

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 04 JUNE 2010

08/0645/FL: ERECTION OF 25 WIND TURBINES, CONSTRUCTION OF ASSOCIATED ACCESS TRACKS, INSTALLATION OF UNDERGROUND 33KV CIRCUIT, A 33KW SUB STATION, ERECTION OF TWO METEOROLOGICAL MASTS AND FORMATION OF A NEW ACCESS ROAD AT COWANS LAW, MOSCOW.

BY COMMUNITY WINDPOWER LTD

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The development proposes the following:

- 25 wind turbines of up to 126.5 metres to tip height (i.e. height from ground level to the tip of the blade when vertical) producing up to 50MW in total.
- each turbine will be a 2MW Asynchronous turbine and grey in colour
- hardstanding area at each turbine base
- on site access tracks and associated watercourse crossings
- one substation compound
- two permanent 80metre meteorological masts
- on site underground cabling
- formation of a new access road from the A719 to the site

1.2 The majority of the development site is located within Whitelee Forest, a commercial forest and it is proposed to incorporate existing forest tracks into the design of the proposed development.

1.3 The applicant estimates that approximately 186900m³ of stone will be required for construction of the windfarm (including access tracks, structural fill beneath turbine foundations and hardstanding at turbine bases, compounds and borrow pits). It is anticipated that stone will be sourced from nine on site borrow pits.

1.4 The principal construction and operations access to the site would be from the proposed new access road from the A719 moving east past Alton Muirhouse Farm. The proposed access road will be 5.0 metres in width and access to the road will be gated and restricted to windfarm traffic and local farm traffic.

1.5 The windfarm proposal comprises 25 three bladed horizontal axis wind turbines. It is proposed to finish the turbines in a pale matt grey/off white colour. The turbines are computer controlled to ensure that at all times each turbine faces directly

into the wind. Each turbine will have a maximum tower hub height of 80m and a rotor diameter of 93m and will reach a maximum height of 126.50 metres from base to blade tip. Turbines with a rating of 2.0 megawatts are proposed for the windfarm generating an overall rating of 50MW. Each turbine foundation will require an excavation of up to 3.5 metres in depth to allow construction of the 302 square metre base.

1.6 Commercial Forestry operations will continue during the operation of the proposed windfarm. The development site has been designed in accordance with the Forest Design Plans with the objective of minimising the effect on the productive forest and on proposed forestry activities. The timber extraction route will be from the main section of the forestry via minor roads south of Raithmuir to the A719. The route passes through the village of Moscow and in order to minimise disruption to local residents there will be restrictions on the number of movements and on when these can take place.

1.7 A temporary construction compound measuring 100m by 50m will be required to provide site offices and staff facilities for construction workers. The compound area will also provide storage and lay down areas for plant and materials. On completion of the windfarm the construction compound area will be reinstated.

1.8 In order to convert the electricity generated by the windfarm, a substation compound containing a range of equipment will require to be constructed. The substation compound will be approximately 24m by 28m containing green coloured steel containers.

1.9 Two permanent meteorological masts are proposed, each consisting of a free standing mast some 80 metres high and will be used to monitor wind speed and environmental conditions with the data being remotely monitored.

1.10 The applicant proposes that the lifetime of the project would be 30 years, covering commissioning, operation and decommissioning of the site. At the end of the life of the windfarm it is proposed that the turbines, transformers and the on site substation would be removed. The upper sections (approx. 1m) of the turbine foundations would be removed and the ground reinstated. Tracks that are to be utilised as part of the ongoing commercial forestry operations will remain but other tracks will be allowed to grass over or be covered in soil and reseeded.

1.11 The application is accompanied by an Environmental Statement that covers a wide range of environmental considerations particularly in respect of landscape and visual impact, impact on the natural and built environment and cumulative impact.

1.12 In terms of socio-economic benefit, the applicant indicates that beneficial effects have been identified during the construction phase for on site employment and service provision to the local and wider economy. There will also be opportunities for local companies to supply goods and services necessary for the construction of the windfarm. The applicant states that overall the development and construction of Cowans Law Windfarm will represent an investment of £30 million in the Scottish Economy of which at least £8 million is forecast to be invested within East Ayrshire.

1.13 The applicant anticipates that Cowans Law Windfarm in accordance with the Council's Renewable Energy Fund Policy will result in developer contributions of £125,000 each year representing more than £3 million pounds during the lifetime of the windfarm.

1.14 In addition to the developer contribution to the Renewable Energy Fund the developer has pledged a further £75000 per year in community benefits through funding an educational ranger, funding a range of community projects to improve the local amenity and environment. The developer has also pledged support to community fundraisers seeking donations for Moscow Community Hall, improvements to play parks in Moscow and Fenwick and donation towards a small wind turbine at Galston Secondary School

1.5 Community Windpower Ltd has developed a series of presentations for schools which explain climate change, global warming and sustainability issues. Community Windpower Ltd states that an educational ranger will be appointed to support the schools at Galston and Fenwick to assist teaching staff with the delivery of environment related topics ranging from ecosystems, climate change and recycling. It is proposed that the ranger will be available to work with other educational and environmental groups and will use the windfarm as a teaching resource.

1.6 Additional community proposals by Community Windpower include; wildlife watch schemes and the provision of bursaries for students from the local area who are enrolled on renewable energy courses at university.

2. RECOMMENDATION

2.1 It is recommended that the Local Planning Committee adopt the position, in terms of the appeal process, that the application should have been refused for the reasons indicated on the attached sheet.

2.2 It is recommended that the decision of the Local Planning Committee should be referred to the next appropriate Full Council for confirmation and that such decision should thereafter be conveyed to the DPEA as representing the position of the Council in the current non-determination appeal.

2.3 The circumstances encountered in this case are unusual as it involves planning appeals legislation that currently gives the Council only 21 days to present a view on the proposal to the Directorate for Planning and Environmental Appeals, which period may not always afford a realistic timeframe for a Council response. It is therefore further recommended that the Council be aware of the legislative circumstances and timeframes and aware of the fact that future special Local Planning Committees or Full Council meetings may be required to endeavour to attain the 21 day response deadline required by the appeal legislation.

3. CONCLUSIONS

3.1 As indicated in section 6 of the report, the application is not in accordance with the development plan. As is indicated at Section 7 of the report, there are material considerations relevant to this application. These are not generally supportive of the application in terms of national policy, planning advice and guidance and NATS as a consultee.

3.2 The proposed Cowans Law wind farm development does not comply with policy ECON7 parts (A), (D) & (G) and Policy ENV1 (A), (E) of the approved Ayrshire Joint Structure Plan 2007. Furthermore the proposal does not comply with policy CS9 (ii), (iv), (vii) and (ix) and Policy ENV13 (i) of the East Ayrshire Local Plan 2003. In terms of the Alteration to the East Ayrshire Local Plan the proposal is contrary to policy ENV17 (iv), policy CS12 (ii) and policy CS14 (A), (D), (E) and (G).

Assessing the proposals against the development plan it is considered that the proposal:

- presents unacceptable visual and landscape impacts in terms of the setting of the proposed wind farm within the immediate wider landscape.
- presents unacceptable adverse cumulative impacts when considered with the existing, authorised and proposed wind farms within the vicinity of the site

3.3 It is considered that the proposed development, together with other existing wind farm developments (existing, consented and proposed) will provide a generating capacity that would meet a significant portion of the Scottish Executive's renewable energy 2020 target placing a disproportionate burden on the local communities in East Ayrshire in satisfying national energy requirements. This is of particular relevance when considering the contribution already made by East Ayrshire in terms of existing renewable energy production as currently, Whitelee windfarm is the largest onshore wind farm in Europe with the majority of the turbines located in East Ayrshire and also in terms of the contribution through the production of opencast coal with consented reserves being greater than that of any other part of the UK.

3.4 It is recognised that the proposed development would result in potential socio-economic benefits through the following:

- the preparation of a Habitat Management Plan that, in terms of proposed mitigation of adverse impacts on the natural environment, would deliver positive benefits to managed areas through increased biodiversity;
- funding by the developer of an educational ranger and the provision of bursaries for students from the local area who are enrolled on renewable energy courses at university
- the potential developer contributions to the Council's Renewable Energy Fund
- the significant benefits accruing from the £30 million investment that potentially would generate output worth an estimated £8 million in the East Ayrshire economy

3.5 Taking all matters into account the potential benefits to be accrued from the proposed development do not in this instance outweigh the significant adverse cumulative impacts on the landscape character and visual amenity that would result from the Cowans Law Wind Farm in the form and on the area in which it is proposed.

Alan Neish
Head of Planning and Economic Development

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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1. PURPOSE OF REPORT

1.1 The purpose of this report is to obtain the view of the Local Planning Committee under the scheme of delegation as the applicant has appealed against the non determination of the planning application under the Town and Country Planning (Appeals) (Scotland) Regulations 2008 to the Directorate for Planning and Environmental Appeals.

1.2 As the application under consideration is a major development as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, that is significantly contrary to the Local Development Plan, the Local Planning Committee's view will require to be endorsed by Full Council before it can be used to inform the planning authority's stance in relation to the appeal.

2. BACKGROUND INFORMATION

2.1 Planning application 08/0645/FL was received by East Ayrshire Council on 22 July 2008 for the erection of 25 turbines, associated works and the formation of an new access road. Consultation responses indicated that additional information was required to be submitted by the applicant in particular in relation to issues of landscape character, habitat management and aviation mitigation.

2.2 Over a period of more than 18 months EAC planning service and the applicant worked together to progress the application towards determination by the Council and by November 2009 it appeared that the remaining outstanding issue of aviation mitigation had been resolved between the developer and NATS.

2.3 The developer and the planning authority agreed a way forward with the submission by the developer of an amendment to the planning application and subject to further consultation and notification to be undertaken by the planning authority it was anticipated that the application could be included on a February 2010 agenda for the Northern Local Planning Committee for determination by the Council. However details of the amendment to the application were not submitted by the applicant to the planning authority.

2.4 On 21 December 2009 the developer submitted a Proposal of Application Notice to East Ayrshire Council for 25 wind turbines with associated works for the same proposal and site (08/0645/FL) at Cowans Law.

2.5 On 29 March 2010, Community Windpower Ltd submitted an appeal to the Scottish Ministers on the basis of the non-determination of application 08/0645/FL.

2.6 On 16 April 2010 Community Windpower Ltd submitted a planning application 10/0345/PP to East Ayrshire Council for the erection of 20 wind turbines with associated works for the same site (08/0645/FL) at Cowans Law.

2.7 In relation to the site at Cowans law the planning authority is now in the situation of having two current applications for windfarms on the same site. Application 08/0645/FL for the erection of 25 wind turbines and application number 10/0345/PP for the erection of 20 wind turbines both applications include the formation of a new access road.

3. APPLICATION DETAILS

3.1 **Site Description:** The application site comprises an area of commercially managed forestry which lies approximately 6km north east of Kilmarnock, 2.5km east of Moscow and 4.5km north of the Galston, Darvel and Newmilns. The site is in close proximity to the east of the A719 and is approximately 4km to the west of junction 8 of the M77.

3.2 There are no major roads within the site, although there are private farm access tracks and forestry roads. There are numerous small streams throughout the site including Stanley Burn, Grassyards Burn, Pockinan Burn, Neilsons Burn, Carlin Burn and Whitley Burn. However part of the site is located within the Lochgoin and Craigendunton water catchment area.

3.3 The site is covered by mature forestry plantations and is situated in a landscape area categorised as plateau moorlands. There are no statutory landscape conservation designations, Scheduled Ancient Monuments or Listed Buildings on the application site.

3.4 The application site is bounded to the north by some forestry and an area of landscape characterised by blanket bogs heather, grass and moorland. Hareshawmuir Road with its scattered farms and houses is situated approximately 1km to the north of the site boundary. To the west the site is bounded by some forestry and predominantly agricultural land and to the south the site is bounded by agricultural land.

3.5 The application site is bounded to the east by Whitelee Windfarm which currently has 140 turbines constructed on site and has consent for a further 75 turbines.

3.6 **Proposed Development:** The development proposes the following:

- 25 wind turbines of up to 126.5 metres to tip height (i.e. height from ground level to the tip of the blade when vertical) producing up to 50MW in total.

- each turbine will be a 2MW Asynchronous turbine and grey in colour
- hardstanding area at each turbine base
- on site access tracks and associated watercourse crossings
- one substation compound
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3.7 The majority of the development site is located within Whitelee Forest, a commercial forest and it is proposed to incorporate existing forest tracks into the design of the proposed development.

3.8 The applicant estimates that approximately 186900m³ of stone will be required for construction of the windfarm (including access tracks, structural fill beneath turbine foundations and hardstanding at turbine bases, compounds and borrow pits). It is anticipated that stone will be sourced from nine on site borrow pits.

3.9 The principal construction and operations access to the site would be from the proposed new access road from the A719 moving east past Alton Muirhouse Farm. The proposed access road will be 5.0 metres in width and access to the road will be gated and restricted to windfarm traffic and local farm traffic.

3.10 The windfarm proposal comprises 25 three bladed horizontal axis wind turbines. It is proposed to finish the turbines in a pale matt grey/off white colour. The turbines are computer controlled to ensure that at all times each turbine faces directly into the wind. Each turbine will have a maximum tower hub height of 80m and a rotor diameter of 93m and will reach a maximum height of 126.50 metres from base to blade tip. Turbines with a rating of 2.0 megawatts are proposed for the windfarm generating an overall rating of 50MW. Each turbine foundation will require an excavation of up to 3.5 metres in depth to allow construction of the 302 square metre base.

3.11 Commercial Forestry operations will continue during the operation of the proposed windfarm. The development site has been designed in accordance with the Forest Design Plans with the objective of minimising the effect on the productive forest and on proposed forestry activities. The timber extraction route will be from the main section of the forestry via minor roads south of Raithmuir to the A719. The route passes through the village of Moscow and in order to minimise disruption to local residents there will be restrictions on the number of movements and on when these can take place.

3.12 A temporary construction compound measuring 100m by 50m will be required to provide site offices and staff facilities for construction workers. The compound area will also provide storage and lay down areas for plant and materials. On completion of the windfarm the construction compound area will be reinstated.

3.13 In order to convert the electricity generated by the windfarm, a substation compound containing a range of equipment will require to be constructed. The substation compound will be approximately 24m by 28m containing green coloured steel containers.

3.14 Two permanent meteorological masts are proposed, each consisting of a free standing mast some 80 metres high and will be used to monitor wind speed and environmental conditions with the data being remotely monitored.

3.15 The applicant proposes that the lifetime of the project would be 30 years, covering commissioning, operation and decommissioning of the site. At the end of the life of the windfarm it is proposed that the turbines, transformers and the on site substation would be removed. The upper sections (approx. 1m) of the turbine foundations would be removed and the ground reinstated. Tracks that are to be utilised as part of the ongoing commercial forestry operations will remain but other tracks will be allowed to grass over or be covered in soil and reseeded.

3.16 The application is accompanied by an Environmental Statement that covers a wide range of environmental considerations particularly in respect of landscape and visual impact, impact on the natural and built environment and cumulative impact.

3.17 In terms of socio-economic benefit, the applicant indicates that beneficial effects have been identified during the construction phase for on site employment and service provision to the local and wider economy. There will also be opportunities for local companies to supply goods and services necessary for the construction of the windfarm. The applicant states that overall the development and construction of Cowans Law Windfarm will represent an investment of £30 million in the Scottish Economy of which at least £8 million is forecast to be invested within East Ayrshire.

3.18 The applicant anticipates that Cowans Law Windfarm in accordance with the Council's Renewable Energy Fund Policy will result in developer contributions of £125,000 each year representing more than £3 million pounds during the lifetime of the windfarm.

3.19 In addition to the developer contribution to the Renewable Energy Fund the developer has pledged a further £75000 per year in community benefits through funding an educational ranger, funding a range of community projects to improve the local amenity and environment. The developer has also pledged support to community fundraisers seeking donations for Moscow Community Hall, improvements to play parks in Moscow and Fenwick and donation towards a small wind turbine at Galston Secondary School

3.20 Community Windpower Ltd has developed a series of presentations for schools which explain climate change, global warming and sustainability issues. Community Windpower Ltd states that an educational ranger will be appointed to support the schools at Galston and Fenwick to assist teaching staff with the delivery of environment related topics ranging from ecosystems, climate change and recycling. It is proposed that the ranger will be available to work with other educational and environmental groups and will use the windfarm as a teaching resource.

3.21 Additional community proposals by Community Windpower include; wildlife watch schemes and the provision of bursaries for students from the local area who are enrolled on renewable energy courses at university.

4. CONSULTATIONS AND ISSUES RAISED

4.1 The responses received in connection with the consultations issued by this Service are summarised for the purposes of this report as follows:

4.2 East Ayrshire Environmental Health Service has not objected to the proposal but states that in relation to noise from the development during construction it is recommended that the developer be required to agree that in the event of any nuisance arising from construction noise outwith the hours of 07:30 to 19:30 Monday to Friday and 08:00 to 13:30 on Saturdays, work should cease outwith these hours until mitigation measures can be implemented.

Should planning permission be granted a condition could be attached to any consent to control site working hours and delivery of materials and components to the site, in order to minimise noise nuisance and disturbance.

During construction and following completion of the proposed installation, a further period of noise monitoring should be conducted at the locations identified in the applicants environmental assessment in order to verify the data presented and to identify any potential areas where noise from the development may cause annoyance or nuisance

Should planning permission be granted a condition could be attached to any consent to address this issue.

4.3 East Ayrshire Council Roads and Transportation Service has not objected to the proposal subject to conditions in relation to a road opening permit and the restriction of use of the new access road to Alton Muirhouse farm, and possible timber operations.

Should planning permission be granted then the above issues can be resolved by appropriate planning conditions and a Section 96 legal agreement (Roads Scotland Act) between the Council and the applicant to ensure the turbine transportation routes and the remedy of any road damage as a result of the development.

4.4 Glasgow Prestwick International Airport (GPA) indicates that the proposed windfarm appears to be entirely terrain shielded from their primary surveillance radar (PSR) and consequently offer no objection to the proposal. However Infratil note two caveats to their position of non objection:

1. The turbine tip height must not exceed 126.5m. If there were to be any proposal to increase the turbine tip height, we would need to review our position as any higher turbine tip height may result in the turbines no longer being terrain shielded from our PSR. Radar visibility of the Cowans Law turbines may not in itself be the grounds for a GPA objection, but if the turbines were visible we would need to review the impact of their visibility on our ability to provide a safe, orderly and expeditious air traffic service. Such an analysis would take into

account the cumulative impact of other developments which may at that stage have been consented or built.

2. The planning documents indicate that the Cowans Law Community Windfarm will also be terrain shielded from the PSR at Glasgow Airport and therefore will not impact on any air traffic movements in and out of BAA Glasgow. However, were the proposed wind farm to have an impact on the PSR at BAA Glasgow such that it caused the flight paths or aircraft inbound to and outbound of BAA Glasgow to encroach further into the Prestwick Local Area, we would have to revisit our position as such additional traffic in our local area may detrimentally affect the ability of our air traffic controllers to provide a safe, orderly and expeditious service to our customers.

Should planning permission be granted then the above issues can be resolved by appropriate planning conditions and a legal agreement between the Council and the applicant.

4.5 British Airports Authority Glasgow Airport – no objection

Noted.

4.6 National Air Traffic Service (NATS) (NERL Safeguarding) - has objected to the application (letter from NATS to EAC dated 08 January 2009) as the proposed development does conflict with NATS safeguarding criteria. NATS has advised EAC that in the event that recommendations made by NATS are not accepted Local Authorities are further obliged to notify both NATS and the Civil Aviation Authority of that fact (which may lead to the decision being subject to review whether by the CAA referring the matter for further scrutiny or by appropriate action being taken in the court.)

It should be noted that EAC has received from the applicant a copy of an email dated 04 September 2009 sent from NATS to Community Windpower which indicates that NATS would be unlikely to object to their proposed development. However in this case it should be noted that the planning authority was not provided with a copy of the information that the NATS response of 04/09/09 refers to.

In response to a request from the applicant, EAC planning officers met with Rob Wood on 24 September 2009 to discuss aviation mitigation. At this meeting Mr Wood advised that in order for NATS to withdraw their aviation objection to the application Community Windpower required to reduce the number of turbines from 25 to 20.

In a letter from Community Windpower to EAC planning dated 29 September 2009 the applicant confirmed the reduction in turbine numbers and that they would amend the application to reflect the aviation mitigation.

In response to the applicants' letter of 29 September 2009 EAC planning wrote to the applicant on 05 November 2009 requesting

details of the applicant's proposed aviation mitigation which would require to be subject to further consultation with all relevant aviation bodies, neighbour notification and notification to the community. EAC planning did not receive details of the proposed aviation mitigation measures from Community Windpower and as such was unable to carry out the further consultation required.

Should the appeal for non determination consider the amended proposal of 20 turbines then the planning service respectfully submits that no opportunity has been provided to advise any consultee fundamental to the proposal and no opportunity to notify those parties who made representation to the planning application has been provided.

In relation to the appeal, EAC planning considers that the proposal before the planning service to be considered for non determination remains as per the original planning application description which proposed 25 turbines.

Consequently EAC considers that in terms of processing the planning application the objection from NERL dated 08 January 2009 remains valid. The applicant has not provided clarity to the planning authority about the identification of the type of aviation solution to be developed and that an agreement between the developer and the relevant operator can be delivered in a reasonable timeframe. Consequently a suspensive aviation condition in relation to the application for 25 turbines at Cowans Law would be inappropriate.

4.7 Defence Estates (Ministry of Defence) – has not objected to the application.

Noted

4.8 Scottish Natural Heritage - no objection subject to the imposition of conditions and a legal agreement between the applicant the Council and consultation with SNH

Should planning permission be granted then the above issues can be resolved by appropriate planning conditions and a legal agreement between the Council and the applicant.

4.9 Royal Society for the Protection of Birds - no objection subject to the imposition of conditions and a legal agreement between the applicant the Council in consultation with RSPB.

Should planning permission be granted then the above issues can be resolved by appropriate planning conditions and a legal agreement between the Council and the applicant.

4.10 Galston, Dunlop and Lugton, Moscow and Waterside, Newmilns and Greenholm, Stewarton and District, Kilmaurs, Fenwick, Darvel and District and New Farm Loch Community Councils - no consultation response received.

Noted.

4.11 Scottish Power -no objections.

Noted.

4.12 Scottish Government Energy Consent and Deployment - no response received to the consultation request.

Noted.

4.13 Scotland Gas Networks - no response received to the consultation request.

Noted.

4.14 Ayrshire Joint Planning Unit - Taking into account the additional material you have sent and the approval by the Ayrshire Joint Planning Steering Group of Supplementary Planning Guidance I can confirm that I raise no objection to the principle of the proposed development.

The proposal for a total of 25 turbines generating up to 50MW and having a blade tip height of 125M falls within an area of search for large scale wind farms and is therefore supported subject to specific proposals satisfactorily addressing all other material considerations. These are outlined in Structure Plan policy ECON7 G and include, grid capacity, impacts on landscape, the historic environment, ecology (including birds), biodiversity and nature conservation, the water environment, local communities, aviation, telecommunications, noise and shadow flicker. These issues are considered within the context of the environmental statement and I note from this that a number impacts from the proposal have been identified. The Council should satisfy itself that these issues can be satisfactorily addressed and appropriate mitigation is in place. The consent should be conditioned for a time period of 25 years with standard conditions/ bond relating to the restoration and operation applied.

Should planning permission be granted then appropriate planning conditions and a legal agreement attached to any consent would address the majority of these issues.

However, the issue of aviation mitigation cannot be resolved by appropriate planning conditions or legal agreement as the applicant has not provided the planning authority with details of any aviation mitigation measures which would thereafter have to be subject to consultation both with NATS, other relevant consultees and the wider community.

4.15 West of Scotland Archaeology Service – no objections subject to conditions in relation to; the identification of archaeology remains at High Rusha and Sneddon Hall

and the fencing of these areas and the implementation of an archaeological watching brief.

Should planning permission be granted the above issues could be addressed by appropriate planning conditions.

4.16 Scottish Environment Protection Agency – No objections subject to the imposition of planning conditions in relation to: a construction method statement (and mitigation measures), construction management plan, integrated drainage strategy, flood risk, pollution prevention, river/stream crossings, access tracks and roads, foul drainage, borrow pit drainage, waste management, soil storage and the storage of chemicals and oil.

Should planning permission be granted the above issues could be addressed by appropriate planning conditions.

4.17 Scottish Water – no objections.

Noted.

4.18 Countryside Access Officer Neighbourhood Services – No consultation response received.

Noted.

5. REPRESENTATIONS

5.1 The application was advertised in the Kilmarnock Standard on 22 August 2008 in accordance with the Environmental Impact Assessment Regulations 1999. Six letters of objection and three letters of support have been received in connection with the application. Fourteen letters of support and a petition submitted by the applicant from the Galston Community Fun day of 01 August 2009 with seventeen signatures were received but were received outwith the time specified for representations and have not been included in the summary below for that reason.

5.2 The proposed wind farm development has not attracted any significant level of third party representations. The points of objection are summarised as follows.

5.3 The environmental statement is disingenuous and fatally flawed. It is wholly biased and relies on regurgitated material to back a false claim.

The environmental assessment submitted by the applicant has been assessed by all relevant consultees. Any additional information requested by the consultees to satisfy their requirements has been provided by the applicant.

5.4 The developer has paid/promised significant monies to local groups in advance of this application, as reported in the Kilmarnock Standard. This is not transparent and is a blatant attempt to buy/bribe the silence of those who might otherwise object.

The planning authority is not party to any discussions between the applicant and any community group which may directly benefit from the proposed development.

5.5 The proposal is contrary to Structure Plan and the adopted East Ayrshire Local Plan policies and to SNH policy with regard to impacts on natural and cultural heritage.

Structure Plan and Local Plan policy will be considered at sections 6 and 7 of this report. SNH have not objected to the application subject to appropriate planning conditions and legal agreements.

5.6 It is clear that properties on the Hareshawmuir Estate will be immediately affected by this proposal both from visual and noise constraints. The size of the turbines will effectively cover the whole horizon to the sky and will envelop one of the last accessible wilderness areas near to Kilmarnock. The background noise survey data is questionable and no readings have been provided on background noise at night.

It is acknowledged that a wind farm of this considerable size and scale will result in a significant visual impact on the landscape character and visual amenity of the area and particularly at Hareshawmuir and on the residential amenity of that area. In relation to the issue of noise levels generated by the wind farm no adverse comments were received from Environmental Health. However both of these issues are further addressed at section 6 of this report.

5.7 The site boundary and the access route are situated close to the residential property at Alton Lodge and the new access road will result in dust, fumes, noise and a safety risk to the residents. The proposed route will have to cater for heavy plant and vehicles with the possible extraction of timber.

It is acknowledged that part of the new access road which links the site to borrow pit 9 is located in close proximity to the property at Alton Lodge and that the proposed number vehicular movements would result in a significant adverse effect on the residential amenity of this property. No adverse comments have been received from the Roads Service or Environmental Health in relation to these issues.

5.8 No information is provided on borrow pit 9 regarding site investigation. The road access to this pit is unacceptable. Why is this location of borrow pit required?

In terms of borrow pits it is noted that the applicant proposes 9 borrow pits for 25 turbines and their related infrastructure requirements. In comparison, the much larger size and scale of wind farm development at the adjacent Whitelee windfarm did not require as many borrow pits for that development.

5.9 It is significant that the background noise survey levels are higher than those previously recorded at the site. Is it an attempt to show that the differential between existing background noise and potential turbine noise would be insignificant. Any increase in current noise levels would be unacceptable.

Environmental Health have not offered any adverse comments in relation to the noise levels of the proposed wind farm. However it should be noted that no cumulative noise assessment information to take account of the adjoining Whitelee wind farm has been provided by the applicant.

5.10 The proposed access to the site west of Polbath Farm is on a fast stretch of road where there is a hidden dip and there have been several accidents.

The Roads Service has assessed the proposed access to the site and has not offered any objections subject to the applicant complying with the submitted drawings.

5.11 The application site encompasses considerable areas of peat much of it blanket bog. The proposal will cause an adverse impact on these areas.

SNH has assessed the applicants environmental statement and habitat management plan and has not objected subject to appropriate planning conditions and a legal agreement to address this issue.

5.12 A further 25 turbines larger than those constructed on Whitelee wind farm will have a most adverse cumulative visual impact.

Section 7 of this report provides a detailed account of cumulative impacts of the proposed development. However it is agreed that in this instance the siting and design of the proposed wind farm at Cowans Law will result in a significant adverse impact on both the character of the landscape and the visual amenity of the surrounding area.

Letters of Support

5.13 People are concerned about the effects of climate change know that we need to stop global warming. That means replacing fossil fuels like coal with clean renewable energy. The proposed wind farm is a good start and receives my support.

5.14 Every week I visit Dalry where Community Windpower erected turbines in 2006 and these are not intrusive, noisy or distract from the landscape. Considering the number already in place I cannot see that a few more will be detrimental to our community.

5.15 The Cowans Law site is adjacent to Whitelee and a suitable distance from any densely populated area therefore would be an ideal site for Community Windpower turbines.

Noted.

6. ASSESSMENT AGAINST DEVELOPMENT PLAN

6.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of assessing the proposed development, the development plan comprises the Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

6.2 *ECON 6 Renewable Energy*

Proposals for the generation and utilisation of renewable energy should be promoted and will conform to the plan both in stand alone locations and as integral parts of new and existing developments where it can be demonstrated there will be no significant adverse impact, including adverse cumulative impact or infrastructure constraints, and where the design of the development is sensitive to landscape character, biodiversity and cultural heritage.

6.3 With regard to wind energy, the plan states that Ayrshire has above average mean wind speeds and as such is attractive for wind energy generation and, in particular, as a location for wind farm development. The Government has set targets for Scotland of electricity demand from renewable energy of 50% by 2020. To achieve these targets at a local level a significant expansion in the number of wind turbines may be required.

6.4 Given the Government's target, there is an onus to find wind farm locations that would contribute to the overall national supply and take environmental impacts into account. The plan further states, however, that local benefits arising from wind farms can be important to the future economic regeneration of rural communities. To guide wind farm development in a manner that maintains landscape and biodiversity value and safeguards the operational needs of Glasgow and Glasgow Prestwick Airports, two areas of search for large scale wind farm development have therefore been identified, these being South Carrick and Whitelee Forest. Policy ECON7 specifically relates to wind farm development and states:

ECON7 Wind Farms

(A) In the Areas of Search proposals for large and small scale wind farm development will be supported subject to specific proposals satisfactorily addressing all other material considerations.

Cowans Law wind farm proposal does lie within an Area of Search as defined in the approved Ayrshire Joint Structure Plan. However it should be noted that in this instance the proposal does not comply with Policy ECON7(A) as the specific proposal does not satisfactorily address all other material considerations as NATS has objected to the application in terms of aviation issues.

(B) Areas designated for their national or international natural heritage value, and green belts, will be afforded significant protection from large scale wind farms.

There are no areas of national or international heritage value and no green belt areas located within or adjacent to the development site.

(C) The integrity of national and international designations should not be compromised.

There are no areas of national or international heritage value located within or adjacent to the development site.

(D) Cumulative impact will be assessed in all relevant cases, taking into account existing wind farms, those which have permission and those that are subject of valid but undetermined applications. The weight to be accorded to undetermined applications will reflect their position in the application process. Where the limit of acceptable cumulative impact has been reached the area will be afforded significant protection.

The proposed wind farm at Cowans Law is located immediately adjacent to Whitelee wind farm which has planning consent for 215 turbines making this site, to date, the largest onshore wind farm in Europe.

It is noted that, from the illustrative material (wireframes and photomontages) supplied as part of the submission there would be significant cumulative visual impacts arising from the proposed additional 25 turbines at Cowans Law with the Whitelee wind farm, as viewed from the south and west and from the A 719 in particular. From some aspects of the A719 the proposed wind farm would result in a cumulative visual impact that would result in an adverse visual effect on the essentially open farmland landscape that characterises this area.

The proposed site extends some 2.5 kilometers west of Whitelee wind farm which means that from vantage points on the M77 and the A719 the proposed turbines obtrude from the mass of Whitelee wind farm grouping to an unacceptable degree and would subtend a much greater horizontal angle than is warranted by the number of turbines proposed.

It should be noted that unlike the consented turbines in Phase 2 extension to Whitelee wind farm, some of which could acceptably be set back behind the ridgeline north of the Irvine Valley, the more gradually sloping terrain east of the A719 means there is less scope for use of ridges and basins to ameliorate the cumulative visual impact of the turbines.

When the proposed wind farm at Cowans Law is considered together with the turbines of Whitelee, the largest onshore wind farm in Europe, the cumulative visual impact of all turbines combined, particularly from the south west and parts of the A 719, would be considerable, the

Cowans Law windfarm significantly increasing the horizontal angle subtended by the Whitelee wind farm where these are seen along the skyline.

Consequently the proposal would result in significant and adverse effects on the landscape and visual amenity of the area and would not comply with Policy ECON7(D) of the Ayrshire Structure Plan.

(E) Outside the Areas of Search: all wind farm proposals will be assessed against the following constraints, any positive or adverse effects on them and how the latter can be overcome or minimised:

- Historic environment;
- Areas designated for their regional and local natural heritage value;
- Tourism and recreational interests;
- Communities;
- Buffer zones;
- Aviation and defence interests;
- Broadcasting installations.

The proposal falls within the Area of Search identified in the Structure Plan.

(F) Proposals affecting Sensitive Landscape Character Areas shall satisfactorily address any impacts on the particular interest that the designation is intended to protect but the designation shall not unreasonably restrict the overall ability of the plan area to contribute to national targets.

There are no Sensitive Landscape Character Area designations within or immediately adjacent to the site.

(G) In all cases, applications for wind farms should be assessed in relation to criteria including, as appropriate, grid capacity, impacts on the landscape and historic environment, ecology (including birds), biodiversity and nature conservation, the water environment, communities, aviation, telecommunications, noise and shadow flicker.

The proposed development will deliver up to 50 megawatts of renewable energy to the national grid and is close in proximity to a grid connection point.

As previously stated in part D above the proposal would result in significant and adverse effects on the landscape and visual amenity of the area and consequently does not comply with Policy ECON 7(G) of the Structure Plan.

In terms of ecology, biodiversity and nature conservation SNH has not objected to the proposal subject to appropriate planning conditions and a legal agreement being attached to any consent.

Scottish Water has not objected to the application and SEPA have not offered any objection subject to the attachment of appropriate planning conditions to any consent.

The nearest communities to the proposed wind farm site are Moscow and Waterside and it should be noted that none of the community councils have objected to the application and no significant volume of representations has been received in connection with the application.

In this instance it is a significant determining factor that in terms of aviation issues NATS has objected to the planning application and as no aviation mitigation measures to this objection were provided by the applicant to the planning authority then the proposal does not comply with policy ECON 7 (G) of the Structure Plan.

In terms of telecommunications this issue would be addressed by legal agreement if planning permission was granted.

In terms of noise and shadow flicker Environmental Health have not offered any adverse comments. However it should be noted that at the time of the submission of the application for the wind farm at Cowans Law the extensions to Phase 1 and Phase 2 at Whitelee wind farm had not been submitted and consequently no cumulative noise assessment has been undertaken by the applicant to take account of these developments.

Given all of the above the proposal is not compliant with Policy ECON7(G) of the Structure Plan.

6.5 Under Policy ENV 1 Landscape Quality the quality of Ayrshire's landscape and its distinctive local characteristics shall be maintained and enhanced. In providing for new development, particular care shall be taken to conserve those features that contribute to local distinctiveness including:

A) settings of communities and buildings within the landscape;

It is considered that, although the turbines of the proposed wind farm would be located further than the 2 km accepted by SPP as a minimum reasonable distance from communities the proposed turbines in addition to the Whitelee wind farm will result in a significant adverse visual cumulative impact on the corridor along the A719 and its communities and in particular the buildings within the landscape at Hareshawmuir Road. Consequently the proposal does not comply with Policy ENV1 (A) of the Ayrshire Structure Plan.

B) patterns of woodland, fields, hedgerows and tree features;

Whilst there are no Ancient or Semi- natural Woodlands within the proposal site, it is noted that SNH are concerned about potential incursions of the windfarm into tree belts of historic value. However

conditions could be placed on any consent, requiring the applicant to undertake restorative planting in historic shelterbelts to compensate for tree loss elsewhere in the site.

C) special qualities of rivers estuaries and coasts;

The proposal would not have an effect on such features.

D) historic landscapes;

Views to the north from the southern parts of Galston and its environs, and particularly across the Loudoun Estate Historic Garden and Designed Landscape will be affected by the proposed wind turbines but given the distances involved not to a significant level.

E) skylines and hill features, including prominent views;

The proposed turbines and the design of turbine arrays in addition to the Whitelee wind farm are likely to have a significant cumulative visual impact on the skyline as seen from nearby settlements and in particular along the route of the A719. Consequently the proposal does not comply with Policy ENV1(E) of the Ayrshire Structure Plan.

East Ayrshire Local Plan (EALP)

6.6 Policy CS 9 states that the Council will require all applications for renewable energy developments which fall within the scope of the Environmental Assessment Regulations to be accompanied by an environmental assessment.

It is noted that the applicants have submitted an Environmental Statement.

6.7 Policy CS 9 also states that all wind farm, wind turbine and other renewable energy developments will be rigorously assessed against the following criteria:

(i) the extent to which the development may adversely affect any sites of nature conservation interest and, in particular, the natural habitat, territory and breeding areas of upland birds.

Should planning permission be granted, conditions and a legal agreement would address the above issues.

(ii) the extent to which the amenity of residents of nearby towns, villages and other residential properties may be adversely affected by reason of noise emission, visual dominance and other nuisance;

Environmental Health have not offered any adverse comments in relation to noise emission.

The proposed wind farm, as it subtends more than 2 km to the west from Whitelee wind farm, proposes to erect wind turbines which would be situated less than 1km from the nearest residential property in the Hareshawmuir Road.

The Hareshawmuir Road is located to the north of the application site and consists of a grouping of residential properties which would in effect be bounded to the east by the turbines of Whitelee wind farm and more immediately to the south by the proposed wind turbines of Cowans law. In this instance the additional turbines located in such close proximity to residential properties will result in a significant adverse visual dominance on both the landscape and the amenity of these residential properties. Consequently the proposal does not comply with Policy CS9(ii) of the EALP.

(iii) the extent to which the development may adversely affect any recognised heritage resources, including Listed Buildings, Conservation Areas, Scheduled Ancient monuments, Archaeological Sites and Historic Gardens and Designed Landscapes and their individual settings;

The proposal would not affect any Listed Buildings, Conservation Areas or Scheduled Ancient Monuments. In terms of Archaeological issues, WOSAS has not objected to the application subject to appropriate planning conditions. The application site is located to the north of Loudoun Castle Historic Gardens and Designed Landscapes. However, given that the application site is approximately 2km distant from the designated site, the visual impact is unlikely to prove significant.

(iv) the visual impact of the proposal and its siting within the immediate and wider natural landscape;

The proposal would be sited within a plateau moorland area with forestry. However, despite the windfarm being located within a landscape type of theoretically low visual sensitivity, to accord with Policy CS 9 the proposal should not have an undue visual impact on the skyline as seen from significant vantage points from surrounding areas of higher sensitivity which include the landscapes surrounding and west of the villages of Waterside, Moscow and Fenwick, and the landscape of the Irvine Valley. Given that the proposed wind farm is sited immediately adjacent to Whitelee wind farm the proposed development would result in a significant adverse impact on the natural landscape as the capacity of the landscape to absorb the windfarm has been exceeded. Consequently the proposal is contrary to policy CS9(iv)of the East Ayrshire Local Plan.

(v) the extent to which the proposal may conflict with the Council's strategy to promote tourism related developments in the Doon and Irvine Valleys, Glen Afton and the Muirkirk Uplands;

The proposal is unlikely to result in an adverse impact on tourism in the area. Indeed the Whitelee Wind Farm Visitor Centre has attracted significant levels of tourism to the area.

(vi) the extent to which the proposal may adversely affect or irreversibly damage prime quality agricultural land;

None of the land within the application site is prime quality agricultural land.

(vii) the cumulative impact of the proposal with other existing or authorised renewable energy developments;

The proposal raises significant issues of cumulative impacts taking account of the Whitelee wind farm and its significant size and scale. The Cowans Law wind farm obtrudes from the general mass of the Whitelee grouping and as a result can be seen prominently from more of the A 719 and other vantage points south and west than can the Whitelee turbines which conversely are set further back in the plateau. Therefore, the cumulative impact of the proposed Cowans Law wind farm when viewed together with the Whitelee grouping results in a significant adverse affect on the visual and landscape amenity of the area and consequently the proposal does not comply with Policy CS9(vii) of the EALP.

(viii) the environmental impact of the connections linking the development site with the national grid and the provision of adequate access arrangements from the surrounding road network;

It is considered there would be no formal environmental constraints relating to the proposed access, and link to the grid, from the windfarm to the A 719, although the Roads & Transportation Service would have to be consulted by the applicant regarding any temporary or permanent effects this might have on traffic management on the A 719.

(ix) the impact of the turbines on radar performance and other safety considerations.

As previously stated NATS has objected to the proposal. Consequently the proposal does not accord with part (ix) of Policy CS9 and is contrary to the Local Plan.

6.8 Policy CS 10 states that where a turbine is not in operation producing electricity for a continuous period of six months, the operator will require providing evidence to the Council that the apparatus is in the process of being repaired or replaced. Otherwise, the Council will deem the turbine to be surplus to requirements and it must be removed, with the land restored to its original condition within an appropriate period to be agreed with the Council.

The decommissioning proposals set out in Paragraph 6.22 of the Environmental Statement are noted and accord with Policy CS 10.

However, should planning permission be granted a condition could be attached to any consent to address this issue.

6.9 Policy CS 11 states that where a wind energy development is already operative or has received authorisation from the Council, the Council will presume against any other development in the vicinity of the site which would compromise or inhibit the efficient operation of the development itself.

Since the current proposal was submitted to the planning authority the Scottish Government has consented two extensions to Whitelee wind farm. The Whitelee wind farm adjacent to the Cowans Law wind farm site may potentially affect the operation of the proposed windfarm. The applicants would have to demonstrate that the efficiency of the Cowans Law windfarm operations would not be impaired in this respect. The Scottish Government was consulted by the Council on the Cowans Law proposal as phase 1 and phase 2 extensions were under consideration by the Scottish Government. No consultation response was received.

Furthermore, no objections were received from Scottish Power Renewables the operator of Whitelee wind farm which adjoins the site at Cowans Law. However, given that the Scottish Government has consented phase 1 and phase 2 extensions to Whitelee wind farm, the proposal at Cowans Law may now by default compromise the operation of Whitelee wind farm. The applicant would require to provide technical evidence to address this issue.

6.10 Policy CS 12 states that in determining any proposals for windfarm developments within close proximity to other Council areas, due regard will be taken of any other consents/ proposals for similar developments in the neighbouring authority areas concerned. There will be a presumption against any such development which would be located in close proximity to a similar development in an adjacent authority area if it would constitute an unacceptable visual intrusion when viewed in conjunction with that development.

The proximity of the Whitelee windfarm extending into South Lanarkshire and East Renfrewshire, is as a whole relevant in terms of cumulative impacts with the Cowans Law proposal. From certain vantage points in East Ayrshire, notably from Loudoun Hill, the Cowans Law windfarm would be seen simultaneously with some turbines that are within South Lanarkshire although in terms of Policy CS 12 the cumulative impacts would be significant only with those turbines of Whitelee windfarm that are within East Ayrshire. It is therefore concluded that Cowans Law windfarm would accord with Policy CS 12.

6.11 Policy ENV 12 states that throughout the rural area, and especially in the Sensitive Landscape Character Areas identified on the Local Plan maps, the Council will ensure that all development proposals respect, in terms of their design, the local landscape characteristics of the particular area within which they are proposed. Developers will be expected to conserve and enhance, and reinstate or replace where

appropriate, those features which contribute to the intrinsic landscape value and quality of the area concerned, including:

(i) existing setting of settlements and buildings within the landscape;

There are no listed buildings within the site or in the immediate vicinity of the site.

(ii) existing woodlands, shelter belts, hedgerows and trees;

The proposal would affect existing forestry operations approved by the Forestry Commission Scotland. In paragraph 7.6.1 of the Environmental Statement it is stated that 'much of the area proposed for the windfarm has already been felled and there appears to be little scope for leaving any of the existing forestry in place'. In fact areas affected by the proposal at Sneddon Law are not due for felling until 2014 and 2020 and the applicants will be required to demonstrate how in detail their proposals would accommodate such a felling programme.

(iii) existing burns, rivers, lochs and other water features;

SEPA have not objected to the proposal subject to the imposition of appropriate planning conditions.

(iv) existing field patterns and means of enclosure including dry stone dykes, hedging and fencing;

As the area of the proposal is afforested it is considered that, with the exception of the potential effects of the proposal on fencing required for division of forestry coupes about which the applicants should demonstrate they have reached agreement with the Forestry Commission Scotland, the windfarm would accord with this criterion.

(v) existing public rights of way, footpaths and bridleways;

The Council's Draft Core Path Plan has identified a potential route (ref. IV 9, Kilmarnock to Whitelee Forest) which passes centrally through the site. A condition could be attached to any planning consent to address the issue of public access.

(vi) existing skylines, landform and contours;

While the proposed wind turbines would be concealed from a large part of the Irvine Valley, including Newmilns and Darvel through the intervening hills east of Moscow, there would be considerable skyline impact from Moscow itself, Waterside, Fenwick, parts of Galston and other parts of the Irvine Valley. There would also be cumulative skyline impacts with the turbines of Whitelee wind farm from notable local viewpoints.

Development which results in the permanent loss of landscape features which are not readily renewable and whose loss would be unacceptable in landscape terms, will not be supported by the Council.

There would be no permanent loss of landscape features as a result of the proposal proceeding.

6.12 Policy ENV 13 states that within the rural area, and especially within the Sensitive Landscape Character Areas identified on the Local Plan maps, the Council will ensure, through the development process, that:

(i) any authorised development is in keeping with, has minimal visual impact and reflects the nature of the rural area in which it is located, in terms of layout, materials used, design, size, scale, finish and colour. The design and material finish of any ancillary features will also require to be sympathetic to the character and appearance of the area;

Whilst the proposed site is located in the rural area it is not located in a Sensitive Landscape Area. In terms of visual impact the proposed wind farm in addition to the adjacent 215 turbine Whitelee wind farm would result in unacceptable levels of cumulative landscape and visual impact.

In addition the array design of the proposed wind farm constitutes long singular lines of turbines with a separation distance of approximately 300metres. In comparison the Whitelee windfarm, immediately adjacent to the proposed site, has developed a more sympathetic array design with a separation distance of up to 600metres between turbines. Consequently the design of both wind farm arrays is incompatible and results in an adverse visual impact on the landscape.

(ii) any authorised development is sensitively sited, landscaped and screened so as to blend into, respect and complement the landscape characteristics of the particular area in which it is to be located;

While the proposed windfarm would be located within a landscape theoretically most suited to absorbing its visual impacts, its cumulative impact with the Whitelee grouping is held to exceed the capacity of the landscape to absorb large scale windfarms and therefore in the context of the landscape characteristics of the site, the proposal is not considered acceptable.

(iii) the landscape setting of a particular area affected by a proposed development is safeguarded from adverse or irreversible change by the use of appropriate planning conditions, management agreements, preparation and promotion of environmental improvement schemes, development and design briefs etc.

Any planning consent could be conditioned and be the subject of a Section 75 legal agreement and a Section 96 agreement (Roads Scotland Act) to ensure that there are no long term adverse or irreversible impacts to the landscape in which the windfarm would be situated.

6.13 Policy ENV14 states that in assessing development proposals relating to land within the rural area which has not been identified as specific development opportunity sites on the Local Plan maps, the Council shall ensure that these have minimum impact on the rural environment. There will be a presumption against any development which would:

(i) cause the permanent and irreversible loss of prime quality agricultural land (ie. Classes 1, 2 and 3.1 in the Macaulay Land Classification System) (see Appendix 3);

None of the land on which the proposal is situated is prime quality agricultural land.

(ii) have a permanent adverse impact or cause irreparable damage to built heritage resources requiring conservation or their settings including listed buildings, conservation areas, historic gardens and designed landscapes, scheduled ancient monuments, archaeological and industrial archaeological sites;

The proposal would have no such impacts on any listed buildings, conservation areas, scheduled ancient monuments and industrial archaeological sites. While no historic garden and designed landscapes are directly affected by the proposals, views into and across the Loudoun Estate – a designated Historic Garden & Designed Landscape – from parts of Galston and other parts of the Irvine Valley would be affected by views of turbines along the skyline and this is considered a significant local landscape issue.

(iii) have a permanent adverse impact or cause unacceptable, irreparable damage to natural heritage resources requiring conservation and to existing species and habitats;

While the proposal would not affect any statutory or non-statutory nature conservation sites, should planning consent be granted, appropriate planning conditions and a legal agreement could be attached to any consent to address these issues.

(iv) adversely affect the quality of water resources, water catchment areas, land drainage or flood protection interests or create water pollution problems.

SEPA and Scottish Water have not objected to the application subject to appropriate planning conditions being attached to any consent.

(v) result in the destruction of any areas of peat which are considered to be of significant ecological value.

Should planning permission be granted, appropriate planning conditions and a legal agreement would address these issues.

6.14 Policy T 6 states that, where considered appropriate, the Council will require developers to produce a transport assessment in respect of proposals which constitute

significant traffic generating developments, in order to detail the local transport impacts of the development and to set out the likely effects of the development proposals as described in PAN 57: Transport and Planning.

The applicants submitted environmental statement provides information on access to the site and the proposed new access road to the windfarm. However the applicant has not provided information on either the transportation routes for the turbines or the number or frequency of vehicle movements. Should planning permission be granted a condition should be attached to any consent to address this issue. Furthermore the applicant will require to conclude a Section 96 Legal Agreement (Roads Scotland Act) with the Council to ensure turbine transportation routes and the remedy of any road damage as a result of the development

7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

7.1 The principal material considerations relevant to the appraisal of the application are the Alteration to the East Ayrshire Local Plan, consultation responses, the representations received, Scottish Planning Policy Renewable Energy, Planning Advice Note 45: Renewable Energy Technologies (PAN45) and Ayrshire Joint Planning Steering Group Wind Farms: Addendum to Ayrshire Joint Structure Plan Technical Report TR03/2006

Alteration to the East Ayrshire Local Plan.

7.2 Policy ENV 15 states that the Council will not be supportive of development which would cause unacceptable and irreparable damage to important landscape features within rural areas. In this regard, developers will be expected to conserve and enhance, (and reinstate or replace where appropriate) those features which contribute to the intrinsic landscape value and quality of the area concerned and which are likely to be adversely affected by the particular development proposed, including:

- (i) existing setting of settlements and buildings within the landscape;

There are no listed buildings within or in the vicinity of the proposal.

- (ii) existing woodlands, shelter belts, hedgerows and trees;

The proposal would affect existing forestry operations approved by the Forestry Commission Scotland. In paragraph 7.6.1 of the Environmental Statement it is stated that ' much of the area proposed for the windfarm has already been felled and there appears to be little scope for leaving any of the existing forestry in place'. In fact areas affected by the proposal at Sneddon Law are not due for felling until 2014 and 2020 and the applicants will be required to demonstrate how in detail their proposals would accommodate such a felling programme.

- (iii) existing burns, rivers, lochs and other water features;

SEPA has not objected to the application subject to appropriate planning conditions being attached to any consent.

- (iv) existing field patterns and means of enclosure including dry stone dykes, hedging and fencing;

As the area of the proposal is afforested it is considered that, with the exception of the potential effects of the proposal on fencing required for division of forestry coupes about which the applicants should demonstrate they have reached agreement with the Forestry Commission Scotland, the windfarm would accord with this criterion.

- (v) existing Public Rights of Way, footpaths and bridleways; and

The Council's Core Path Plan has identified a potential route (ref. IV 9, Kilmarnock to Whitelee Forest) which passes centrally through the site. Should planning permission be granted a condition could be attached to any consent to address the issue of public access.

- (vi) existing skylines, landform and contours.

Development which results in the permanent loss of landscape features which are not readily renewable and whose loss would be unacceptable in landscape terms, will not be supported by the Council.

While the proposed wind turbines would be concealed from a large part of the Irvine Valley, including Newmilns and Darvel through the intervening hills east of Moscow, there would be considerable cumulative skyline impact from Moscow itself, Waterside, Fenwick parts of Galston and other parts of the Irvine valley. There would also be cumulative skyline impacts with the turbines of the Whitelee windfarm from notable local viewpoints.

7.3 Policy ENV 17 states that in assessing development proposals relating to land within the rural area which has not been identified as specific development opportunity sites on the Local Plan maps, the Council shall ensure that these have minimum impact on the rural environment. There will be a general presumption against any development which would:

- (i) cause the permanent and irreversible loss of prime quality agricultural land (ie. Classes 1, 2 and 3.1 in the Macaulay Land classification System);

None of the land on which the proposal is situated is prime quality agricultural land.

- (ii) have significant unacceptable adverse impact or cause irreparable damage to built heritage resources requiring conservation or their settings including listed buildings, conservation areas, historic gardens and designed landscapes, scheduled ancient monuments, archaeological and industrial archaeological sites;

The proposal would have no such impacts on any listed buildings, conservation areas, scheduled ancient monuments and industrial archaeological sites. While no historic garden and designed landscapes are directly affected by the proposals, as referred to above views into and across the Loudoun Estate – a designated Historic Garden & Designed Landscape – from parts of Galston and other parts of the Irvine Valley would be affected by views of turbines along the skyline and this is considered a significant local landscape issue.

(iii) have significant unacceptable adverse impact or cause irreparable damage to natural heritage resources requiring conservation and to existing species and habitats;

Scottish Natural heritage has not objected to the application subject to appropriate planning conditions and the conclusion of a Section 75 legal agreement with the applicant to ensure issues of habitat management.

(iv) have significant unacceptable adverse visual impact or cause irreparable damage to the landscape character and scenic quality of the area within which it is proposed;

The proposed site and turbine layout extends some 2.5 kilometers west of Whitelee wind farm which means that from vantage points on the M77 and the A719 the proposed turbines obtrude from the mass of Whitelee wind farm grouping to an unacceptable degree and would subtend a much greater horizontal angle than is warranted by the number of turbines proposed. The proposal would therefore result in a significant unacceptable adverse visual impact on the corridor along the A719.

In addition, in terms of the nearby grouping of residential properties at Hareshawmuir Road the proximity of the proposed turbines (some within 1km) will result in a significant unacceptable adverse visual impact on the residential amenity of these properties. The proposal is therefore contrary to policy ENV17(iv) of the Alteration to the East Ayrshire Local Plan.

(v) adversely affect the quality of water resources, water catchment areas, land drainage or flood protection interests or create water pollution problems;

SEPA have not objected to the application subject to the imposition of appropriate planning conditions. Scottish Water has not offered any objection to the application.

(vi) result in the destruction of any areas of peat which are considered to be of significant ecological value.

Scottish Natural Heritage has not objected to the application subject to appropriate planning conditions and the conclusion of a Section 75 legal agreement with the applicant to ensure ecological issues.

7.4 Policy ENV 24 states that the Council will presume against any developments which:

(i) have an adverse effect on the water environment by increasing levels of pollution or detrimentally impact upon water quality, aquatic habitats for wildlife or recreational amenity; and

(ii) have an adverse effect on groundwater or major aquifers.

The Council supports the source control and passive treatment measures recommended by SEPA in its 'Guide to Sustainable Urban Drainage' and will support new developments with innovative methods of surface water disposal and treatment which meet the standards of SEPA and the Water Authority.

SEPA has not objected to the proposal and should planning permission be granted appropriate conditions should be attached to any consent to address these issues.

7.5 Policy CS12 states that the Council will positively support and promote the development of sympathetic renewable energy proposals both in stand alone locations and as integral parts of new and existing developments where it can be demonstrated that there will be no significant, unacceptable adverse impact, including adverse cumulative impact with other existing renewable energy developments or other renewable energy developments which are consented or under construction;

(i) on any recognised statutory or non statutory sites of nature conservation interest;

There are no statutory or non statutory sites of nature conservation interest within the application site

(ii) on the amenity of nearby communities or sensitive establishments, including individual or small groups of houses in the countryside that may be adversely affected by reason of noise emission, visual dominance and other nuisance;

Environmental Health have not offered any adverse comments in relation to noise emission. However it should be noted that at the time of the submission of the application for the wind farm at Cowans Law the extensions to Phase 1 and Phase 2 at Whitelee wind farm had not been submitted and consequently no cumulative noise assessment has been undertaken by the applicant to take account of these developments.

The proposed wind farm, as it subtends more than 2 km to the west from Whitelee wind farm, proposes to erect wind turbines which would be situated less than 1km from the nearest residential property in the Hareshawmuir Road.

The Hareshawmuir Road is located in close proximity to the north of the application site and consists of a grouping of residential properties which would in effect be bounded to the east by the turbines of Whitelee

wind farm and more immediately to the south by the proposed wind turbines of Cowans Law. In this instance the additional turbines located in such close proximity to residential properties will result in a significant adverse cumulative visual dominance on both the landscape and the amenity of these residential properties. Consequently the proposal does not comply with policy CS12(ii) of the Alteration to the East Ayrshire Local Plan.

(iii) on any recognised built heritage resources, including Listed Buildings, Conservation Areas, Scheduled Ancient Monuments, archaeological sites and landscapes and Historic Gardens and Designed Landscapes and their individual settings;

The proposal would not affect any Listed Buildings, Conservation Areas or Scheduled Ancient Monuments and their settings. While no Historic Gardens and Designed Landscapes would be directly affected by the proposal, views across the setting of the nearby Loudoun Estate historic garden and designed landscape from Galston would include a view of significant numbers of turbines along the northern skyline.

(iv) on the visual amenity of the area and the natural landscape setting for the development, particularly within the Sensitive Landscape Character areas as identified on the local plan rural area map; and

The proposal would be sited within a plateau moorland area with forestry. The application site is not within a Sensitive Landscape Character Area as delineated in the Ayrshire Joint Structure Plan. The proposal should not have an undue visual impact on the skyline as seen from significant vantage points from surrounding areas of higher sensitivity which include the landscapes surrounding and west of the villages of Waterside, Moscow and Fenwick, and the landscape of the Irvine Valley.

(v) on existing infrastructure

Developers will also be required to demonstrate to the satisfaction of the Council that all energy production will be generated either at, or in close proximity to, the source of materials used in the generation process and that there will be no unacceptable adverse environmental impact caused by any proposed connections linking the proposed development with the national grid and the surrounding road network.

There would be no formal environmental constraints relating to the proposed access, and link to the grid, from the windfarm to the A 719. However, it is considered that more detailed information on potential grid connections from the proposed turbines to the A 719 than that given in Para 6.15, ES Vol. 1 is required if the overall impact of this element of the windfarm is to be assessed. The applicants will have to demonstrate that Scottish Power approve of the grid connection as proposed.

7.6 Policy CS14 states that the Council will assess all applications for wind farm developments, including extensions to existing, consented and / or operational wind farms, against the provisions of Policy ECON 7 of the approved Ayrshire Joint Structure Plan: Growing a Sustainable Ayrshire and any future supplementary planning guidance to be prepared relating to cumulative impact.

Policy ECON7 of the Structure Plan states:

(A) In the Areas of Search, proposals for large and small wind farm developments will be supported subject to specific proposals satisfactorily addressing all other material considerations.

The Ayrshire Joint Structure Plan identifies broad areas of search for large scale commercial windfarms, one of which centres around Whitelee in East Ayrshire. The boundary of the Area of Search was derived from the Ayrshire and Clyde Valley Windfarm Landscape Capacity Study (2004), commissioned by SNH, which classified this area of land as plateau moorland and considered it to be of low sensitivity. However, the scope of the study was limited to the consideration of only landscape and visual factors.

The Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications) refines the Structure Plan Area of Search into a Preferred Wind Farm Area. The Preferred Wind Farm Area is designed to better reflect local considerations, including the local topography, potential adverse local visual impacts, identified features on the ground and appropriate buffer zones around settlements and dwellings. It is therefore considered that the Preferred Wind Farm Area provides an appropriate reflection of the diversity within the plateau moorland area and the detail of the local topography.

The Preferred Wind Farm Area in the Alteration to the East Ayrshire Local Plan has been agreed by the Ayrshire Joint Planning Unit as a realistic interpretation of the Broad Area of search within East Ayrshire for Structure Planning purposes.

In this instance only 3 of the proposed 25 wind turbines are located within the Preferred Wind Farm Area as identified on local plan maps. Given that the remaining 22 turbines are situated outwith the Preferred Wind Farm Area the proposal constitutes a significant departure from local plan policy. The considerable number of turbines located outwith the Preferred Search Area and the long singular layout and design of the turbine arrays (including the distance between turbines) results in a significant adverse visual impact on the character of the surrounding landscape.

Significantly in this case the specific proposal does not satisfy all other material considerations as NATS has objected to the application stating that the proposed development conflicts with their safeguarding criteria

and the planning authority has not received any aviation mitigation measures from the applicant.

(B) Areas designated for their national or international heritage value, and green belts, will be afforded significant protection from large scale wind farms.

The proposal does not impinge on, nor is it adjacent to, any areas subject to national or international designations.

(C) The integrity of national and international designations should not be compromised.

No areas with national or international designations would be compromised by the proposal.

(D) Cumulative impact will be assessed in all relevant cases, taking into account existing wind farms, those which have permission and those that are the subject of valid but undetermined applications. The weight to be afforded to undetermined applications will reflect their position in the application process. Where the limit of acceptable cumulative impact has been reached, the area will be afforded significant protection.

The proposed wind farm at Cowans Law is located immediately adjacent to Whitelee wind farm which has planning consent for 215 turbines making this site, to date, the largest onshore wind farm in Europe.

It is noted that, from the illustrative material (wireframes and photomontages) supplied as part of the submission there would be significant cumulative visual impacts arising from the proposed additional 25 turbines at Cowans Law with the Whitelee wind farm, as viewed from the south and west and from the A 719 in particular. From some aspects of the A719 the proposed wind farm would result in a cumulative visual impact that would result in an adverse visual effect on the essentially open farmland landscape that characterises this area.

The proposed site extends some 2.5 kilometers west of Whitelee wind farm which means that from vantage points on the M77 and the A719 the proposed turbines obtrude from the mass of Whitelee wind farm grouping to an unacceptable degree and would subtend a much greater horizontal angle than is warranted by the number of turbines proposed.

It should be noted that unlike the consented turbines in Phase 2 extension to Whitelee wind farm, some of which could acceptably be set back behind the ridgeline north of the Irvine Valley, the more gradually sloping terrain east of the A719 means there is less scope for use of ridges and basins to ameliorate the cumulative visual impact of the turbines.

When the proposed wind farm at Cowans Law is considered together with the turbines of Whitelee, the largest onshore wind farm in Europe,

the cumulative visual impact of all turbines combined, particularly from the south west and parts of the A 719, would be considerable, the Cowans Law windfarm significantly increasing the horizontal angle subtended by the Whitelee wind farm where these are seen along the skyline.

Notwithstanding the significant adverse visual and landscape cumulative effects of the Cowans Law proposal combined with Whitelee windfarm, the Council is considering, as a consultee, a Section 36 application under the Electricity Act 1989 for a 40 turbine windfarm at Harelaw. The combination of the consented Whitelee windfarm with 215 turbines, the undetermined Harelaw wind farm for 40 turbines and the additional proposal at Cowans Law for 25 turbines results in the limit of acceptable cumulative impact being exceeded. Consequently the area should be afforded significant protection from the considerable size and scale of wind farm proposed at Cowans Law.

The proposal would result in significant and adverse effects on the landscape and visual amenity of the area and does not comply with Policy ECON7(D) of the Ayrshire Structure Plan or with policy CS14 of the EALP.

(E) Outside Areas of Search, all wind farm proposals will be assessed against the following constraints, any positive or adverse effects on them and how the latter can be overcome or minimised:

- 1) Historic environment;
- 2) Areas designated for their regional and local natural heritage value;
- 3) Tourism and recreational interests;
- 4) Communities;
- 5) Buffer zones;
- 6) Aviation and defence interests;
- 7) Broadcasting installations.

As stated at part (A) above, 23 of the 25 wind turbines are located outwith the Preferred Wind Farm Area.

The application site and immediate vicinity are not designated as an historic environment or designated for their regional and local natural heritage value.

The proposal would not result in any significant adverse effect on tourism or recreational interests.

The nearest communities to the proposed wind farm site are Moscow and Waterside and it should be noted that none of the community councils consulted have objected to the application and no significant volume of representations has been received in connection with the application. However as previously stated the Hareshawmuir Road is

located to the north of the application site and consists of a grouping of residential properties which would in effect be bounded to the east by the turbines of Whitelee wind farm and more immediately to the south by the proposed wind turbines at Cowans Law. In this instance the additional turbines located in such close proximity (less than 1km) to residential properties will result in a significant cumulative adverse effect on both the landscape and visual amenity of these residential properties.

In terms of aviation issues, it is a significant determining factor that NATS has objected to the planning application and as no aviation mitigation measures to this objection were provided by the applicant to the Council then the proposal does not comply with Policy CS14 (E) of the Alteration to the EALP with modifications.

Any broadcasting installation issues would be addressed by a legal agreement if planning permission was granted.

(F) Proposals affecting Sensitive Landscape Character Areas shall satisfactorily address any impacts on the particular interests that the designation is intended to protect but the designation shall not unreasonably restrict the overall ability of the plan area to contribute to national targets;

The proposed windfarm would not be located within a Sensitive Landscape Character Area nor be viewed across such designated areas.

(G) In all cases, applications for wind farms should be assessed in relation to criteria including, as appropriate, grid capacity, impacts on the landscape and historic environment, ecology (including birds), biodiversity and nature conservation, the water environment, communities, aviation, telecommunications, noise and shadow flicker.

The proposed development will deliver up to 50 megawatts of renewable energy to the national grid and is close in proximity to a grid connection point.

As previously stated in part D above the proposal would result in significant and adverse effects on the landscape and visual amenity of the area and consequently does not comply with Policy ECON 7(G) of the Structure Plan.

In terms of ecology, biodiversity and nature conservation SNH has not objected to the proposal subject to appropriate planning conditions and a legal agreement being attached to any consent.

Scottish Water has not objected to the application and SEPA have not offered any objection subject to the attachment of appropriate planning conditions to any consent.

The nearest communities to the proposed wind farm site are Moscow and Waterside and it should be noted that none of the community

councils have objected to the application and no significant volume of representations has been received in connection with the application.

In this instance it is a significant determining factor that in terms of aviation issues, NATS has objected to the planning application and as no aviation mitigation measures addressing this objection were provided by the applicant to the planning authority, then the proposal does not comply with policy ECON 7 (G) of the Structure Plan.

In terms of telecommunications this issue would be addressed by legal agreement if planning permission was granted.

In terms of noise and shadow flicker Environmental Health have not offered any adverse comments. However it should be noted that at the time of the submission of the application for the wind farm at Cowans Law the extensions to Phase 1 and Phase 2 at Whitelee wind farm had not been submitted and consequently no cumulative noise assessment has been undertaken by the applicant to take account of these developments.

Given all of the above the proposal is not compliant with Policy ECON7(G) of the Structure Plan.

7.7 Policy CS15 states that the Council will, if mindful to grant planning permission for a commercial wind farm development, require applicants to contribute to a dedicated Renewable Energy Fund which will be used to finance sustainable community environmental projects, particularly those designed to help reduce carbon emissions and counteract global warming. For a period of 10 years from the commencement of construction work on the wind farm, all contributions will be directed exclusively to local projects within 10 kilometres of the boundary of the wind farm. Thereafter, 50% of the contributions received will be directed towards local projects with 50% being reserved for use in the wider East Ayrshire area. Contributions will be payable annually and be set at a standard rate of £2500 per megawatt of installed capacity per annum, index linked to 1 January 2008.'

The applicant has provided written confirmation that they will comply with the terms of the developer contribution policy. Should planning permission be granted the applicant will require to conclude a legal agreement with the Council to address this issue.

7.8 Policy CS16 where a wind turbine is not in operation producing electricity for a continuous period of six months, the operator will be required to provide evidence to the Council that the apparatus is in the process of being repaired or replaced. Otherwise, the Council will deem the turbine to be surplus to requirements and require its removal, with the land restored to its original condition within an appropriate period to be agreed with the Council.

The decommissioning proposals set out in Paragraph 6.22 of the Environmental Statement are noted and accord with Policy CS 10. However, should planning permission be granted an appropriate

condition would require to be attached to any consent to address this issue.

7.9 In terms of the Alteration to the East Ayrshire Local Plan it should be noted that the issue of the definition of the Preferred Wind Farm Search Area and the Broad Search Area as identified in the Ayrshire Joint Structure Plan has been the subject of a Hearing by Scottish Ministers into the Alteration to the East Ayrshire Local Plan. At the moment the Council is awaiting the response from the Reporter into this issue with regard to the Local Plan. Consequently it is important to note that the appeal currently under consideration by the DPEA will also address the issue of the difference between the wind farm search area as indicated in the Structure Plan and the Alteration to the East Ayrshire Local Plan. Therefore, the Council is in a position where the same issue is subject to scrutiny at the same time through two different mechanisms, the Local Plan Inquiry and this Planning Appeal; both of which will result in a forthcoming decision by the Scottish Ministers.

Consultations Responses

7.10 The majority of the consultees offered no objection to the proposal subject to the imposition of appropriate planning conditions and the conclusion of legal agreements. However, the planning authority has received an objection from NATS that cannot be addressed either through the imposition of appropriate conditions in any consent granted for the proposed development or by means of a legal obligations secured through a Section 75 agreement in terms of the Town and Country Planning (Scotland) Act 1997. Consequently on the basis of the unresolved objection from NATS, the application should be refused.

Representations

7.11 Within the representations received by the Council, there are concerns particularly in relation to noise emissions, landscape character and visual amenity impacts which are considered to be material in the determination of this application and in relation to this Council coming to a view on the proposed development.

7.12 It is acknowledged that a wind farm of this size and scale will result in significant visual impacts on both the landscape character and visual amenity of an area. Taking account of the proposal for an additional 25 turbines at Cowans Law and the cumulative effect of the existing Whitelee wind farm, the residential amenity of the surrounding area and in particular the grouping of properties located at Hareshawmuir Road, would be significantly adversely affected by the proposed wind farm.

SPP Wind Farms

7.13 SPP Wind farms set out Scottish Planning Policy on renewable energy developments. The Scottish Ministers have set a target of generating 50% of Scotland's electricity from renewable sources by 2020 and confirmed that this target should not be regarded as a cap. The importance of using clean and sustainable energy from renewable sources will continue to increase as a result of global imperatives to tackle climate change and the need to ensure secure and diverse energy supplies. The Scottish Ministers will continue to support the full range of renewable generation

technologies, including microrenewables, to enable Scotland to realise its considerable renewable energy potential.

7.14 SPP encourages planning authorities to support a diverse range of renewable energy technologies and guide development to appropriate locations and provide clarity on issues that will be taken into account when specific proposals are assessed. Development plans should support all scales of development associated with the generation of energy and heat from renewable sources.

7.15 The SPP states that factors relevant to the consideration of applications will depend on the scale of the development and its relationship with the surrounding area, but are likely to include impact on the landscape, historic environment, natural heritage and water environment, amenity and communities and any cumulative impacts that arise. The design and location of any windfarm development should reflect the scale and character of the landscape. The location of turbines should be considered carefully to ensure that the landscape and visual impact is minimised.

7.16 Importantly, the SPP considers that in terms of cumulative impacts, planning authorities should take account of existing windfarms, those which have permission and valid applications for wind farms which have not been determined. The SPP states that planning authorities should set out in the development plan a framework for onshore windfarms of over 20 megawatts generating capacity. In this regard SPP indicates the spatial framework should identify areas requiring significant protection where the cumulative impact of existing and consented wind farms limits further development.

7.17 In assessing wind farm proposals in areas of potential constraints planning authorities should consider likely impacts on communities, including long term and significant impacts on amenity and the impacts of the proposal on aviation interests.

7.18 The relevance of these extracts from SPP is considered in the context of the Ayrshire Joint Structure Plan 2007, the East Ayrshire Local Plan and the Alteration to the East Ayrshire Local Plan as noted above.

PAN 45: Renewable Energy Technologies

7.19 PAN 45 provides information on renewable energy technologies and advice for dealing with these as planning issues in both development plans and planning applications. In relation to wind energy developments, issues include safety, proximity to roads, electro-magnetic interference, noise, shadow flicker, birds and habitats, cumulative effects, siting in the landscape, visual impact, decommissioning and the EIA process requirement.

7.20 PAN45 indicates that proposals for new wind energy developments in an area with one or more existing developments and proposals for more than one wind energy development in one area are factors that constitute cumulative wind farm development. The nature and character of the location and the landscape in which a development is located will determine the acceptability or otherwise of siting proposals in proximity to each other. PAN45 states that two or more windfarms or the extension of a wind farm can have cumulative impacts which will most frequently involve changes to the landscape and changes affecting views and visual amenity.

7.21 The PAN clarifies that it may be appropriate to provide significant protection to the areas between wind farms or clusters of wind farms when analysis shows that their visual separation should be maintained. The scale and pattern of turbines plus the tracks will be relevant to critical factors such as landscape and visual impacts.

7.22 In this case PAN45 Annex 2 Appendix 1 provides advice on the use of suspensive aviation conditions and provides clarity on the governments position in relation to outstanding aviation issues. PAN 45 makes it clear that any aviation mitigation measures need to provide specification of the nature and extent of the mitigation required. It is also important that there is clarity about the identification of the type of solution and that there is agreement between the developer and the relevant operator that such a solution can be delivered within a reasonable timeframe.

7.23 The relevance of these extracts from PAN45 is considered in the context of the Ayrshire Joint Structure Plan 2007, the East Ayrshire Local Plan and the Alteration to the East Ayrshire Local Plan as noted above.

Ayrshire Joint Planning Steering Group Wind Farms: Addendum to Ayrshire Joint Structure Plan Technical Report TR03/2006

7.24 All three Ayrshire Councils have agreed that this Addendum will be used in the assessment of wind farm applications. The purpose of the Addendum is to support the implementation of wind energy policy as set out in the Ayrshire Joint Structure Plan. The addendum provides developers with greater clarity regarding those areas where the principle of windfarm development is likely to be acceptable or unacceptable and to provide further explanation of the criteria against which new development will be assessed.

7.25 In terms of the Addendum the proposed site is not located in an area afforded significant protection from the effects of large scale windfarms. The Addendum requires that an assessment be undertaken against relevant development plan policies to protect the interests of designated sites. This assessment has been undertaken at part 6 of this report.

7.26 Part 14 of the Addendum refers to cumulative impacts and clarifies that these will frequently involve landscape and visual impacts but may also affect natural heritage designations and aviation interests. In this case there are no natural heritage designations within the application site but issues of landscape and visual impact and aviation mitigation are fundamental to the proposal. In terms of cumulative impacts the effect of the proposal on the landscape and nearby residential properties at Hareshawmuir Road has to be considered against the adjoining Whitelee wind farm, to date the largest onshore wind farm in Europe. Given this situation the proposal results in significant adverse effects on the character of the landscape and on the visual amenity of the area.

7.27 Part 20 of the Addendum categorically states that “wind farms will not be permitted in locations where the cumulative impact will adversely affect aviation safety and operations. It is for the developer to demonstrate that NATS, CAA, MOD, and Glasgow Prestwick/Glasgow International Airports have been consulted and are

satisfied with the proposal. If mitigation is required then it must be demonstrated that the relevant consultee agrees to the specific mitigation being implemented in the anticipated timescale.”

Significantly in this instance NATS have objected to the proposed 25 turbine windfarm at Cowans Law as the proposed development conflicts with NATS safeguarding criteria. No aviation mitigation measures have been provided by the developer to the Planning Authority to enable further relevant consultation. NATS have advised EAC that in the event that recommendations made by NATS are not accepted Local Authorities are further obliged to notify both NATS and the Civil Aviation Authority of that fact (which may lead to the decision being subject to review whether by the CAA referring the matter for further scrutiny or by appropriate action being taken in the court.)

7.28 Part 18 of the Addendum indicates that establishing and maintaining visual separation from other wind farms will allow for a clear distinction to be perceived between the wind farmed landscape and the landscape beyond. It is therefore appropriate to provide significant protection to the areas in the immediate vicinity of these newly created wind farm landscapes on visual grounds.

8. FINANCIAL AND LEGAL IMPLICATIONS

8.1 There are potential financial implications for the Council in coming to a view on this application. Should the Department for Planning and Environmental Appeals be minded to approve the proposed Cowans Law windfarm development and if the Council is considered to have acted unreasonably in its processing of the planning application, a claim for an award of expenses could be made by the applicant. However, as indicated above in Section 2 of this report, the planning authority was anticipating the submission of further details to enable progression of the application when the appeal was lodged. Consequently, it is not considered that it was acting unreasonably in not having determined the application. Legal implications will arise though the requirement for a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 and a Section 96 agreement under the Roads (Scotland) Act, should the Department for Planning and Environmental Appeals be minded to grant consent for the proposed development.

8.2 In the event of the appeal being sustained, Heads of Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, to be concluded prior to the issue of consent, should comprise the following:

- The provision (and monitoring) of Financial Bonds for the restoration and aftercare of the site (including the borrow pits) in terms acceptable to the Council and in a sum sufficient to meet the estimated restoration costs.
- The payment of an agreed developer contribution towards the Renewable Energy Fund.

- The preparation and implementation of a television reception remedial procedure.
- The undertaking of a Habitat and Condition Survey
- The preparation and implementation of a Habitat Management Plan to the satisfaction of the Council, Scottish Natural Heritage(SNH), Scottish Water (SW) and the Royal Society for the Protection of Birds (RSPB).
- The production of a Protected Mammals Management Plan in respect of mitigation for badgers and otters including proposals for monitoring and reporting.
- The undertaking and establishment of baseline conditions in respect the water environment and water quality on the site.
- The undertaking and establishment of baseline conditions in respect of the bog environment and peat quality on the site.
- The establishment of noise, dust and vibration monitoring programmes.
- The maintenance of any private water supply or drainage services to private residential properties which may be affected by the construction or operation of the Windfarm.
- The provision of an ecological Clerk of Works.
- The funding and appointment of a Planning Monitoring Officer.
- The securing of public access in accordance with the Council's Core Path Plan and the Whitelee Access Strategy.
- The securing of agreed Road Maintenance Conditions.
- The grant of an undertaking that no Significant Land Use Changes shall be affected, other than in accordance with agreed procedures.
- Payment of an agreed contribution towards the cost of mitigating any direct environmental effects.
- The right to suspend operations should there be justifiable and actionable noise complaints confirmed as being in breach of stipulated day and night time noise limits.

9. CONCLUSIONS

9.1 As indicated in section 6 of the report, the application is not in accordance with the development plan. As is indicated at Section 7 of the report, there are material considerations relevant to this application. These are not generally supportive of the application in terms of national policy, planning advice and guidance and NATS as a consultee.

9.2 The proposed Cowans Law wind farm development does not comply with policy ECON7 parts (A), (D) & (G) and Policy ENV1 (A), (E) of the approved Ayrshire Joint Structure Plan 2007. Furthermore the proposal does not comply with policy CS9 (ii), (iv), (vii) and (ix) and Policy ENV13 (i) of the East Ayrshire Local Plan 2003. In terms of the Alteration to the East Ayrshire Local Plan the proposal is contrary to policy ENV17 (iv), policy CS12 (ii) and policy CS14 (A), (D), (E) and (G).

Assessing the proposals against the development plan it is considered that the proposal:

- presents unacceptable visual and landscape impacts in terms of the setting of the proposed wind farm within the immediate wider landscape.
- presents unacceptable adverse cumulative impacts when considered with the existing, authorised and proposed wind farms within the vicinity of the site

9.3 It is considered that the proposed development, together with other existing wind farm developments (existing, consented and proposed) will provide a generating capacity that would meet a significant portion of the Scottish Executive's renewable energy 2020 target placing a disproportionate burden on the local communities in East Ayrshire in satisfying national energy requirements. This is of particular relevance when considering the contribution already made by East Ayrshire in terms of existing renewable energy production as currently, Whitelee windfarm is the largest onshore wind farm in Europe with the majority of the turbines located in East Ayrshire and also in terms of the contribution through the production of opencast coal with consented reserves being greater than that of any other part of the UK.

9.4 It is recognised that the proposed development would result in potential socio-economic benefits through the following:

- the preparation of a Habitat Management Plan that, in terms of proposed mitigation of adverse impacts on the natural environment, would deliver positive benefits to managed areas through increased biodiversity;
- funding by the developer of an educational ranger and the provision of bursaries for students from the local area who are enrolled on renewable energy courses at university
- the potential developer contributions to the Council's Renewable Energy Fund
- the significant benefits accruing from the £30 million investment that potentially would generate output worth an estimated £8 million in the East Ayrshire economy

9.5 Taking all matters into account the potential benefits to be accrued from the proposed development do not in this instance outweigh the significant adverse cumulative impacts on the landscape character and visual amenity that would result from the Cowans Law Wind Farm in the form and on the area in which it is proposed.

10. RECOMMENDATIONS

10.1 It is recommended that the Local Planning Committee adopt the position, in terms of the appeal process, that the application should have been refused for the reasons indicated on the attached sheet.

10.2 It is recommended that the decision of the Local Planning Committee should be referred to the next appropriate Full Council for confirmation and that such decision should thereafter be conveyed to the DPEA as representing the position of the Council in the current non-determination appeal.

10.3 The circumstances encountered in this case are unusual as it involves planning appeals legislation that currently gives the Council only 21 days to present a view on the proposal to the Directorate for Planning and Environmental Appeals, which period may not always afford a realistic timeframe for a Council response. It is therefore further recommended that the Council be aware of the legislative circumstances and timeframes and aware of the fact that future special Local Planning Committees or Full Council meetings may be required to endeavour to attain the 21 day response deadline required by the appeal legislation.

**Alan Neish
Head of Planning and Economic Development**

27 May 2010
JL/RH
FV/DVM

LIST OF BACKGROUND PAPERS

1. Consultation Letters
2. Statutory Notices and Certificates.
3. Consultation responses.
4. Letters of Representation
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan (2007).
7. Ayrshire Joint Planning Steering Group Wind Farms: Addendum to Ayrshire Joint Structure Plan Technical Report TR03/2006
8. Alteration to the east Ayrshire Local Plan
9. Cowans Law Environmental Statement
10. Cowans Law Maps and Technical Drawings
11. SPP : Renewable Energy
12. PAN 45: Renewable Energy Technologies

Anyone wishing to inspect the above background papers should contact Jane Little on 01563 576768.

Implementation Officer: Dave Morris

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 08/0645/FL

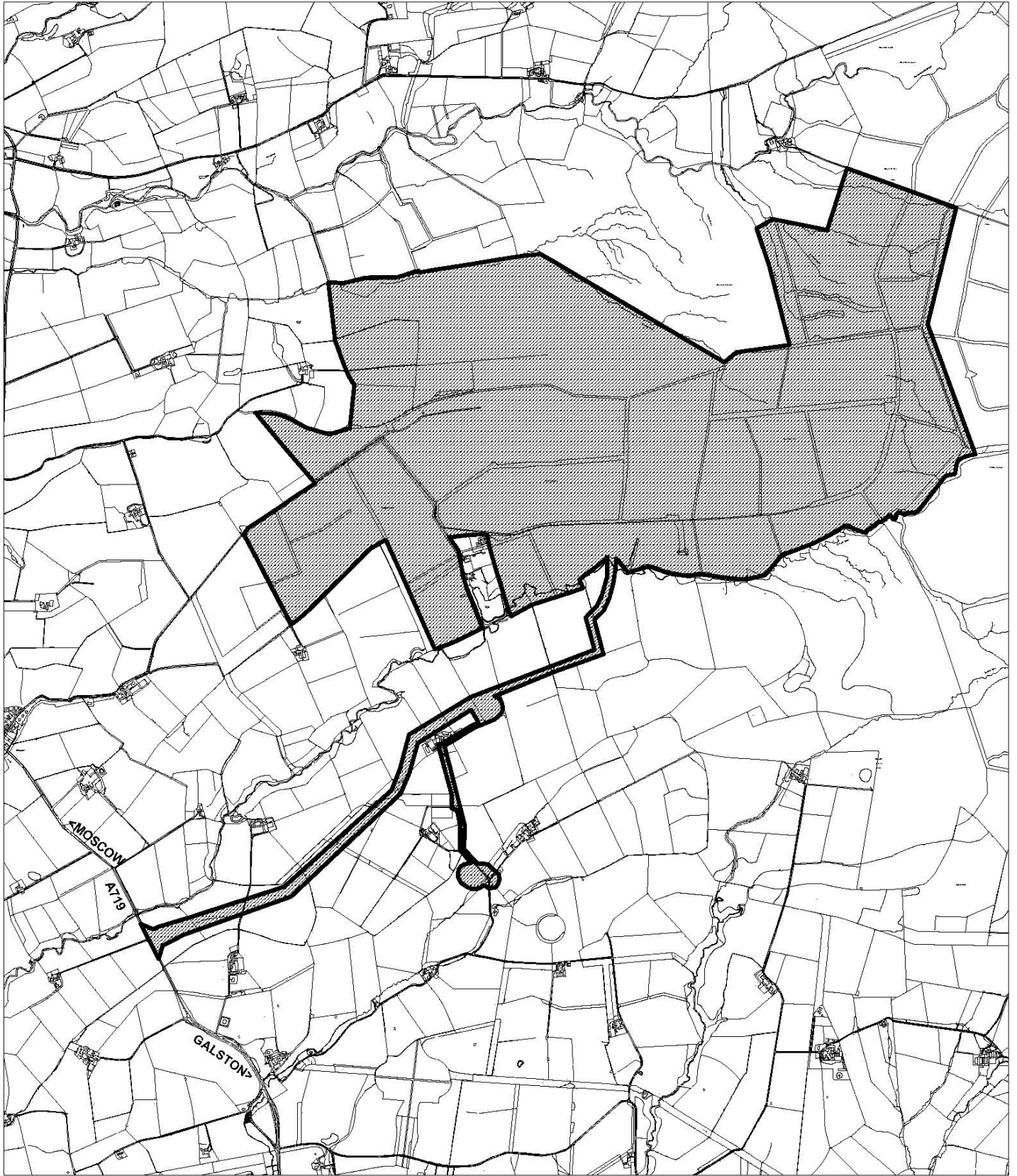
Location	Cowans Law Hemphill Road Moscow Galston
Nature of Proposal:	Erection Of 25 Wind Turbines, Construction Of Associated Access Tracks, Installation Of Underground 33KV Circuit, A 33KV Substation, A Temporary Construction Compound, 2X Meteorological Masts and Formation of New Access Road
Name and Address of Applicant:	Community Windpower Ltd GODSCROFT LANE FRODSHAM CHESHIRE WA6 6XU
Name and Address of Agent	

Officer's Ref: Fiona Finlay
01563 576798

The application should be refused for the following reasons:

1. The development is contrary to Ayrshire Structure Plan policy ECON7 (A), policy CS14 (E)(6) of the Alteration to the East Ayrshire Local Plan and policy CS9(ix) of the adopted East Ayrshire Local Plan as the proposal does not satisfactorily address all other material considerations in terms of aviation issues and in particular radar performance and resulting safety issues.
2. The development is contrary to Ayrshire Structure Plan policy ECON7 (D) and policy CS14 (D) of the Alteration to the East Ayrshire Local Plan as the limit of acceptable cumulative impact has been reached and the area should be afforded significant protection.
3. The development is contrary to Ayrshire Structure Plan policy ECON7(G) and to policy CS14(G) of the Alteration to the adopted East Ayrshire Local Plan in terms of adverse effects on landscape and the visual amenity of the area and aviation issues.
4. The development is contrary to Ayrshire Structure Plan policy ENV1 (A) as the proposal results in an adverse effect on communities and buildings within the landscape.


5. The development is contrary to Ayrshire Structure Plan policy ENV1 (E) as the proposal results in an adverse visual effect on skylines, hill features and prominent views.
6. The proposal does not comply with the adopted Local Plan policy CS9 (ii) as the development will result in significant adverse visual dominance on the landscape and the amenity of residential properties.
7. The proposed development does not comply with the Local Plan policy CS9 (iv) as the development will result in a significant adverse impact on the immediate and wider natural landscape.
8. The development is contrary to the adopted Local Plan policy CS9 (vii) as the proposal would result in a significant cumulative adverse effect on the visual and landscape amenity of the area.
9. The development is contrary to the adopted Local Plan policy ENV13 (i) as the proposal would result in an adverse visual impact in terms of layout and design of the turbines on the landscape.
10. The development is contrary to the Alteration to the East Ayrshire Local Plan policy ENV17 (iv) as the proposal would result in a significant unacceptable adverse visual impact to the landscape character and scenic quality of the area.
11. The development is contrary to the Alteration to the East Ayrshire Local Plan policy CS12 (ii) as the proposal would result in adverse effect on the amenity of nearby residential properties by reason of visual dominance.
12. The development is contrary to the Alteration to the East Ayrshire Local Plan policy CS14 (A) as the majority of the turbines area located outwith the Area of Search and the proposal does not satisfactorily address all other material considerations.



Title/Location **Cowans Law,
Moscow
Application No. 08/0645/FL**

East Ayrshire Council
 Planning & Economic
 Development Division.
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 Tel: (01563) 576790 Fax: (01563) 576774
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 Com Date: 4/6/2010 Checked By



Key  **Application Site**

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