

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 10 OCTOBER 2008

**PROPOSED ERECTION OF 36 WIND TURBINES AND ASSOCIATED WORKS
COMPRISING A PERMANENT MONITORING MAST, TEMPORARY SITE
COMPOUND, TEMPORARY CONCRETE BATCHING PLANT, FORMATION OF
NEW INTERNAL ACCESS TRACKS AND UPGRADING OF EXISTING TRACKS
ON LAND NORTH OF THE IRVINE VALLEY, NORTH EAST OF KILMARNOCK ON
EAGLESHAM MOOR.**

**APPLICATION BY CRE ENERGY LTD
(A subsidiary of Scottish Power Renewable Energy Ltd.)**

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for the consideration of the Local Planning Committee under the scheme of delegation a formal consultation from the Scottish Ministers on an application made under Section 36 of The Electricity Act 1989 for a proposed wind farm development at Whitelee Forest on land to the north east of Kilmarnock and for the Local Planning Committee to take a formal view on the proposed development.

2. BACKGROUND INFORMATION

2.1 The Scottish Ministers are responsible, under Section 36 of the Electricity Act 1989, for the authorisation of any new electricity generation scheme with a generation capacity in excess of 50 Megawatts (MW). As the current proposal for the Whitelee wind farm extension project has an installed capacity of up to 130 MW, East Ayrshire Council has been formally consulted by the Scottish Ministers in terms of Section 36 of the Electricity Act 1989.

2.2 The Council is a formal consultee in this process and a copy of the application has been served on the Council by Scottish Government, Enterprise Energy and Tourism Directorate and also by the applicant in terms of Schedule 8 of the Electricity Act 1989. In procedural terms the Council, as Planning Authority, requires to respond to the Scottish Ministers on those aspects for which the Council has responsibility. In this regard the Council in response to the consultation can either:

- (i) offer no objections to the Section 36 application as submitted; or
- (ii) offer no objections, subject to modifications and/or the imposition of appropriate conditions it considers necessary to make the development acceptable; or

(iii) formally object to the application, stating the grounds on which objection is made.

2.3 The Section 36 application was lodged with the Scottish Ministers on 23 April 2008 together with a comprehensive Environmental Statement as required under The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000.

2.4 Should the Scottish Ministers be disposed to grant a Section 36 consent for the Whitelee Wind Farm Extension, the applicant has requested that deemed planning consent be granted in terms of Section 57 of the Town and Country Planning (Scotland) Act 1997. A separate application for planning permission would not therefore be required for the proposed development.

2.5 In April 2006, CRE Energy, a subsidiary of Scottish Power Renewables, received planning consent from the Scottish Government to construct a 140 turbine windfarm at Whitelee Forest on Eaglesham Moor. Construction of the consented Whitelee windfarm site is currently underway and on completion will provide a capacity of 322MW.

3. APPLICATION DETAILS

3.1 **Site Description:** The Section 36 application site lies approximately 5.0 kilometres north east of Kilmarnock. The site occupies an area north of the Irvine Valley of elevated moorland and forestry centred on Whitleehill, along a broad ridge formed by Rough Hill, Crins Hill and Whitleehill. The site is approximately 2265 hectares and is located immediately to the south west of the consented Whitelee windfarm. The majority of the site is under commercial forestry plantation with associated forest tracks used for timber extraction. There are occasional small openings of moorland, such as Crins Hill and Pley Moss.

3.2 The application is presented as an extension to the existing Whitelee windfarm. Whilst the majority of the proposed site and all of the proposed turbines are located within East Ayrshire the proposal includes using the access at Lochgoin within East Renfrewshire and one borrow pit within South Lanarkshire, both of which were previously granted consent as part of Whitelee windfarm.

3.3 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 Birk Burn, Rough Hill Burn, Gowshawk Burn and West Burn. Craigendunton Reservoir is located adjacent to the northern boundary of the site at Hareshaw Hill.

3.4 There are no statutory landscape conservation designations on the application site. There are no Scheduled Ancient Monuments or Listed Buildings on the site. However there are two provisional Wildlife Sites within the site at Crins Hill and Pley Moss.

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

- 36 wind turbines of up to 140 metres to tip height (i.e. height from ground level to the tip of the blade when vertical)
- hardstanding area at each turbine base
- on site access tracks and associated watercourse crossings
- substation building and substation compound
- a meteorological mast; and
- on site underground cabling

In addition to the above components of the operational windfarm proposal the construction phase proposals include:

- limited forestry clearance (approximately 217 hectares of forestry clearance , 9.6% of site area.)
- construction compounds and laydown areas
- four temporary meteorological masts;
- five borrow pits (areas of stone excavation)

3.6 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.

3.7 The applicant estimates that approximately 370000 m³ of stone will be required for construction of the windfarm (including access tracks, structural fill beneath turbine foundations and hardstanding at turbine bases and compounds). It is anticipated that stone will be sourced from five on site borrow pits (two of which are located on the consented site).

3.8 The principal construction and operations access to the site would be from the consented site operations entrance from the B764 at Lochgoin and via the consented site spine road. The turbine towers, nacelles and blades will be delivered to Port of Ayr harbour or Glasgow's King George V Dock. These will then be transported to the site via the M77 and B764, which is the same route used for the delivery of turbines for the previously consented Whitelee windfarm.

3.9 The windfarm proposal comprises 36 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 reach a maximum height of 140 metres from base to blade tip. Turbines with a rating of 3.6 megawatts are under consideration for the proposed windfarm.

3.10 The proposed development includes approximately 3.4 kilometres of spine road, 189.5 kilometres of access track and 1.8 kilometres of upgrades to existing Forestry Commission roads.

3.11 Forestry Commission Scotland will continue commercial forestry activities 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.

3.12 It is proposed to replant the felled forest areas during the operational phase of the windfarm, which will then be harvested when the trees have reached 12 metres in height which is likely to be between 20 to 25 years after planting.

3.13 Three separate temporary construction storage compounds/laydown areas will be required, providing site accommodation, materials and small component storage, car parking and welfare facilities:

- substation construction compound 72m by 72m
- infrastructure contract compound 90m by 110m
- turbine contract compound 90m by 85m

3.14 To minimise traffic visiting the site a temporary concrete batching plant measuring 50m by 65m may be established within the construction compound. Each turbine foundation will require approximately 370m³ of concrete and 40 tonnes of reinforcing steel.

3.15 It should be noted that the applicant proposes to install turbines only to the northern part of the application site. Scottish Power Renewables may seek a future application to develop the southern part of the site, although this would be subject to a further planning application and environmental statement.

3.16 One permanent meteorological mast is proposed 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.

3.17 The application covers a 25 year period of operation, following final commissioning. The construction period for the proposed development is anticipated to be 18 months and decommissioning is expected to take a further six months.

3.18 The Section 36 application is accompanied by a comprehensive 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.

3.19 The applicant states that the Whitelee windfarm extension development would deliver a net energy yield of 130 megawatt hours per year that would serve the equivalent of around 73,000 households.

3.20 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. The land uses changes proposed are considered by the applicant to be of low significance locally and nationally.

3.21 The applicant anticipates that the proposed development would result in beneficial effects through its contribution to improved accessibility and recreation and would create a small amount of on site employment during the 25 year operational phase of the windfarm. The previously consented site includes plans for a Visitors

Centre and The Whitelee Access Network set up as result of the consented site proposes a network of pathways with car parks and interpretation points.

3.22 As part of the wind farm development, the applicant states that they are committed to the concept of community benefit and will adhere to any clear recommendations set out by East Ayrshire Council. Whilst the applicant has been in discussions with East Ayrshire Council regarding the terms of a community benefit payment this issue is likely to be resolved when the modifications to the Finalised Draft of the East Ayrshire Local Plan is presented to Cabinet.

4. CONSULTATIONS AND ISSUES RAISED

4.1 Consultations have been carried out by this Division and by the Scottish Government, Enterprise Energy and Tourism Directorate. The responses received in connection with the consultations issued by this Division are summarised for the purposes of this report. The wider responses received by the Scottish Government are available for inspection as background papers and include comments from Scottish Natural Heritage.

4.2 East Ayrshire Environmental Health Division 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.

The Planning Authority can indicate to the Scottish Ministers that conditions should be attached to any consent granted for the development to control site working hours and delivery of materials and components to the site, in order to minimise noise nuisance and disturbance.

The proposed development site is surrounded by approximately twenty five properties whose water supplies are derived from ground either within or adjacent to the site. The developer must be required to ensure these water supplies are unaffected by the proposed development.

The Planning Authority can indicate to the Scottish Ministers that conditions should be attached to any consent granted for the development to address the point made by the Environmental Health Division.

4.3 East Ayrshire Council Roads and Transportation Division has considered the applicants non technical summary which provides an overview of the assessment of traffic and transportation effects associated with the proposed development. Construction traffic will be generated over an 18 month time period. The turbine towers, nacelles and blades would be delivered to Port of Ayr harbour or Glasgow's

King George V dock and then transported to the site via the M77 and B764, which is the same route as used for the delivery of turbine components for the consented site. Construction traffic would then use the site entrance of the consented site from the B764 at Lochgoin to reach the proposed development via the consented site spine road.

In view of the above and the consistency of the approach with the previously consented windfarm, the Roads Division has no adverse comments to make on the proposed development.

Noted.

4.4 East Renfrewshire Council has no objections to the proposal subject to the imposition of conditions by Scottish Ministers and legal agreements between the operator, Scottish Ministers and the three local authorities. A report was approved by the Planning Applications Committee of East Renfrewshire Council on 10 September 2008.

Noted.

4.5 South Lanarkshire Council is considering the proposal but at the time of writing this report has yet to make a formal recommendation to the Scottish Ministers.

Noted.

4.6 Glasgow Prestwick International Airport (GPA) indicates that the Whitelee windfarm extension appears to be entirely terrain shielded from their primary surveillance radar (PSR). Therefore GPA has no objection to the proposal. However GPA notes one caveat to their position. GPA assumes that the solution being put in place for the consented Whitelee windfarm to mitigate effects on the PSR at Glasgow Airport will be extended to cover this proposal and that consequently the flight paths of aircraft approaching and departing BAA Glasgow will not change. If this were not to be the case then and the flight paths of aircraft inbound to and outbound from BAA Glasgow were 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.

It is considered that any view presented by the Council on the proposed Whitelee windfarm extension development should be qualified to ensure that:

(i) the Section 36 Consent and Deemed Planning Consent should not be granted by the Scottish Government until a suitable mitigation strategy for aviation impacts has been identified and accepted in writing by GPA;

(ii) any Section 36 Consent should include a condition which prohibits the erection of any Whitelee windfarm extension turbine (that is, its tower, nacelle and rotor) until such time as the agreed mitigation has been implemented to GPA's satisfaction (in GPA's absolute discretion);

(iii) a Section 75 and other supplementary agreements required by GPA to create real burdens in relation to the application site are entered into with the Planning Authority and with GPA to the effect that no turbine shall be constructed until a suitable mitigation has been identified and is implemented; and

(iv) The developer will meet all costs of developing and implementing a suitable mitigation and all reasonable costs incurred by GPA in relation to the Whitelee windfarm extension.

4.7 New Farm Loch Community Council – no response received to the consultation request.

Noted.

4.8 Kilmaurs Community Council - no response received to the consultation request.

Noted.

4.9 Stewarton and District Community Council - no response received to the consultation request.

Noted.

4.10 Dunlop and Lugton Community Council - no response received to the consultation request.

Noted.

4.11 Darvel and District Community Council - no response received to the consultation request.

Noted.

4.12 Newmilns and Greenholm Community Council -no response received to the consultation request.

Noted.

4.13 Galston Community Council - no response received to the consultation request.

Noted.

4.14 Moscow Community Council - no response received to the consultation request.

Noted.

4.15 Waterside Community Council - no response received to the consultation request.

Noted.

4.16 Hurlford and Crookedholm Community Council - no response received to the consultation request.

Noted.

4.17 East Ayrshire Councils Countryside Development Manager advises that the Council is currently carrying out a statutory consultation on the Council's Core Path Plan as required by The Land Reform (Scotland) Act 2003. Within this document there are four candidate core paths which the extension to Whitelee windfarm will impinge upon. There are rights of way located within the proposed development site. Under the Land Reform (Scotland) Act and the Countryside (Scotland) Act the developer will be required to apply for path closures or diversion orders and will need to consider adequate access provision whilst construction works are undertaken.

The implementation of the Whitelee Access Action Plan as recommended by the Whitelee Access Planning Group is scheduled to be opened to the public prior to the opening of Whitelee windfarm and visitor centre to the public in September 2009. There is therefore concern that within a relatively short time of opening the Whitelee Access Network to the public that the proposed extension to Whitelee windfarm could significantly restrict access across the network.

The applicant states that they intend to follow the access principles agreed previously for the consented Whitelee windfarm construction site:

Rights of way have remained open throughout the consented site. If a diversion is required then this will be applied for by the applicant under the appropriate legislation.

In accordance with the Land Reform Act 2003 chapter 2, part 6(1) (g) general public access rights are removed from the construction site for health and safety reasons.

Signage is provided at Right of Way access points where access is prohibited and to direct the public to nearby accessible areas.

Signage is provided at Right of Way access points to advise users of the route of the Right of Way and hazards associated with the construction site.

In relation to the Core Path Plan the applicant is in agreement with the principle of using windfarm access tracks as Core Paths as long as it does not prevent safe and effective operation of the windfarm. The

timing of the implementation of the Core Path Plan for new routes through the windfarm should take into account the status of the development in order to mitigate potential conflicts that may affect the health and safety of the public.

It is therefore considered that the Planning Authority should indicate to the Scottish Ministers that conditions or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the health and safety issues in relation to the Core Path Plan and the Whitelee Access Network.

5. REPRESENTATIONS

5.1 The applicant in accordance with the Electricity Act 1989, advertised the application in both national and local newspapers for two consecutive weeks. The Council has been notified by the Scottish Government that eleven objections have been received in connection with the application, two of which were made on an anonymous basis. No neighbour notification is required to be carried out under the Electricity Act 1989 and representations were invited to be sent directly to the Scottish Government.

It is notable that this proposed wind farm development has not attracted any significant level of third party representations. Three of the eleven letters of objection were received directly by the Council and these letters were forwarded to the Scottish Government. With this Section 36 application, it is for the Scottish Ministers to take into account the representations received in the determination of this proposal. However the main points of objection are summarised for information below and full copies of the representations are available for inspection as background papers.

5.2 The points of objection are summarised as follows:

- I register my objection on the basis of visual amenity, destruction of historic landscape, increased traffic over a private road and other impacts
- No data available on how efficient the first phase has been and what impacts it has had on the environment and any problems for nearby properties
- No information given on future phases or what size this will eventually be or how close to houses
- Private forestry demolished to allow for the windmills
- Could effect tourist trade as countryside would be spoiled
- Effect on local air space for microlighting due to the height of the windmills
- The first phase is not yet completed
- No benefits to customers living in the area of the windfarm
- Unacceptable visual impact
- No justification for the development
- Unacceptable cumulative effect
- No gain to the Scottish Economy
- Siting of vast numbers of turbines in one location

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. Although this is a consultation from the Scottish Ministers and not a planning application, the proposed development should be assessed in a similar context. For the purposes of assessing the proposed development, the development plan comprises the Approved Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

6.2 On 22 November 2007, the Ayrshire Joint Structure Plan: Growing a Sustainable Ayrshire became operative following modifications made by the Scottish Ministers. Policy ECON7 of the newly adopted structure plan relates to renewable energy developments and states:

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 18% of electricity demand from renewable energy by 2010 and 40% 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.

The Whitelee windfarm extension proposal does lie within an Area of Search as defined in the approved Ayrshire Joint Structure Plan.

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

The comments of the consultation responses received by the Scottish Government should be taken into account and subject to appropriate mitigation secured by conditions and legal obligations through a Section 75 Agreement, there would be no significant adverse impacts on natural heritage interests.

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

It is not considered that the proposed wind farm will compromise the integrity of any national or international designations.

(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.

All of the 36 turbines associated with the proposed wind farm would be located close to the existing consented Whitelee windfarm (140 turbines). In addition to the Section 36 application to extend Whitelee windfarm the Council has received a valid, undetermined planning application for the erection of 25 turbines at Cowans Law, immediately adjacent to the current application site. The cumulative visual impact of the proposed wind farm extension together with the existing Whitelee windfarm and the proposed turbines at Cowan's Law must be considered to have a significant cumulative visual impact on the landscape character of the area.

(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 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 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 130 megawatts of renewable energy to the national grid and is close in proximity to a grid connection point.

The relevant agencies have been consulted by the Scottish Government and their comments should be taken into account when the application is determined by the Scottish Government.

The Council considers that if the above criteria can be satisfied subject to the imposition of conditions or secured by means of a Section 75 legal agreement then the proposal would comply with the terms of Policy ECON7.

6.5 Policy ENV 1: Landscape Quality states:

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....:

- D) historic landscapes; and*
- E) skylines and hill features, including prominent views.*

Local plans shall seek to protect and enhance landscape character and establish criteria for the assessment of future development proposals in the context of the particular local landscape type within which the development is proposed.

The Finalised Draft of the Alterations to the East Ayrshire Local Plan will update the policy framework at the local level to reflect the provisions of the new structure plan. However at this time, this document is not a material consideration in the formation of a view on the Whitelee windfarm extension development.

6.6 The need to reduce dependence on fossil fuels and nuclear power for energy production is reflected in the Scottish Renewables Obligation which requires that an ever increasing proportion of electricity be produced from renewable sources. The renewable energy source most relevant to East Ayrshire is wind power, and the upland areas which catch the prevailing westerly winds are coming under pressure for wind energy related developments. While supportive of renewable energy projects, it is considered imperative that the more sensitive parts of the rural area in terms of landscape quality, nature conservation and heritage interest are adequately protected. The potential impact of wind farm development on the environment and visual amenity of the area is of particular concern to the Council.

6.7 Policy ENV10 (iii) states that development likely to adversely affect Provisional Wildlife Sites will be resisted and all sites of recognised conservation value will be safeguarded wherever possible. Where development is approved for such sites, appropriate measures should be taken to conserve, manage, as far as possible, the site's biological or geological interest and to provide for replacement habitats or features where damage is unavoidable.

The application site includes two provisional wildlife sites at Crins Hill and Pley Moss. It is noted that no direct development in the form of turbines or access tracks, is proposed within the two provisional wildlife sites. However the Scottish Government should ensure that the environmental impacts of the proposed developments are mitigated against through the implementation of appropriate conditions and legal obligations through a Section 75 agreement.

6.8 Policy ENV13 under criteria (ii) and (iii) states that within the rural area, and especially within the Sensitive Landscape Character Areas identified in the Local Plan maps, the Council will ensure, through the development process, that...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 located and...that the landscape setting of a particular area affected by a proposed development is safeguarded from adverse or irreversible change by the use of planning conditions, management agreements, preparation and promotion of environmental improvement schemes, development and design briefs etc.

The proposed development does not lie within a Sensitive Landscape Character Area. As indicated in previous responses, a number of issues remain to be addressed but these can be addressed through the imposition of appropriate conditions in any consent granted for the development or by means of legal obligations secured through a Section 75 Agreement.

6.9 Policy CS9 states that the Council will require all applications for renewable energy developments which fall within the scope of the Environmental Impact Assessment Regulations to be accompanied by an environmental assessment. 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 sites of nature conservation interest and, in particular, the natural habitat, territory and breeding areas of upland birds;

It is considered that the Whitelee windfarm extension development will not significantly adversely affect the surrounding area in terms of nature conservation. It is noted that, the proposed development site consists primarily of commercial forestry land.

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

It is not considered that with the mitigation measures proposed within the ES that there will be any significant adverse impact on residential properties through noise and other potential nuisance.

(iii) the extent to which the development may adversely affect any recognised heritage resources;

It is not considered that the proposed development would significantly adversely affect any heritage resources.

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

Visual impact will occur as a result of the Whitelee windfarm extension proposal and, while significant impacts may in the greater part be confined locally, regard has to had to the impact on the wider natural landscape. See comments at (vii) below.

(v) the extent to which the proposal may conflict with the Council's strategy to promote tourism developments in the Irvine Valley...

The Environmental Statement, based on available research on public attitudes and tourism impacts, concludes that the proposed Whitelee windfarm extension development is not likely to have a detrimental effect on tourism within East Ayrshire. Indeed the proposed development could have a beneficial effect on the Council's proposed Core Path Plan document which is currently out to public consultation.

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

No prime quality land is affected by the proposed development.

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

It is considered that the proposed Whitelee windfarm extension, in conjunction with existing Whitelee windfarm and the proposal for 25 turbines at Cowans Law would cause significant cumulative visual impacts on the wider landscape within which the development is located.

(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; and

The proposed development will utilise the existing access arrangements associated with the consented site. The grid connection lies outside the scope of this application and will be subject of a separate application under Section 37 of the Electricity Act.

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

It is anticipated that the technical solutions already agreed for the consented Whitelee windfarm will ensure that there are no significant adverse effects on civil aviation and radar. However, the Scottish Government should ensure through imposition of appropriate conditions for the development or by means of legal obligations secured through a Section 75 Agreement that the technical solution being put in place for the consented Whitelee windfarm to mitigate its effects on the radar at Glasgow Airport will be extended to cover the site of this proposal.

6.10 Policy CS12 states that in determining any proposals for wind farm 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.

There are proposals for windfarm developments in neighbouring South Lanarkshire. However these proposals are not located immediately adjacent to the current application site.

6.11 Policy TLR7 states that the Council will seek to develop a definitive strategic and local footpath and cycleways network including encouragement and promotion of strategic long distance cycle route and footpath links.

It is not considered that there would be any significant adverse impacts on the development of such networks as a result of the proposed Whitelee windfarm extension development. The only impact may be short term in relation to restriction of access during the construction period for health and safety reasons.

7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

7.1 The principal material considerations relevant to the appraisal of the application are the consultation responses, the representations received, Scottish Planning Policy 6: Renewable Energy (SPP6) and Planning Advice Note 45: Renewable Energy Technologies (PAN45).

Consultations Responses

7.2 There are no significant adverse comments received from statutory and non-statutory consultees that cannot be addressed either through the imposition of appropriate conditions in any consent granted for the proposed development or by means of legal obligations secured through a Section 75 Agreement in terms of the Town and Country Planning (Scotland) Act 1997.

Representations

7.3 Of the representations received directly and indirectly by this Council, there are concerns particularly in relation to landscape character and visual amenity impacts which are considered to be material in the determination of this application by the Scottish Ministers and in relation to this Council coming to a view on the proposed development. Notably however, PAN45 on Renewable Energy Technologies, under paragraph 71, states:

'There are no landscapes into which a wind farm will not introduce a new and distinctive feature. Given the Scottish Ministers' commitment to addressing the important issue of climate change and the contribution expected from renewable energy developments, particularly wind farms, it is important for society at large to accept them as a feature of many areas of Scotland for the foreseeable future.'

SPP 6: Renewable Energy

7.4 SPP6 was published on 22 March 2007 and set out Scottish Planning Policy on renewable energy developments. The Scottish Ministers have set a target of generating 40% (since quantified as 6 GW) 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.

7.5 The planning framework set out in SPP6 is seen to ensure the delivery of renewable energy targets as well as supporting the development of a viable renewables industry in Scotland. The development of existing and new technologies has the potential to provide significant opportunities for Scotland to enhance its manufacturing capacity with associated economic and employment benefits. Such

benefits, which may accrue locally or nationally, should be fully taken into account when considering planning applications.

7.6 The SPP sets out how the planning system should manage the process of encouraging, approving and implementing renewable energy proposals when preparing development plans and determining planning applications. Planning authorities should use the development plan process to support and encourage the continued growth of all renewable technologies. In particular, plans should set out a spatial approach for considering wind farm proposals over 20 megawatts.

7.7 SPP6 states that spatial policies should not be used to restrict development on sites where the technology can operate efficiently and environmental and other impacts can be addressed. In all instances, development plans should provide clarity on the criteria that should be met to enable development to take place in a satisfactory manner. Plans should, however, use spatial policies to afford significant protection to areas designated for their national or international natural heritage value; green belts and those areas where further development would result in unacceptable cumulative impacts. Planning authorities should revise their development plans to take account of this SPP. In the meantime, they should continue to determine those applications that are, or come, before them ahead of revised local policies being put in place.

7.8 Paragraph 8 states:

'Support for renewable energy developments and the need to protect and enhance Scotland's natural and historic environment must be regarded as compatible goals if an effective response is to be made to the challenges of sustainable development and climate change. The planning system has a significant role to play in resolving conflicts so that progress towards the 2020 target continues to be made in a way that affords appropriate protection to the natural and historic environment without unreasonably restricting the potential for renewable energy development.'

'The promotion of renewable sources of electricity generation, an integral part of the UK Government's energy policy, has been identified as having a key role in its commitment to addressing the causes of climate change and the introduction of measures in support of the UK "Climate Change Programme". The policy is for renewables to make a steadily increasing contribution to secure, diverse and sustainable energy supplies, as electricity consumption increases, existing generating capacity is retired and climate change reduces the incentive to generate electricity by burning fossil fuels. The Scottish Executive is therefore committed to increasing the amount of renewable energy used in Scotland.'

7.9 Paragraphs 23 and 40 go on to state:

'During the lifetime of this SPP, onshore wind power is likely to make the most substantial contribution towards meeting renewable targets. Scotland has considerable potential to accommodate this technology in the landscape although, increasingly, careful consideration must be given to the need to address cumulative impacts. Development plans should set out a spatial framework, supported by broad criteria, for the consideration of wind farm proposals over 20 megawatts. Annex A

sets out the considerations that should be taken into account when undertaking this work. This framework should not be used to put in place a sequential approach to determining applications.'

and

'Some planning authorities may have already progressed work that identifies broad areas of search for wind farms in their development plans. Such areas should provide a steer to developers on acceptable locations but their existence should not be used to rule out development elsewhere if it can be accommodated in a manner consistent with the approach set out in this SPP. Planning authorities should continue to determine those applications that are, or come, before them ahead of revised local policies being put in place.'

7.10 In terms of cumulative impact, paragraph 51 states:

'Planning authorities should ensure that, where relevant, applicants adequately address the cumulative impact that their proposal would have on the area. This will apply primarily to larger scale developments although it should be recognised that smaller community developments may also contribute to a cumulative effect, particularly if poorly sited. In reaching decisions on individual applications, planning authorities should take account of those projects in the vicinity that have been built, those which have permissions and those that are currently the subject of valid but undetermined applications. Where relevant, the views of neighbouring authorities should be taken into account. Decisions should not be unreasonably delayed because other schemes in the area are at a less advanced stage in the consideration process and, in such circumstances, the weight that planning authorities should attach to undetermined applications should reflect their position in the application process.'

7.11 Paragraph 21 is also of relevance in terms of the economic benefits that would accrue from renewable energy developments and states:

'The Scottish Ministers believe that a thriving renewables industry in Scotland has the potential to develop new indigenous industries, particularly in rural areas; to provide significant export opportunities and to enhance Scotland's manufacturing capacity. The planning system has a key role in supporting Scotland's economic competitiveness and employment market. The scope for developments to contribute to national or local economic development priorities should be a material consideration when considering policies and decisions.'

7.12 The relevance of these extracts from SPP6 is considered in the context of the Ayrshire Joint Structure Plan 2007 as noted above.

PAN 45: Renewable Energy Technologies

7.13 PAN 45 is an accompaniment to NPPG 6 and 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.

The proposed Whitelee windfarm extension development has taken into consideration the provisions of PAN 45 in terms of addressing the issues arising from renewable energy technologies and indeed promotes good practice developed since the publication of PAN 45 in January 2002.

8. FINANCIAL AND LEGAL IMPLICATIONS

8.1 There are potential financial implications for the Council in coming to a view on this application as, should the Committee be minded to formally object to the proposed Whitelee extension windfarm development, this will trigger a Public Local Inquiry in terms of Section 62 and Schedule 8 of the Electricity Act 1989. Furthermore, if the Council is considered to have acted unreasonably in its objection to the proposed development, a claim for an award of expenses could be made by the applicant. Legal implications will arise though the requirement for a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 should the Scottish Ministers be minded to grant consent for the proposed development

8.2 Heads of Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, to be concluded prior to the issue of consent under Section 36 of the Electricity Act 1989, should comprise the following:

- Appropriate developer contributions for the purpose of enabling mitigation measures and community improvements within East Ayrshire consistent with Council policy.
- No section of the development hereby authorised shall be commenced until a restoration bond is provided by the developer and agreed by the Scottish Government and the Planning Authority that will secure restoration of the site following decommissioning of the turbines, consistent with conditions 4, 5 and 6 of Appendix 1.
- The developer shall provide a Planning Monitoring Officer for the development, the costs of providing this position shall be incurred by the developer.
- The development site shall be made available at all times for safe public access in accordance with the Council's Core Path Plan and the Whitelee Access Strategy

9. CONCLUSIONS

9.1 As indicated in section 6 of the report, the Section 36 application and the related application for deemed planning permission are considered to be in accordance with the development plan. As is indicated at Section 7 of the report, there are material considerations relevant to this application; it is considered that

these are supportive of the application in terms of national policy, planning advice and the majority of consultees. It is also material that there is not any significant level of objection to the proposed development.

9.2 The proposed Whitelee extension windfarm development is generally considered to comply with the approved Ayrshire Joint Structure Plan 2007 and the East Ayrshire Local Plan 2003. However, in assessing the proposals against the criteria set out in ECON7 (D) of the Ayrshire Joint Structure Plan, it is considered that the proposal presents significant cumulative impacts when considered with not only other existing or authorised windfarm developments within the vicinity of the development site but also with a current valid planning application to be determined by East Ayrshire Council for 25 turbines at Cowans Law.

9.3 It is considered that the proposed development, together with other existing wind farm developments (existing and proposed) will provide a generating capacity that would meet a significant portion of the Scottish Executive's renewable energy 2010 target.

9.4 It is however recognised that the proposed development would result in potential benefits to the natural environment and socio-economic benefits through the following:

- the securing of developer contributions to promote socio-economic benefit to local communities;
- the significant benefits accruing from the construction programme that potentially would generate substantial local output in the East Ayrshire economy.

9.5 In general the proposal is considered to be development plan compliant, although the development plan policies would presume against the development in terms of cumulative visual impacts, in particular in relation to any possible cumulative visual impact which would result from the valid but undetermined planning application for 25 turbines at Cowans Law.

9.6 It is therefore considered that the greater weight would then fall with the provisions of SPP6. In such circumstances, it is considered that, notwithstanding the significant cumulative visual impacts associated with the Whitelee windfarm extension proposal, these are not considered to be of such weight to set aside the clear and stated provisions of SPP6 for the reasons stated elsewhere within this report, particularly as the Whitelee extension proposal has not attracted any significant level of third party objections and that issues raised by other statutory consultees can be addressed.

9.7 The remaining significant issue is that of aviation impacts as indicated in the consultation response from GPA. Whilst GPA are not objecting to the proposal they require confirmation that the technical solution developed for the consented Whitelee windfarm will also apply in this instance.

9.8 It is considered therefore that, any view presented by the Council on the proposed Whitelee windfarm extension development should be qualified to ensure that: the Section 36 Consent and Deemed Planning Consent should not be granted

by the Scottish Government until a suitable mitigation for aviation impacts has been identified and accepted in writing by GPA.

9.9 Taking all relevant matters into consideration, it is considered on balance that the Council should offer a qualified non-objection to the Whitelee windfarm extension development.

10. RECOMMENDATIONS

10.1 It is recommended that the Council does not formally object to the proposed development, but that this is strictly qualified on the following basis:

(i) the Section 36 Consent and Deemed Planning Consent should not be granted by the Scottish Government until a suitable mitigation for aviation impacts has been identified and accepted in writing by GPA;

(ii) any Section 36 Consent should include a condition which prohibits the erection of any Whitelee windfarm extension turbine (that is, its tower, nacelle and rotor) until such time as the agreed mitigation has been implemented to GPA's satisfaction

(iii) the developer will meet all costs of developing and implementing a suitable mitigation and all reasonable costs incurred by GPA in relation to the Whitelee windfarm extension; and

10.2 That the applicant enters into an individual, legal agreement with East Ayrshire Council consistent with the Heads of agreement detailed under Section 8.2 of this report.

10.3 It is recommended that a copy of this report be forwarded to the Scottish Ministers as presenting this Council's formal response to the consultation on the Section 36 application for the Whitelee windfarm extension development in terms of the Electricity Act 1989.

10.4 It is further recommended that, in the event that the Scottish Ministers are minded to grant consent for the Whitelee windfarm extension development, the conditions listed in Appendix 1 of this report (or as may be further amended in discussion or negotiation) are incorporated in any consent granted or secured by means of a Section 75 Agreement in terms of the Town and Country Planning Act 1997.

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

01/10/08
FV/DVM

LIST OF BACKGROUND PAPERS

1. Formal 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. The Whitelee windfarm extension Environmental Statement
8. The Whitelee windfarm extension Planning Statement.
9. SPP 6: Renewable Energy
10. PAN 45: Renewable Energy Technologies

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

Implementation Officer: Dave Morris

APPENDIX 1

LIST OF MATTERS TO BE INCLUDED AS SECTION 36 APPROVAL CONDITIONS, PLANNING CONDITIONS OR LEGAL OBLIGATIONS SECURED BY A SECTION 75 AGREEMENT IN TERMS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Conditions of Section 36 Consent

- 1 The commencement of the development shall be no later than 5 years from the date of this consent or such other period as the Scottish Ministers may hereafter direct.
2. No turbine, crane pad or access track shall be sited except:
 - a) In the positions shown on Figure 3 within the Whitelee windfarm extension Environmental Statement; or
 - b) In a position not more than 200 metres from the position shown on the Figure 3 with the prior written approval of the Scottish Ministers.
3. No development shall commence until a scheme has been submitted to and approved in writing by the Scottish Ministers, in consultation with Glasgow Prestwick International Airport (GPA), to secure the satisfactory mitigation of the impact of the development on the operation of the primary search radar at BAA Glasgow.
4. At least one month prior to the commencement of the development, the company shall provide to the Scottish Ministers and the Planning Authority details of the bond or other financial provision which it proposes to put in place to cover all site restoration costs on the expiry of this consent. No work shall commence on the site until the company has provided documentary evidence that the proposed bond or other financial provision is in place and written confirmation has been given by the Scottish Ministers and the Planning Authority that the proposed bond or other financial provision is satisfactory. The company shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent and the bond will be subject to a five yearly review, to be conducted by the company, the landowners, the Planning Authority and the Scottish Ministers, from the commencement of the development.
- 5 No section of the development hereby authorised shall be commenced until a strategy for the restoration of the site has been submitted by the company and approved by the Scottish Ministers in consultation with the Planning Authority. The restoration strategy shall set out the means of reinstating the site following the removal of the components of the development. In particular the restoration strategy shall detail the level of subsoil, topsoil and peat replacement required over each part of the site.
6. Within 12 months prior to the end of the period of this consent as detailed in paragraph 8 below (unless a further consent is granted) all wind turbines, ancillary

equipment and buildings shall be dismantled and removed from the site and the land shall be restored and subject to aftercare, in accordance with the restoration and aftercare strategy referred to in 5 above. For the purposes of this condition "restored" means the removal of all wind turbines, turbine pads, initial layer of foundation and all buildings and ancillary development. Notwithstanding this requirement, no later than one year prior to commencement of the restoration and aftercare scheme, the Scottish Ministers in consultation with the Planning Authority and Scottish Natural Heritage, shall review the retention of pads, cable/ducts and access tracks within the context of the restoration strategy, landscape strategy and access strategy to identify any elements to be retained on site or requiring alternative reinstatement.

7. No later than 3 years prior to the decommissioning of the development, a restoration and aftercare scheme shall be submitted for the approval of the Scottish Ministers in consultation with the Planning Authority.

General Planning Provisions

8. The consent is for a period of 25 years from the commencement date of generation of electricity from the development to the grid. Not later than 12 months before the expiry of the consent the developer shall submit for the approval of the Planning Authority a written scheme providing for the removal of all surface elements of the development and the foundations of the wind turbines to 1 metre below ground level and for the environmental restoration of the site. The scheme shall be implemented as approved.

9. If any wind turbine which has commenced generation to the grid fails to generate electricity for a continuous period of 6 months then, unless otherwise agreed in writing with the Planning Authority, the wind turbine (including its foundation to 1 metre below ground level and its ancillary equipment) shall be dismantled and removed from the Site within 6 months and the ground fully reinstated to the satisfaction of the Planning Authority.

10. No part of the development shall display a name, logo, sign or advertisement unless such signage is required under other legislation. The site shall not be lit without the prior written approval of the Planning Authority.

11. All electricity or control cables between the turbines, substation and control building shall be laid underground and alongside tracks which are constructed on the site as part of the development unless otherwise agreed in writing with the Planning Authority.

12. No wind turbines shall generate electricity to the grid until a scheme of investigation and alleviation of any electromagnetic interference for TV and radio reception which may be caused by the operation of the turbines hereby permitted has been submitted to and approved in writing by the Planning Authority. Any remedial measures shall be implemented by the developer without delay, and procedures set out in the approved scheme shall be followed at all times.

The Construction of the Development

13. No development shall commence until a Peat Management Statement (which shall be implemented as approved) has been submitted in writing to and agreed by the Planning Authority. The scheme shall include:

- (a) Provisions for the storage of excavated material from wind turbine foundations or for road construction;
- (b) Detailed means of construction of tracks on the site;
- (c) Arrangements for the management of water flows in connection with construction works;
- (d) Provisions for the supervision of construction staff at all times;
- (e) Arrangements (prior to the commencement of the development) for random investigations (including specialist movement dissection equipment); and
- (f) Arrangements for drainage during the construction period.

14. No development shall commence until a Construction Method Statement(s) (which shall be implemented as approved) has been submitted in writing to and approved by the Planning Authority. The scheme shall include provisions relating to:

- (a) the construction of on site tracks, wind turbine foundations and the erection of wind turbines and all other development be carried out under this consent;
- (b) the period of construction;
- (c) hydrogeology and hydrology;
- (d) the potential extraction of stone from borrow pits within the site (including details of any proposed blasting to obtain stone);
- (e) the management of dust and waste arising from construction;
- (f) the sequence of development (including especially the creation of the on site tracks);
- (g) the location, design and external appearance of the proposed buildings and associated compounds including fencing and surfacing;
- (h) the appointment of an planning monitoring officer to ensure compliance with conditions on this consent relevant to habitats and species and with power to prevent works not in accordance with the approved Construction Method Statement;
- (i) the restoration of the site following the construction period; and
- (j) those mitigation measures described in the Environmental Statement submitted with the Section 36 application.

15. The developer shall undertake a peat slide risk assessment on a quarterly basis to be submitted to the Planning Authority.

16. During construction and the operation of the windfarm the developer shall ensure that the water supply to surrounding residential properties meets the standards as required by Scottish Water.

Off-Site Roads

17. A wheel and chassis wash facility which operates on a closed cycle shall be installed at a location(s) and shall be operated throughout the construction period. The public roads adjacent to site accesses shall be kept free from mud, dirt, stones and other deleterious material arising from construction activities (utilising mechanical brushers where appropriate).

Protection of Amenity

Construction Noise

18. Construction work on the site, save for the erection of turbines, shall be confined to the hours of 0730 – 1930 Mondays to Fridays and 0800 – 13030 on Saturdays with no works on Sundays or on Public Holidays unless otherwise agreed by the Planning Authority. The receipt of any materials or equipment other than turbine blades, nacelles and towers, shall not take place except during the hours of 0700 – 1900 hours Mondays to Fridays unless otherwise agreed by the Planning Authority.

Operational Noise

19. At the reasonable request of the Planning Authority, following a complaint to the Planning Authority from the occupier of any dwelling relating to noise emissions from the Wind Turbines, the Developer will demonstrate (in accordance with methodology set out in ETSU) that, at the dwelling in question, the noise levels experienced as a result of the Wind Turbines, do not exceed:

i) During Night Hours, the greater of the Night Hours LA90 10min Background Noise Level plus 5 dB(A) or 43 dB LA90 10min at Wind Speeds not exceeding 12 metres per second;

and at all other times:

ii) The greater of the Quiet Waking Hours LA90 10min Background Noise Level plus 5 dB(A) or 40 dB LA90 10min at Wind Speeds not exceeding 12 metres per second;

Access

20. No rights of way shall be obstructed either during the construction period or once the windfarm is operating.

21. Access shall be maintained at all times to the Core Path Network and the Whitelee Access Network during the construction period or when the windfarm is operating.