscape and Visual effects

The Planning Authority, Mountaineering Scotland, Ms Clubb and Mr Ade, on behalf of Carsphairn Community Council, objected to the proposed Development on the grounds of its adverse landscape and visual impacts. NatureScot did not object to the proposed Development but consider that the proposals would cause significant and adverse effects across a number of sensitivities including a localised significant adverse effect on the Galloway Hills Regional Scenic Area (RSA).

At Chapter 3 of the PI Report, the Reporters consider the landscape and visual impacts of the proposed Development. An Inquiry session was held and details of parties presenting evidence and documents submitted on landscape and visual matters are

provided at paragraphs 3.2 - 3.4 of the PI Report. A summary of the position on agreed matters between the Applicant and the Planning Authority in respect of the landscape and visual impacts of the proposed Development is also included at Chapter 3.

The Reporters findings are set out in paragraphs 3.167 – 3.248 of the PI Report under the following subheadings: “Landscape effects”, “Effects on Cairnsmore of Carsphairn and the Galloway Hills Regional Scenic Area”, “Visual effects”, “Cumulative effects” and “Reporters’ overall conclusions on landscape and visual effects”. The Reporters take account of the consultation responses from Dumfries and Galloway Council, NatureScot, Mountaineering Scotland, Carsphairn Community Council as well as representations from other parties who raised objections and concerns in respect of the landscape and visual impacts of the proposed Development around the application site.

Scottish Ministers note the proposed Development site straddles three Landscape Character Types (LCT), and has close proximity to LCT 19 – Southern Uplands (Carsphairn unit), as described in the Dumfries and Galloway Wind Farm Landscape Capacity Study (2017), namely:

- LCT 4 – Narrow Wooded River Valley (Ken unit)
- LCT 9 – Upper Dale Valley (Upper Glenkens unit)
- LCT 19a – Southern Uplands with Forest (Ken unit)

Scottish Ministers also note there are no national or international designated landscapes on the proposed Development site or adjoining it, but that the site’s western edge boundary partly falls within the Galloway Hills regional scenic area (RSA) .The Company’s assessment covers other landscape designations within the study area which include the Fleet Valley National Scenic Area, the Thornhill Uplands RSA and the Terregles Ridge RSA.

The Reporters conclude in the summary of the PI Report (paragraph 8.3) that that there would be significant adverse landscape and visual effects in relation to views to and from Cairnsmore of Carsphairn, especially from Stronafreggan and upper Glenkens area and the Southern Upland Way between Culmark Hill and Benbrack, stating *“the divergence from the emerging wind farm pattern in the wider area would result in more significant landscape and visual effects from the proposals compared to existing schemes”*.

Reporters further state in this summary that *“the significant adverse landscape and visual effects would adversely affect special qualities of the Galloway Hills Regional Scenic Area”* and found that significant weight should be given to the adverse landscape and visual impacts of the proposed Development *“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.”*

The conclusions of the Reporters on landscape and visual impacts are not altered by the Supplementary PI Report other than to remove the significant weighting placed on the emerging wind farm pattern that was developed under a now superseded policy framework. In considering the proposed Development in terms of NPF4, objections

on landscape and visual impacts remain from the Planning Authority, Mountaineering Scotland and Carsphairn Community Council (through Ben Ade's comments).

The Scottish Ministers have taken account the EIA Report, AEI and AEI II, consultation responses and public representations alongside the Reporters' considerations and subsequent conclusions. The Scottish Ministers agree with the findings and conclusions of the Reporters that the 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 Cairnsmore hills and that significant weight should be given to the adverse landscape and visual impacts of the proposed Development.

The Benefits of the Proposal

Climate Change and Renewable Targets

Scottish Ministers agree with the Reporters view set out within the Supplementary PI Report 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 Reporters recognise that this need is intensifying. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (the "2019 Act") sets a target for Scotland to be carbon-neutral, meaning net-zero emissions by 2045 at the latest. Additionally the 2019 Act sets out two interim targets to reduce emissions by 75% by 2030 and by 90% by 2040.

Shepherd's Rig has a proposed generating capacity of 70.2 MW of renewable energy and 6 MW of battery storage. The Reporters 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).

The Scottish Ministers are satisfied that the proposed Development would provide carbon savings, and that these savings would be of an order that weighs in favour of the proposed Development.

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

While the Reporters consider that 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) they 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 Reporters recognise that delivering this scale of growth in this timescale is a very significant challenge.

The Reporters consider that 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.

The Planning Authority considers that 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. In their view there is nothing in the OWPS to suggest that onshore wind development considered to be unacceptable at present should now be considered acceptable and consented. In addition they set out that there are no overriding factors contained within the OWPS that would have altered the council's decision to object to the proposed Development had OWPS been published at the point that decision was taken.

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

Economic Benefits

The Scottish Ministers note that Chapter 17 of the EIA report includes consideration the socio-economic benefits of the proposed Development. This is revised by Chapter 17 of the AEI report following changes to the proposed Development. The Reporters have set out their considerations and conclusions on the socio-economic effects in Chapter 5 of the PI Report and in paragraphs 3.11 and 3.12 of the Supplementary PI Report.

The Company's assessment of the proposed Development's economic impact found that the expected economic impact for Dumfries and Galloway from the construction and development phase is £16.8 million and 150 job years, with the figures for Scotland as a whole set out as £46 million and 425 job years. During the operation and maintenance phase the benefits to Dumfries and Galloway would be £2.3 million and 43 job years, with the figures for Scotland as a whole being £3.7 million and 69 job years. The assessment also found that there would be no significant impact on tourism and recreation.

Mountaineering Scotland, as set out in paragraphs 5.73 – 5.82 of the PI Report, acknowledge that a windfarm provides some financial benefits however consider that a proper understanding of the evidence on tourism and wind farms applied to the specific nature of the local landscape and the visitors attracted to it, leads to the conclusion that an adverse effect on hillwalking recreation and tourism from a wind farm at Shepherds Rig cannot be excluded.

Carsphairn Community Council consider that the Carsphairn hills are increasingly important to the local economy as a tourist and recreational asset and the Carsphairn Community Woodland consider the location of the proposed Development next to the Muirdrochwood Forest would negatively impact a resource for the community and visitors.

Ms Clubb raised concerns about the viability of tourism recreation and business operating in the area as a result of the proposed Development, on the grounds that the landscape and road network in the area combine to provide a perfect socio-economic base for recreation and tourism.

The Reporters conclude that there would be economic benefits locally and nationally arising from the construction and operational phases of the development. At Para 7.54 of the PI Report this is described as modest positive net economic impact. The Reporters agree with the Company that the proposals would have no significant effects on formal tourism facilities or accommodation. The Reporters do however consider that this remote rural area includes important recreational resources, including routes for walking, cycling and horse-riding. While the Reporters find no evidence that wind farms have an adverse impact on tourism or tourism employment, they have found that landscape and visual impacts would be detrimental to hillwalkers. The Reporters conclude in para 7.56 of the PI Report that there are some concerns about the effect on areas that are important for hillwalking but overall they find that opportunities for social interaction and physical activity would be protected.

In paragraphs 3.11 and 3.12 of the Supplementary PI the Reporters look again at the expected economic benefits of the proposal. The Reporters consider such benefits are modest and not significant at a national or regional scale.

Whilst it is always difficult to precisely quantify overall net economic benefits, the Scottish Ministers are satisfied the proposed Development has the potential to bring net positive economic benefits. The Scottish Ministers are also satisfied that there would not be significant adverse impacts on tourism as a consequence of the proposed Development but note the concerns about the impact on hillwalking.

National and Local Policy

Scottish Ministers agree with the Reporters' findings in the PI Report (paragraphs 7.58 -7.67) that the proposed Development does not comply with the development plan. As NPF4 has been adopted and now forms part of the development plan this position has been reconsidered by the Reporters.

The Planning Authority consider that the emerging policies of National Planning Framework (NPF) 4 are consistent with those of the local development plan and 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 to the council to make an alternative decision had it been in front of it at the time, in particular the impact on visual amenity of the area and landscape 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 NPF4 policies 4 and 11.

The Reporters find in Chapter 3 of the Supplementary PI Report that the proposed Development does not comply with policies 11 (e)ii or 4 (d)i of NPF4 in the fact that the Reporters consider that: the significant landscape and visual effects as a whole are more than localised; that 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; and that design changes such as moving turbine positions within the site boundary would not fully mitigate the impacts.

The Reporters further consider in Chapter 3 of the Supplementary PI Report, that the 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. The Reporters acknowledge with regards to NPF4 policy 11(e)ii, that despite the 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 whilst the Reporters have identified an inconsistency with policy 4 (d)i on the effects of the Regional Scenic Area, in terms of policy 4 (d) ii they conclude that the renewable energy benefits are of more than local importance.

The Reporters recognise the urgent policy imperative in OWPS and NPF4 to deliver additional installed onshore wind capacity and acknowledge a significant strengthening of policy support for renewable energy developments. In terms of weight the Reporters conclude in the PI report that the significant effects on the areas recreational resources should be given significant weight to the extent that they outweighed the aims of delivering renewable energy. The Reporters now consider in the updated policy context that the proposed Development's contribution to renewable energy targets causes the benefits as a whole to clearly outweigh the significant landscape and visual impacts.

The Scottish Ministers acknowledge that the proposed Development would result in adverse visual and landscape impacts. The Scottish Ministers have had regard to the balance of these impacts in relation to the benefits of the proposed Development and consider that the proposed Development is acceptable, on balance, in the context of the benefits it will bring through contributing to renewable energy and climate change targets.

The Scottish Ministers' Conclusions

Reasoned Conclusions on the Environment

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

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

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

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

Acceptability of the proposed Development

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

The proposed Development, if built, would align with the strategic outcomes of NPF4 by supporting the transition to a low carbon economy for Scotland and to take advantage of our natural resources to grow low carbon industries. The Scottish Government has confirmed its long-term commitment to the decarbonisation of electricity generation and the proposed Development would help advance this policy objective.

Net positive benefits to the Scottish economy are anticipated alongside short- and longer-term benefits to the planning authority area of Dumfries and Galloway.

The Scottish Ministers are satisfied that the proposed Development will provide carbon savings, and that these savings will be of an order that weighs in favour of the proposed Development and will contribute to the Scottish Government's strategic priorities.

The Scottish Ministers are also satisfied that there would not be significant adverse impacts on tourism as a consequence of the proposed Development but note the concerns about the effect on hillwalking.

However, the Scottish Ministers acknowledge that the proposed Development would result in adverse visual and landscape impacts.

The benefits of the proposed Development must therefore be considered carefully in the context of the negative impacts on the natural environment that would result and whether or not, on balance, they are acceptable. The Scottish Ministers are satisfied that the negative impacts are acceptable in accordance with NPF4 and in the context of the significant renewable energy benefits and the net economic benefits that the

proposed Development would bring in contributing to renewable energy and climate change targets.

The Scottish Ministers consider that these are significant considerations which strongly support the decision to grant consent under section 36 of the Electricity Act and deem planning permission to be granted.

The Scottish Ministers' Determination

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

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

Section 36 consent and expiry of Planning Permission

The consent hereby granted will last for a period of 30 years from the earlier of:

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

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

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

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

In accordance with the EIA Regulations, the Company must publicise notice of this determination and how a copy of this decision letter may be inspected on the

application website, in the Edinburgh Gazette and a newspaper circulating in the locality in which the land to which the application relates is situated.

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

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

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

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

Yours faithfully

PP Temeeqa Dawson

**For Ruth Findlay
For and on behalf of the Scottish Ministers
A member of staff of the Scottish Government**

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

ANNEX 1

Description of the Development

The Development comprises an electricity generating station known as Shepherds Rig Wind Farm located in the Dumfries and Galloway Council planning authority area located approximately 5 kilometers (“km”) east of the village of Carsphairn and 45 km north west of Dumfries. The principle components of the Development comprise (“the Development”).

The components of the generating station and ancillary development comprise:

- 15 wind turbines, with a maximum tip height of up to 149.9m;
- 2 wind turbines with a maximum tip height of up to 125 meters;
- associated turbine foundations and crane hard standings;
- on-site access tracks;
- an anemometer mast of up to 100 meters in height;
- underground electrical and fibre optical cables to each turbine;
- a battery energy storage facility;
- 33/132 kilovolt connection to a grid supply point;
- substation/control room buildings and compounds;
- temporary construction compound
- two borrow pits;
- a temporary concrete batching plant.

ANNEX 2

Part 1

Conditions Attached to section 36 Consent

1. Notification of Date of First Commissioning and Final Commissioning

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

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

2. Commencement of development

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

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

3. Non-assignment

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

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

4. Serious incident reporting

- (1) In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company

will provide written notification of the nature and timing of the incident to the Scottish Ministers, including confirmation of remedial measures taken and/or to be taken to rectify the breach, within 24 hours of the incident occurring or first becoming known to the Company.

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

5. Radar mitigation

- (1) No part of any turbine shall be erected above ground unless the Company has agreed a Primary Radar Mitigation Scheme (PRMS) with the Operator which has been submitted to and approved in writing by the Scottish Ministers in order to mitigate the impact of the Development on the Primary Radar Installation located at Great Dun Fell and associated air traffic management operations.
- (2) No part of any turbine shall be erected above ground unless the approved PRMS has been implemented and the Development shall thereafter be operated fully in accordance with such approved PRMS.

For the purpose of this condition 5:

"Operator" means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

"Primary Radar Mitigation Scheme" or "PRMS" 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 surveillance infrastructure and air traffic management operations of the Operator at Great Dun Fell.

Reason: *In the interest of air safety.*

Annex 2

Part 2

Conditions attached to Deemed Planning Permission

6. Commencement of Development

- (1) The Development must be begun not later than the expiration of 5 years beginning with the date of permission.
- (2) Written confirmation of the intended date of commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.

Reason: *To comply with section 58 of the Town and Country Planning (Scotland) Act 1997.*

7. Approved details

- (1) 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) EIA Report, Table 4.8: Summary of Mitigation and Enhancement Measures; and
 - b) AEI, 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. Redundant turbines

- (1) If one or more wind turbines fails to generate an electricity supply to the grid for a continuous period of 6 months then, unless otherwise agreed in writing by the Planning Authority, the Company shall:
 - a) Within three months of the expiration of the 6-month period, submit a scheme to the Planning Authority setting out how the relevant wind turbine(s) and associated infrastructure solely required for the relevant 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 ground restored; and
 - b) Implement the approved scheme within 9 months of the date of its approval, all to the satisfaction of the Planning Authority .

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

9. Design and operation of wind turbines

- (1) There shall be no Commencement of Development unless full details of the proposed wind turbines hereby permitted, including each turbine number and specific height of that turbine (as stated in AEI II, Figure 4.1 (Revised Development Layout)) have been submitted and approved in writing by the Planning Authority.
- (2) The Development shall be constructed and operated in accordance with the approved details unless otherwise agreed in writing by the Planning Authority.

Reason: *To ensure that the Planning Authority is aware of the wind turbine details and to protect the visual amenity of the area.*

10. Signage

- (1) 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 otherwise approved in writing by the Planning Authority.

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

11. Design of sub-station, ancillary buildings and other ancillary development

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

Reason: *To safeguard the visual amenity of the area.*

12. 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 and shall be decommissioned. The total period for decommissioning and restoration of the site in accordance with this condition shall not, without the prior written approval of the Scottish Ministers in consultation with the Planning Authority, exceed three years from the date from which the Development ceases to generate electricity.
- (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 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.*

13. Financial guarantee

- (1) There shall be no Commencement of Development 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 12, have been submitted to and approving 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 12.
- (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 12. 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 Planning 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 12, 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.

14. Ecological Clerk of Works

- (1) There shall be no Commencement of Development unless 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.
- (2) The terms of appointment shall:
 - a) impose a duty on the ECoW to monitor compliance with the ecological, ornithological and hydrological commitments provided in the EIA Report, AEI and AEI II 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 15;
 - 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.
- (3) 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.
- (4) No later than 18 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.
- (5) 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.

15. 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 AEI. 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 AEI, 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 AEI, 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 ECoW. 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 ECoW 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.*

16. Borrow pits – scheme of works

- (1) 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.
- (2) Thereafter, the excavation works shall be implemented in accordance with the approved details.
- (3) 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.*

17. Borrow pits – blasting

- (1) Unless otherwise approved in writing in advance by the Planning Authority, 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.*

18. Construction Environmental Management Plan

- (1) There shall be no Commencement of Development unless 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 (EHO). 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.
- (2) 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;
 - 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.
- (3) Thereafter, the construction of the Development shall be implemented 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.*

19. Construction Hours and Timing

- (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 unless approved in writing in advance by the Planning Authority.
- (2) 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.
- (3) 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.*

20. Traffic management plan

- (1) There shall be no Commencement of Development unless 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.
- (4) 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.*

21. Abnormal Load Route – trailer type

- (1) There shall be no Commencement of Development for the delivery of abnormal indivisible loads to the site until a scheme, including provisions for minimising conflict with other traffic movements, has been submitted to and approved in writing by the Planning Authority.
- (2) The scheme shall be implemented in accordance with the approved details unless otherwise agreed in writing by the Planning Authority.

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

22. Abnormal Load Route – offsite roadworks

- (1) There shall be no Commencement of Development on offsite roadworks until a scheme of landscape mitigation has been submitted to and approved in writing by the Planning Authority.
- (2) The scheme shall be implemented in accordance with the approved details unless otherwise agreed in writing by the Planning Authority.

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

23. Floating Roads

- (1) 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.
- (2) The floating road shall then be implemented in accordance with the approved details, unless otherwise agreed in writing by the Planning Authority.

Reason: *To ensure peat is not unnecessarily disturbed or destroyed.*

24. Biodiversity plan

- (1) There shall be no Commencement of Development unless a Biodiversity Plan setting out proposals for the monitoring, restoration, enhancement and management of the peatland habitat of the site during construction, operation and decommissioning, has been submitted to and approved in writing by the Planning Authority.
- (2) The Biodiversity Plan shall be implemented in accordance with the approved details unless otherwise agreed in writing by the Planning Authority.

Reason: *To promote net biodiversity gain from the Development.*

25. Access

- (1) There shall be no Commencement of Development unless an Access Management Plan (AMP) has been submitted to and agreed in writing by the Planning Authority. The AMP 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.
- (2) The AMP shall be implemented in accordance with the approved details unless otherwise agreed in writing by the Planning Authority.

Reason: *In the interests of securing public access rights.*

26. Archaeology

- (1) There shall be no Commencement of Development unless 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.
- (2) 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 AEI and shown on AEI Figure 11.14.

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

27. Air Safety

- (1) There shall be no Commencement of Development unless 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.*

28. Hydrology

- (1) There shall be no Commencement of Development unless 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.
- (2) 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.*

29. Noise (*see guidance notes below)

- (1) 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.*

30. Breeding Bird Protection Plan

- (1) There shall be no Commencement of Development unless 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.*

31. Roads post-construction work

- (1) There shall be no Commencement of Development unless 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.*

32. Roads post-construction work – compliance

- (1) That within 3 months of the completion of construction work hereby granted, the works approved in respect of condition 31 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.*

33. Roads – extra-ordinary damage

- (1) There shall be no Commencement of Development unless the wind farm operator has entered into a Section 96 agreement with the relevant 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.*

34. Compensatory Planting

- (1) 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.
- (2) Thereafter the scheme shall be implemented in accordance with the approved details.

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

35. Transport Monitoring Officer

- (1) There shall be no Commencement of Development unless 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.
- (2) The terms of appointment shall:
 - a) impose a duty to monitor compliance with the Traffic Management Plan approved in accordance with condition 20 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 20 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 20 of this permission at the earliest practical opportunity.
- (3) 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.*

36. 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 20.
- (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.*

37. Shadow Flicker

- (1) 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.
- (2) The scheme shall be implemented in accordance with the approved details.

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.

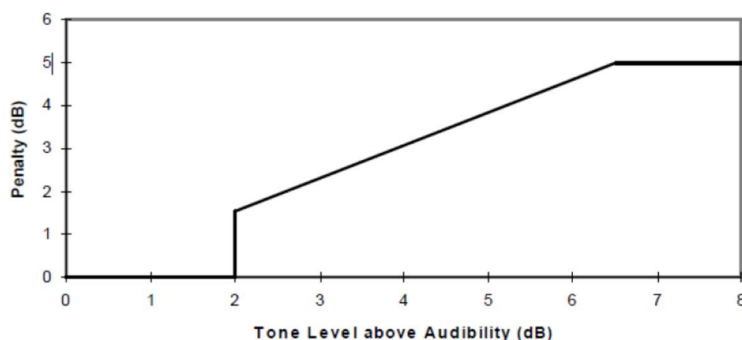
(b) For each 10 minute interval for which LA90, 10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that 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	
AEI	The Additional Environmental Information submitted by the Company dated October 2019
AEI II	The Additional Environmental Information (II) submitted by the Company dated March 2021
Commencement of Development	The initiation of the Development (or part thereof) by the carrying out of a material operation within the meaning of section 27 of the Town and Country Planning (Scotland) Act 1997 (as amended).

Company	SETT Wind Development Limited, incorporated under the Companies Acts (Company Number 10988810), and 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	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	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	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	The development and/or site described in Annex 1;
EIA Report	The Environmental Impact Assessment Report submitted by the Company on 7 December 2018.
Final Commissioning	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	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	Dumfries and Galloway Council.
Public holiday	<p>New Year's Day, if it is not a Sunday or, if it is a Sunday, 3rd January.</p> <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.