EXECUTIVE SUMMARY SHEET

PURPOSE OF REPORT

1 Application 04/0001/S36 under section 36 (s.36) of The Electricity Act 1989 for Afton Wind Farm, to the south of New Cumnock, was approved by the Scottish Ministers on 17 October 2014. The applicants are now seeking to vary that consent with regard to a number of factors, including revised infrastructure and provision of 5 borrow pits. However, there will be no changes to the actual turbine layout or heights.

RECOMMENDATION

2 It is recommended that the Council does not formally object to the proposed development and 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 variation application for the Afton Wind Farm development in terms of the Electricity Act 1989.

CONTRARY DECISION NOTE

3 Should the Committee agree to object to the S36 variation application contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to the Council as this would not constitute a significant breach of policy.

Michael Keane
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.
EAST AYRSHIRE COUNCIL

PLANNING COMMITTEE: 21 AUGUST 2015

15/0003/S36VAR: AFTON WIND FARM SECTION 36 VARIATION
AT: AFTON WIND FARM, C90 AFTON ROAD FROM NEW CUMNOCK, EAST AYRSHIRE

BY: NATURAL POWER

REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT, ECONOMY AND SKILLS

PURPOSE OF REPORT

1 Application 04/0001/S36 under section 36 (s.36) of The Electricity Act 1989 for Afton Wind Farm, to the south of New Cumnock, was approved by the Scottish Ministers on 17 October 2014. The applicants are now seeking to vary that consent with regard to a number of factors, including revised infrastructure and provision of 5 borrow pits. However, there will be no changes to the actual turbine layout or heights.

BACKGROUND INFORMATION

2 Application 04/0001/S36, a consultation under section 36 (s.36) of The Electricity Act 1989 was considered by Southern Local Planning Committee at its meeting of 14 December 2007, where Committee agreed to the view of 'no objections' to the proposal subject to the inclusion of appropriate planning conditions and legal obligations. In coming to this view the Planning Authority understood that the proposal remained subject to an outstanding aviation objection from Glasgow Prestwick Airport. The objection required the conclusion of appropriate mitigation measures prior to the issue of any decision notice by Scottish Ministers. The objection remained outstanding until July 2013, when Glasgow Prestwick Airport removed their aviation objection to the proposal at Afton, subject to the inclusion of appropriate planning conditions requiring an identified mitigation solution.

3 At a meeting thereafter in August 2013, East Ayrshire Council Planning Service, EON (the wind farm operator) and the Energy Consents and Deployment Unit (ECDU) met to discuss the application, with the EAC view being, that the application should be referred back to Committee for an updated view, given the intervening period elapsed since 2007, the significant change in circumstance (including a new Local Plan) and the submission of applications for Ashmark, South Kyle, Keirs Hill, Glenmount, High Cumnock, Garleffan and Hare Hill extension wind farms.

4 On 27 June 2014 Planning Committee recommended updating their response to a holding objection on the basis that:

(i) no appropriate cumulative landscape and visual impact assessment had been provided by the applicant as required by Scottish Government Policy and Guidance, Scottish Natural Heritage Policy and Guidance, the East Ayrshire Local Plan 2010, the Addendum to the Structure Plan and the East Ayrshire Landscape Wind Capacity Study 2013; and
(b) no appropriate noise assessment had been provided by the applicant as required by the IOA ‘A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise, May 2013’;

(ii) that should the Scottish Ministers determine to approve the S36 application without a requirement for the applicant to provide an appropriate Cumulative Landscape and Visual Impact Assessment and up-to-date Noise Assessment then the Scottish Ministers should ensure that the applicant enters into a legal agreement with East Ayrshire Council consistent with the Heads of Agreement detailed under Section 7.3 of the Committee report;

(iii) that should Scottish Ministers determine to approve the S36 application without the requirement for the applicant to provide an appropriate Cumulative Landscape and Visual Impact Assessment and up-to-date Noise Assessment then the Scottish Ministers should ensure that the applicant enters into negotiation with the Council in relation to any planning conditions that require to be imposed on the consent; and

(iv) that a copy of the Committee report be forwarded to the Scottish Ministers as presenting this Council’s updated formal response to the consultation on the Section 36 application for the Afton wind farm in terms of the Electricity Act 1989.

5 On 17 October 2014, the Scottish Ministers granted s.36 consent and deemed planning permission under s.57(2) of the Town and Country Planning (Scotland) Act 1997, noting that ‘the planning authority cited the fact that the noise assessment undertaken for the application does not conform to current best practice guidance as a reason for their holding objection, and that they therefore considered that “no appropriate noise assessment” has been provided….Ministers do not agree with this conclusion.’ In relation to landscape and visual amenity, Ministers considered that the information supplementary environmental information (SEI) provided was ‘sufficient at the point of decision to inform them of the updated position and to allow Ministers to make an assessment of the cumulative impacts,’ and overall, were of the view ‘that cumulative landscape and visual impacts resulting from the proposal in combination with other developments are acceptable’.

6 Consent was therefore granted for:-

- 27 turbines: 22 turbines up to 120m (height to tip) and 5 turbines numbered 20, 21, 22, 23 and 25 of up to 100m (height to tip);
- A temporary laydown area and construction compound including hard standing and fences;
- An anemometer mast;
- New and upgraded site tracks;
- Approximately 10 km of access track;
- Underground cabling;
- A substation and control building; and
- Other associated infrastructure,

with all of the above subject to a number of further planning conditions.

6 Consent is now sought to vary the terms of the consent granted to: -

Alterations:
- re-locate and re-design of the onsite control building;
- alternative sections of onsite access tracks; and
- relocate and increase height of the permanent anemometer mast;
Additions:
- a metering building next to Black Hill Substation;
- underground cabling that connects the control building to the metering building and in turn to the Black Hill Substation;
- up to five Borrow Pits (BP);
- widen limited parts of Afton Road; and
- provide layby areas on Afton Road.

An Environmental Statement (ES) has been prepared by Natural Power Consultants Limited (Natural Power) on behalf of E.ON Climate and Renewables UK Developments Limited (E.ON) in support of an application made under Section 36C of the Electricity Act 1989 to vary the consent granted on 17 October 2014.

The applicant has established a Community Liaison Group (CLG) which serves to update key stakeholders with project progress. It has been established with EAC at a meeting held in March 2015 that the CLG would be a suitable forum for public consultation on this application. Prior to submission of the application, on 15 April 2015, E.ON hosted a meeting with the CLG at the New Cumnock Community Centre, albeit with Section 36C applications, there is no statutory requirement for a Pre-Application Consultation (PAC).

The proposed development has been devised to factor in ways of improving design of (and access to) the consented Afton Wind Farm. Principles of good design have been incorporated in producing the final amalgamated layout. As such, the final wind farm layout as varied will make fewer watercourse crossings, improve access on Afton Road, reduce traffic flow on Afton Road and improve access on site.

When the original application 04/0001/S36 was approved by the Scottish Ministers, the Council had previously requested that the applicant be required to enter into a legal agreement with the Council, on a number of matters, with regards to the effects of the scheme, including any payments to the Renewable Energy Fund, condition monitoring, decommissioning etc. Notwithstanding this request, the Scottish Ministers issued the decision for 04/0001/S36 without provision for a legal agreement. However the applicant has noted a commitment to enter into negotiations with the Council to provide such an agreement. Negotiations have therefore been on-going with the Council and the applicant in this respect, which would (provisionally) include decommissioning, restoration and aftercare financial guarantee; Renewable Energy Fund (REF) payments; and Planning Monitoring Officer; to be the subject of any s.75 agreement – notwithstanding that some of these matters are already able to be controlled by planning conditions attached to the consent, which the Council has experienced is best served by both planning condition and legal agreement clauses. The one matter not covered by condition is the REF payment(s), however, this is the subject of an obligation in the draft s.75.

APPLICATION DETAILS-

As above, the current application is to vary the terms of the consent for 04/0001/S36, by;

- re-location and re-design of the onsite control building;
- alternative sections of onsite access tracks;
- relocation and increase height of the permanent anemometer mast;
- adding a metering building next to Black Hill Substation;
- adding an underground cabling that connects the control building to the metering building and in turn to the Black Hill Substation;
- creating up to five Borrow Pits (BP);
- widening limited parts of Afton Road; and
- provision of layby areas on Afton Road.

12 For clarity, the application for variation does not seek to change:
- the consented number of wind turbines;
- the consented locations of wind turbines; or
- the consented maximum blade tip heights of wind turbines.

13 In support of the application, the applicants have submitted the following information: -
- Borrow Pit Assessment Report;
- Environmental Statement and Non-Technical Summary;
- National Vegetation Classification (NVC) assessment; and
- Assessment of Groundwater Dependant Terrestrial Ecosystems; planning Design and Access Statement.

PROPOSED DEVELOPMENT

14 In detail, the proposed development seeks to vary the following elements; firstly: -

Onsite control building:

The original control building was consented north of Afton Reservoir, close to the Scottish Water office. Since the submission of the Afton planning application in 2004, changes to Health and Safety at work legislation, advanced communications technologies and the developer’s experience in operating wind farms in remote locations means the consented control building can and should be improved. In addition, surveys undertaken close to the consented control building location found otter holts that would be affected by the development. The new control building will be approx. up to 32m x 23m x 7m in size; larger than that originally proposed, to comply with current health and safety requirements which have emerged since the original application was submitted. The new control building is now proposed within the setting of the consented Afton Wind Farm, west of Afton Reservoir, which is more suitable for establishing a grid connection to Black Hill substation. It is located away from otter holts, although a survey would be undertaken prior to construction to confirm this is still the case at time of construction.

Metering building

The metering building is required as part of the grid connection to transfer the electricity generated from the Afton Wind Farm to the Black Hill Substation. The metering building will be up to 10m x 10m x 3m in size and located in the Black Hill Substation Development Area, outwith the site, but within 100m of the consented Black Hill Substation. The location of the metering building will not compromise use of existing access tracks next to it.

Alternative sections of underground cabling

The underground cable required to connect the control building to Black Hill Substation via the metering building would be placed in trenches and follow the route of the consented on-site tracks where possible but ultimately will be a direct line across to Black Hill Substation. In this regard, ground disturbance will be minimised. Ground works will be restored in accordance with the restoration requirements of the consented Afton Wind Farm which will be agreed with consultees through the Construction Method Statement (CMS) and Construction Environmental Management Plan (CEMP) processes.
Access Tracks

The routes of alternative onsite access tracks in this application have been chosen to optimise vehicle movement around the site in line with current health and safety guidance and also minimise the potential impacts on the environment. In particular these will minimise water crossings and avoiding areas of deep peat. The consented infrastructure has a micro-siting allowance of 50 m and therefore all varied tracks which are proposed in areas outwith this microsited area are included in this application and have been assessed appropriately.

Five new borrow pits

The borrow pits (BP) required were not included in the original application. They have now been proposed to alleviate the volume of construction traffic on Afton Road. The locations of BP have been established following ground investigation work and are fully detailed in the Borrow Pit Assessment Report that accompanies the application. The BP have been located outwith the Afton Reservoir Water Catchment Area and where good source of construction aggregate is expected. Following their use, they will be restored appropriately. [BP1 and BP2 are located in the middle of turbines 3, 4 & 5; BP3 is located next to turbine 1; BP4 & 5 are located around turbines 10, 11 & 12.] With this overall BP inclusion within the site, however, there will be potential reduction in vehicle movements through New Cumnock, due to the intention to gain road making material from internal borrow pits rather than from external sourcing.

Relocation and increase height of the permanent anemometer mast;

Wind data recorded from temporary masts onsite to inform ongoing wind monitoring requirements has highlighted the need to relocate the consented permanent anemometer mast and increase its height from 60 m to 80 m in height. The design is expected to be a slender metal lattice structure and will be agreed with EAC preconstruction.

Widening parts of Afton Road; and provision of layby areas on Afton Road.

Full details of the widening of the road and provision of laybys will be provided pre-construction under a separate submission to discharge planning condition 13 of the consented Afton Wind Farm. Parts of Afton road need to be widened to allow safe passage of construction traffic to Afton Wind Farm. The areas needing road widening works have been identified as being within the public road boundary. In order to manage the traffic using the Afton Road, laybys have been included within this variation. The exact locations and construction of these laybys will follow the requirements of East Ayrshire Council as the relevant roads authority. It should be noted that the accommodation works within the public roads will require road construction consent to be obtained from the Ayrshire Roads Authority.

The drafting and issue of conditions is the remit of the Scottish Ministers, however, a number of conditions are attached to this report to reflect the Council’s view on what should be attached to any consent, should Members decide not to object to the consultation. It is anticipated the Ministers would update the consent with new conditions, should the variation be approved.
DECOMMISSIONING, RESTORATION AND AFTERCARE

At the end of the wind farm’s operational life the proposed variations would be included within the Decommissioning Method Statement and will be prepared at least six months prior to the decommissioning of the site for agreement with the Planning Authority and relevant consultees. At this stage it is proposed by the applicants that the tracks that are to be utilised for ongoing land management operations would be left in situ, other tracks would be allowed to grass over or covered with soil and reseeded, albeit these details have still to be agreed in consultation with the Planning Authority. The control building and metering building could either be demolished or its use changed to meet requirements at that time. The cabling would be left in situ to minimise disruption to the surrounding environment.

CONSULTATIONS AND ISSUES RAISED

Ayrshire Roads Alliance (ARA)

The changes regarding the construction traffic movements are related to the potential reduction in vehicle movements due to the intention to gain road making material from internal borrow pits rather than from external sourcing. While this should reduce the impact on the public road it is recognised that the temporary widening for the construction traffic will still be necessary. At present there are no details of the location or construction of the accommodation works, other than the red line site and the statement that the construction will be of stone. The ARA would recommend that further information relating to these matters be submitted through the construction traffic management plan to the Planning Service to allow further comment from ARA. It should be noted that the accommodation works within the public roads will require a road construction consent to be obtained from the ARA. The consent will require clarification of the accommodation works, in particular how the road is to be reinstated after the development is completed. The ARA would be willing to allow the widening to remain as part of the adopted road should the design of the accommodation works meet adoptable road standard. This may be advantageous to the windfarm operator should maintenance be required in the future that involved the use of the C90 by abnormal loads. It would also be advantageous to leave the accommodation works for use by other windfarm developers that may follow on. The ARA will request that the developer enter into a section 96 agreement to deal with any extraordinary road maintenance that may result from the abnormal load movements. It is also intended that a section 69 agreement will be requested to ensure that in the event that on site borrow pits fail to provide stone for the construction of internal access tracks, and therefore need to be source externally, then the impact on public roads from the source to the site entrance can be assessed.

Traffic management is controlled through an existing condition on the substantive consent (condition 12), and public road improvements are likewise conditioned (Condition 13) – as this information is still to be submitted prior to the commencement of works, these matters can be accommodated within any new condition wording proposed, or likewise, accommodated should the Scottish Ministers keep the existing conditions on the substantive consent. New proposed conditions are appended to this report should Members decide not to object to the consultation, for the consideration of the Scottish Ministers.

Environmental Health have no comments.

West of Scotland Archaeology Service confirmed the variation raises no significant issues.
Lugar And Logan Community Council have not responded at the time of writing.

Cumnock Landward (Netherthird And District) have not responded at the time of writing.

Auchinleck Community Council have not responded at the time of writing.

Ochiltree Community Council have not responded at the time of writing.

Cumnock Community Council have not responded at the time of writing.

Dalmellington Community Council have not responded at the time of writing.

New Cumnock Community Council have not responded at the time of writing.

BT/Radio Frequency Allocation & Network Protection have no objections.

Forestry Commission note that the developer is indicating that there will be no direct impacts on forestry resulting from this variation and on that basis, have no comment.

West of Scotland Archaeological Service have not responded at the time of writing.

Marine Scotland Science (MSS) were consulted by the Scottish Ministers and suggest calculating acid neutralising capacity (ANC) in conjunction with the other measurements taken within the water quality monitoring programme, and with that one exception of the recommendation of the calculation of ANC, MSS has no further comment regarding this development.

Ministry of Defence were consulted by the Scottish Ministers and requested that the proposed anemometer mast is fitted with aviation warning lighting, and further noted the height of the development will necessitate that aeronautical charts and mapping records are amended.

**Noted, this matter, whilst a consideration for the Scottish Ministers, has been included as a proposed planning condition for completeness, in addition to the other suggested conditions, and should Members decide not to object to this consultation, these would be forwarded to the Ministers for their consideration to include with any proposed grant of consent and issue of any deemed planning conditions.**

**REPRESENTATIONS**

18 The Energy Consents and Deployment Unit of the Scottish Government has advised the Planning Service that no representations were received during the timeframe required.

**ASSESSMENT AGAINST DEVELOPMENT PLAN**

19 The original assessment of the application for the windfarm was considered under 04/0001/S36, at the Southern Local Planning Committee on 14 December 2007, and thereafter on 27 June 2014 at Planning Committee. As the merits of the substantive proposal have already been considered, and the view of East Ayrshire Council as Planning Authority under Section 36C of the Electricity Act 1989 has already been given to the Scottish Ministers, this report only requires to take account of the implications of the
variation changes in terms of the assessment against the development plan. Although this is a consultation from the Scottish Ministers and not a planning application, the proposed development should be assessed in a similar context.

Ayrshire Joint Structure Plan 2007 (AJSP)

20 ECON6: Renewable Energy - Proposals for the generation and utilisation of renewable energy should be promoted and will conform to the plan both in standalone locations and as integral parts of new and existing developments where it can be demonstrated there will be no significant adverse impact, including adverse cumulative impact or infrastructure constraints, and where the design of the development is sensitive to landscape character, biodiversity and cultural heritage.

It is considered that the proposal is broadly in accordance with ECON6.

21 To guide wind farm development in a manner that maintains landscape and biodiversity value and safeguards the operational needs of Glasgow and Glasgow Prestwick Airports, two areas of search for large scale wind farm development have therefore been identified, these being South Carrick and Whitelee Forest. Policy ECON7 specifically relates to wind farm development and states:

ECON7: Wind Farms

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

The Afton wind farm proposal does not lie within an Area of Search as defined in the approved Ayrshire Joint Structure Plan, however in this instance consent has been granted under 04/0001/s36 by the Scottish Ministers, notwithstanding, it is considered the variation to this raises no substantive issues in the above regard.

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

In respect of criterion (B), subject to appropriate mitigation secured by existing conditions imposed on the consent by the Scottish Ministers, or by new conditions which may be proposed through this variation if approved, it is considered the current application has demonstrated there would be no significant adverse impacts on natural heritage interests. Any legal obligations will still be sought through a legal agreement, but this has yet to be concluded – the applicants however, whilst they have a substantive consent which has no legal agreement attached, are in favour of such an agreement between the Council and themselves. In conjunction with the Planning Service, therefore, the Operators are working towards an agreement outlining obligations of the wind farm operator pertaining to planning monitoring, payments to the Renewable Energy Fund, and decommissioning, restoration and aftercare financial guarantee, and the operators, EoN have noted that they will pay the quantum proposed by East Ayrshire in the form of a bond.

(C) The integrity of national and international designations should not be compromised.
Subject to appropriate conditions or legal obligations, secured by the existing consent, or by new conditions proposed through this variation, it is considered that the changes to the proposed wind farm will not compromise the integrity of any national or international designations.

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

There are no significant issues raised through the variation in terms of cumulative impacts.

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

[1] Historic environment;

WOSAS originally recommended that an archaeological watching brief be maintained during the construction period, and it is anticipated this will be covered by condition. The variation itself raises no additional substantive archaeological issues.

[2] Areas designated for their regional and local natural heritage value;

Subject to appropriate mitigation secured by existing conditions, the application has demonstrated there would be no significant adverse impacts on natural heritage interests raised through this variation.

[3] Tourism and recreational interests;

The relatively minor changes will not have any significant adverse effects on regionally significant tourist resources.

[4] Communities;

The main impact on local communities, particularly New Cumnock, will be the traffic impacts occurring during the construction period. However, the variation impacts will be an improvement compared with the consented scheme, in terms of including borrow pits on site, which will lead to the reduction of road haulage for stone transportation.

[5] Buffer zones;

The current application makes no change to this, as the turbine locations are unaltered.

[6] Aviation and defence interests;

The current application makes no change to this, as the turbine locations are unaltered.
Broadcasting installations.

There are no broadcasting installations affected by the proposed development.

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 current application makes no change to this, as the turbine locations are unaltered.

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 current application makes no change to these factors, as the turbine locations are unaltered. The proposed alterations to the consented scheme, via this variation, will actually be beneficial in terms of the effects of the changes to track re the effects of the proposal on areas of deep peat. The introduction of borrow pits will also reduce the need to transport stone through various communities, but in particular, New Cumnock and will lead to a reduced number of vehicle trips overall.

Policy ENV15: the Council will not be supportive of development which would cause unacceptable and irreparable damage to important landscape features within rural areas. In this regard, developers will be expected to conserve and enhance (and reinstate or replace where appropriate), those features which contribute to the intrinsic landscape value and quality of the area concerned and which are likely to be adversely affected by the particular development proposed, including:

(i) existing setting of settlements and buildings within the landscape;
(ii) existing woodlands, shelter belts, hedgerows and trees;
(iii) existing burns, rivers, lochs and other water features;
(iv) existing field patterns and means of enclosure including dry stone dykes, hedging and fencing;
(v) existing Public Rights of Way, footpaths and bridleways; and
(vi) existing skylines, landform and contours.

The above considerations have been assessed in relation to impacts on local landscape characteristics and the relatively minor changes overall will not have any significant adverse effects in respect of the above.

ENV16: the Council will not be supportive of development which would create unacceptable visual intrusion or irreparable damage to the landscape character of rural areas. In this regard, the Council will ensure, through the development process, that

(i) any authorised development is in keeping with, has minimal visual impact and reflects the nature of the rural area in which it is located, in terms of layout, materials
used, design, 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;

*In terms of the variation proposal, any visual impacts will be negligible.*

(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 located; and

*Overall, whilst there are little visual changes proposed by the variation, there will be a small increase overall in the length of access track, however, as approximately half of the track will be constructed as floating track, which is of environmental benefit compared with the consented development, and is the more appropriate in terms of minimising the overall impact of the development on the landscape.*

(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 scheme as approved is already subject to conditions to ensure that there are no long term adverse or irreversible changes to the landscape in which the wind farm would be situated. These would be updated to reflect the proposed changes of the variation, and are appended to this report for Members consideration.*

24 Policy CS12: the Council will positively support and promote the development of sympathetic renewable energy proposals both in standalone 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;

*The appropriate mitigation secured by conditions and legal obligations through a s.75 agreement remain in place, and the application has demonstrated the suggested changes will have no significant impacts in their own right on natural heritage interests. Should the Scottish Ministers decide to grant consent, suggested updated conditions have been appended for their consideration.*

(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;

*It is not considered, in respect of the relatively minor changes proposed within the variation, that there will be any significant adverse impacts on residential properties through noise and other potential nuisance in comparison with the consented scheme. With regard to visual dominance in relation to proximity to local communities, there are no changes sought which would give rise to significant adverse effects overall.*
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 substantive consent would be subject to the existing conditions, and the variation application raises no new issues in this regard. Updated conditions are attached to this report, should Members decide not to object, in order that the Ministers consider these for inclusion to any possible grant of consent.

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

As has been stated in relation to the Development Plan policies, it is considered that the visual impacts will not be unacceptable for the changes proposed to the consented development, which do not impact on the turbine heights or locations.

on existing infrastructure.

It is considered that there will be no unacceptable impact caused by the proposed connections to link the proposed development with the national grid and surrounding road network, the application overall being subject to the imposition of the original appropriate planning conditions (or any updated ones issued by the Ministers in the event of this variation being approved) and/or obligations secured by means of a s.75 agreement, however, this is still in draft form, and requires to be the subject of continued negotiations. The updated EAC conditions have been appended to this report for the consideration of the Ministers should Member decide not to object to this consultation.

25 CS14: 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 ECON7 of the approved Ayrshire Joint Structure Plan: Growing a Sustainable Ayrshire and any future supplementary planning guidance to be prepared relating to cumulative impact.

The criteria listed above fully reflect the provisions of Structure Plan policy ECON7. Please refer to detailed comments in relation to ECON7 in paragraph 21 above.

26 CS15: the Council, if mindful to grant planning permission for a commercial wind farm development, requires applicants to contribute to a dedicated Renewable Energy Fund (REF) 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 km of the boundary of the wind farm. Thereafter, 50% of the contributions received will be directed towards local projects with 50% being reserved for use in the wider East Ayrshire area. Contributions will be payable annually and be set at a standard rate of £2500 per megawatt of installed capacity per annum, index linked to 1 January 2008.

The s36 consent issued by Scottish Ministers for Afton did not include any requirement for a s.75 agreement. Whilst the applicant is therefore not obliged to enter into any such agreement, the company have nevertheless noted their
intention to do so, and to contribute to the REF amongst other provisions. The s.75 agreement is currently in draft form, and is in the process of being agreed by the various parties. Notwithstanding, the mechanism for this process is through the Electricity Act 1989 and the Council is a consultee and not the determining body, therefore ultimately, the imposition a legal agreement and any payments to the REF lie within the jurisdiction of any subsequent grant imposed by the Scottish Ministers, however, notwithstanding that, the Operators are in continued talks with the Council on the matter and a draft legal agreement is in preparation.

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

In the consented scheme, the Planning Authority indicated to the Scottish Ministers that a condition should be attached to any consent granted for the proposed development to ensure that the developer meets the provisions of Policy CS16, and this was included on the s.36 consent (condition 3). Updated conditions have been appended to this report, in the event that Members decide not to object, in order that the Scottish Ministers have the Council's view on appropriate conditions to be included with any proposed grant of consent.

ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

Consultation Responses

28 None of the responses from the technical consultees suggest the Council should object to the application.

Representations Received

29 The Energy Consents and Deployment Unit of the Scottish Government has advised the Planning Service that no representations were received during the timeframe required.

Impact on Amenity

30 As noted above in the Development Plan Section, the proposed changes will not have any significant adverse impacts on residential properties through noise and other potential nuisance.

Planning History

31 04/0001/S36: Section 36 application for proposed erection of 27 wind turbines and associated works comprising a permanent monitoring mast, temporary site compound, temporary concrete batching plant, formation of new internal access tracks and upgrading of existing tracks and construction of control building and electrical substation on land adjacent to Afton Reservoir, near New Cumnock, was considered by Southern Local Planning Committee at its meeting of 14 December 2007, where Committee agreed to the view of 'no objections' to the proposal subject to the inclusion of appropriate planning conditions and legal obligations. As the application overall was subject to an outstanding aviation objection from Glasgow Prestwick Airport, whereby the objection required the
conclusion of appropriate mitigation measures prior to the issue of any decision notice by Scottish Ministers, (which remained outstanding until July 2013), given the intervening period, and increased cumulative level of other wind development, and the adoption of a new development plan, Planning Committee, on 27 June 2014, recommended updating their response to a holding objection, as detailed at paragraph 4 above.

Scottish Historic Environment Policy (SHEP)

32 The proposal has no adverse impacts on the provisions of the SHEP.

Scottish Planning Policy (SPP)

33 The proposed variation meets with the terms of SPP, in terms of increased energy output, and will help support the transformational change to a low carbon economy, consistent with national objectives and targets (SPP para 154), which aims to have 100% of electricity demand derived from renewable sources by 2020 (para 154). In terms of the detailed development management considerations noted in SPP on assessing wind farm applications, the following have been assessed:

- net economic impact, including local and community socio-economic benefits;
- the scale of contribution to renewable energy generation targets;
- effect on greenhouse gas emissions;
- cumulative impacts
- impacts on communities/individuals, including visual impact, residential amenity, noise;
- landscape and visual impacts, including effects on wild land;
- effects on the natural heritage, including birds;
- impacts on carbon rich soils, using the carbon calculator;
- public access, including impact on long distance walking and cycling routes and scenic routes
- impacts on the historic environment;
- impacts on tourism and recreation;
- impacts on aviation and defence interests and seismological recording;
- impacts on telecommunications and broadcasting installations;
- impacts on road traffic; and on adjacent trunk roads;
- effects on hydrology, the water environment and flood risk;
- the need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration;
- opportunities for energy storage; and
- the need for a robust planning obligation to ensure that operators achieve site restoration

and overall, the proposal is not considered to significantly adversely impact on any of the above considerations.


34 The changes proposed under this variation application are considered to be minor overall. It is considered therefore that the variation poses no significant issues in terms of the Addendum. In support of this, the application does not impact on any international or national designations, and the landscape and visual impacts will be limited. As noted above in the report, effects on aviation interests, natural heritage designations and cumulative impacts are also very limited, however in terms of:-
• Historic Environment;
• Areas designated for their regional and local natural heritage value;
• Tourism and recreational interests;
• Communities;
• Buffer Zones;
• Aviation and defence interests, and
• Broadcasting installations,
these issues have been assessed above at paragraph 21.

East Ayrshire Council Supplementary Planning Guidance - East Ayrshire Landscape Wind Capacity Study

35 The site is located mainly within the East Ayrshire Southern Uplands and Upland Glen Character Types. The Upland Glen type would be quickly and easily dominated by turbine development and would not be the recommended landscape type for such development, the Southern Uplands landscape type is less sensitive to turbine development however, overall in this instance the substantive consent under 04/0001/s36 has been granted, and in this respect, the variation poses no further issues.

Applicants Supporting Documentation

36 The applicant has submitted a range of documents supporting the application, for example, a National Vegetation Classification (NVC) Habitat Survey; predicted rock extraction volumes, site hydrology report, and Ground Water Dependant Terrestrial Ecosystem (GWDTE) assessment; all of which describe measures that will ensure protection of the environment and assist in mitigation of environmental effects.

FINANCIAL AND LEGAL IMPLICATIONS

37 In compliance with the Council’s Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation of Financial Guarantees dated 21 May 2014 any windfarm or wind turbine proposal will require to comply with the terms of this report in relation to the submission, agreement, implementation and monitoring of financial guarantees, notwithstanding in the case of section 36 consents [including variations] the Scottish Ministers are the determining body, and the Council is a consultee in that process, and the process overall is not subject to the same controls, such as would be exercised under any Planning Authority decision under the Planning Acts.

38 There are no financial obligations for the Council in determining this application, however, legal implications arise insofar as any permissions arising from this proposal will be subject to either (i) the same conditions; (ii) updated conditions and/or (iii) additional conditions. A set of appropriate conditions re attached to this report, should Members decide not to object, in order that the Council’s up to date advice on conditions can be relayed to the Scottish Ministers for their consideration. Thereafter, the Council will be responsible to discharging any deemed planning conditions.

39 As noted above at paragraph 5, the consent for 04/0001/s36 was approved by the Scottish Ministers with no legal agreement, and therefore no decommissioning bond or surety of any sorts for site restoration currently exists. Therefore, overall financial obligations may arise for the Council, in the event of decommissioning and aftercare costs, should the Operator not be able to fully restore the site at the end of the duration of the consent.

40 Nonetheless, the applicants and operators have been proactive in this regard and have agreed to enter into a s.75 legal agreement, albeit still requires to be finalised with the
various parties. Assuming the same process will be carried out by the Scottish Ministers should they issue an approval for his variation application, therefore, whilst the developer is therefore not legally obliged to enter into a legal agreement, they have agreed to do so nonetheless. Discussions so far on this issue have included the inclusion of matters of decommissioning, restoration and aftercare financial guarantee; Renewable Energy Fund (REF) payments; and Planning Monitoring Officer.

Ironside Farrar (IF) as the Council’s technical and environmental consultants, submitted their initial decommissioning assessment report of the approved application on 12 June 2014. This was updated in August 2015 to include IF’s assessment for the Afton Windfarm site including the variations and additions of the following elements (Application Ref: 15/0003/S36 VAR):

• re-locate and re-design of the onsite control building;
• alternative sections of onsite access tracks;
• relocate and increase height of the permanent anemometer mast;
• a metering building next to Black Hill Substation;
• underground cabling that connects the control building to the metering building and in turn to the Black Hill Substation;
• up to five Borrow Pits (BP);
• widen limited parts of Afton Road; and
• provide lay-by areas on Afton Road.

Site preliminary, professional/client and contingency fees are based on a standard percentage basis and would cover site establishment, power, welfare facilities, insurance, supervision required to complete the works, and EAC costs (or those of their appointed consultant) are included in this bond assessment to schedule, tender and administer any decommissioning works. Also, the bond value has been calculated using information supplied by the developer and review of publicly available maps and aerial images, and the costs are derived from published rates and our own experience of civil engineering works in Central Scotland. The cost arrived at, is £3,681,660, however, this does not include an inflationary amount, which would, in line with procedures for previous similar applications, protect the Council against price increases during the bond period. The Council’s Financial Service advise that the previously estimated price inflation at 3% per annum over the 5 year period would add 15.9% to the total cost – this will increase the proposed value significantly from £3.682m to £4.268m. The site operator, EoN has agreed to meet a bond which will cover these costs fully.

The above takes on board the Council’s revised arrangements for the consideration of Financial Guarantees relative to certain types of development, in that Planning, Finance and Legal Services have all been involved in the process of requesting and assessing the proposed arrangements for securing the site’s decommissioning, restoration and aftercare.

COMMUNITY PLAN

The proposed development accords with the Economy themes of the Community Plan as the proposal promotes economic activity which will improve and enhance the local economy.
CONCLUSIONS

45  As indicated in the report above, there are material considerations relevant to this application, but in this instance, it is considered that these support the proposal.

46  It is concluded from the foregoing that the variation application is acceptable and will not detract visually from the surrounding area or represent any significant landscape and visual impacts from the consented development. It is considered that there will be no significant impacts upon surrounding properties as a result of the proposed development, and no significant or adverse effects on the environment.

RECOMMENDATION

47  It is recommended that the Council does not formally object to the proposed development and 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 variation application for the Afton Wind Farm development in terms of the Electricity Act 1989.

CONTRARY DECISION NOTE

48  Should the Committee agree to object to the S36 variation application contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to the Council as this would not constitute a significant breach of policy.

Michael Keane
Head of Planning and Economic Development

13 August 2015

FV

LIST OF BACKGROUND PAPERS

1. Application Forms/Plans.
2. Consultation responses.
4. East Ayrshire Local Plan 2010
5. NVC Habitat Survey results
6. Assessment of Groundwater Dependant Terrestrial Ecosystems
7. Consent letter 04/0001/s36
8. Scottish Historic Environment Policy (SHEP)
9. Scottish Planning Policy (SPP)
11. East Ayrshire Council Supplementary Planning Guidance – East Ayrshire Landscape Wind Capacity Study

Anyone wishing to inspect the above papers please contact Marion Fergusson, Senior Planning Officer on 01563 576769

Implementation Officer: David McDowall, Operations Manager
APPENDIX 1

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

Location Afton Wind Farm Afton Road, Mossmark New Cumnock
Nature of Proposal: Afton Wind Farm Section 36 Variation
Name and Address of Applicant: Natural Power
The Green House
Forrest Estate
Dalry
Castle Douglas
DG7 3XS

Part 1
Conditions applying to Section 36 Consent

The consent granted in accordance with section 36 of the Electricity Act 1989 is subject to the following conditions:

Duration of the consent.

1. The consent is for a period of 25 years after the Final Commissioning of the Development. Written confirmation of the date of Final Commissioning of the Development shall be provided to the Scottish Ministers and the Planning Authority no later than one calendar month after that date.

Reason: To define the duration of the consent.
Commencement of Development

2 The Commencement of Development shall be no later than three years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct. Written confirmation of the intended date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authority no later than one calendar month before that date.

**Reason:** In accordance with s58 of the Town and Country Planning (Scotland) Act 1997, and to avoid uncertainty and ensure that the consent is implemented within a reasonable period.

Non Assignation

3 This consent is granted to the Company only. The Company shall not be permitted to transfer or assign the consent without the prior written authorisation of the Scottish Ministers following consultation with Glasgow Prestwick Airport Limited or any of its permitted successors, being the holder of the aerodrome licence and responsible for the provision of an air traffic control service at Glasgow Prestwick Airport. The Scottish Ministers may grant authorisation (with or without conditions) or refuse such authorisation as they may, in their discretion, see fit. The consent shall not be capable of being utilised, assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The company shall notify the Planning Authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of an assignation having been granted.

**Reason:** To safeguard the obligation of the consent if transferred to another company and to take account of any cumulative conditions.

Serious Incident Reporting:

4 In the event of any serious breach of health and safety or environmental obligations relating to the Development during the period of this consent, the Company will provide written notification of the nature and timing of the incident to the Scottish Ministers, including confirmation of the remedial measures taken and/or to be taken to rectify the breach, within 48 hours of the incident occurring.

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

Conditions attached to deemed planning consent

**Approved details**

5. Except as otherwise required by the terms of this consent an deemed planning permission, the development shall be undertaken and implemented in full and strict accordance with the approved plans and the details included within the Environmental Statements dated October 2004 and 2015 and supplementary documents, including the Addendum of August 2005.

**Reason:** To ensure the development is carried out in accordance with the approved details.

**Design and operation of turbines**

6. There shall be no Commencement of Development unless full details of the proposed wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour), any anemometry masts and all associated apparatus have been submitted to and approved in writing by the Planning Authority. The turbines shall be consistent with the candidate turbine or range assessed in the environmental statement, and the tip height
shall not exceed 120 metres above ground level. The Development shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from material external rust, staining or discolouration, until such time as the wind farm is decommissioned.

All wind turbine blades shall rotate in the same direction. None of the wind turbines, anemometers, power performance masts, shall display any name, logo, sign or other advertisement (other than health and safety signage) unless otherwise approved in advance in writing by the Planning Authority.

**Reason:** To ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts of the candidate turbine assessed in the environmental statement and in the interests of the visual amenity of the area.

**Design of sub-station and ancillary development**

7 There shall be no Commencement of Development unless final details of the external appearance, dimensions, and surface materials of the substation building, associated compounds, external lighting and parking areas have been submitted to and approved in writing by the Planning Authority. The substation building, associated compound, storage, fencing, external lighting and parking areas shall be constructed in accordance with the approved details.

**Reason:** To ensure that the environmental impacts of the ancillary development forming part of the Development conform to the impacts assessed in the environmental statement and in the interests of the visual amenity of the area.

**Micro-siting**

8 All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the location shown on plan reference Site Layout Figure 4.1. Wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro-siting within the site. However, unless otherwise approved in advance in writing by the Planning Authority in consultation with SEPA and SNH micro-siting is subject to the following restrictions:

(a). No wind turbine, building, mast or hardstanding shall be moved more than 50m from the position shown on the original approved plans;
(b). No access track shall be moved more than 50m from the position shown on the original approved plans;
(c). All micro-siting permissible under this condition must be approved in advance in writing by the Environmental Clerk of Works (ECoW) no later than one month after the date of Final Commissioning, and an updated site plan must be submitted to the Planning Authority showing the final position of all wind turbines, masts, areas of hardstanding, tracks and associated infrastructure forming part of the Development. The plan should also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the ECoW or Planning Authority's approval, as applicable.

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

**Borrow Pit - Scheme of Works**

9 There shall be no Commencement of Development unless a site specific scheme for the working and restoration of the borrow pits forming part of the Development has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The scheme shall include (but not be limited by):

(a). A detailed working method statement based on site survey information and ground investigation;
(b). Details of the handling of any overburden (including peat, soil and rock);
(c). Drainage and water management, including measures to minimise surrounding areas of
peatland, water dependant sensitive habitats and Ground Water Dependant Terrestrial
Ecosystems (GWDTE) from drying out; and
(d). A programme of implementation of the works described in the scheme.

**Reason:** To ensure that excavation of materials from the borrow pit is carried out in a manner that
minimises the impact on road safety, amenity and the environment, and that the mitigation
measures contained in the Environmental Statement accompanying the application, or as
otherwise agreed, are fully implemented.

**Reason:** To secure the restoration of borrow pits at the end of the construction period.

**Borrow Pit - post commencement**

10 No later than 3 months prior to the end of the construction period full details of the
reinstatement, restoration and aftercare scheme of the borrow pits at the end of the construction
period, to include topographic surveys of pre-construction profiles, and details of topographical
surveys to be undertaken of the restored borrow pit profiles shall be submitted in writing to the
Planning Authority for approval. The approved borrow pit reinstatement, restoration and aftercare
scheme shall be implemented in full within 6 months of the date of approval of the scheme.

**Reason:** To secure the restoration of borrow pits at the end of the construction period.

**Borrow Pit – Blasting**

11 Blasting shall only take place on the site between the hours of 10.00 to 16.00 on Monday to
Friday inclusive and 10.00 to 12.00 on Saturdays, with no blasting taking place on a Sunday or on
national public holidays, unless otherwise approved in advance in writing by the Planning
Authority.

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

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

**Planning Monitoring Officer**

12 There shall be no Commencement of Development unless the Planning Authority has
appointed an independent and suitably qualified environmental consultant to assist the Planning
Authority in monitoring of compliance with conditions attached to this deemed planning permission
during the pre-construction phase when conditions are being satisfied, during the construction
phase of the Development until completion of the Development, and from commencement of
decommissioning and restoration until completion of restoration and aftercare of the site, with the
cost of such appointment being met in full by the Company.

**Reason:** To enable the development to be suitably monitored to ensure compliance with the
consent issued.
Environmental Clerk of Works

13 There shall be no Commencement of Development unless the Planning Authority has approved in writing the terms of appointment by the Company of an independent Environmental Clerk of Works (ECoW) in consultation with SNH and SEPA. The terms of appointment shall;
(a). Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the environmental statement and other information lodged in support of the application, the Construction and Environmental Management Plan, [any species plans identified in the Environmental Statement] and other plans approved in terms of condition 14 ("the ECoW works/CEMP");
(b). Require the ECoW to report to the Company’s nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity; and
(c). Require the ECoW to report any incidences of non-compliance with the ECoW Works to the PMO at the earliest practical opportunity.
(d). The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 14.

No later than 3 months prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier), the Company shall submit details of the terms of appointment by the Company of an independent ECoW throughout the decommissioning, restoration and aftercare phases of the Development to the Planning Authority for approval in consultation with SNH and SEPA. The ECoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

**Reason:** To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.

Construction and Environmental Management Plan

14 There shall be no Commencement of Development unless a Construction and Environmental Management Plan (CEMP) outlining site specific details of all on-site construction works, post-construction reinstatement, drainage, mitigation, monitoring and contingencies together with details of their timetabling, has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA.

The CEMP shall include:

(a). a site waste management plan (dealing with all aspects of waste produced during the construction period other than peat), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;
(b). details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
(c). a dust management plan;
(d). details of track construction methods;
(e). details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
(f). a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
(g). soil storage and management;
(h). a drainage management plan strategy, demonstrating how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources;
(i). a surface water and groundwater management plan;
(j). sewage disposal and treatment;
(k). temporary site illumination;
(l). the construction of the access into the site and the creation and maintenance of associated visibility splay;
(m). the method of construction of the crane pads;
(n). the method of construction of the turbine foundations;
(o). the method of working cable trenches;
(p). the method of construction and erection of the wind turbines and meteorological masts;
(q). details of watercourse crossings;
(r). post-construction restoration/ reinstatement of the working areas not required during the operation of the Development, including construction access tracks, construction compound, storage areas, laydown areas, access tracks, passing places and other construction areas. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation;
(s). a wetland ecosystems mitigation plan;
(t). felling and tree management plan

The development shall be implemented thereafter in accordance with the approved CEMP unless otherwise approved in advance in writing by the Planning Authority in consultation with SNH and SEPA.

**Reason:** To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented.

**Construction Hours**

15 Construction work which is audible from any noise-sensitive receptor shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 16.00 on Saturdays, with no construction work taking place on a Sunday or on national public holidays. Outwith these specified hours, development on the site shall be limited to turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, unless otherwise approved in advance in writing by the Planning Authority.

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

**Reason:** In the interests of local amenity.

**Traffic Management Plan**

16 There shall be no Commencement of Development unless a traffic management plan has been submitted to and approved in writing by the Planning Authority. The traffic management plan shall include:

a. The routeing of all traffic associated with the Development on the local road network;
b. Measures to ensure that the specified routes are adhered to, including monitoring procedures;
c. Details of all signage and lining arrangements to be put in place;
d. Provisions for emergency vehicle access;
e. Identification of a nominated person to whom any road safety issues can be referred; and
f. Notification procedures for advising on access by vehicles carrying abnormal loads, including the number and timing of deliveries, the length, width and axle configuration of all extraordinary traffic accessing the site.
The approved traffic management plan shall thereafter be implemented in full, unless otherwise agreed in advance in writing with the Planning Authority.

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

**Habitat Management Plan**

17 There shall be no Commencement of Development unless a Habitat Management Plan (HMP) and a Species and Habitats Protection Plan (SHPP) has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The habitat management plan shall set out proposed long term management for the wind farm site and shall provide for the maintenance, monitoring and reporting of habitats on site.

The approved habitat management plan will be updated to reflect ground condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted to the Planning Authority for written approval in consultation with SNH and SEPA.

The HMP and SHPP shall include (but not necessarily be limited to) measures for:

(1) the protection and/or restoration of peat land habitat;
(2) monitoring and mitigation protocols for any protected species;
(3) management and mitigation of habitats and species present on site for the duration of the consent; and
(4) a procedure for monitoring and reporting on implementation and for amending the approved measures, to include:
   (i) the methods, frequency and duration of ecological monitoring over the operational phase of the wind farm; and
   (ii) the submission of monitoring results to the Planning Authority on an annual basis or such other frequency as may be agreed.

Thereafter the measures shall be implemented in accordance with the approved HMP and SHPP, unless otherwise agreed in advance in writing with the Planning Authority, both the approved HMP and approved SHPP shall be implemented in full.

**Reason**: In the interests of good land management and the protection of habitats.

**Peat Landslide Management**

18 Prior to Commencement of Development, the Company shall appoint and pay for an independent and suitably qualified geotechnical engineer acceptable to the Planning Authority, the terms of whose appointment (including specification of duties and duration of appointment) shall be approved by the Planning Authority.

The Developer shall undertake continuous monitoring of ground conditions during the construction phase of the Development. Continuous analysis and call out services shall be provided by the geotechnical engineer throughout the construction phase of the Development. If a risk of peat failure is identified, the Developer shall install such geotechnical instrumentation to monitor ground conditions as is recommended by the geotechnical engineer and shall monitor ground conditions. Any remediation work considered necessary by the geotechnical engineer shall be implemented by the Developer to the satisfaction of the geotechnical engineer. Monitoring results shall be fed into risk analysis reports to be submitted to the Planning Authority on a quarterly basis during the construction phase of the Development.

**Reason**: To minimise the risk of peat failure arising from the Development.
Television Reception

19 There shall be no Commencement of Development unless a Television Reception Mitigation Plan has been submitted to, and approved in writing by, the Planning Authority. The approved Television Reception Mitigation Plan as approved by the Authority in terms of the Environmental Statement shall thereafter be implemented in full. Any claim by any individual person regarding television picture loss or interference at their house, business premises or other building, made during the period from installation of any turbine forming part of the Development to the date falling twelve months after the date of Final Commissioning, shall be investigated by a qualified engineer appointed by the Company and the results shall be submitted to the Planning Authority. Should any impairment to the television signal be attributable to the Development, the Company shall remedy such impairment so that the standard of reception at the affected property is equivalent to the baseline television reception.

**Reason:** To ensure local television services are sustained during the construction and operation of this development.

Private Water Supplies

20 There shall be no Commencement of Development unless a Private Water Supply mitigation scheme (which includes a risk assessment) covering the period from the Commencement of the Development until 12 months after date of Final Commissioning has been submitted to and approved in writing by the Planning Authority. The Private Water Supply mitigation scheme shall include:-

- (a) details of all mitigation, monitoring and contingency measures to be delivered to maintain the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of this consent and are identified by the PWS mitigation scheme as potentially being affected by the Development with the mitigation scheme reporting on whether consent to obtain relevant access to the identified sources of supply has been achieved to permit monitoring, (where relevant) and where such consent is achieved monitoring of those relevant properties for the period from Date of Commencement until 12 months after the Date of Final Commissioning;
- (b) water quality sampling method; and
- (c) shall specify abstraction points.

The approved Private Water Supply mitigation scheme shall thereafter be implemented in full.

**Reason:** To maintain a secure and adequate quality water supply to all properties with private water supplies which may be affected by the development.

Redundant turbines

21 If one or more turbine fails to generate electricity for a continuous period of 6 months, then unless otherwise agreed in writing by the Planning Authority, the Company shall; (i) by no later than the date of expiration of the 6 month period, submit a scheme to the Planning Authority setting out how the relevant turbine(s) and associated infrastructure will be removed from the site and the ground restored; and (ii) implement the approved scheme within six months of the date of its approval, all to the satisfaction of the Planning Authority.

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

22 The Development will cease to generate electricity by no later than the date falling twenty five years from the date of Final Commissioning. The total period for decommissioning and restoration of the Site in accordance with this condition shall not exceed three years from the date of Final Export without prior written approval of the Scottish Ministers in consultation with the Planning Authority.

There shall be no Commencement of Development unless a decommissioning, restoration and aftercare draft plan has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The draft plan shall outline measures for the decommissioning of the Development, restoration and aftercare of the site.

No later than 18 months prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare plan, based upon the approved decommissioning, restoration and aftercare plan, shall be submitted to the Planning Authority for written approval in consultation with SNH and SEPA. The detailed decommissioning, restoration and aftercare plan will provide updated and detailed proposals for the removal of the above ground elements of the Development, the restoration of the site, the treatment of ground surfaces, the aftercare plan, the management and timing of the works and the environment management provisions which shall include:

(a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
(b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
(c) a dust management plan;
(d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
(e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
(f) soil storage and management;
(g) a surface water and groundwater management plan
(h) sewage disposal and treatment;
(i) temporary site illumination;
(j) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
(k) details of watercourse crossings;
(l) a species protection plan based on surveys for protected species (including birds) carried out no longer than 18 months prior to submission of the plan.

The Development shall be decommissioned, site restored and the aftercare implemented thereafter in accordance with the approved plan, unless otherwise agreed in writing in advance with the Planning Authority in consultation with SNH and SEPA.

Reason: To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.

Aviation Safety

23 There shall be no Commencement of Development until the Company has provided the Planning Authority, Ministry of Defence, Defence Geographic Centre and NATS with the following information, and has provided evidence to the Planning Authority of having done so;
(i) the precise location of development;
(ii) the date of the expected commencement of each stage of construction;
(iii) the height above ground level of the tallest structure forming part of the Development;
(iv) the maximum extension height of any construction equipment;
(v) the position of the turbines and masts in latitude and longitude; and
(vi) the date of completion of construction.

**Reason:** In the interests of aviation safety.

24 Prior to the operation of, and immediately after the installation of, the proposed anemometer mast, this shall be fitted with aviation warning lighting. The development shall be fitted with a minimum intensity 25 candela omni-directional flashing red light or equivalent infra-red light fitted at the highest practicable point of the structure.

**Reason:** In the interests of air safety.

**Financial Guarantee**

25 There shall be no Commencement of Development unless the Developer has delivered a bond or other form of financial guarantee in terms acceptable to the Planning Authority which secures the cost of performance of the borrow pit, decommissioning, restoration and aftercare obligations as contained in conditions 10 and 22 to the Planning Authority. The financial guarantee shall thereafter be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations. The value of the financial guarantee shall be verified by a suitably qualified independent professional as being sufficient to secure the cost of obligations relating to the borrow pit, decommissioning, restoration and aftercare obligations contained in conditions 9 and 22.

The value of the financial guarantee shall be reviewed by a suitably qualified independent professional no later than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.

**Reason:** to ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Commencement of the Development Means the implementation of the consent and deemed planning permission by the carrying out of a material operation within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997.

26 Prior to the commencement of development a programme of archaeological survey work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation, shall be submitted to and require the approval in writing of the Planning Authority. All arrangements thereby approved shall be implemented by the developer at its expense in accordance with the approved timetable for investigation.

**Reason:** In order that any archaeological remains are preserved and recorded.