

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 09 OCTOBER 2009

PROPOSED ERECTION OF 39 WIND TURBINES AND ASSOCIATED WORKS COMPRISING A PERMANENT MONITORING MAST, TEMPORARY SITE COMPOUND, PERMANENT SUBSTATION BUILDING AND THE FORMATION OF NEW INTERNAL ACCESS TRACKS ON LAND NORTH OF THE IRVINE VALLEY, NORTH EAST OF KILMARNOCK ON EAGLESHAM MOOR.

APPLICATION BY SCOTTISH POWER RENEWABLES

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The development proposes the following:

- 39 wind turbines of up to 140 metres to tip height (i.e. height from ground level to the tip of the blade when vertical) 6 of which will be 110 metre to tip height.
- hardstanding area at each turbine base
- on site access tracks and associated watercourse crossings
- substation building (55m by 33m) and substation compound (50m by 70m)
- one meteorological mast; and
- on site underground cabling

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

- 88 hectares of forestry clearance (approximately 3.0% of site area.)
- construction compounds and laydown areas
- six temporary meteorological masts;
- six borrow pits (areas of stone excavation)

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 400,000 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).

1.4 It is proposed to extract the required quantities of stone from two existing borrow pit locations on the original Whitelee windfarm site. In addition, the three borrow pit locations identified for the Phase 1 extension would also be used for the proposed phase 2 development, with an additional borrow pit located at Quarry Hill. It is intended that each borrow pit will be used to supply stone locally to minimise the need for extensive haulage distances within the site.

1.5 Following construction borrow pits will generally be restored (part filled and contoured). However a single face on borrow pits 2, 3 and 4 are required to be kept open to meet the future needs of Forestry Commission Scotland.

1.6 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.

1.7 The windfarm proposal comprises 39 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, except for turbine numbers 203, 204, 205, 206, 208 and 209 which will reach a maximum height of 110 metres. Turbines with a rating of 3.6 megawatts are under consideration for the proposed windfarm.

1.8 The proposed development includes approximately 6.3 kilometres of spine road, 16.5 kilometres of access track and 4.96 kilometres of upgrades to existing Forestry Commission roads.

1.9 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.

1.10 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.

1.11 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

1.12 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.

1.13 One permanent meteorological mast (in addition to the mast granted consent under the phase 1 extension) is proposed consisting of a free standing mast some 90 metres high and will be used to monitor wind speed and environmental conditions with the data being remotely monitored.

1.14 The application covers a 25 year period of operation, following final commissioning. The construction period for the proposed development is anticipated to be 20 months and decommissioning is expected to take a further six months.

1.15 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.

1.16 The proposed development involves the generation of electricity from a renewable energy source that will reduce or avoid the use of fossil fuels. The applicant states that the Whitelee windfarm extension phase 2 development would deliver a net energy yield of up to 141 megawatt hours per year.

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

1.18 The applicant anticipates that the proposed development would result in beneficial effects through its contribution to improved accessibility and recreation through the implementation of the Whitelee Access Action Plan which will provide a network of paths and viewpoints and visitor centre.

1.19 There will be six operational staff on site during the normal working hours for servicing and maintenance. The operational staff will be responsible for the operation of the Whitelee Windfarm, the Phase 1 Extension and the current proposal for the lifetime of the windfarm.

2. RECOMMENDATION

2.1 It is recommended that the Council does not formally object to the proposed development.

2.2 It is recommended that the applicant enters into a legal agreement with East Ayrshire Council consistent with the Heads of Agreement detailed under Section 8.2 of this report.

2.3 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 phase 2 extension development in terms of the Electricity Act 1989.

2.4 It is further recommended that, in the event that the Scottish Ministers are minded to grant consent for the Whitelee windfarm extension phase 2 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.

3. CONCLUSIONS

3.1 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.

3.2 The proposed Whitelee extension phase 2 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 and a current Section 36 application for 40 turbines at Harelaw on Glenouther Moor.

3.3 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.

3.4 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.

3.5 In general the proposal is considered to be development plan compliant, although the development plan policies may 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 and the Section 36 application at Harelaw for 40 turbines at Glenouther Moor.

3.6 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 phase 2 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 phase 2 proposal has not attracted any significant level of third party objections and that issues raised by other statutory consultees can be addressed by planning conditions or by a Section 75 legal agreement.

3.7 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.

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 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 141 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 the Scottish Government, Business, Enterprise and Energy 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 26 May 2009 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 Phase 2, 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 complete and provides a capacity of up to 322MW.

2.6 In May 2009 Scottish Power Renewables received planning consent from the Scottish Government to construct a 36 turbine phase 1 extension to Whitelee Windfarm. The phase 1 extension will provide a capacity of up to 130MW.

3. APPLICATION DETAILS

3.1 **Site Description:** The Section 36 application site lies immediately to the southwest of the Whitelee Windfarm and occupies an area north of the Irvine Valley of elevated moorland and forestry centred on Whiteleehill, along a broad ridge formed by Rough Hill, Crins Hill and Whiteleehill approximately 5.0 kilometres north east of Kilmarnock. The site area is approximately 2796 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 Whitelee forest owned and operated by the Forestry Commission and Larchet Hill which is in private ownership. There are occasional small openings of moorland, such as Crins Hill and Pley Moss.

3.2 The application is presented as the second phase 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 existing access at Lochgoin within East Renfrewshire and six on site borrow pits, two of which were used for the construction of the consented 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, no Scheduled Ancient Monuments or Listed Buildings on the application 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:

- 39 wind turbines of up to 140 metres to tip height (i.e. height from ground level to the tip of the blade when vertical) 6 of which will be 110 metre to tip height.
- hardstanding area at each turbine base
- on site access tracks and associated watercourse crossings
- substation building (55m by 33m) and substation compound (50m by 70m)
- one meteorological mast; and
- on site underground cabling

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

- 88 hectares of forestry clearance (approximately 3.0% of site area.)
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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 400,000 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).

3.8 It is proposed to extract the required quantities of stone from two existing borrow pit locations on the original Whitelee windfarm site. In addition, the three borrow pit locations identified for the Phase 1 extension would also be used for the proposed phase 2 development, with an additional borrow pit located at Quarry Hill. It is intended that each borrow pit will be used to supply stone locally to minimise the need for extensive haulage distances within the site.

3.9 Following construction borrow pits will generally be restored (part filled and contoured). However a single face on borrow pits 2, 3 and 4 are required to be kept open to meet the future needs of Forestry Commission Scotland.

3.10 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.

3.11 The windfarm proposal comprises 39 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, except for turbine numbers 203, 204, 205, 206, 208 and 209 which will reach a maximum height of 110 metres. Turbines with a rating of 3.6 megawatts are under consideration for the proposed windfarm.

3.12 The proposed development includes approximately 6.3 kilometres of spine road, 16.5 kilometres of access track and 4.96 kilometres of upgrades to existing Forestry Commission roads.

3.13 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.

3.14 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.

3.15 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
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- turbine contract compound 90m by 85m

3.16 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.

3.17 One permanent meteorological mast (in addition to the mast granted consent under the phase 1 extension) is proposed consisting of a free standing mast some 90 metres high and will be used to monitor wind speed and environmental conditions with the data being remotely monitored.

3.18 The application covers a 25 year period of operation, following final commissioning. The construction period for the proposed development is anticipated to be 20 months and decommissioning is expected to take a further six months.

3.19 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.

3.20 The proposed development involves the generation of electricity from a renewable energy source that will reduce or avoid the use of fossil fuels. The applicant states that the Whitelee windfarm extension phase 2 development would deliver a net energy yield of up to 141 megawatt hours per year.

3.21 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.

3.22 The applicant anticipates that the proposed development would result in beneficial effects through its contribution to improved accessibility and recreation through the implementation of the Whitelee Access Action Plan which will provide a network of paths and viewpoints and visitor centre.

3.23 There will be six operational staff on site during the normal working hours for servicing and maintenance. The operational staff will be responsible for the operation of the Whitelee Windfarm, the Phase 1 Extension and the current proposal for the lifetime of the windfarm.

4. CONSULTATIONS AND ISSUES RAISED

4.1 Consultations have been carried out by this Division and by the Scottish Government, Business, Enterprise and Energy 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 the scope of the Environmental Assessment appears to be satisfactory, with the proviso that the applicant will require to identify and where necessary protect any private water supplies within the development site.

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 notes that the Environmental Statement contains a section relating to Access, Traffic and Transportation which suggests that the proposed development will have a similar impact to that of the earlier windfarm development. A Section 96 legal agreement, similar to that provided for the original Whitelee windfarm phase of the development would be acceptable to ensure that the impact on the existing road structure could be monitored and any remedial works required as a result of the traffic generated by development be addressed by the applicant.

It should be noted that any requirement for a Section 96 agreement would be implemented separately under the Roads (Scotland) Act 1984 and would require the agreement of East Ayrshire Council, East Renfrewshire Council (as access to site in ERC) and Scottish Power Renewables.

The applicant has previously concluded a Section 96 agreement for the original Whitelee Windfarm and is in the process of concluding a similar agreement for the Extension Phase 1 site.

A similar agreement will be required for the current proposal for the Phase 2 extension site.

4.4 East Renfrewshire Council has prepared a report on the application to be presented to their planning committee on 07 October 2009.

Noted.

4.5 Glasgow Prestwick International Airport (GPA) have reviewed the parameters of the proposed windfarm and based on the information provided in the Environmental Statement their analysis indicates that the Whitelee Extension Phase 2 appears to be entirely terrain shielded from their primary surveillance radar. GPA further notes the statement in Chapter 16 paragraph 32 of the Environmental Statement that if any of the proposed Phase 2 turbines are detected by the Glasgow Airport PSR “then the existing radar solution for the Whitelee Windfarm will be extended to cover any of the additional turbines that may be visible.”

Therefore we have no objection to this proposed windfarm.

Noted.

4.6 Ayrshire Joint Structure Plan has considered this application and the supporting information and raise no objection to the principle of the proposed development, however further reflection on the following issues should be considered:

4.6.1 Turbines 205, 206 & 207

These turbines lie out with the forested area and lie to the west of Wallace Gill Muir. Article 10 of the Habitats Directive contains a requirement for land use planning and development policies to encourage the management and restoration of features of the landscape which are of major importance for flora and fauna. The management of such features outside designated sites is recognition of the important role that they have in facilitating the dispersal and migration of species, or genetic exchange. Particular significance is placed on Sphagnum acid bogs, given their potential for carbon sequestration. Within this context the general area within which these turbines lie has been previously identified as an ANNEX 1 habitat in the Structure Plan (Refer Report of Survey, Structure Plan April 1999, Technical Note 19) and as such a possible habitat which should be retained and enhanced.

It is acknowledged that turbine numbers 205, 206 and 207 are located outwith the forest near to High Bowhill, in an area which is identified in the Phase 1 habitat maps as wet modified bog.

It is proposed to include a condition on any consent for management to be undertaken in a suitable area currently under forestry, which will restore such an area to wet modified bog habitat to offset the loss of the phase1 habitat at High Bowhill.

4.6.2 Landscape Character & Visual Considerations.

Irvine Valley- the Guidance published to support wind farm policy in the Structure Plan highlights the need to conserve the “distinctiveness and small pastoral and woodland landscapes of the Irvine Valley”. This landscape character type is not suitable for wind farms and the visual impact on this landscape type (which includes the nationally recognised Loudoun Castle designed landscape) from development within the preferred area of search should be minimised. It is noted that this was partially achieved through the redesign of the turbine layout prior to submission of the application, a further improvement could however be achieved through the removal of turbines 205, 206 & 207 from the area identified above.

As a result of pre application discussions and in order to reduce the visual impact of the proposal on the character of the landscape the applicant agreed to remove 6 turbines located at Wallacegill Muir from the original design and also agreed to reduce the height of turbine numbers 203, 204, 205, 206, 208 and 209 from 140 metres to 110 metres.

It is considered that this redesign of the proposal will result in a significant improvement on the visual effect of the proposal on the character of the surrounding landscape.

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 – reviewing the application summary of the site it would seem that virtually all aspects of the environmental and technical parameters have been considered and taken on board.

However there is always the impact that such turbines will have on those persons living close to the site and the 140m high turbines will be prominent on the general landscape.

A 25 year operation period is envisaged for the extended site and this will have a significant effect on areas surrounding the site. The proximity of existing dwellings to the new turbine layout should be carefully monitored to minimise the impact of turbine noise and the visual contribution made by them as far as possible.

The spin off benefits from the Phase 1 Development will hopefully soon be having an impact on local communities.

It is acknowledged that the size and scale of the turbines will result in some visual effects on the general character and appearance of the surrounding landscape. However, the proposed extension lies mainly within the footprint of the consented phase 1 and as such is likely to be no more prominent than the neighbouring turbines already approved.

In terms of noise from turbines located near to dwellinghouses, the applicant has provided noise data in respect of this issue which has been examined by the Council's Environmental Health Section who have offered no adverse comments on this issue.

In terms of spin off benefits, the applicant has considered the Council's policy on developer contributions for windfarm development and has agreed with the general terms of this policy.

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 and Waterside Community Council - no response was received to the original consultation request issued by East Ayrshire Council to Moscow and Waterside Community Council.

However, as a result of the additional advertisement of the proposal by the applicant to comply with the Environmental Impact Regulations, Moscow and Waterside Community Council has forwarded a letter of objection to the Scottish Government. The points of objection have been included in section 5 of this report.

Noted.

4.15 New Farm Loch 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 states that by the time this extension gets built, the Whitelee Wind Farm will be open to the public, the proposed extension would separate the population centres of Kilmarnock, Newmilns, Darvel and Galston from the recreational facilities at Whitelee. During construction access routes and rights of way will therefore need to be kept open or diverted. As with Phase 1, every opportunity must be made to keep these open. All of the routes from population centres in East Ayrshire cross the construction site all of which have recently been identified as core paths

Unless access routes can be kept open during the construction phase Scottish Power Renewables should investigate options for phased opening of this area rather than full closure throughout construction. Increased levels of

construction traffic at a time when visitors are being encouraged to access the site increases the health and safety risks.

There will be complications in the implementation of the signage plans for the new access plan for the Whitelee Windfarm for visitor maps and interpretation. Additional costs for signage etc. would need to be met. For example, a number of the main/core path routes would become very confusing to the user with so many new roads intersecting them, the whole signage and waymarking in this area would need to be looked at. It would also be necessary to update site plans throughout the entire Whitelee area both during and after construction of the extension.

Attention needs to be paid to the quality of surfacing used on any roads. At the current Whitelee site they are variable, what is suitable for heavy plant may not be suitable for horses, walkers and cyclists, and some sections of the current road system are now having to be improved to allow multiuser usage. Initial specifications should reflect the final use.

In summary, it is suggested that the following points be considered and conditioned as appropriate:

1. the developer should make every effort, through all stages of the proposed development, to minimise the potential impact on public access so far as reasonably practicable.
2. the Whitelee Access Planning Group be consulted regarding the detail and extent of the construction boundary.
3. The lifting of any restrictions to public access should be phased. If construction activity within a particular area is to be considerably shorter than for the development as a whole, that the developers and their contactors should consider only temporary restrictions to access in these areas to prevent unnecessary and protracted inconvenience to the general public.
4. Any access routes subject to temporary closure should be adequately protected, inspected and maintained by the developer.
5. in the event of any access infrastructure being removed that these are replaced or re-instated by and at the cost of the developer, and with agreement of the Whitelee Access Planning Group.
6. the developer meets the full cost of updating signage, interpretation and promotional materials in relation to the Whitelee access network.
7. that the developer considers, prior to the closure of routes used for public access, the likely impact on remaining access points and to provide additional capacity (including car parking) as required and in agreement with the Whitelee Access Planning Group.

8. Ensure that public access along the spine road SE of Flow Moss is retained, or an alternative route provided by the developer

The above raised points are considered to be issues with regard to access provisions that have previously been discussed with the applicant as part of the consented Phase 1 extension and directly, by the applicant, with the Whitelee Access Planning Group.

The applicant has stated that any potential effects on public access as a result of the development will be minimised as far as practicable whilst emphasising that public safety remains the top priority.

It is considered that should planning permission be granted, the construction of the Whitelee windfarm extension Phase 2 is likely to result in new windfarm access tracks that would in turn facilitate improved public access to the area.

The applicant, as a member of the Whitelee Access Group, has engaged extensively with the Group in relation to the proposed development in order to facilitate public access to the area.

It is therefore considered that the Planning Authority should indicate to the Scottish Ministers that a condition 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 one letter of objection has been received in connection with the application. 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.

5.2 In accordance with Environmental Impact Regulations, when initial comments are received from a statutory consultee, the applicant is required to advertise the promotion of this information in national and local newspapers for two consecutive weeks. Following this additional advertisement two letters of objection were received in connection with the application. Consequently a total of three letters of objection have been received in connection with the proposal.

5.3 It is notable that this proposed wind farm development has not attracted any significant level of third party representations. 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.

5.4 The points of objection are summarised as follows:

- The 140 metre height of the turbines will dominate the environment and industrialise the visible landscape and horizon.
- The effect of the proposal on private water supplies.
- To ameliorate the proposal, remove or reduce the height of the turbines.
- Impact on wildlife
- Impact on the local economy and community development
- Impact on landscape character and visual amenity
- Impact on tourism

It should be noted that the Council participated in pre application discussion with the developer which resulted in the removal of six turbines and the reduction in height of a further six turbines from the original proposal submitted by the applicant. These amendments to the proposal are considered to significantly reduce the visual impact of the proposal and the impact on the character of the landscape of the Irvine Valley.

It is therefore considered that the Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the issues of habitat management and the issue of private water supplies.

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 Policy ECON 7 Wind Farms states that,

A) In 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.

In terms of the Structure Plan, the indicative Key Diagram indicates that the proposed windfarm is likely to be located within the Fenwick Moor Broad Area of Search for large scale windfarms.

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 proposal neither impinges on, nor is adjacent to any areas subject to national or international natural heritage designations or green belts.

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 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 windfarm is located south and west of the Whitelee Windfarm and the Extension phase 1. Although, when considered together with the turbines of the original Whitelee development and Extension Phase 1, the cumulative visual impact of the windfarm particularly from the south west and parts of the A 719 is likely to be considerable.

However the grouping is compact and, for the size of the overall development would not subtend an unduly wide angle along the skyline as viewed from these locations, while from the Irvine Valley the windfarm is likely to be visible from some key locations and then not significantly visually prominently.

It should be noted that the windfarm layout has been amended to remove 6 turbines and reduce the height of a further six turbines specifically so that its visual impact from the Irvine Valley would be reduced to be less visually prominent. It is therefore

considered that in terms of cumulative visual impact the proposal would be acceptable under Policy ECON 7.

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:

- a. Historic environment;
- b. Areas designated for their regional and local natural heritage value;
- c. Tourism and recreational interests;
- d. Communities;
- e. Buffer zones;
- f. Aviation and defence interests;
- g. Broadcasting installations.

As the turbines are located within the Structure Plan Areas of Search the above criteria are not relevant to the proposal.

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.

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 windfarms 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 Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues.

6.3 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 as the turbines of the windfarm would be located further than the 2 km accepted by SPP 6: Renewable Energy as a minimum reasonable distance from communities the proposal would not have any adverse effects on local communities.

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

There are no Ancient or Semi- natural Woodlands within the proposal site.

- C) special qualities of rivers, estuaries and coasts;

The proposal would not have an effect on such features.

- D) historic landscapes;

It is not considered that any Historic Gardens and Designed Landscapes would be adversely affected by the proposal.

- E) skylines and hill features, including prominent views;

When considered together with the turbines of the original Whitelee development and Extension Phase 1 the cumulative visual impact of the windfarm particularly from the south west and parts of the A 719 is likely to be considerable.

However, the grouping is compact and, for the size of the overall development would not subtend an unduly wide angle along the skyline as viewed from these locations, while from the Irvine Valley the windfarm is likely to be visible from some key locations and then not significantly visually prominent.

It should be noted that the windfarm layout has been amended to remove 6 turbines and reduce the height of a further six turbines specifically so that its visual impact from the Irvine Valley would be reduced to be less visually prominent.

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6.4 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 a comprehensive environmental statement.

6.5 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.

The Planning Authority can indicate to the Scottish Ministers that conditions should be attached to any consent granted for the development to 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;

The Environmental Health section of the Council has not offered any objection to the proposal in terms of noise emissions but has indicated that a condition should be attached to any consent granted for the development to address the issue of private water supplies.

- (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 and their settings. No Historic Gardens and Designed Landscapes would be affected by the proposal.

- (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 which has been identified in background landscape studies for the Structure Plan as the landscape, in principle, most suited to large-scale wind farm developments. It is considered that the proposal will not significantly visually dominate any communities within East Ayrshire the turbines being a significant distance east of the settlements along the A 719 and set back behind the ridge defining the northern visual limit of the Irvine Valley.

- (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;

It is not considered that the proposal would have an adverse effect on any existing or future tourism related developments in the Irvine Valley.

- (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;

Although, when considered together with the turbines of the original Whitelee development and Extension Phase 1 the cumulative visual impact of the windfarm particularly from the south west and parts of the A 719 is likely to be considerable, the grouping is compact and, for the size of the overall development, would not subtend an unduly wide angle along the skyline as viewed from these locations, while from the Irvine Valley the windfarm would be visible from some key locations and then not significantly visually prominent.

It is therefore considered that in terms of cumulative visual impact the proposal would be considered acceptable under Policy CS 9.

(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;

Connections to the national grid are taken from within South Lanarkshire and access from the public road network to Whitelee windfarm is taken from East Renfrewshire.

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

No objections have been received from any consultee in connection with the application in terms of aviation issues.

6.6 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 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 it must be removed, with the land restored to its original condition within an appropriate period to be agreed with the Council.

The Planning Authority can indicate to the Scottish Ministers that a condition should be attached to any consent granted for the development to address the above issue.

6.7 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.

It is not considered that the Phase 2 extension proposal would inhibit the previously consented sites.

6.8 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.

It is not considered that the proposal would result in any visual intrusion in conjunction with any existing or proposed developments in adjoining Authority areas.

6.9 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.

It is considered that there would be no permanent loss of landscape features as a result of the proposal proceeding.

6.10 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 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;

It is considered that although the visual impact of the proposal is likely to be significant it will be seen, from most vantage points, against the background of and as part of the existing phases of the Whitelee windfarm and extension phase 1 and therefore will not be significantly obtrusive in its own right.

(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;

It is considered that the proposed windfarm would be located within a landscape capable of absorbing its visual impacts. Also the proposed windfarm will, overall, be viewed against the background of the existing phases of Whitelee windfarm and extension phase 1 into which it will visually blend.

(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.

The Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues.

6.11 Policy ENV 14 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;

It is considered that the proposal would not result in any irreparable damage to built heritage resources.

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

The Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues.

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

The Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues.

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

The Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues.

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, The Alteration to the East Ayrshire Local Plan, 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 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, 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.'

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7.4 For clarity, whilst development proposals will continue to be assessed first and primarily against the Adopted Local Plan, the Council has now given authority for an appropriate and proportionate degree of weight to be given to the Alteration to the East Ayrshire Local Plan in the determination of planning applications. In this case, the Adopted Local Plan is the primary document as objections have been received to the preferred search area indicated in the Alteration to the East Ayrshire Local Plan.

7.5 Under Policy ENV 13 the Council will encourage and support:

(v) in accord with Article 10 of the Habitats and Birds Directive and the provisions of the Ayrshire Local Biodiversity Action Plan (LBAP), the management, conservation, enhancement or restoration, as considered appropriate, of existing landscape features which are of major importance for wild fauna and flora, including linear features such as rivers and existing field boundaries and other features such as ponds and small woods which are essential for the migration, dispersal and exchange of wild species.

The Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues.

7.6 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;

It is considered that the proposal would not result in any irreparable damage to built heritage resources.

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

The Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues.

(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;

Given that the current proposal is set within the backdrop of the consented Whitelee windfarm and the phase 1 extension, it is not considered that the proposal will result in an unacceptable adverse visual impact or cause irreparable damage to the landscape character of the area.

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

The Planning Authority should indicate to the Scottish Ministers that a condition should be attached to any consent granted for the development to address the above issues.

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

The Planning Authority should indicate to the Scottish Ministers that a condition should be attached to any consent granted for the development to address the above issue.

7.7 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

It is considered that there are no identified statutory or non statutory sites of nature interest that would be effected by the proposal.

- (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;

The Environmental Health Section of the Council has not offered any objection to the proposal in terms of noise emissions but has indicated that a condition should be attached to any consent granted to address the issue of private water supplies.

- (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, Historic Gardens and Designed Landscapes or Scheduled Ancient Monuments and their settings.

(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 application site is not within a Sensitive Landscape Character Area as delineated in the Ayrshire Joint Structure Plan. The proposed windfarm is located south and west of the Whitelee Windfarm and the Extension phase 1.

Although, when considered together with the turbines of the original Whitelee development and Extension phase 1 the cumulative visual impact of the windfarm particularly from the south west and parts of the A 719 is likely be considerable, the grouping is compact and, for the size of the overall development would not subtend an unduly wide angle along the skyline as viewed from these locations, while from the Irvine Valley the windfarm would be visible from some locations and then not significantly visually prominent.

It should also be noted that the windfarm layout has been amended to remove 6 turbines and reduce the height of others specifically so that its visual impact from the Irvine Valley would be reduced to an acceptable level. It is therefore considered that the proposal respects landform and contours to the extent that it does not obtrude on local skylines and therefore does not have an adverse effect on the landscape character and scenic quality.

(v) on existing infrastructure

It is not considered that the proposal would result in any significant adverse effect on existing infrastructure.

7.8 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 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 essentially diagrammatic representation of the Broad Area of Search in the Structure Plan has been refined by the Council, in consultation with the Ayrshire Joint Planning Unit, in the

Alteration to the East Ayrshire Local Plan Finalised Version with Modifications to reflect local landscape considerations, to minimise adverse local visual impacts and to relate, wherever possible, to identified physical features on the ground. This refined area, referred to as the Preferred Wind Farm Area in the Local Plan, has also 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.

While 10 of the turbines relating to the amended plans for the windfarm are located outwith the above Preferred Area, it should be noted that the windfarm layout has been amended to remove 6 turbines and reduce the height of others specifically so that its visual impact from the Irvine Valley would be reduced to an acceptable level. It is therefore considered that the proposal respects landform and contours to the extent that it does not obtrude on local skylines or therefore have an adverse effect on the landscape character and scenic quality and that, in this particular case, the location of some turbines outwith the Preferred Wind Farm Area is acceptable in terms of Policy CS 14.

(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 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 windfarm is located south and west of the original Whitelee Windfarm and Extension phase 1. Although, when considered together with the turbines of the original Whitelee development and Extension phase 1 the cumulative visual impact of the windfarm particularly from the south west and parts of the A 719 is likely to be considerable, the grouping is compact and, for the size of the overall development, would not subtend an unduly wide angle along the skyline as viewed from these locations, while from the Irvine Valley the windfarm would be visible from only some locations and then not significantly visually

prominent. It is therefore our view that in terms of cumulative visual impact the proposal would be considered acceptable under Policy CS 14.

(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.

The Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues, in particular how adverse effects can be minimised.

(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 Planning Authority should indicate to the Scottish Ministers that a condition or a legal obligation through a Section 75 agreement should be attached to any consent granted for the development to address the above issues.

7.9 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.'

Scottish Power Renewables has stated that they are committed to the concept of community benefit and will adhere to the recommendations set out by East Ayrshire Council in relation to this issue.

Consequently the applicant will require to enter a Section 75 legal agreement with the Council in terms of a developer contribution to accord with Local Plan policy.

7.10 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 Planning Authority should indicate to the Scottish Ministers that a condition should be attached to any consent granted for the development to address the above issues.

7.11 Most of the proposed windfarm would be located within the Broad Area of Search for large commercial windfarms indicated diagrammatically in the approved Ayrshire Joint Structure Plan and shown in detail as the Preferred Area for large scale windfarms in the Alteration to the East Ayrshire Local Plan Finalised Draft with Modifications. However, although part of the proposal is outwith the above delineated area, it should be noted that, following extensive discussions with Scottish Power and site visits by Planning Officers to locations along the A71 and A719 and other local viewpoints west and north of the proposal site, the original windfarm layout was amended to remove 6 turbines and reduce the height of others specifically so that its visual impact from the Irvine Valley would be reduced.

It is therefore considered that the proposal respects landscape type, landform and contours so that it does not obtrude on local skylines the landscape character and scenic quality and that, in this particular case, the location of some turbines outwith the Preferred Wind Farm Area is therefore considered acceptable.

SPP 6: Renewable Energy

7.12 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.

7.13 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.

7.14 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.

7.15 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.

7.16 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.'

7.17 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.'

7.18 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.'

7.19 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.'

7.20 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

7.21 PAN 45 is an accompaniment to SPP 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 phase 2 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.
- 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 during the operation of the windfarm for safe public access in accordance with the Council's Core Path Plan and the Whitelee Access Strategy except during periods of maintenance/servicing where restrictions may be required for public safety.

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 phase 2 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 and a current Section 36 application for 40 turbines at Harelaw on Glenouther Moor.

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 may 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 and the Section 36 application at Harelaw for 40 turbines at Glenouther Moor.

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 phase 2 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 phase 2 proposal has not attracted any significant level of third party objections and that issues raised by other statutory consultees can be addressed by planning conditions or by a Section 75 legal agreement.

9.7 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.

10.2 It is recommended that the applicant enters into a 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 phase 2 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 phase 2 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

FV/DVM
30 September 2009

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
11. Alterations to the East Ayrshire Local Plan

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

Implementation Officer: Dave Morris

APPENDIX 1

Conditions of Section 36 Consent

General

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.

Reason: To ensure the commencement of the development is undertaken within five years

2. The consent is for a period from the date of this consent until the date occurring 25 years after the date of final commissioning of the development. For the purposes of this condition, final commissioning shall be the earlier of, final commissioning or 17 months after the first commissioning. Not later than 12 months before the expiry of the consent, the developer shall submit for the approval of the East Ayrshire Council 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.

Reason: to define the duration of the consent.

3. 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 East Ayrshire Council, 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 East Ayrshire Council.

Reason: to ensure the removal of non-functional equipment and plant.

4. No part of the development shall display a name, logo, sign or advertisement unless such signage is required under other legislation.

Reason: to prevent advertisements being displayed on the turbines, buildings and structures, in order to protect the amenity of the area.

5. The site shall not be illuminated by lighting unless:

- East Ayrshire Council has given prior written approval;
- Lighting is required during working hours which has been approved by the relevant planning authority; or
- An emergency requires the provision of lighting.

Reason: To ensure the site is not illuminated unless necessary, in the interests of amenity.

6. No turbine, crane pad, meteorological mast or access track shall be sited except:
 - a. In the positions shown on Figure 4.1 of the Environmental Statement;
 - b. In a position not more than 200m from the position shown on Figure 4.1.
 - c. with the approval of the Ecological Clerk of Works and the site archaeologist.

Any movement greater than 200m shall require the prior written approval of the Scottish Ministers in consultation with the relevant planning authority. No turbine shall be erected under (b) if its new position is closer to any residential property that was within 1000m of the original position of the turbine as indicated on Figure 4.1.

Reason: To restrict the micro-siting of tracks and turbines

7. No electricity or control cables between the turbines, substations and control buildings shall be laid other than underground alongside tracks which are to be constructed or upgraded on the Site, unless otherwise agreed with the relevant planning authority or authorities.

Reason: To ensure appropriate placement of electricity and control cables.

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

Reason: to ensure public roads are kept free of material arising from construction activities

Ground Conditions

9. Prior to the commencement of the development, the Company shall contract the services of an appropriately experienced and professionally qualified engineering geologist or geotechnical engineer, whose appointment has been approved by East Ayrshire Council. The specification and duration of this appointment shall be submitted to East Ayrshire Council for their approval.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide

10. The Company shall undertake on-going assessment of ground conditions as construction progresses. The results of this monitoring shall be fed into risk analysis reports to be submitted to East Ayrshire Council on a quarterly basis. On-going assessment and call out services shall be provided by suitably qualified geotechnical personnel whose appointment has been approved by East Ayrshire Council. If a risk of peat failure is identified, the Company shall install and monitor ground conditions using suitable geotechnical instrumentation as recommended by the approved geo-technical personnel. This may take the form of a line of stakes, levelling points or more complex installations such as inclinometers. Any remediation considered necessary (other than that identified in the Contingency Plan, Condition 12) shall be approved in writing by East Ayrshire Council prior to implementation.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide.

11. The Company shall develop and adopt a formalised reporting procedure which records Site workings, monitoring results and any observations that may be pertinent to the stability of the works.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide.

12. Prior to the commencement of the development the Company shall submit to East Ayrshire Council and South Lanarkshire Council for their written approval, a contingency plan for its response to unexpected adverse ground conditions. Any alterations to this contingency plan shall be notified to and approved in writing by East Ayrshire Council and South Lanarkshire Council.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide.

13. The geotechnical personnel approved in terms of Condition 9 shall undertake an annual inspection of the Site commencing at a date not exceeding one year from the date of this consent. Such inspection shall be carried out annually until the site has been decommissioned and then restored in accordance with Condition 32. This inspection shall include a walkover inspection of the Site, with a report produced and submitted to East Ayrshire Council within 3 months of the inspection. Where the report identifies a risk of peat failure, measures shall be implemented in accordance with the contingency plan approved in terms of Condition 12. South Lanarkshire Council and East Renfrewshire Council shall receive a copy of the annual inspection report for information.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide.

14. Excess peat excavations shall not be placed onto the peat surface until the adequacy of the ground to support the load has been determined and East Ayrshire Council has given its written approval.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide.

15. All water discharged from excavations shall be directed into suitably designed or natural drainage lines.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide.

16. All release of water shall be into a formalised drainage path which shall form part of a Site-wide drainage network.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide

17. All excavation shall be suitably supported to prevent collapse and development of tension cracks.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide.

18. No work shall commence on any turbine foundation, crane hardstanding or track construction until the Company has produced a Factor of Safety and Geomorphological map for the approval of East Ayrshire Council following consultation with SEPA and SNH.

Reason: To mitigate peat slide risk and minimise environmental impacts arising from peat slide.

Construction Method Statements

19. No construction work shall commence until a method statement for track construction work has been submitted to and approved by East Ayrshire Council. Thereafter, the approved method statement shall be implemented by the Company. The method statement shall fully detail the following considerations. If the content of the method statement proposed is the same as the approved Prior to Commencement Document Issue 02 for Condition 7.11 of the Whitelee Windfarm Section 36 Consent (Ref IEC 3/33), then approval under this condition shall be deemed to be granted:

- The role of the Ecological Clerk of Works (ECoW) in decisions over location and construction methodologies for each section of track;
- Method of defining track route and location (track corridors should be pegged out 500-1000m in advance of operations);

- Track design approach: Maps of tracks indicating double and single tracks and position of passing places. Full extent of anticipated track "footprint(s)" including extent of supporting "geogrid" below roadstone and cabling at edges of the track;
- Track construction: Floating track construction over peat >1m deep and gradients of 1:10 or less;
- Track construction for peat <1m deep, or on gradients of >1:10, cross slopes or other ground unsuitable for floating roads. Where it is concluded that there is a high risk of instability, identification of the circumstances under which non engineering solutions such as alternative routes would be considered;
- Procedures to be followed when, during track construction, it becomes apparent that the chosen route is more unstable or sensitive than was previously concluded, including ceasing work until a solution, informed with reference to advice from ECoW, is identified;
- Timing and extent of any necessary re-instatement;
- Extent, design, treatment and reinstatement of embankments, track edges and other areas affected by track construction;
- Drainage treatments;
- Design of crossing points for water courses such as culverts and bridges;
- Methods to deal with failing roads, sinking/sunken roads, peat rotation at road edges etc; and
- Procedure for early reporting to the planning authorities of all major departures from the agreed method statement and design parameters for the tracks.

Reason: to ensure compliance with commitments made in the Environmental Statement and subsequent schemes developed following the consultation process.

20. 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 East Ayrshire Council. The scheme shall include provisions relating to:

- the period of construction;
- protection of groundwater and surface water;
- the sequence of development (including especially the creation of the on site tracks);

- the location, design and external appearance of the proposed buildings and associated compounds including fencing and surfacing;
- those mitigation measures described in the Environmental Statement submitted with the Section 36 application.

Reason: to ensure compliance with commitments made in the Environmental Statement and subsequent schemes developed following the consultation process.

21. Prior to the commencement of development, a monitoring plan shall be submitted for the approval of East Ayrshire Council, East Renfrewshire Council and South Lanarkshire Council setting out the steps that shall be taken to monitor the environmental effects of the development during the construction phase and the operational phase. Additionally the plan shall outline a methodology for developing avoidance and mitigation measures to address any adverse environmental effects identified during the course of the monitoring. Thereafter the monitoring plan as approved, and if necessary as amended, shall be implemented.

Reason: to ensure appropriate mitigation measures to address any adverse environmental effects

22. At intervals to be agreed by East Ayrshire Council, East Renfrewshire Council and South Lanarkshire Council, the monitoring plan shall be reviewed and amended where necessary by the Company and such amended plan shall be submitted for approval of the above planning authorities. The plan shall make specific reference to ground water, surface water, noise and dust. Thereafter, the plan as approved or amended as the case may be, shall be implemented within the timescales to be approved by the planning authorities.

Reason: to ensure the continued relevance of the monitoring plan.

23. Prior to the commencement of the development, a scheme showing the details of peat/soil stripping at the Site and the storage and proposed use and replacement of peat, topsoil, and subsoil, shall be submitted to East Ayrshire Council, East Renfrewshire Council and South Lanarkshire Council. All soil stored on Site shall be stored in accordance with BS3882. Thereafter, all soil stripping and storage and replacement operations shall accord with the details as approved. In particular the scheme shall incorporate a method statement setting out the measures to protect and store peat. If the content of the method statement proposed is the same as the approved Prior to Commencement Document Issue 01 for Condition 7.13 of the Whitelee Windfarm Section 36 Consent (Ref IEC 3/33), then approval under this condition shall be deemed to be granted.

Reason: to ensure appropriate treatment of peat on site.

24. A Desk Study of the whole Site (and particularly the Borrow Pit locations) is required to confirm no previously potentially contaminating use of land. If any such previous use is confirmed, then a Phase 2 intrusive

investigation and risk assessment is required. This should detail any methods of proposed remediation required. This is required to be submitted to the East Ayrshire Council and South Lanarkshire Council for approval prior to commencement of development.

Reason: to ensure adequate assessment of potentially contaminating land use.

Borrow Pits

25. No development shall take place within each of the borrow pits identified on Figure 4.1 of the Environmental Statement until a scheme of working for each borrow pit has been submitted to, and received the written approval of the relevant planning authority after consultation with SNH. The scheme shall then be implemented as approved, or as may subsequently be approved in writing, by the relevant planning authority. The scheme shall make provision for:

- method of working (to include blasting as set out in Condition 26-28);
- soil handling
- drainage including measures to prevent drying out of surrounding peatland
- demarcation of the site
- programme of implementation and
- programme of restoration and aftercare.

Reason: to ensure a scheme is in place to control the use of borrow pits.

26. No blasting shall take place except between the following times:-

10.00-12.00 and 14.00-16.00 Monday to Fridays

10.00-12.00 Saturdays

Reason: to ensure blasting times are limited for reasons of public amenity.

27. No blasting shall take place until a scheme to address Site blasting has been submitted to, and received the written approval of, the relevant planning authority. The scheme shall be implemented as approved, or as may subsequently be approved, in writing by the relevant planning authority. This scheme shall make provision for the following elements. If the content of the method statement proposed is the same as the approved Prior to Commencement Document Issue 01 for Condition 7.30 of the Whitelee Windfarm Section 36 Consent (Ref IEC 3/33), then approval under this condition shall be deemed to be granted:

- blasting monitoring locations
- type of monitoring equipment to be used
- frequency of monitoring

- the methods to be employed to minimise the effects of overpressure arising from the blasting, having regard to blast design, methods of initiation and the weather conditions prevailing at the time
- limits on air overpressure levels at specified properties; and
- submission of blasting records to the relevant planning authority

Reason: to ensure a scheme is in place to control blasting

28. Ground vibration from blasting shall not exceed a peak particle velocity of 6mm/second at the blasting monitoring locations identified for Condition 27 above. The measurement to be the maximum of three mutually perpendicular directions taken at the ground surface.

Reason: To ensure ground vibration from blasting is kept to a minimum

Operations and Maintenance

29. No servicing, maintenance or testing of plant shall take place other than within designated areas, as approved by the relevant planning authority prior to commencement of development.

Reason: to ensure appropriate noise levels are maintained and areas used for maintenance or testing are limited in the interests of public amenity

30. Efficient silencers shall be fitted to, used and maintained in accordance with manufacturers' instructions on all vehicles, plant and machinery used on the Site. Save for the purposes of maintenance, no machinery shall be operated with the covers open or removed.

Reason: to ensure appropriate noise levels are maintained and areas used for maintenance are limited in the interests of public amenity

31. Only mechanical means of snow clearance shall be used to clear access tracks, unless otherwise agreed in writing by the planning authorities after consultation with SNH.

Reason: to ensure effective methods of snow clearance.

Decommissioning

32. Within 36 months following the end of the period of the s.36 consent as detailed in Condition 2 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 scheme. 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, East Ayrshire Council and East Renfrewshire Council after consultation with SNH,

shall review the retention of pads, cable/ducts and access tracks as are located within their administrative area within the context of the restoration strategy and access strategy to identify any elements to be retained on Site or requiring alternative reinstatement.

Reason: To ensure that the site is restored to the satisfaction of the Planning Authority and East Renfrewshire Council.

33. 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 East Ayrshire Council and East Renfrewshire Council with respect to the activities within their administrative area, after consultation with such other parties they consider appropriate. The restoration strategy shall set out the means of reinstating the Site, following the removal of the components of the development as specified in Condition In particular the restoration strategy shall detail the principles of subsoil, topsoil and peat replacement required over the Site. No section of the development shall be commissioned until details of all seed mixes proposed to be used are submitted by the Company to East Ayrshire Council and East Renfrewshire Council for approval after consultation with SNH.

Reason: To ensure that a plan is in place for the restoration of the site

34. No later than 3 years prior to the decommissioning of the development, and in any event no later than 3 years prior to the end of the period of this consent as detailed in Condition 2, a restoration and aftercare scheme shall be submitted for the approval of East Ayrshire Council and East Renfrewshire Council with respect to the activities within their administrative area, after consultation with, SNH and such other parties as they consider appropriate. The scheme shall subsequently be implemented as approved, unless otherwise agreed in writing by East Ayrshire Council and East Renfrewshire Council following consultation with SNH and other relevant bodies.

Reason: To ensure that a plan is in place for the restoration and aftercare of the site

Ecology

35. Prior to the commencement of the development, an Ecological Clerk of Works (ECoW) shall be in place. The ECoW shall be appointed by the Company and approved by East Ayrshire Council after consultation with SNH, for the period from commencement of development to final commissioning of the development. The scope of work of the ECoW shall include:

- monitoring compliance with the ecological mitigation works that have been approved in this consent;
- advising the Company on adequate protection of nature conservation interests on the Site;

- directing the micrositing and placement of the turbines and tracks, as referred to in Condition 6 of this consent; and
- monitoring compliance with the scheme of working for each borrow pit required by condition 25.

Reason: to minimise disturbance to nature conservation interests within the wind farm site.

36. Prior to any construction works, including deforestation, an ecologist appointed by the Company following approval by East Ayrshire Council after consultation with SNH, shall carry out a protected species survey and based on the findings of this survey, the Company shall submit a management plan for the approval of the East Ayrshire Council. This plan shall include further mitigation measures designed to safeguard protected mammals within and adjacent to the operational areas of the Site. South Lanarkshire Council shall receive a copy of the approved management plan for information. During the course of construction, regular monitoring of the proposed mammal mitigation measures shall be carried out by the ECoW (as referred to in Condition 35) to ensure best practicable mitigation is carried out to the written satisfaction of East Ayrshire Council. Should such survey or ongoing monitoring work identify impacts from any part of the works proposed for this development on European Protected Species (EPS), SNH will be informed and will advise on the need for a licence application to disturb EPS, damage or destroy their place of shelter. No work which could cause disturbance to EPS may go ahead unless a licence is obtained from the Scottish Ministers.

Reason: To ensure the protection of European Protection Species

37. All construction works and the movement of plant, vehicles and machinery shall be carried out in such a way as to avoid encroachment onto undisturbed bog the location of which shall be identified by the ECoW and agreed with East Ayrshire Council after consultation with SNH.

Reason: To ensure the protection of bog.

38. Three months prior to the commencement of decommissioning as set out in Conditions 32-34 an Ecological Clerk of Works shall be appointed by the Company and approved by East Ayrshire Council after consultation with SNH until the completion of aftercare or such earlier date as may be agreed in writing by East Ayrshire Council. The scope of work of the Ecological Clerk of Works shall include those elements identified in Condition 35, with the exception of the third and fourth bullet points of that paragraph.

Reason: to minimise disturbance to nature conservation interests during wind farm construction.

Pollution Prevention

39. No work shall commence on Site until the Company has submitted and obtained written approval from East Ayrshire Council and South Lanarkshire Council for a method statement for oil spill contingencies and foul drainage arrangements. This method statement shall be approved by the East Ayrshire Council and South Lanarkshire Council after consultation with SEPA. Thereafter, this method statement, as amended by East Ayrshire Council and South Lanarkshire Council, shall be implemented in full by the Company. If the content of the method statement proposed is the same as the approved Prior to Commencement Document Issue 01 for Condition 7.10 of the Whitelee Windfarm Section 36 Consent (Ref IEC 3/33), then approval under this condition shall be deemed to be granted.

Reason: to safeguard and protect the local environment

40. No fuel, oil, lubricant, paint or solvent shall be stored on Site other than within bunds or double skin tanks which must be locked and capable of containing at least 110% of the largest capacity vessel stored therein and any spillage of any oil shall be cleaned-up immediately. Any electrical equipment utilising oils or organic fluids should similarly be in a bunded area sufficient to contain any spillage. Details of the arrangements for such storage and contingency plans for dealing with spillages are to be submitted to East Ayrshire Council, East Renfrewshire Council and South Lanarkshire Council for approval prior to the commencement of the development, unless the Councils agree otherwise. If the content of the method statement proposed is the same as the approved Prior to Commencement Document Issue 04 for Condition 7.16 of the Whitelee Windfarm Section 36 Consent (Ref IEC 3/33), then approval under this condition shall be deemed to be granted.

Reason: to safeguard and protect the local environment

Financial Provision

41. At least one month prior to the commencement of development, the company shall provide the Scottish Ministers with details of the bond or other financial provision in favour of East Ayrshire Council, South Lanarkshire Council and East Renfrewshire Council which has been approved in writing by or on behalf of the Councils and is to be put in place to cover all borrow pit restoration and aftercare costs at the completion of extraction and all site restoration costs and aftercare costs on the expiry of consent. No work shall commence on the site until the company has provided documentary evidence that such approved bond or other financial provision is in place. The company shall ensure that the approved bond or other financial provision is maintained throughout the duration of the consent and the bond or other financial provision will be indexed linked and subject to five yearly review, to be conducted by the company, East Ayrshire Council, South Lanarkshire Council

and East Renfrewshire Council, from the commencement of the development.

Reason: To ensure financial security for the cost of the site reinstatement to the satisfaction of Scottish Ministers and the Planning Authority.

Noise

42. At the reasonable request of the East Ayrshire Council, following a complaint to East Ayrshire Council 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:

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:

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.

In evaluating a complaint relating to one of the dwellings specified in Table 13.3 of the Environmental Statement, noise emission levels shall where appropriate be compared with the relevant ETSU-R-97 derived "quiet waking hours" or "night hours" noise limits defined in Chapter 6 of ETSU-R-97, derived from the measured background noise levels recorded in the Environmental Statement Appendix 13.5. In the event of a complaint from any property not specified in paragraph Table 13.3 of the Environmental Statement, the measured wind farm noise level shall be compared to the prevailing background noise level at the property specified in Table 13.3 of the Environmental Statement which is most likely to experience background noise levels similar to the complainant property.

Reason: To control construction and decommissioning noise, in the interests of residential amenity.

43. Prior to the commencement of the development, the Company shall submit to East Ayrshire Council a method statement for addressing noise emission issues in and around the site. Specifically the method statement will set out the cumulative effects of concurrent construction, tree felling, operation of the sub-station and operation of the development and thereafter predict the likely noise impacts from such events both singularly and cumulatively. The method statement will include the means to ensure that noise generated by the construction and operation of the wind farm complies with the guidance set out in ETSU-R-97 as well as advice contained within Planning Advice Note 56 (PAN56) "Planning and Noise". The agreed proposals within the method statement shall be implemented by the applicant (or other body appointed by

the applicant) to the satisfaction of East Ayrshire Council. A copy of the agreed proposals shall be provided to South Lanarkshire Council for information.

Reason: To assess operational noise in the interests of residential amenity.

44. No fixed or mobile plant used within the Site during the construction period shall incorporate bleeping type warning devices that are audible outwith the Site boundary.

Reason: To control construction and decommissioning noise, in the interests of residential amenity.

45. Construction work on site, save for the erection of turbines, maintenance, emergency works, dust suppression and the testing of plant and equipment, or construction work that is not audible from any noise sensitive property outwith the Site, shall be confined to 07:30 - 19:30 Monday to Friday and 08:00 - 13:30 on Saturdays with no work on Sunday or Public Holidays. If any noise nuisance arises outwith these times such work shall cease forthwith until suitable mitigation measures are in place. The receipt of materials and equipment other than turbine blades, nacelles, and towers shall not take place except during the hours of 07:00 - 19:00 Monday to Fridays.

Reason: To control construction noise, in the interests of residential amenity.

Dust

46. Prior to the commencement of the development, the Company shall submit to the planning authorities a management plan for minimising the emission of dust from the construction and operation of the development hereby authorised. The dust management plan shall specify the following matters and, after its approval shall be implemented in full by the Company. If the content of the method statement proposed is the same as the approved Prior to Commencement Document Issue 02 for Condition 7.44 of the Whitelee Windfarm Section 36 Consent (Ref IEC 3/33), then approval under this condition shall be deemed to be granted:

- the water spraying of internal roads and stockpiles of materials to suppress dust in periods of prolonged dry weather;
- the means to ensure that an adequate water supply is available at all times for dust suppression purposes;
- the steps to be taken to improve efficiency of dust suppression measures in the event of the failure of the regime to prevent the emission of wind borne matter from the whole road falling out onto the adjacent peat land and associated habitats;
- the operation of the Site so as to ensure that adequate steps are taken at all times to minimise dust propagation from unsurfaced access tracks within the Site;

- provision of safe drainage for waste water used in dust suppression in order to prevent drainage directly to water courses.

Reason: to minimize the emission of dust for public amenity

Traffic

47. Prior to the commencement of development the Company shall erect signs on the access routes to the main site entrance at Lochgoin and for the removal of timber via Hareshawmuir Road as identified in the Environmental Statement and thereafter maintain the signs advertising drivers of heavy goods vehicles to remain on specified access routes.

Reason: In the interests of road safety and the free flow of traffic in the vicinity of the site.

Private Water Supplies

48. Prior to the commencement of the development, the Company shall submit to the relevant planning authority an assessment of the effects of the development on the quantity and quality of water supplied to all properties with private water supplies that may be affected by the development. Thereafter, any mitigation measures as identified in the risk assessment, amended, as the case may be by the relevant planning authority shall be implemented and agreed by the relevant planning authority in order to maintain a secure and adequate quality water supply to all properties with private water supplies that may be affected by the development.

Reason: To ensure the protection of private water supplies.

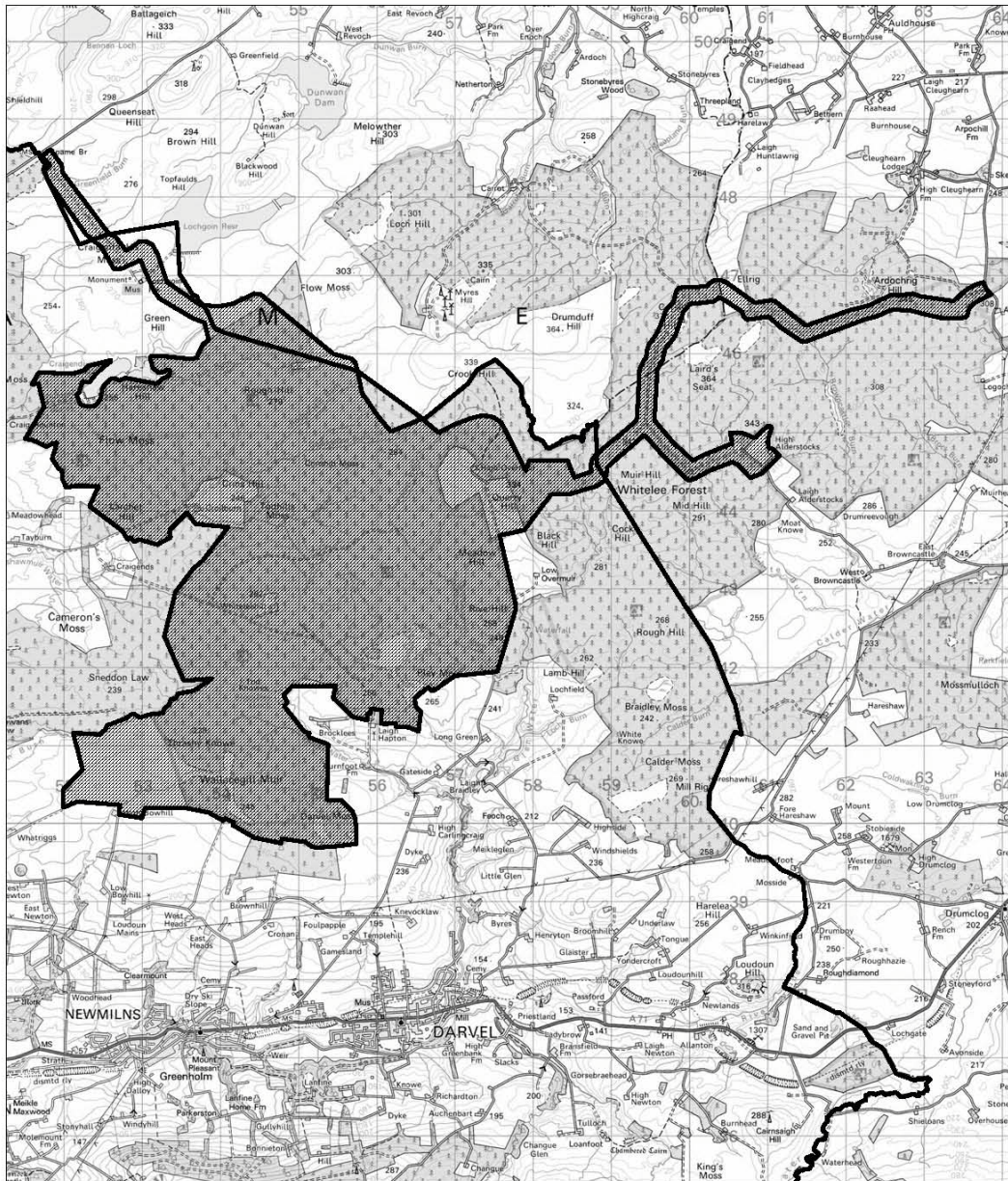
Access


49. Access shall be maintained to the Core Path Network and the Whitelee Access Network during the operational period of the Windfarm, except during periods of maintenance/ servicing where restrictions are required to safeguard public safety.

Reason: To ensure adequate provision for public access across the site, in the interests of amenity.

50. Prior to the commencement of development the developer shall submit to the Planning Authority a full survey and assessment of an area of forestry which is capable of being restored to wet modified bog habitat.

Reason: To provide a compensatory area of wet modified bog further to the location of turbines 205, 206 and 207.



<p>Title/Location Whitelee Windfarm Extension</p> <p> Phase 2</p> <p> Application No. Section 36</p>	<p>East Ayrshire Council</p> <p>Planning & Economic Development Division, 6 Croft Street Kilmarnock KA1 1JB</p> <p>Tel: (01563) 576790 Fax: (01563) 576774 E-Mail : Planning@east-ayrshire.gov.uk</p>
<p>Key</p> <p> Application Site</p>	<p>Com Date: 09/10/09 Checked By</p>



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