EAST AYRSHIRE COUNCIL

PLANNING COMMITTEE – 15 JANUARY 2021

Report by the Head of Planning and Economic Development, Economy and Skills

---

SUBJECT: CONSULTATION UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR THE CONSTRUCTION OF A WIND FARM COMPRISING THE ERECTION OF 49 WIND TURBINES WITH MAXIMUM TIP HEIGHTS OF 149.9M AT LAND WITHIN THE NORTH KYLE FOREST, APPROXIMATELY 5.5KM EAST OF PATNA, 6KM WEST OF NEW CUMNOCK AND 2.5KM NORTH EAST OF DALMELLINGTON. (19/0006/S36)

Click here for Application Details: https://eplanning.east-ayrshire.gov.uk/online/applicationDetails.do?activeTab=documents&keyVal=PZQ2NKGF04H00

PURPOSE OF REPORT

1. The purpose of this report is to present for the consideration of the Planning Committee 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 North Kyle (west of New Cumnock and north east of Dalmellington) and for the Planning Committee to take a formal view on the proposed development. The Section 36 application includes an application for deemed planning permission for the same development under Section 57(2) of the Town and Country Planning (Scotland) Act 1997.

RECOMMENDATION

2. It is recommended that the Council does not object to the S36 application subject to:

    1. The conclusion of a Section 75 Legal Agreement between the Applicant and the Council prior to the issue of the Section 36 consent, or agreement to the satisfaction of the Planning Authority of another arrangement to secure a legal obligation post decision, to include those matters listed within the legal implications section of the committee report.

    2. The attachment to the deemed planning permission of planning conditions to address the matters listed below, the detail of which is to be agreed by the Planning Authority in discussion with the Scottish Government and the Applicant.

APPLICATION DETAILS

3. The Scottish Ministers are responsible, under Section 36 of the Electricity Act 1989, for the authorisation of any new, or extensions to existing, electricity generation schemes with a generation capacity in excess of 50 Megawatts (MW). As the proposed North Kyle wind farm would have an installed capacity of 205.8MW, East

Ayrshire Council has been formally consulted by the Scottish Ministers in terms of Section 36 of the Electricity Act 1989.

4. The Council is a formal consultee in this process. In procedural terms the Council, as Planning Authority, requires to provide a response to the Scottish Ministers. In this regard, the Council in response to the consultation can either:

   (i) Offer no objections to the Section 36 application as submitted;
   (ii) Offer no objections subject to the imposition of appropriate conditions and/or legal obligations it considers necessary to make the development acceptable, or
   (iii) Object to the application, stating the grounds on which objection is made.

5. Should the Scottish Ministers be disposed to grant a Section 36 consent for the North Kyle wind farm, the Applicant has requested that deemed planning permission 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.

6. Within the following report consideration is given to the whole development but the assessment by the Planning Authority primarily focuses on effects as they relate to East Ayrshire. As a consultee in the process, it should be expected that this Council focuses its consideration on matters of interest to this Council however in coming to a position, such effects on East Ayrshire cannot be viewed in complete isolation and therefore the wider development impact, both positive and negative, must also be given some cognisance. Ultimately, it will be for Scottish Ministers to undertake an overall assessment and consider all relevant matters, including this Council's position, when coming to their decision.

7. The application is accompanied by an Environmental Impact Assessment Report as required under The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the EIA Regulations). Following this, Additional Environmental Information was submitted on two separate occasions. This is referred to as Additional Information 1 (AI1) and Additional Information 2 (AI2) submitted on 20 August 2020 and 30 October 2020 respectively.

8. Application documents, consultation responses and representations to the S36 application are available to view on the Energy Consents Unit website.

Site Description:

9. The application site covers an area of approximately 2,061 hectares and is located within the North Kyle Forest. The site lies approximately 6km west of New Cumnock, 7.5km south west of Cumnock and 3km north east of Dalmellington. The application site is located within an undulating upland plateau which is extensively forested for commercial purposes. The landscape is fairly simple with rounded hills rising to just over 400m AOD. The upland area forms a backdrop to the lowlands of the north (Ochiltree and beyond) and a containing edge to the upland basin to the east (around New Cumnock) and upper Doon valley to the west where Benqhuat Hill forms a more prominent backdrop (Benquhat is located just outwith the application site). The higher hills of the Southern Uplands lie to the south.

10. The application site is contained almost wholly within the upland plateau on land ranging from just under 300m to 400m AOD in height, but is also partly within a lower lying area to the east which forms part of the Upland Basin (around the upper River Nith) and is just over 200m AOD in height.

11. In terms of historic and existing development, parts of the site and the surrounding area have been subject to extensive surface coal mining which is clearly evident. Although parts have been restored, there are significant areas which remain in a state of abandonment following the collapse of the coal operators in the last decade.

12. The most significant of the unrestored sites are located to the south west of the site (i.e Chalmerston/Pennyvennie, Benbain). To the east, coaling has recently finished at House of Water where restoration is currently taking place. Similarly, Greenburn which is outwith the application site has finished coaling and restoration is almost complete.

13. A coal haul road still exists within the application site which runs between the Chalmerston, House of Water and Piperhill complexes as do several forestry access tracks.

14. The South-West Scotland Interconnector overhead power line runs through the site roughly north-south.

Proposed Development:

15. The proposed development comprises of the following main elements:

- A total of 49 wind turbines each with a maximum tip height of 149.9m and a generating capacity of 4.2MW with associated foundations, crane hardstandings and transformer kiosk;
- Internal access tracks (including 17km of existing tracks including the existing North Kyle Forest Haul Road (NKFHR));
- Three substation compounds;
- One telecommunications mast;
- Search areas for up to four temporary stone extraction areas (borrow pits) with a total search area of 88,000 sqm and a predicted extraction volume of 572,000 m^3 identified.
- It is also proposed to obtain stone from the North Kyle Forest Haul Road which is wider than necessary, in spoil and overburden areas and in existing overburden stores at various locations within the site. It is the applicant's preference to source stone in this way as opposed to from temporary stone extraction areas;
- Up to four temporary site construction compounds;
- Three site entrances;
- Advanced felling of approximately 421.3 ha of forestry as a result of the construction. Restocking is proposed to include more broadleaf woodland and open ground would increase to facilitate the delivery of the Habitat Management Plan (HMP). A net loss of 151.36 ha of commercial forestry would occur which would require to be compensated for. It is proposed that the extent, location and composition of such compensatory planting would be agreed with Scottish Forestry.

<u>Additional Environmental Information (AI1 and AI2)</u>

16. The proposed development was revised to 49 turbines from the originally proposed 54. The revised layout is appended to a letter dated 19 August from the applicant within the Additional Information submitted on 20 August (AI1). This shows the removal of turbines 1, 2, 10, 11 and 12 from the proposal. The letter also includes a table setting out the applicant's rationale for the removing of the 5 turbines as proposed and the reasoning for not omitting 10 additional turbines as suggested by EAC officers. Also appended is a plan of the proposed restoration landscape at House

of Water with turbines overlain. The information submitted within AI1 also includes and formalises prior correspondence including:

- An email from EAC officers dated 20 February 2020 which requests additional/corrected information on matters including the LVIA, Residential Visual Amenity Study, Regeneration and Restoration Proposals and transport matters. That email also contained comments regarding the LVIA and sought the applicant's consideration of revisions to the scheme;
- A Response Statement from the Applicant dated May 2020 which responded to the various comments of consultees, including informal comments from EAC officers;
- An email dated 12 June 2020 from EAC officers to the Response Statement in which officers make recommendations regarding turbine removal;
- A letter dated 2 July 2020 from the applicant to the Energy Consents Unit which provides a response to EAC officers' informal comments and recommendations in the email dated 12 June 2020.
- Correspondence in respect of the SEPA objection

17. A second package of additional information was submitted on 30 October 2020 (AI2). AI2 contains the following:

- Annex 1 containing a written comparison of the application scheme and 49 turbine scheme from selected LVIA viewpoints;
- Annex 2 containing a written comparison of the application scheme and 49 turbine scheme in respect of the residential visual amenity.
- Photomontage visualisations from selected viewpoints to take account of the 49 turbine scheme;
- Wireframe visualisations from selected viewpoints to take account of the 49 turbine scheme;
- Photomontage and wireframe visualisations for the residential visual amenity study to take account of the 49 turbine scheme.
- A revised carbon balance assessment;
- A response to matters raised by RSPB in their consultation responses.

18. As the applicant considered that there are no changes in the significance of the proposed development as a result of the changes, no revisions have been made to the EIA Report. Turbines which have been omitted from the proposal are T1, T2, T10, T11 and T12 which are located either within or adjacent to the Upland Basin in the north eastern portion of the application site.

19. The proposed wind turbines would be arranged roughly on a northeast – southwest tilted 'C' shape with the sections of the site to the north east and south east roughly enclosing the land at Overhill (where there is an existing wind farm approval). The south eastern part of the 'C' would extend from Benbain/Chalmerston, north west through Chalmerston North and into an extensive area of forestry with the north east part of the arc extending into land around House of Water and Burnston.

20. Access is proposed from three entrances. Access for HGVs from the south would be from the A713 between Waterside and Dalmellington using the existing haul road access at Chalmerston. HGV access to the site from the north would be from the B7046 between Burnton and Sinclairston using the haul road access at Piper Hill. For light traffic only, the previous site access to Pennyvennie surface mine from the B741 is proposed.

21. The applicant proposes a micrositing allowance for turbines, tracks and onsite infrastructure of 100m from the proposed layout. This is to allow the accommodation of possible variations in ground conditions across the site.

22. It is anticipated that construction would take 36 months and would be completed in two phases with phase 1 being on land to the south-west of the South West Scotland Interconnector and phase 2 being on land to the east of the Interconnector.

23. During the construction of the development, it is predicted within the EIA Report that approximately 203,273m^3 of peat would be excavated. It is proposed that approximately 175,000m^3 of that peat would be placed on unrestored, previous surface mine areas within the site in order to form a soil horizon and bring the areas back into beneficial after-use. This would potentially enable 35 ha of unrestored land to be restored as part of the proposed development, according to the EIA Report.

24. A coal mining risk assessment (CMRA) is included as Appendix 2.10 to the EIA Report. It concludes that six of the proposed turbines are classified as being at higher risk from previous workings. These are T1, T2 (now omitted), T9, T47, T48 and T53. It notes that the risks would need to be investigated, assessed and mitigated or managed based on the findings of the ground investigation.

25. The expected lifetime of the proposed development would 30 years (including the operational lifetime of 25 years, plus construction and decommissioning).

Regeneration and Enhancement Activities Statement:

26. The S36 application also contains a proposed North Kyle Regeneration and Enhancement Activities document. The document outlines potential proposals to assist in the restoration of abandoned surface mining areas in and around the wind farm application site.

27. The proposals focus on the Chalmerston complex acknowledging the bond funds already available to East Ayrshire Council to carry out limited restoration works. The document proposes restoration works with an estimated value of £5.2M. Approximately half of this would be 'built-in' to the wind farm development with £2.6M of 'additional work' proposed to be financed by the applicant. This is independent of the £4.3M available to East Ayrshire Council for restoration. It is proposed that the restoration would be capable of being delivered during the construction phase of the project. It is proposed that the 'built-in' works would be part of any consent granted and would be carried out as part of the development. These include the restoration and enhancement of bog habitat, re-use of excavated peat for opencast restoration purposes and retention of access tracks for public access.

28. According to the Additional Information letter (AI1) dated 19 August 2020, the potential 'additional works' which includes new pathways and linkages, establishment of a soil receptor site and re-profiling of tips would be the subject of a separate planning application to East Ayrshire Council with the precise scope being detailed in consultation with the Council, local communities and other stakeholders. It is proposed the works would then be secured through S75 obligations on the applicant and landowner. The regeneration and enhancement proposals are considered further below in the material considerations section.

Other documents and statements:

29. The application is also accompanied by a Planning Statement, a Socio-economic and Tourism Impact Assessment and a Pre-application Consultation Report.

CONSULTATIONS AND ISSUES RAISED

30. The Council is a consultee on the Section 36 application and therefore consultation by the Council is limited to other Council services and associated organisations/consultants. A summary of responses internal to the Council and appointed consultants is provided below along with a summary of responses from organisations consulted by the Scottish Government.

Council consultees:

31. **Ironside Farrar Limited (IFL):** IFL were appointed by the Council to undertake an evaluation of the Landscape and Visual Impact Assessment (LVIA) sections of the applicant's EIA Report and AEI (AI1 and AI2). The purpose of this evaluation is to determine the overall adequacy of assessment, whether conclusions are reasonable and to highlight potential issues relating to the overall acceptability of the development from a landscape and visual point of view so far as they relate to effects which would be experienced within East Ayrshire.

32. IFL's review of the LVIA within the EIA Report for the initially proposed 54 turbine scheme is summarised as follows:

Review of LVIA

33. IFL mostly agree with the assessment of the LVIA in terms of the extent of significance effects and those receptors affected. Some landscape effects have been overstated within the assessment. The method of cumulative assessment sometimes overstates the cumulative effects and there is not always a clear distinction between the assessment of the different cumulative scenarios.

34. Discrepancies were identified in some of the production of viewpoint imagery with differences noted between the wireline and corresponding photomontage.

Location and Strategic Cumulative issues:

35. In terms of the East Ayrshire Landscape Wind Capacity Study (EALWCS), the proposed turbines are located largely within the East Ayrshire Foothills with Forest and Opencast Mining LCA, extending into part of the Upland Basin where 5 turbines are proposed (also within House of Water opencast site which recently completed extraction). The siting of the proposed wind farm partially conforms with the EALWCS being contained to a large extent by the outer foothills of the plateau north of the Doon Valley. However, the design deviates from the guidance towards the east where wind turbines south of Carsgalioch Hill and east of the consented Over Hill wind farm extend along the Nith and spill into the western part of the Upland Basin and extend onto higher ground at High Mount, towards Carsgalioch Hill, with impacts to both the Upland Basin and East Ayrshire Lowlands.

36. In terms of the proposal's compliance with SNH siting and design guidance, IFL note that the design of the wind farm limits its impact on the more sensitive skylines above the Doon Valley, however there would be more complete visibility of the wind farm from the east and north. From northerly viewpoints such as VP5 (A70 between Drongan and Ochiltree), consented wind farms would appear as relatively dispersed and/or distant developments. The cumulative effect of the proposals would be to create the impression of a single extensive wind farm with a dominant effect on the southern skyline of the East Ayrshire Lowlands. Some turbines, particularly the more westerly ones would tend to be more exposed, seen with small scale lowland farms

and houses, and bigger electricity pylons, tending to accentuate the scale of the wind turbines.

37. Viewed from the east, for example VP14, the turbines also have a dominant effect on the western horizon, and IFL note the stacking and general uneven turbine arrangement apparent from this viewpoint, with turbines seen to advance into the Upland Basin.

38. Overall, IFL conclude that the scale of the proposals, its cumulative relationship with other consented schemes and aspects of its design result in some undesirable effects identified in SNH guidance.

Effects on Sensitive Receptors

- Landscape Character:

39. IFL identify significant overall effects to the character of the Foothills with Forest and Opencast Mining LCA and as identified in the LVIA, these effects would extend into the adjacent lowland landscape of the Upland Basin and the East Ayrshire Lowlands to the east and north respectively.

40. Seen across the open landscape of the East Ayrshire Lowlands, the turbines would be a prominent feature of the southern horizon and significant adverse effects to the landscape are likely south of the A70.

41. From the Upland Basin there is a relatively gradual transition to the Foothills with Forest and Opencast Mining, the low hills of which are unremarkable when viewed from the Upland Basin. The Upland Basin would be directly and indirectly affected by the proposals and IFL predict significant adverse effects to landscape character within approximately 5-6km but not affecting the character of the Upland Basin as a whole.

42. There would be little or no visibility to the proposals from the Doon Upland River Valley and IFL agree with the LVIA that there would be no significant effects to landscape character here.

43. When taking into consideration consented schemes, The Southern Uplands and Southern Uplands with Forest landscape will be strongly characterised by wind energy schemes, such that significant adverse landscape effects from the proposals would be very limited in extent.

44. IFL do not agree with the LVIA that there would be significant effects on the more distant LCAs.

- Landscape Designations:

45. The proposals would be outside the boundary of the East Ayrshire Sensitive Landscape Areas (EASLA). The proposals are not considered to have a significant effect on the character of this area.

46. No overall significant adverse effects on the character of the Dumfries House or Craigengillan design designated landscapes are predicted.

- Visual effects:

47. The proposals would result in quite extensive significant and adverse visual effects towards the north across the East Ayrshire Lowlands, up to 12km to the north (VP2), across the Upland Basin and into the Nith Valley to the east. The wind farm has less

of a visual effect to the south and west, with significant adverse effects typically more localised.

48. Significant adverse visual effects would be experienced from settlements including Cumnock, New Cumnock, Ochiltree, Skares, Drongan, plus the small collections of houses comprising the settlements of Dalleagles and Burnside between New Cumnock and Dalmellington. From these locations the wind farm would appear as an irregular extended array of turbines seen on the horizon. We do not consider that adverse visual effects would be significant across any larger settlement as a whole, but are likely to be across Dalleagles and Burnside.

49. Other sensitive locations where significant adverse visual effects would be experienced include the northern parts of Dumfries House Estate, parts of Loch Doon, and from higher ground within the Craigengillan Estate including Auchenroy Hill and the Dark Sky Observatory.

50. Significant adverse visual effects would be experienced from parts of the A70, B741 mostly between Dalmellington and New Cumnock, and a number of nearby minor roads. Significant effects would also be experienced from Core Paths and Public Rights of Way, including those to the west of New Cumnock and some within more open locations within the Craigengillan Estate.

51. Significant adverse visual effects would be experienced from most of the single residential properties assessed as part of the RVAS, and we identify the potential for unacceptable effects to residential visual amenity at Upper Beoch.

- Cumulative effects:

52. Significant cumulative effects would arise, principally with the consented but as yet unbuilt wind farms of South Kyle, Enoch Hill, Pencloe, Benbrack, and Polquhairn, operational Dersalloch and Hare Hill, and the scoping Greenburn wind farm.

53. The proposals would add significantly to wind energy within the Foothills with Forest and Opencast Mining LCT, and to the partial encirclement of the Upland Basin by existing and consented schemes and potentially Greenburn. Other than to nearby parts of the Southern Uplands, we find no other significant adverse cumulative effects to landscape character.

54. Significant adverse cumulative visual effects would occur from many of the locations where significant visual effects would be experienced resulting from combined views to proposals listed above:

- From the south, cumulative visual effects would typically arise with views to South Kyle, Benbrack and Dersalloch, including from sensitive locations such as the shore of Loch Doon and Auchenroy Hill;
- from the east/ Upland Basin mainly with views to Enoch Hill, Pencloe, Hare Hill, Lethans and potentially Greenburn; and
- From the north the proposals would visually connect with and add significant turbines numbers to Polquhairn, South Kyle, Overhill and potentially Greenburn, creating the visual impression of a single extensive wind farm rather than a series of separate developments.

<u>Proposals in Conjunction with Open Cast Coal Sites:</u>

55. The proposals are partly located within the House of Water open cast coal site towards the east, and the Chalmerston (North, Central, South) and Coyle Water sites

to the west and south. Disturbed ground and restored open cast sites lie to the north towards Skares.

56. The assessment anticipates the restoration of the House of Water site as part of the consented mining operation, while sites towards Skares can expect to be fully restored in time. The Chalmerston/ Coyle Water sites have no restoration proposals in place, however the wind farm proposals include the possibility of restoration alongside the project, described in the Regeneration and Enhancement Activities Statement accompanying the application.

57. In general, the landscape and visual effects of a wind farm may be exacerbated when sited in, or close to, a landscape visibly disturbed by an industrial activity such as open case mining. The EALWCS (p.81) recommends the restoration of disturbed ground/ earthworks and landscape restoration as integral to any larger wind farm proposals within the Foothills with Forestry and Opencast Mining landscape.

58. The proposals would tend to be seen in longer distance views from the north and east with the Skares and House of Water coal sites, however assuming the successful restoration of these sites there should be no significant exacerbation of landscape and visual effects.

59. Views to the unrestored Chalmerston workings and a limited number of turbine blades would be seen from beyond the Doon Valley to the south, but generally the combined effects of the disturbed coal site landform and the wind turbines would be experienced when within or relatively close to the wind farm site.

60. The outlined restoration proposals of the Regeneration and Enhancement Activities Statement should result in some enhancement to the landscape character and views within the site to future users, albeit the effects of the windfarm would remain significant and adverse when considering the existing baseline, or an 'enhanced' baseline post restoration.

Overall IFL Conclusions

61. The proposals are located mostly in a landscape identified in Supplementary Guidance to be East Ayrshire's least sensitive landscape to turbines >70m (Medium sensitivity). The EALWCS identifies a limited scope for very large (>130m turbines) within the Foothills with Forest and Opencast Mining LCA.

62. The landscape of the site is therefore suited to larger scales of wind energy, however there are aspects of the proposals which exacerbate its effects to neighbouring lowland areas, in particular the siting of the more easterly turbines in the less contained parts of the landscape.

63. The design and siting of the wind farm successfully limits impacts to the more sensitive landscapes to the west, albeit with some localised significant visual and cumulative visual effects from sensitive landscapes at Craigengillan and around Loch Doon.

64. With the consenting of Enoch Hill and Pencloe wind farms, any sizable wind energy development within the Foothills with Forest and Opencast Mining LCA is likely to result in significant cumulative landscape and visual effects, and the scale of the proposals would result in a strong partial encircling effect to the Upland Basin, significantly affecting both landscape character and views.

65. However, effects in the Upland Basin are increased by the apparent encroachment into the basin landscape, and undesirable aspects of its appearance from some

locations, including stacking, outlying turbines, and turbines located on more prominent landforms towards the north.

66. From northerly viewpoints, the proposals and consented schemes would appear as a single extensive wind farm on the horizon of the East Ayrshire Lowlands. Significant effects from the proposals, particularly to visual amenity, would extend up ~12km affecting receptors in sensitive locations including several settlements and the northern parts of the Dumfries House estate.

67. While SPG and the EALWCS recognise the capacity for wind energy on the southern horizon of the East Ayrshire Lowlands, there are aspects of the wind farm design, in particular the siting of turbines in less enclosed areas to the north and east of the consented Over Hill wind farm, which tend to exacerbate landscape and visual effects from these more northerly locations.

68. A number of nearby residential properties within 2km would be significantly affected by the proposals and it is possible that effects at Upper Beoch are unacceptably overbearing in terms of residential visual amenity. However, with the level of information provided in the RVAS, it is difficult to conclude with certainty if this would be the case.

Additional IFL advice

69. Following the informal submission of a response statement from the applicant dated May 2020 (responding on various matters which had arisen through the S36 consultation process), IFL were again appointed to review the LVIA information which had been submitted in the Statement including a set of visualisations in response to the IFL points regarding discrepancies in the visualisations and lack of information in respect of the Residential Visual Amenity Assessment (RVAA) at Upper Beoch. IFL were also requested by Council officers to provide comments on which turbines would have the most benefit in mitigating the most significant impacts if they were removed. This is both in respect of the landscape and visual impacts as well as the residential visual amenity impacts.

IFL provided the following review of the applicant's response statement:

70. The resubmitted visualisations within the response statement address the errors noted by IFL in the originally submitted LVIA. However, a significant additional discrepancy was identified at VP5 (A70 near Ochiltree) where turbines appear to be positioned too far to the left of the image. An additional discrepancy is noted in the VP3 photomontage where turbines to the right of the image are shown partially screened by topography, while the wireframe shows that they are not. IFL noted that while these discrepancies may not alter the significance of the effect at the viewpoints in question, guidance requires that visualisations portray the appearance of the wind farm as accurately as possible. IFL also noted that wireframe images are often misaligned vertically and horizontally presenting difficulties in verifying whether turbines have been correctly positioned into photomontages.

71. In terms of the additional information to support the RVAA at Upper Beoch, IFL judged that the contribution of the North Kyle turbines to the cumulative experience at Upper Beoch, by way of their proximity and their prevalence in views, would exceed the Residential Visual Amenity Threshold at the property.

72. IFL considered the following turbines as having the greatest effect on the Upland Basin (i.e. those located within the upper catchment of the River Nith and extending into the Upland Basin):

- Turbines 1, 2, 3, 6 and 7 which are located within the Upland Basin, having a direct impact on its character;
- Turbines 4 and 5 which are located on the immediately adjacent landform north of the basin and are prominent in views from New Cumnock; and
- Turbines 8-12 which are located at the transition from the Foothills with Forest and Open Cast Mining LCA to the Upland Basin. These turbines are separated from the core of the wind farm located on the higher plateau to the west and extend towards the lowlands in the east.
- Additionally, turbines 8-12 are considered by IFL to have the greatest visual effect on the property at Upper Beoch.
- From northerly viewpoints such as VPs 4 and 5, turbines 16, 17 and 18 appear separated from the main turbine array, prominently sited on high ground. Turbine 16 is also prominent from New Cumnock.

73. IFL therefore concluded that the removal of turbines 1 to 12, 16, 17 and 18 (a total of 15 turbines towards the east of the proposals) would have the greatest potential for limiting the effect of the wind farm to sensitive landscape and visual receptors, improving the appearance of the wind farm, and providing greater alignment to the guidance of the EALWCS. These conclusions would need to be verified through an updated landscape and visual impact assessment.

Additional Environmental Information (AI1 and AI2) (revised 49 turbine scheme)

74. Additional Environmental Information (AI1) was submitted by the applicant on 20 August 2020 following the submission of the informal response statement which is referred to above. AI1 contains a letter which proposes the removal of 5 turbines from the scheme (T1, T2, T10, T11 and T12). It also contains a response to the IFL comments on turbines recommended for removal. AI1 also contains a response to IFL comments regarding the accuracy of visualisations (letter dated 2 July 2020).

75. AI2 submitted on 30 October 2020 contains a selection of revised visualisations (wireframes from viewpoints where the omitted turbines would have been visible from and photomontages from viewpoints 11, 12, 14 and 25). It also contained revised visualisations to support the RVAA at Upper Beoch and a written assessment providing a comparison between the visual effects of the 54 turbine scheme and the 49 turbine scheme at viewpoints and at Upper Beoch.

76. IFL provided the following further review of the information contained within AI1 and AI2 which follows on from previous reviews:

- Effects at Viewpoints

77. Overall IFL agree with the Annex 1 comparative assessment provided within AI2. The proposed modifications will result in little discernible change from the majority of viewpoints, with some modest change from some viewpoints towards the east, where turbines would in places be ‘thinned’ and with less stacking. However, the horizontal extent and general appearance would be largely unchanged.

78. The greatest change would be from VP25, located a short distance east of the wind farm within the Upland Basin landscape character area, where the extent to which turbines would be seen extending into the Upland Basin landscape would be lessened to some extent.

79. The changes would not alter the assessments of significance from any viewpoint. IFL note that no revised photomontage has been prepared at VP5 where there was a notable discrepancy (see above additional IFL advice).

- Effects to Residential Visual Amenity at Upper Beoch

80. Removal of T10, 11 and 12 would remove 3 of the most prominent turbines visible towards the north and east from the property, with the closest North Kyle turbine in this direction now turbine 8 at 1.9km distant. In addition, the blade tips of turbines 1 and 2 would no longer be visible between 3 – 3.6km from the property in the same direction.

81. In conclusion, the 49 Scheme removes the most prominent turbines which would affect the property, and increases separation between the property and turbines to the north east to almost 2km. Turbines in other directions mostly benefit from some screening. While turbines would remain a prominent feature of the wider landscape, it is concluded that they are not likely to be sufficiently dominant to exceed the threshold of residential visual amenity at the property.

82. It would remain the case that the visual effects to Upper Beoch would be significant adverse, as would cumulative effects with consented wind farm developments.

- Effect of Changes on Landscape and Visual Issues

83. The comparative wirelines show no material change to views from northerly viewpoints and therefore the conclusions of the original IFL audit remain unchanged.

84. The LVIA for the Application Scheme identifies a major significant adverse effect to the character of much of the *Upland Basin* LCA, and significant adverse effects from VPs 25 and 14 within the *Upland Basin* and at Maneight. The assessment provided with the 49 Scheme identifies no change to these effects, although some localised benefits to the immediate setting of the River Nith are identified from the removal of turbines 1 and 2.

85. The IFL LVIA audit predicted that the Application Scheme would also result in a significant adverse visual effect from VP12 within New Cumnock, and from the small settlements of Dalleagles and Burnside, both within the *Upland Basin*. These conclusions remain unchanged with the 49 Scheme.

86. The revised scheme makes only modest improvements to the wind farm appearance from the east with little material reduction to its landscape or visual effects.

- Letter to ECU dated 19 August (AI1)

87. IFL respond to the applicant's rationale for amendments to the scheme within the above letter and its Comment on Applicant Response Statement (June 2020) as follows:

Turbines 1 – 9

88. The letter finds no strong rationale for the removal of turbines located within or at the edge of the *Upland Basin.* The letter notes their positioning in a restored landscape of open cast workings, in part of the landscape which '*… has more in common with the restored landscape of opencast workings than any underlying characteristic for the wider character areas described in the EALWCS* [East Ayrshire Landscape Wind Capacity Study, 2018]*.'*

89. Restoration plans for the House of Water open cast coal site are included with the letter. The restoration proposals show a mosaic of grassland, heath, areas of natural regeneration and wetland habitat. Recontouring of overburden and the infill of voids will emulate the pre-existing topography and that of the wider basin, which is generally quite undulating. Some obviously man made elements, such as the large water-filled void towards the north of the House of Water site will remain.

90. Overall, it can be expected that the character of the restored landscape will, in time, broadly correspond to that of the wider *Upland Basin*, and contrast with the more forested and elevated landscape of the *Foothills with Forestry and Open Cast Mining* LCA to the west. The sensitivities, constraints and guidance of the EALWCS apply as much to this part of the *Upland Basin* as they do to other parts.

91. The letter includes an assessment of the acceptability of locating the turbines in the directly affected area of restored mine workings against constraints identified for the *Upland Basin* in the EALWCS, finding no constraints of relevance to the proposals.

92. This misses the broader point that the findings of the LVIA identify a major significant adverse effect to the wider *Upland Basin* (excluding the A76 corridor), an effect to which turbines 1 – 9 are key contributors. This implies a level of development changing key landscape characteristics and not responding to landscape constraints and sensitivities identified in the EALWCS.

93. These turbines are also notable for their contribution to significant adverse visual effects from within the *Upland Basin*, such as from settlements/ properties along the B741 (Maneight, Burnside, Dalleagles).

Turbines 10 - 12

94. The removal of these turbines would have a material effect on residential visual amenity from Upper Beoch, as discussed above.

Turbines 16 - 18

95. These turbines were identified by IFL in their original audit as ‘outliers’ in views from the north and east, the removal of which would lessen the horizontal extent of the wind farm to some degree, and promote its appearance as a more contained development. It is recognised however that turbines 1 to 12 are of most relevance to key landscape and visual issues.

Conclusions

96. It is concluded by IFL that the North Kyle 49 scheme is likely to reduce effects to visual amenity at Upper Beoch such that they would not exceed the threshold of residential visual amenity, however the significant adverse visual effects, and cumulative effects, from this property are notable.

97. From the wider landscape, the proposed turbine removals would result in little substantive change to the appearance of the windfarm, nor to its landscape or visual effects, with only a very localised reduction of effect to the River Nith corridor close to the wind farm.

98. Excepting the changes at Upper Beoch, the comments and conclusions of the earlier IFL audit and IFL *Comment on Applicant Response Statement* remain the same.

99. **ACCON UK (ACCON):** ACCON were appointed by the Council to give advice on noise related issues.

100. ACCON advise that the methodologies used in the noise assessment represent good practice and are in line with ETSU-R-97 and the IOA Good Practice Guide for wind turbines.

101. As there are a number of consented and planned wind turbines in the vicinity of the proposed development site, noise limits for the proposed development operating alone have been determined by subtracting the predicted cumulative noise levels from all relevant developments (apart from the proposed development) from the ETSU-R-97 derived noise limits. Adopting the applicant's derived noise limits for North Kyle Energy Project should ensure the identified cumulative noise limits would be met. ACCON therefore consider that these noise limits could form the basis of site-specific limits for the noise conditions should the proposed development receive consent, especially as the most affected dwellings would not be downwind of the proposed turbines for the majority of the time.

102. Given the proximity of other wind farms, including those in planning, ACCON recommend that a planning condition should require that a protocol be submitted to EAC setting out in detail the sequence of noise measurements and actions required to investigate any noise complaint such that the wind farm responsible for potential breaches of their limits can be identified. The condition should ideally require the submission of such a protocol and agreement of its content by EAC before commencement of construction of the development.

103. Additionally, it would be appropriate if the development were consented to ensure that post commissioning noise monitoring is required, followed up by periodic noise monitoring, initially at two yearly intervals. A condition to control amplitude modulation would also be appropriate which could be based on a model condition published in an IOA Acoustics Bulletin article (November/December 2017 edition).

104. The applicant's assessment of construction and decommissioning noise finds that there would be no significant noise effects from either of these stages of the development. ACCON consider these conclusions to be appropriate. Suitably worded planning conditions should be provided to control potential noise impacts from construction and also noise and vibration from blasting

Additional Environmental Information

105. In respect of the amended 49 turbine scheme ACCON note that as Greenburn Wind Farm is now at planning stage (was at scoping stage at the time of the original North Kyle submission), Greenburn should be taken into account in the operational noise assessment for the North Kyle scheme as part of the AEI.

Ayrshire Roads Alliance (ARA):

106. ARA offer no objection to the proposed development subject to conditions requiring the submission and approval of a detailed Construction Traffic Management Plan (CTMP) and details of abnormal load routes and mitigation works which will require to be approved before development can commence.

107. ARA also comment that they consider the use of Main Street through Ochiltree as an abnormal load route to be very sensitive due to the residential, school and community frontage which use this route and should only be taken as a last resort. The developer will be required to provide fuller details on the proposed route through Ochiltree and engage with the local community on the detailed proposals brought forward through the CTMP and abnormal load traffic management plan.

108. ARA also recommend that the Applicant enters into an agreement with the Council to provide a financial contribution towards the extraordinary maintenance of the affected

local road network adversely affected by construction traffic, particularly the U720 and B7046 routes. The contribution would be based a rate of £1.00 per tonne for imported materials. If this is not accepted, a Road Construction Bond in favour of the Council should be held as security for extraordinary road repairs arising from the development.

Contaminated Land Officer:

109. No objection in principle. No specific area of concern in regard to significant risk from potentially contaminated land has been identified. It is noted that a Construction Environmental Management Plan (CEMP) would be implemented during construction to avoid, reduce or control associated adverse environmental effects. The implementation of the CEMP will address any contaminated land issues which may pose a potential risk to key receptors in the proposed development. There is therefore no need for a contaminated land condition.

Environmental Health:

110. Assessment of noise impacts should be referred to the Council's external consultants.

West of Scotland Archaeology Service (WOSAS):

111. WOSAS generally agree with the conclusions and mitigation for the proposal. However, note disagreement with assessment of minor a minor level of significance on a site of potential National importance (WOSASPIN 8024, section 5.4.39 of EIA report). WOSAS consider that the site should be assessed with a higher level of significance of effect given the proximity of turbines across unforested upland ground lying to the west. Given the site is not a Scheduled Ancient Monument, WOSAS do not advise refusal of the application on that basis alone.

Countryside Access Officer

112. Area wide access rights, as contained within the Land Reform (Scotland) Act 2003, are currently exercisable across the majority of the site on the basis that the site currently consists of forestry plantation with existing access roads and other informal paths, but with areas of restored open cast sites.

113. There are no Core Paths within the development site boundary. However, there is a Right of Way within the site boundary which has been acknowledged in the application. There are other forestry tracks and paths within the site that currently provide recreational access opportunities.

114. It has been noted that Technical Appendix 2.12 contains an Outline Outdoor Access Management Plan – this is very much welcomed. However, if the application is to be approved, it is strongly recommended that a full Outdoor Access Management Plan is produced and East Ayrshire Leisure is closely consulted on this.

115. It is noted from the various plans in the application that all turbines seem to be located off the main paths/tracks throughout the site. This is welcomed, and although there is no specific guidance in Scotland on the setting back of turbines in relation to established paths, it is worth noting the advice note used in Wales – with which East Ayrshire Leisure agrees is an example of good practice.

116. It is noted that desk study has been undertaken in relation to existing paths and routes within the site and the WalkHighlands website is the source of this information. Although this can be a useful resource, it is much preferred that the East Ayrshire Countryside & Outdoor Activities Service is consulted in this regard, in specific the

Green Infrastructure Development Officer (with remit for outdoor access). It is also recommended that the surrounding communities are consulted on this, as these can often be very valuable resources of local knowledge. It is also worth reiterating here, that although there are only three path routes detailed on WalkHighlands website, access rights apply area wide.

117. Prior to this application being approved, it is recommended that:

1. The developer provides a full Outdoor Access Management Plan as detailed in section 2.1, fully consulting East Ayrshire Leisure, as the responsible body for managing outdoor access in East Ayrshire. The details of the plan should be mutually agreed before the application can be approved.

No response was received from Ayrshire Roads Alliance (Flooding)

Consultation responses to Scottish Government

118. The Scottish Government consulted widely on the Section 36 application and a large number of consultees have provided a response to the Scottish Government. A list of those that have responded and their pertinent comments (also available to view on the Energy Consents Unit website) are provided below.

NatureScot (Scottish Natural Heritage)

119. Key points of advice as follows (on application 54 turbine scheme):

Landscape and Visual Impact Assessment

- Visibility of the wind farm would be widespread, with the majority of the proposed turbines seen, from the well-settled lowlands and valleys lying to the north and east of the proposal. Visual effects would be particularly severe from a broad area around Skares/Ochiltree and Drongan and from the upper Nith Valley between New Cumnock/Cumnock.
- This proposal would make a significant contribution to the extensive accumulation of wind farm development seen on the uplands which immediately surround the Upland Basin LCT and experienced from the A76 within the Upper Nith Valley. Significant cumulative effects, with existing, consented and proposed wind farms, would also occur in views from the East Ayrshire Lowlands and Lowland River Valleys LCTs which lie to the north of the site.
- The appearance of the wind farm could be improved to minimise the congested appearance of overlapping turbines (principally those located in the western part of the site) seen from key views to the north. Care needs to be taken to ensure an optimum design should the position of turbines significantly change following detailed site investigation with revised visualisations from key viewpoints submitted by the applicant.
- NatureScot advise that micrositing should remain at 50m due to the above.
- NatureScot recommend that a greater commitment should be made by the applicant towards restoration and regeneration on the most disturbed parts of the site to provide a more appropriate setting to the proposed wind farm. Restoration measures form part of the proposal although these are not fully confirmed at this stage. The measures proposed would provide some positive enhancement and we advise restoration proposals should be developed further in consultation with the planning authority.

Statutory designated sites

120. SNH consider that no national or international natural heritage designated sites will be adversely affected by the proposal.

Habitats/Peat

121. SNH advise that the impacts on peat and carbon rich soils will be overcome by siting, design and suitable mitigation

Badger

122. SNH recommend that prior to the application being determined, the applicant should prepare a mitigation plan for sett G which appears to be in the proposed stone extraction area (SEA) 4.

Black Grouse

123. SNH support the principle of the outline Habitat Management Plan (HMP) but advise that further consideration should be given to ensure that any tree planting takes place at the most appropriate locations within Management unit C. To ensure this takes place SNH recommend that the final version of the HMP should be developed with input from Scottish Forestry, RSPB and SNH along with the developer and associated consultants.

Bats

124. SNH support the mitigation measures proposed for bats as detailed in the Section 7.5 Mitigation of EIA Chapter 7 and Chapter 11: Schedule of Mitigation of the EIA Report and recommend that these measures should be implemented.

Response to Additional Information (revised 49 turbine scheme)

125. Turbines 1 and 2: The removal of turbines 1 and 2 would slightly reduce the magnitude of effects on the restored river corridor landscape of the River Nith Valley.

126. Turbines 10, 11 and 12: The removal of turbines 10, 11 and 12 would slightly reduce the impact on views from Upper Beoch and on views from Maneight and the B741.

127. Notwithstanding these slight improvements to the design and appearance of the proposal, SNH still consider that the visibility of the wind farm would be widespread, with the majority of the proposed turbines seen from well settled lowland and valleys lying to the north and east of the proposal. Turbine blades would be visible above the prominent peak of Benbeoch in views from Loch Doon (VP21).

128. SNH also consider the comments of RSPB in their response to AI2 information and take the view that the locations of turbines 12, 45, 48 and 49 which would be within 500m of black grouse leks 1 and 3 may result in the loss of these leks, affecting black grouse at a local level. SNH therefore recommended post construction monitoring to check this. They also recommend that the final version of the HMP should be developed with input from Scottish Forestry, RSPB and SNH as well as other associated consultants.

Scottish Environment Protection Agency (SEPA)

129. Advise the following in respect of the original EIA Report:

Object on the grounds of lack of information with respect to:

- Management of forestry waste;
- Construction Environment Management Plan (CEMP)

Forest Waste

130. It is proposed that forestry waste will be used in track construction which may be acceptable if it is to facilitate the movement of forestry machinery. However, the use of brash for coverage elsewhere in the site would be viewed by SEPA as waste disposal and this would not be acceptable.

Peat

131. A detailed Peat Management Plan is essential and should be produced to include such issues as: the depths of peat on site (already gathered); the procedures to be used; the management of storage on site; a programme for reuse and the volumes of peat surplus/deficit. It is stated that the soil/peat would be reinstated in the four Borrow Pits (Stone Extraction Areas (SEA)). Any reinstated material should match the surrounding habitat. If peat is to be reinstated, it must be hydrologically connected to the surrounding peatland.

Water Environment

132. A singe Private Water Supply (PWS) has been identified (Clawfin) which is located within 250m (but not within 100m) of an existing site access track. As such, SEPA requires no further assessment.

Coal Mine Risk Assessment

133. It has been established that 17 wind turbines are located in Development High Risk Areas (DHRA), principally due to them falling in areas of current or previous surface mining footprints. Historic underground mine workings may also present risks to some turbine locations. Three substations have been identified as potentially being at risk.

134. The assessment document indicates the requirement for additional ground investigation and potential for changes to turbine foundation design. The planning authority may wish to recognise the need for relocation of some infrastructure based on further ground investigation works.

135. Should proposed additional ground investigations at the site identify that stability risks need to be mitigated through the injection of grout then standard grouting guidance should be followed. This is provided in Appendix A below. If no grout injection is proposed then no further consultation with SEPA, on this issue, is required.

Regeneration and Enhancement Proposals

136. While SEPA welcome the proposed restoration activities on the unrestored Chalmerston Surface Mine Complex and associated mine phases, any major earth works, particularly in areas of the former mine activity, carry potential risks to the quality of the water environment.

137. SEPA recommend a planning condition, which requires baseline and operational water environment monitoring to be undertaken in areas of former surface mine activity, should be attached to the grant of any planning permission.

Construction Environment Management Plan (CEMP)

138. The CEMP indicates the requirements for record keeping and reporting for 'water quality monitoring records'. However, no water environment monitoring has been specified within the accompanying documentation.

139. The CEMP should be updated to include the specific pollution risks associated with the excavation and movement of surface mine backfill materials. Appropriate mitigation measures to prevent short and long term impacts to the water environment should be outlined.

140. The applicant should consider the need for a Bio Security Plan and any requirements should be detailed within the CEMP. It is possible that a condition to secure bio security measures may be required.

Response to Additional Information:

141. SEPA advise of no objection following correspondence with the applicant. With regard to forest brash, SEPA note the applicant advises that there will be a "reasonable likelihood" that a Paragraph 7 exemption for the treatment of brash will be obtained and that the ecological improvement can be demonstrated.

Historic Environment Scotland (HES)

142. HES broadly agree with the findings of the EIA Report in respect of cultural heritage assets of national importance and note that the EIA Report identifies a significant adverse effect on the setting of the Category A listed Temple building located in the northern part of the Dumfries House Inventory Designed Landscape.

143. In evaluating the extent of impact to the setting of this listed building, HES take account of the outlying nature of the Temple located on the far north boundary of the Inventory Designed landscape. HES also consider the recent introduction of an avenue between the Temple and Waterside Wood which has created a new formal vista from the Temple looking down/across the estate.

144. Whilst HES agreed with the EIA Report finding that there would be a significant adverse effect on the setting of the Category A listed Temple and the Dumfries House estate Inventory Designed Landscape, given that there would be no visibility from within the core of the estate, and from Dumfries House itself, HES are content that this effect would not raise issues such that they would object.

Scottish Water

145. No objection.

146. According to records, the development proposals may impact on existing Scottish Water assets.

147. There are no Scottish Water drink water catchments or Drinking water Protected Areas in the areas that may be affected by the proposed development.

148. Scottish Water will not accept any surface water connections into the combined sewer system.

Scottish Forestry

149. Comment as follows:

Wind Farm Forest Plan

150. To enable the windfarm development a significant increase in tree felling will be required in the period 2020-2024 (Phase 2) compared to the existing approved Forest Design Plan. This will have a serious impact on the ability of the windfarm forest plan to meet the following UKFS Requirements:

- Forests and woodlands should be designed to achieve a diverse structure of habitat, species and ages of trees that is appropriate to the scale, context and ecological potential of the site.
- Forests characterised by a lack of diversity due to extensive areas of even-aged trees should be progressively restructured to achieve a range of age classes.

151. The greatest impact on the diversity of age in the forest will be in the north of the site where an exceptionally large area (greater than 300 ha) will be felled in one phase, whereas the existing plan (without development) breaks the same area up into four felling phases.

152. Given the opportunity lost to enhance age class diversity through the existing Forest Design Plan, the restocking plan is the only opportunity for the development to restructure age classes and improve diversity for the next rotation of the forest.

153. Analysis of the windfarm restocking plan (fig 2.11.7) shows that options for a more diverse structure in future rotations are available by breaking up large areas of even-aged forest using the open space, broadleaf riparian woodland and new roads as future felling boundaries. However, the forestry report does not explain the design concept with regards to future structure. No planting years are given on the restocking plan which suggests that all felled areas will be planted over a short period of time, eliminating an opportunity to increase age-class diversity.

154. Clarification is required on the windfarm restocking plan to ensure that sufficient opportunities are created to increase diversity in the next rotation through delayed restocking of adjacent coupes and/or greater use of alternative species. This is especially important for the large area of Phase 2 felling to the north of the site.

Habitat Management Plan (HMP) mitigation: deforestation for peatland restoration

155. The Forestry Report briefly mentions deforestation of 23.99 ha to facilitate the delivery of the draft HMP. The Outline HMP shows that the loss of existing bog habitat is 3.75 ha and is of only local importance, yet the removal of a total of 50.29 ha will be restored from commercial forestry to blanket bog as mitigation.

156. It has not been made clear in either the HMP or the Forestry Report how this deforestation to mitigate loss of bog habitat has been justified against the resulting loss of woodland and requirement for compensatory planting.

157. Further clarification is required to demonstrate how the bog restoration fits with the criteria for woodlands removal in the Control of Woodland Removal Policy and in Scottish Forestry's Peatland Management Guidance.

Compensatory Planting (CP)

158. Scottish Forestry are generally content with the method of calculating the CP and note, subject to clarification of peatland restoration that a requirement for 151.36 ha

will be required. The consents and agreements required for CP should be described in a Compensatory Planting Plan which must be a condition of any consent.

Transport Scotland

159. Transport Scotland advise that they have no objection to the proposed development in terms of environmental impacts on the trunk road network. Conditions are requested regarding the approval of the route for an abnormal loads on the trunk road network and for any additional signing or temporary traffic control measures deemed necessary due to the size or length of any loads being delivered or removed.

RSPB Scotland

160. RSPB do not object to the proposal but strongly advise that the current status of the Southern Scotland black grouse population is taken into consideration in relation to the potential impact of this development, and that full consideration is given to mitigate impact through design amendments, which go beyond those already proposed through habitat management.

<u>Displacement and disturbance to black grouse</u>

161. In respect of displacement and disturbance to black grouse, RSPB Scotland do not agree with the conclusion in the EIA Report that lek sites displaced will simply join population that is declining should firstly be mitigated through design to reduce the risk. Mitigation measures are not considered to reduce the effect to not significant since they do not include consideration to 500m buffer areas for all turbines or the removal or relocation of turbines to reduce displacement risk.

162. RSPB Scotland note that in addition to Turbines 13 and 48 being located within 500m of leks 1 and 3 respectively, it also appears that turbines 12 and 14, 45 and 49 are within 500m of lek 3. It is therefore advised that all turbines are located at least 500m distant from all lek sites.

163. In addition, the proposed construction buffer area of 750m around each lek site is supported and RSPB Scotland would expect this to be made a condition of any planning consent.

<u>Collision risk</u>

164. In respect of collision risk, RSPB Scotland consider that black grouse are at risk from collision with infrastructure closer to the ground than the rotors and are therefore at significant risk of collision with turbine towers. It is considered by RSPB Scotland that turbines proposed in open ground pose a greater risk for black grouse collision and these would include turbines 9, 12 and 13 in the north and 47, 48, 52 and 53 in the south. Turbines 12, 13, 48 and 52 are considered to have the potential to cause the highest risk to grouse and as such advise that additional measures are fully considered to reduce the collision risk. This would include the potential to remove or relocate turbines. Irrespective of any decision to relocate or remove turbines, it is strongly advised that mitigation through marking of the riskiest towers to increase visibility is carried out.

<u>Cumulative impact</u>

165. RSPB Scotland note that the cumulative impact to black grouse is likely to be higher than is predicted in the EIA Report because the population estimate is out of date.

166. Proposals for habitat enhancement are supported but it is not considered that these measures will be sufficient to mitigate the potential impact during the operational phase without additional measures as recommended above and additional consideration of the location of habitat management areas as set out below.

Habitat Management measures

Woodland fringe and shrub creation

167. RSPB Scotland welcome proposals for habitat enhancement to benefit black grouse through bog restoration and woodland fringe habitat creation although they have concerns that the areas selected are only 100m from proposed turbine locations. The creation of woodland fringe and scrub habitat is likely to attract grouse to feed in the vicinity of turbines, increasing the risk of collision. The woodland fringe and scrub creation should therefore be created at a minimum distance of 500m from turbine locations.

Bog Restoration

168. Although areas of enhancement of ground vegetation to benefit black grouse in the vicinity of turbines is less of a concern than the creation of woodland fringe, RSPB Scotland still recommend that the area proposed for bog restoration at A1/2 is reduced to ensure restoration is at least 500m from the proposed turbine locations.

169. Areas proposed for bog restoration at B1 and B2 are a maximum of 100m and minimum of 80m from the proposed turbine location. Since the latter area is surrounded by turbines, RSPB Scotland advise that the whole area of bog restoration is reconsidered. Ideally an alternative location is sought.

Deep Peat

170. RSPB Scotland consider the minimum carbon payback period for the development of 1.8 years to be poor and advise that this should be improved through the micrositing of infrastructure.

Response to Additional Information (AI1)

171. In response to the additional information submitted (AI1), RSPB Scotland do not consider that the Applicant's Response Statement addresses the issues raised relating to impacts to ornithology and deep peat habitats. RSPB Scotland therefore again strongly advise that any assessment of impact on black grouse takes into consideration the current status of a downward trend in the population and seeks to mitigate impacts through full consideration of design amendments.

172. RSPB Scotland advise that all turbines are located at least 500m from all lek sites.

173. RSPB Scotland consider that turbines 12, 13, 48 and 52 have the potential to cause the highest risk to grouse from collision risk and as such advice that in addition to advise to locate turbines at least 500m from lek sites, that additional mitigation measures are fully considered to reduce this risk further. This would include the potential to remove or relocate turbines.

174. RSPB Scotland note that this issue has not been directly addressed in Additional Information but that one of the five turbines removed correlates with turbines highlighted s being of the most potential risk to black grouse in the north east of the

site (T12). This partly addresses RSPB concerns relating to the proximity of turbines to lekking and nesting black grouse.

175. RSPB strongly advise that mitigation through the marking of the riskiest towers to increase their visibility is carried out.

176. With regard to habitat enhancement measures, RSPB Scotland note that the Response Statement includes feedback to SNH relating to the location of shrub planting in restoration area C due to deep peat habitat and that it is proposed that the final version of the HMP will be developed with input from Scottish Forestry, RSPB and SNH.

177. RSPB Scotland note, however, that the issue of the location of bog restoration areas within 500m of turbines has not been directly addressed in additional information but welcome the agreement to include input from SNH and RSPB Scotland relating to the detail of shrub planting proposed as part of an agreed HMP. This is welcomed by RSPB Scotland and is recommended for inclusion as a condition.

178. The issue of deep peat has not been addressed but it is noted by RSPB Scotland that SNH have expressed satisfaction that the impacts on peat and carbon rich soils can be overcome by siting, design and suitable mitigation.

Response to Additional Information (AI2)

179. The applicant provided a letter from MacArthur Green dated 29 October within the AI2 submission which responds directly to the matters raised by RSPB Scotland. RSPB's response to that are as follows:

180. RSPB Scotland welcome the confirmation of the objectives of the proposed development to make contributions relevant black grouse conservation projects. However, RSPB Scotland maintain their advice that the mitigation of impacts on site should take precedence over any works agreed to compensate impacts through off-site measures.

181. With regard to the turbines posing the most likely risk of collision, RSBP Scotland advise that such turbines are confirmed, agreed and are marked to reduce the risk of collision. This should be addressed through conditions on any consent.

182. RSPB Scotland do not agree with the conclusion that on-site mitigation measures as proposed within the EIA Report would satisfactorily mitigate the potentially significant adverse effect to a non-significant level. The measures outlined in the EIA Report are aimed at reducing disturbance to birds during construction (traffic management) and the marking of fences to reduce potential collision and are not proposals to address operational displacement effects which can only be addressed through the location of turbines at 500m or more from active lek sites.

183. RSPB Scotland agree that the removal of turbines 10, 11 and 12 reduces the likelihood of displacement of lekking birds in this vicinity of the project. However, they maintain their advice that T13 which is in the same area of the project should be located at least 500m from lek site 1. This advice is notwithstanding the applicant's proposal to ensure net gain is delivered.

184. RSBP Scotland agree with the letter which notes that the status of lek 3 is likely to change in the 'do-nothing' scenario as the area of forestry which surrounds this lek would over time mature and become unsuitable lekking habitat, meaning that regardless of whether the wind farm became operational or not, any birds associated with that lek would likely be displaced, either within the same area or further afield.

185. With regard to the HMP areas, RSPB Scotland note and welcome the confirmation that the final location of any habitat enhancement measures will be agreed as part of a HMP in liaison with RSPB Scotland, FLS and NatureScot. RSPB Scotland maintain advice that the location of these works needs to fully consider both the potential to enhance habitat for black grouse alongside minimising unintentional negative impacts through location.

South Ayrshire Council (SAC)

186. SAC advise of no objections.

187. SAC advise that they are content with the assessment of visual impact on South Ayrshire identified receptors as being minimal.

188. With regard to transport impacts, SAC advise that the North Kyle Route 2 for the delivery of turbine components which proceeds into South Ayrshire's strategic road network should not be deviated from or amended in such a way as to route directly through settlements straddling arterial roads, in particular, the A70 with respect to Coylton, to avoid residential / community nuisance within South Ayrshire; as well as to avoid exacerbating already pressured baseline conditions.

189. Particular regard should be had to cumulative impacts on ornithology and SNH's appraisal of same in any consultation response received from them.

Dumfries and Galloway Council (DGC)

190. DGC advise they have no comments on the consultation.

Ochiltree Community Council

191. Ochiltree Community Council advise that Ochiltree Community Hub fully support the project and have no concerns on the planning application.

Ochiltree Community Hub

192. Ochiltree Community Hub advise that they support the application.

The Coal Authority (CA)

193. CA records indicate that there are 46 mine entries within or within 20m of the site boundary. The site is also in an area of recorded and likely unrecorded coal mine workings at shallow depth and an area where coal has bene removed by surface mining methods.

194. The CA note that the Coal Mining Risk Assessment (TA2.10) states that the detail and risk associated with the mining history of the site has been factored into decisions in respect of the development layout in order to minimise the risks. The report indicates that the turbines have been sited in areas where there is least risk from mine entries and this would accord with CA adopted policy. The CA is of the opinion that building over the top of, or in close proximity to, mine entries should be avoided wherever possible, even after they have been capped.

195. The proposed intrusive site investigations should be designed by a competent person and should ensure that they are adequate to properly assess the ground conditions on the site in order to establish the extraction situation in respect of coal mining legacy and the potential risks posed to the development by past coal mining activity. The

nature and extent of the intrusive site investigations should be agreed with the Permitting Section of the Coal Authority as part of the permissions process. The findings of the intrusive site investigations should inform any remedial measures which may be required.

196. It is requested that relevant planning conditions are imposed on any consent granted in order to ensure that the intrusive investigations and any remedial works and/or mitigation measures necessary are carried out prior to commencement of development. Subject to this the CA have no objection to the application on the basis of the information reviewed.

Ironside Farrar Limited (IFL)

197. IFL are consultants to the Scottish Government in respect of the review of the peat landslide risk hazard assessment (PLRHA). IFL's first review requested clarifications and amendments to the investigation of peat landslide risk.

198. Following the applicant's response to this which was submitted as additional information, IFL noted that the recommendations of the first review had been addressed and made no further recommendations.

Nith District Salmon Fisheries Board (NDSFB)

199. NDSFB reiterate the requirement to conduct a full fisheries audit of all watercourses draining the site into the River Nith catchment by means of electrofishing and that whilst electrofishing date was available from third parties previously, that data may not be available in the future as the coal mining industry winds down. In those circumstances the wind farm project would have to conduct their own electrofishing surveys to suit the requirements relating to the specific project.

Fisheries Management Scotland (FMS)

200. FMS advise that it is important that consultation with local fisheries organisations takes place. FMS has developed in conjunction with Marine Science Scotland, advice for district salmon fisheries boards and Trusts in dealing with planning application. FMS strongly recommend that these guidelines are fully considered.

Marine Science Scotland (MSS)

201. MSS advises that the developer establishes a robust integrated hydrochemical, macroinvertebrate and fish population monitoring programme to monitor all potentially impacted watercourse and selected control sites as a means of ensuring the avoidance and/or minimum impact on fish populations as a result of the proposed development.

Glasgow Airport

202. No comment as the proposal is located outwith the consultation zone.

Glasgow Prestwick Airport (GPA)

203. GPA objects due to the significant impact on its primary radar provision in the airspace above the proposed wind farm until such times as it is confirmed that a mitigation solution can be implemented and maintained for the lifetime of the wind farm and a corresponding mitigation service agreement is in place between both parties.

204. In response to the consultation on Additional Information (AI1 and AI2), GPA advised that it was in active dialogue with the developer to determine if the radar mitigation technology being deployed at GPA can mitigate the clutter from the rotating blades of the turbines visible to the GPA primary radars and radar modelling and flight trials are currently underway to establish whether this mitigation technology can be applied and the radar optimised in the airspace above the proposed wind farm.

205. GPA noted in their AI2 response that following the recent completion of an Instrument Flight Procedure (IFP) Assessment against GPA's published IFPs vs the proposed wind farm, there are numerous turbines that will have an impact on their published flight path procedures and as such more detailed work will be required with GPA's IFP designer to ascertain if the impact of the turbines can be mitigated and accommodated.

National Air Traffic Services (NATS)

206. NATS advise of objection due to impacts to its en-route RADAR.

Ministry of Defence (MoD)

207. MoD offer no objections subject to 7 perimeter turbines being fitted with 25 candela omni-directional red lighting or infrared lighting.

208. Four additional turbines (1, 22, 43 and 54) should be fitted with 25 candela omni-directional red lighting and infrared COMBI lighting.

209. In response to consultation on the Additional Information, MoD advise of the requirement for red lighting or infrared lighting to perimeter turbines only.

BT

210. BT advise that the proposals should not cause interference to BT's current and presently planned radio network.

Atkins Global

211. Atkins Global advise that they have no objection in relation to impacts on UHF Radio Scanning Telemetry communications.

Scotways

212. Scotways object on the grounds of an incomplete recreational access baseline and lack of information regarding the proximity of turbines to a recorded right of way.

213. The access baseline fails to consider recorded rights of way SCD5, SCD6, SCD18 and SCD19. The Outdoor Access Management Plan should accurately reflect the public access situation over the site, specify how these rights of way will be taken into account and detail any required diversions.

214. A number of turbines have been situated in close proximity to rights of way SCD18 and SCD19. In lights of the advice within the Welsh Technical Advice note on Renewable Energy, the Society seeks clarification of the minimum separation distance between these rights of way and nearby turbines.

Response to Additional Information

215. An objection is upheld awaiting further information on details of an additional linkage proposed to connect SCD18 and SCD19 which would reinstate these rights of way.

216. Objection regarding the proximity of turbines to rights of way still stands.

VisitScotland

217. Given the importance of Scottish tourism to the economy, and of Scotland's landscape in attracting visitors to Scotland, VisitScotland would strongly recommend any potential detrimental impact of the proposed development on tourism - whether visually, environmentally and economically - be identified and considered in full.

218. VisitScotland strongly agrees with the advice of the Scottish Government –the importance of tourism impact statements should not be diminished, and that, for each site considered, an independent tourism impact assessment should be carried out. This assessment should be geographically sensitive and should consider the potential impact on any tourism offerings in the vicinity.

219. VisitScotland would also urge consideration of the specific concerns raised above relating to the impact any perceived proliferation of developments may have on the local tourism industry, and therefore the local economy.

British Horse Society (BHS)

220. BHS advise that due to the amount of horse riders in the vicinity of the proposed wind farm they request that developers take particular care when moving large vehicles around during construction.

REPRESENTATIONS

221. The Scottish Government Energy Consents Unit has received 8 separate representations, objecting to the application on the following grounds. All representations are available to view on the Energy Consents Unit website.

- Close proximity of turbines to boundary of hill on farm meaning it would not be possible to plant trees in future.
- Evidence from Darsalloch wind farm of cattle shying away from turbines which potentially means losing 500 acres of summer grazing.
- Potential damage to properties.
- Dust pollution.
- Need assurance that bonds will be in place to cover cost of restoration in the event of the operator going bust.
- Developer does not intend to carry out any restoration work to Chalmerston.
- Burnhead Wind Farm was rejected only 4-5 years ago and the proposed site is only within a few hundred metres.
- Visual (including cumulative) impact on home and place of work at Upper Beoch.
- Noise (including cumulative) impact on home and place of work at Upper Beoch.
- Potential impact on Overhill Wind Farm due to insufficient separation distance.
- Visual impact on property at Knockenlee, Dalleagles (including cumulatively)

ASSESSMENT AGAINST DEVELOPMENT PLAN

222. The application has been submitted to the Scottish Government under Section 36 of The Electricity Act 1989. Unlike a planning application, there is no requirement that the application be determined in accordance with the development plan, unless material considerations indicate otherwise, as required by Section 25 of the Town and Country (Scotland) Act 1997. Instead, the development plan is a consideration, albeit an important one, amongst a number of other matters that will require to be taken into account by the Scottish Ministers in the determination of the application. Schedule 9 of the Electricity Act 1989 sets out the matters which Scottish Ministers are required to have regard to in considering development proposals.

223. However, for the purposes of the Council's assessment of the development to inform the response to the Scottish Government, it is considered that the development plan represents a logical document against which to base its primary assessment. Other material considerations pertinent to the application are considered following such assessment and overall conclusions drawn thereafter.

224. The development plan for East Ayrshire comprises two separate plans: the East Ayrshire Local Development Plan 2017 (EALDP) and the Minerals Local Development Plan 2020 (MLDP). The policies relevant to the proposed wind farm development are contained within the EALDP and it is these policies that are considered in detail below.

225. There are also relevant policies within the MLDP which should be used alongside the EALDP because the proposal includes an element of mineral extraction (i.e. the formation of borrow pits); the proposal is on a former minerals site that is identified in the plan as a former minerals opportunity site and the application site is within the Coalfield Communities Landscape Partnership area. The MLDP should therefore be used alongside the EALDP.

226. Taking account of the likely effects of the proposal, the development plan policies which are considered to be relevant are:

227. EALDP Policies:

- Policy RE3: Wind energy proposals over 50 metres in height
- Policy RE5: Financial Guarantees
- Policy RES11: Residential Amenity
- Policy T1: Transport requirements for new development
- Policy T4: Development and Protection of Core Paths and Natural Routes
- Policy ENV2: Scheduled monuments and archaeological resources
- Policy ENV4: Gardens and Designed Landscapes
- Policy ENV6: Nature Conservation
- Policy ENV 7: Wild Land and Sensitive Landscape Areas
- Policy ENV8: Protecting and Enhancing the Landscape
- Policy ENV9: Trees, Woodland and Forestry
- Policy ENV10: Carbon rich soils
- Policy ENV11: Flood Prevention
- Policy ENV12: Water, air and light and noise pollution
- Overarching Policy OP1

228. EALDP Supplementary Guidance:

- Planning for Wind Energy
- Financial Guarantees

229. MLDP 2020 Policies:

- Policy MIN SS3: Coalfield Communities Landscape Partnership
- Policy MIN SS4: Former minerals opportunity sites and placemaking

Policy MIN SUP2: Borrow Pits

230. It is important to note that the assessment by the Planning Authority focuses on the significant environmental effects predicted to arise as a result of the development as such effects are more likely to be of a determinative nature in the assessment and conclusions. For the avoidance of doubt, a lack of significant effect does not mean there will be no effect at all and non-significant effects are still relevant to the assessment of the development.

East Ayrshire Local Development Plan 2017 (EALDP)

Policy RE3: Wind energy proposals over 50 metres in height

231. This policy states that all wind energy proposals over 50m in height, including extensions and proposals for repowering, will be assessed using the spatial framework for wind development shown on Map 12 and all relevant Renewable Energy and other LDP policies.

232. The Council will afford significant protection to Group 2 areas shown on Map 12. Development may be appropriate in some circumstances within these areas in cases where it can be demonstrated that any significant adverse effects on the environmental characteristics of these areas can be substantially overcome by siting, design or other mitigation and where the proposal is acceptable in terms of all applicable renewable energy criteria set out in Schedule 1.

233. Within those areas shown on the Spatial Framework (Map 12) as Group 3 - Areas with Potential for Wind Energy Development, proposals for wind energy over 50m in height will be supported where it can be demonstrated that they are acceptable in terms of all applicable Renewable Energy Assessment Criteria set out in Schedule 1.

234. **The application site is almost wholly within a Group 3 area (area with potential for wind energy development). The exceptions are some small areas where Class 1 carbon and peatland is identified to un-forested areas primarily to the southern and central part of the site and where there is some minor encroachment into a larger area at Headmark Moss. Class 1 Carbon and Peatland areas fall within Group 2 of the spatial framework (areas of significant protection) and is of national importance. Benbeoch Site of Special Scientific Interest (SSSI) which is also a Group 2 area, is located just outwith the application site.**

235. **The infrastructure layout almost completely avoids the Class 1 areas. An access track is shown running along the northern fringe of the Headmark Moss area of peatland, however, this shows the utilisation of an existing access track. Turbine 48 and associated access track appears to be within or in proximity to a Class 1 peat area as do turbines 39 and 43. Peatland and Carbon mapping produced by SNH is fairly indicative and therefore it is relevant to also refer to the applicant's peat survey which is within the Draft Peat Management Plan.**

236. **The area where Turbine 48 and nearby infrastructure is proposed was probed at depths of peat ranging from 0m to 3m. The turbine itself is show to be located where there is no soil. Floating roads are proposed where peat is more than 1m deep. Turbine 39 is located at the edge of a Class 1 area and the peat survey shows peat here as being 3m in depth. Similarly, turbine 43 is shown at the edge of a Class 1 area and would be located to peat of a depth of 2-3m. In both cases, infrastructure avoids the deepest areas of peat which are likely to be that of greatest value in terms of the Class 1 description.**

237. **It is considered that the development infrastructure avoids and/or is designed (i.e. through a floating road design) so that there would not be a significant adverse effect on the Class 1 peat areas.**

238. **In addition to the findings in relation to the Group 2 areas, Policy RE3 also requires that developments be acceptable in terms of the Schedule 1 criteria. These are listed and considered below.**

Policy RE3: Schedule 1 Renewable Energy Assessment Criteria

- **Landscape and Visual Impacts**

239. The applicant's landscape and visual impact assessment (LVIA) is contained within Chapter 4 of the EIA Report for the 54 turbine scheme. As the applicant does not consider there to be any changes to the significance assessment, the EIA Report has not been updated to reflect the revised 49 turbine scheme. Instead, supporting information has been submitted as part of AI1 and AI2 which includes revised visualisations from selected viewpoints, a written statement which compares the revised scheme with the original at these viewpoints and a summary of the rationale for removing turbines 1, 3, 10, 11 and 12 but not others which were suggested for removal by EAC. Assessment of landscape and visual impact should therefore primarily take account of the EIA Report LVIA but with reference to the supporting information within the additional information submitted.

240. The LVIA assesses effects on landscape fabric, landscape character and visual amenity both during construction and operation. No significant effects are predicted during construction, so assessment of landscape and visual impacts shall focus on operational impacts.

241. The current landscape and visual baseline is described under part 4.4 of the LVIA and provides the rationale for the receptors considered likely to be significantly affected and therefore assessed further.

242. The baseline section also describes the cumulative wind farm context. Table 4.8 sets out the wind farm developments which were operational, consented, in planning and at scoping stage, focusing on those within 20km. This list was compiled and frozen in August 2019. This table contained errors in the heights of the some of the cumulative turbines which was noted in the first IFL audit. A corrected table is contained in Appendix C of the applicant's Response Statement dated May 2020 submitted as part of the AI1 package in August 2020. The Response Statement at paragraph 4.12 states that the findings of the LVIA were not affected by the errors in Table 4.8. It should also be noted that the cumulative context has not been updated since the table was frozen in August 2019. It does not, therefore, take account of the S36c variation application at Enoch Hill to increase turbine heights from 130m to 149.9m or the planning application to increase turbines heights at Overhill from 149.9m to 180m and Greenburn is included at scoping stage only (now at planning stage).

Landscape Character Effects

243. The LVIA assesses the following landscape character types (LCTs) which are based on the EALWCS 2018 and the SNH Landscape Character Assessment 2019. Consideration of the LVIA findings are also set out below in bold.

- **Foothills and Forestry with Opencast Mining**

This is the host landscape and the LVIA predicts there to be direct significant effects.

244. **It is agreed that there would be a significant adverse effect of this LCT as a whole. Proposals would envelop Overhill while Polquhairn and Knockshinnoch would be relatively small scale separate developments at the fringe.**

- **Upland Basin**

The LVIA notes that from locations in the River Nith Corridor and parts of New Cumnock the development would extend southwards from the consented Overhill array and would constitute a substantial impact. From the A76 corridor, however, it notes that the development would be substantially screened and the character substantially unaltered. The cumulative landscape impact from proposed wind farms visible from this LCT are noted as having a significant impact within the River Nith corridor and from parts of New Cumnock.

245. **It is broadly agreed that the proposed development would have the extent of effect as described. It is also agreed that the proposal would have a significant cumulative effect if proposed wind farms are considered. With the consenting of Enoch Hill, this suggests that cumulative effects would also be significant with a baseline scenario of existing and consented wind farms.**

- **East Ayrshire Southern Uplands**

The LVIA notes that significant effects are anticipated in the unit west of Glen Afton.

246. **It is considered that given the extent of existing and consented wind farm development in and around the eastern unit of the East Ayrshire Southern Uplands, it is not considered that the proposals contribute significantly to cumulative landscape effects here.**

- **East Ayrshire Lowlands**

The LVIA notes that significant effects are predicted between Ayr and Cumnock due to the prominence of the development on the skyline west of this part of the LCT. The proposed development would also extend wind energy development northwards from the main concentration of turbines located in the Southern Uplands to the south. The development would affect the perceived scale and simplicity of the landscape at the transition with the Foothills and Forestry and add significantly to the cumulative context on the skyline in views from this LCT.

247. **It is agreed that there would be significant adverse effects to the landscape character of this LCT, but that the effects would be largely contained south of the A70 (i.e. within 5-6km).**

248. **It is not considered, however, that the influence of other wind energy developments (over and above the proposals) would result in a significant cumulative landscape effect on this LCT.**

- **Lowland River Valley**

The LVIA notes that significant effects are predicted at elevated locations of the northern slopes of the Ayr valley.

249. **It is not considered that there would be significant effects on this LCT due to the distance from the development. Significant effects are more likely to the more southerly Lugar valley.**

- **Upland River Valleys**

The LVIA predicts significant effects at the Nith and Berlow Water units of the LCT but not the Doon Valley.

250. **It is agreed that there would be no significant or cumulative landscape effects to the character of the Doon Valley due to the restricted visibility of turbines. It is considered that the effects on the Nith Valley are only borderline significant due to the 7km distance from turbines. It is not agreed that there would be any significant cumulative effect here.**

251. **Similarly, with regard to the Berlow Water valley, significant effects are considered to be borderline only.**

- **Foothills with Forestry**

The LVIA predicts localised significant effects west of the Doon Valley.

252. **It is considered that these effects are to visual amenity rather than landscape character and that there would be no significant landscape effects on this landscape.**

- **East Ayrshire Plateau Moorlands**

The LVIA predicts significant effects south of the Ayr valley including for all cumulative scenarios.

253. **It is also considered that here, the significant effects would be more to visual amenity than landscape character because of the separation between the proposals and this LCT provided by the lowland Upland Basin.**

- **Rugged Upland**

The LVIA notes that significant effects are predicted to the northern fringes of the LCT.

254. **This landscape is located at least 12k south of the closest turbines. It is considered that any significant effects relate more to visual impacts rather than landscape character.**

255. **In summary, the LVIA predicts significant landscape character impacts to 9 different landscape character types as set out above. However, taking advice from IFL's assessment which takes account of factors such as the distance from turbines and the influence of existing and consented schemes, it is considered that this may be overstated in some cases and that significant landscape character effects would be attributable primarily to the Foothills with Forest and Open Cast Mining LCT (the host landscape), the Upland Basin (including cumulatively) and the East Ayrshire Lowlands LCT.**

<u>Landscape Designations</u>

256. The LVIA assesses the landscape effects on the Dumfries House Garden and Designed Landscape (GDL). The GDL is primarily a cultural heritage designation rather than a landscape designation, and so it should be noted that the landscape

assessment differs from the cultural heritage assessment of the impacts which are considered below under the historic environment criterion.

257. The LVIA considers there to be significant landscape effects only to parts of the GDL. These are confined to locations on the northern side of the valley in which the GDL is located including the original access to the estate and adjoining agricultural fields. The effects would also be cumulative when seen in conjunction with operational and consented wind farm developments with the proposed development being a significant addition.

258. The IFL review also notes the prominence of the wind farm from northern parts of the GDL, but also notes that views would become more obscured by trees and forestry south of the Home Farm and across the majority of the estate and therefore effects to the overall character are not considered to be significant.

259. IFL do not consider there to be significant landscape effects to any other landscape designation.

260. **In conclusion, taking account of the LVIA and IFL review there are not considered to be significant effects to any landscape designations as a result of the proposed development.**

261. There would be no change to these effects as a result of the revised 49 turbine scheme.

Visual Effects

Settlements

262. The LVIA assesses visual amenity effects on settlements within 15km of the development, transport routes and recreational routes, selected based on their distance, theoretical visibility to the proposed turbines and their likely significance. The visual effects on the settlements of Dalmellington (including Bellsbank), Cumnock, New Cumnock, Ochiltree, Skares, Patna and Drongan are assessed in the LVIA.

- **Dalmellington and Bellsbank**

It is agreed with the LVIA that there would be no significant effects across Dalmellington due to restricted visibility. Visibility will be greatest from the upper parts of Bellsbank but the overall effects would not be significant, including cumulatively.

- **Cumnock**

It is agreed with the LVIA that there would be locally significant effects from the more elevated northerly parts of Cumnock but that there would not be an overall significant effect to the settlement.

There would also be some localised significant cumulative effects due to the level of existing/consented development seen on the southern horizon. It is also considered that there would be a significant cumulative impact with Greenburn wind farm as the Greenburn proposals would only partly overlap in views from Cumnock.

- **New Cumnock**

It is agreed with the LVIA that there would be some significant adverse effects, with the wind farm clearly visible on the horizon from western parts of the settlement.

There would also be significant additional cumulative effects with the proposals seen in combination with prominent existing and proposed wind energy development on the southern horizon.

- **Ochiltree**

It is agreed with the LVIA that there would be significant adverse effects, mostly to the western part of Ochiltree. It is also considered that the cumulative visual effect would be significant. The proposals would be to the fore of Overhill and South Kyle and link visually with Polquhairn wind farm.

- **Skares**

The LVIA considers there to be a significant adverse visual effect across this settlement. It is considered that this may overstated but it is agreed that significant effects would be experienced across parts of the settlement. There would be significant cumulative effects with Greenburn.

- **Patna**

It is agreed that views from Patna would be very limited and there would be no significant effect from the proposals.

- **Drongan**

It is agreed that there would be a significant visual and cumulative visual effect from parts of Drongan.

- **Other settlements**

No explicit assessment was carried out of the effects on the smaller settlements of Dalleagles and Burnside on the B741 to the south of the site, however, it is considered that there would be significant adverse visual effects from these settlements.

263. No revised assessment on these settlements has been undertaken for the revised 49 turbine scheme. No changes to the above summarised effects are therefore predicted.

264. The LVIA refers to the Residential Visual Amenity Study in Technical Appendix 4.7 carried out to assess the likely effects of the proposed development on the visual amenity of individual properties. However, the effects on individual properties is a separate assessment to that carried out as part of the LVIA as the assessment is related to the overbearing or overwhelming effect of turbines on living conditions. Effects on individual properties are therefore considered under the impacts on communities and individual dwellings criterion below.

Transport Routes

265. The visual effects on the following routes are considered in the LVIA:

- **A76 Dumfries to Kilmarnock**

No significant effects predicted.

- **A70 Lanark to Ayr**

Local significant effects predicted between Ochilree and Killoch.

- **A713 Ayr to Castle Douglas**

No significant effects predicted due to no or little visibility.

- **B741 New Cumnock to Girvan**

Significant effects predicted between Maneight and New Cumnock including cumulatively with application developments (Enoch Hill now consented). No assessment of effects is provided west of Dalmellington, but the prominence of the development is noted.

- **B7046 Cumnock to Drongan**

Significant adverse visual effects predicted as well as cumulatively along this route;

- **Glasgow and South Western Railway Line**

Localised significant adverse visual effects predicted west of New Cumnock and north east of New Cumnock. Visual effects would not be significant overall;

266. **It is generally agreed that the development would have the visual effects from transport routes as assessed within the LVIA. However, it is likely that there would be significant adverse effects from the B741 west of Dalmellington given the elevated and open views to the proposed wind farm.**

267. No revised assessment of effects on transport routes has been undertaken for the revised 49 turbine scheme. No changes to the above summarised effects are predicted.

Recreational Routes

268. The LVIA assesses the visual effects from the following recreational routes:

- **National Cycle Route 7**

No significant visual effects predicted.

- **The River Ayr Way**

Locally significant adverse visual effects predicted southwest of Mauchline, some 12km from the turbines. No widespread significant effects predicted.

- **Core Path 14 River Ayr Way Link**

No significant adverse visual effects are predicted due to enclosure from vegetation and the distance from the development.

- **Core Path C9 Ochiltree to Drongan**

A significant adverse visual effect is predicted due to the visibility from a large proportion of the route of the wind farm approximately 6km to the south. A significant cumulative effect is also predicted with Greenburn.

- **Core Path C10 Coalfield Cycle Route**

Some localised significant adverse visual effects to the west of New Cumnock are predicted but not to the route overall.

- **Core Path C12 New Cumnock Circular**

A significant effect on the visual amenity of this route is predicted.

- **Core Path C13 Auchenroy Hill and Dalcairnie Falls**

Significant adverse visual effects to the upper parts of this route are predicted as well as cumulatively with Enoch Hill.

- **Core Path C14 Glen Afton**

No significant effects predicted due to intervening topography and vegetation;

- **Core Path D6 Dumfries Estate**

No significant effects are predicted due to a combination of intervening topography and vegetation and only visible in oblique views as well as a distance of over 6km.

- **Core Path D16 Craigengillan to Knockdon**

Significant adverse effects are predicted from the upper parts of this route and significant effects with existing/consented wind farms.

269. **It is generally agreed that the development would have visual effects on recreational routes as assessed in the LVIA and summarised above. However, for Core Path 14 it is considered that there would be some significant adverse visual effects when taking account of VP4 close to the northern entrance to Dumfries House where a significant adverse effect is predicted for more sensitive receptors and so it follows that some significant adverse effects may be experienced along this route. The IFL audit also identified some additional significant cumulative effects to Core Paths C12 and C13.**

270. It is also agreed with the findings of the IFL audit which notes that there are likely to be localised significant adverse effects to Core Path 11 (Knockshinnoch Lagoons) which was scoped out of the LVIA. This core path is located to the west of New Cumnock and from where there is likely to be relatively open views of the wind farm.

271. No revised assessment of the effects on core paths has been undertaken for the revised 49 turbine scheme. No changes to the above summarised effects are predicted as a result of the revisions.

Viewpoints

272. Technical Appendix 4.6 provides a tabulated assessment of 25 viewpoints at a range of locations, distances, directions and elevations from the site. They are intended to represent the experience that receptors would have at recognised vantage points within landscape character types and designations, settlements, transportation and recreational routes. Visualisations for each viewpoint are provided within EIAR Volume 3b. Revised visualisations for selected viewpoints to reflect the revised 49 turbine scheme are provided within the AI2 submission. Revised wireframe images were provided for a total of 14 viewpoints where the removed turbines would have been visible. In addition, revised photomontage images are provided for viewpoints 11, 12, 14 and 25 where the effects of the revisions would be most apparent. AI2 Annex 1 also provides a summary of the residual effects and cumulative effects predicted at each of the selected viewpoints as well as an analysis of the effect of the proposed revisions. Revised visualisations were also provided within AI1 to address the errors noted by IFL in their audit. However, it is noted that the photomontage for VP5 has not been revised to correct the noted discrepancies.

273. Of the 25 viewpoints assessed, the LVIA identifies significant adverse effects at 11 up to a distance of approximately 12km. No material changes to this are assessed within AI2 Annex 1 as a result of the revisions.

274. Significant visual effects, including significant cumulative visual effects have been identified within the LVIA from the following viewpoints:
    - VP2 B705 outskirts of Mauchline
    - VP3 A70 Approach to Lugar
    - VP4 B7036 Dumfries House Estate Access
    - VP5 A70 Between Drongan and Ochiltree
    - VP9 Avisyard Hill
    - VP10 Skares Road

- VP14 Connel View, New Cumnock
- VP16 Benquhat Hill
- VP17 Quinton Knowe
- VP20 Auchenroy Hill
- VP21 Loch Doon
- VP24 Scottish Dark Sky Observatory
- VP25 Minor Road Auchincross

275. Significant cumulative visual effects are also predicted from all of the above viewpoints.

276. Whilst the assessment of the revisions in AI1 Annex 1 does not identify any alterations to the findings of the LVIA, it notes that from two of the viewpoints (14, 16), there would be some modest improvements through reductions in stacking although this would not be immediately apparent. From VP25 it finds there would be some qualitative improvements by reducing the proximity and prominence of the scheme where it currently dips towards the Upland Basin Landscape.

277. IFL in their LVIA audit generally agreed with the LVIA viewpoint assessment although considered VP12 Nith Crossing, New Cumnock to have a significant visual effect (as well as cumulatively) as the scale of the wind farm would be revealed to pedestrians passing the viewpoint as the view through the trees changes.

278. **It is also generally agreed that there would be no material changes to the assessment as a result of the revisions to the scheme. The revisions would result in some thinning and less stacking of turbines from some viewpoints to the east. The greatest change would be from VP25 where the extent to which turbines would be seen extending into the Upland Basin would be lessened.**

IFL/EAC recommendations for turbine removal

279. EAC officers wrote to the Energy Consents Unit in an email dated 12 June 2020 setting out recommended alterations to the scheme in order to address some of the significant adverse effects arising to the east and north of the proposed development. This followed the submission of the applicant's Response Statement dated May 2020. Both documents are contained within the AI1 submission.

280. The recommendations, based on advice from IFL as summarised in the consultations section above (additional IFL advice) were as follows:

- Remove turbines 1, 2, 3, 6 and 7 which are located within the Upland Basin, having a direct effect on its character;

- Remove Turbines 4 and 5 which are located on the immediately adjacent landform north of the basin and are prominent in views from New Cumnock;

- Remove turbines 8 – 12 which are located at the transition from Foothills with Forest and Opencast Mining LCT to Upland Basin LCT. These turbines also have the greatest visual effect on the property at Upper Beoch.

- Remove turbines 16, 17 and 18 which appear separated from the main turbine array in views from the north (VPs 4 and 5), prominently sited on high ground. Turbine 16 is also prominent from New Cumnock.

281. The applicant responded to those recommendations firstly within a letter to the ECU dated 2 July 2020 within the AI1 package in which they set out their reasons for disagreement with the recommendations. The letter explains that the proposed wind farm has already been subject to extensive design evolution and that the wind farm design meets the design priorities of:

- Reducing the prominence, complexity and horizontal spread of turbines in views from the north, including views from the incised landscapes of the Lugar Valley and Dumfries House GDL and setting the proposed development within a skyline context of other existing and consented wind turbines.
- Significantly reducing the visibility of the proposed development from the A76 corridor, utilising the intervening topography and vegetation on the eastern edge of the Foothills with Forestry and Open Cast Mining to obscure turbines.
- Reducing the prominence, complexity and horizontal spread of the development on the skyline in views from New Cumnock and the adjoining landscape.

282. The letter advises that reducing turbine numbers as suggested would not materially alter the conclusions of the LVIA. The applicant's counter-positions to the recommendations are set out. In respect of the Upland Basin and New Cumnock, the applicant considers that although identified as being more sensitive to wind energy development, the Upland Basin is not a designated landscape and is highly modified due to opencast operations at House of Water and Greenburn.

283. The applicant also considers that turbines 1, 2, 3, 6 and 7, which are located within the Upland Basin, are also considered to be of considerable value in the development and would be seen as an integral part of the wider scheme. The applicant considers that reducing the development in line with the recommendations would undermine the renewable energy generation, restoration, regeneration and community benefit proposition offered by the scheme.

284. It should be noted that community benefits and any impacts to it are <u>not</u> material planning considerations. The landscape and visual impacts of the proposal require to be balanced with the other relevant considerations of the proposals (both positive and negative) and this balancing exercise is undertaken in the conclusions section below.

285. The applicant's letter dated 19th August sets out revisions to reduce the number of turbines proposed from 54 to 49 (removal of Turbines 1, 2, 10, 11 and 12 – five of the 15 turbines suggested). It also provides a response to the suggested removal of 15 turbines which is summarised below.

286. In respect of <u>turbines 1 to 12</u> (those either within or adjacent to the Upland Basin), the applicant disagrees that removal of these turbines is needed to account for the EALWCS constraints and that the EALWCS is intended to be a broad-brush study with boundaries between areas rarely being clear-cut. The applicant's letter makes the following further points:

- Much of the western part of the Upland Basin LCT has been impacted and heavily altered by opencast mining with significant changes to the landscape at both House of Water and Greenburn since the landscape character areas were defined.
- All of the proposed turbines that are located within the Upland Basin (i.e. 1, 2, 3, 6 and 7) would be situated on land elevated above the river corridor on dry heath/scrub/acidic grassland.
- None of the proposed turbines are associated with landcover related to the river or associated landcover.

- The landscape covered by the proposed turbines in two different character areas has more in common with the restored landscape of opencast workings than any underlying characteristic for the wider character areas described in the EALWCS.
- There is no strong rationale for the omission of turbines 4, 5, 8, 9, 10, 11 and 12 (those located in the Foothills with Forest and Opencast Mining LCT having an indirect effect on the Upland Basin) based on the EALWCS constraints.
- There would be no significant landscape benefit in the removal of any of the proposed turbines when assessed against the EALWCS. However, removal of T1 and T2 closest to the river Nith would have the greatest benefit as this would slightly reduce the magnitude of indirect effects upon the restored river corridor landscape.

287. Turbines 10, 11 and 12 are also proposed for removal but for residential visual amenity reasons only as noted below.

288. With regard to Turbines 4 and 5 (those sited immediately adjacent landform north of the basin and are prominent in views from New Cumnock), the applicant considers that from VPs 12 and 14 (in New Cumnock) these turbines would be distant with intermittent screening in the case of VP12 with no change to the horizontal extent. The removal of turbines 4 and 5 are considered to result in a very slight improvement but would not be sufficient to change the overall assessed effect.

289. **The IFL response to this notes that it can be expected that the character of the restored landscape will, in time broadly correspond to that of the wider Upland Basin and contrast with the more forested and elevated landscape of the Foothills with Forestry and Opencast Mining to the west. IFL consider that the sensitivities, constraints and guidance of the EALWCS apply as much to this part of the Upland Basin as they do to other parts.**

290. **IFL consider that the letter from the applicant in finding the acceptability of locating turbines in the area of restored mine workings against the EAWLCS constraints misses the broader point that the findings of the LVIA identify a major significant adverse effect to the wider Upland Basin (excluding the A76 corridor), an effect to which turbines 1 to 9 are key contributors. IFL consider that these turbines also contribute to significant visual effects from the Upland basin such as from settlements and properties along the B741.**

291. With regard to Turbines 16, 17 and 18 (those separated from the main array in views from the north, to high ground) the applicant's letter considers that the landform is only modestly elevated and the undulating nature would mean that the turbines would not be located on a 'containing edge'. The letter considers that the removal of these three turbines would not offer a significant benefit to the landscape character of either the host landscape or the Upland Basin when other retained turbines are taken into account.

292. The letter then goes onto consider the effect to VPs 12 and 14 in New Cumnock finding that turbine 16 is distant, intermittently screened in views from VP12 and screened by forestry from VP14.

293. **IFL note that turbines 16, 17 and 18 were identified as outliers in views from the north and east, the removal of which would lessen the horizontal extent of the wind farm to some degree and promote its appearance as a more contained development. IFL do, however, acknowledge that turbines 1 to 12 are of most relevance to key landscape and visual issues.**

294. With regard to the residential visual amenity impact at Upper Beoch the applicant disagrees that the original scheme would have any overbearing impact on residents, however, the removal of turbines 10, 11 and 12 which are those closest to Upper Beoch is proposed to improve the visual impact. The effect of this is considered under the impacts on communities and individual dwellings criterion below.

295. The applicant also considers that the removal of these turbines would improve the appearance of the wind farm from Maneight and the B741 by removing two of the most prominent turbines visible from this location (T10 and T11).

296. **Taking account of the applicant's rationale for removing turbines 1 and 2 and 10, 11 and 12, it is agreed that the changes would not materially reduce the significance of landscape and visual effects. There would be some localised reduction to the landscape effect at the River Nith corridor close to the wind farm along with some reduction in stacking. The removal of turbines 10 and 11 would reduce the prominence of views from B741 between New Cumnock and Maneight.**

297. **With regard to the remaining turbines (3-9 and 16-18) which have not been omitted, it is necessary to consider the scheme as is now proposed whilst taking account of the applicant and IFL comments regarding these turbines along with the various other considerations of the scheme. This is more appropriately considered in the Conclusions section below.**

Summary of landscape and visual considerations

298. The proposed development would be located almost wholly within a landscape identified in the EALWCS as having scope, albeit limited, for very large turbines (>130m). The landscape is therefore considered to be broadly suitable for larger scales of wind farm, however, there is encroachment into the eastern Upland Basin LCT, where the landscape is less contained which exacerbates effects to the neighbouring low lying areas to the east in particular.

299. With respect to landscape character effects, it is considered that the proposed development would have a significant overall effect to the character of the Foothills with Forest and Opencast Mining LCT and that these effects would extend into the adjacent settled lowland landscape of the Upland Basin LCT and the East Ayrshire Lowlands LCT to the east and north of the of the development respectively.

300. From the Upland Basin LCT there would be a direct and indirect effect from the proposals and it is predicted that significant adverse effects to the landscape character would extend to approximately 5-6km but not affecting the character of the Upland Basin as a whole.

301. From the open landscape of the East Ayrshire Lowlands LCT, the turbines would be a prominent feature of the southern horizon with significant adverse effects to the landscape character south of the A70.

302. No change to the assessment of landscape character effects are predicted as a result of the revised 49 turbine scheme, although there would be some localised benefits to the immediate setting of the River Nith as a result of the removal of turbines 1 and 2.

303. Most of the significant visual effects of the proposed development would be experienced to the north where there would be extensive visibility of the proposed development and to the east.

304. Significant adverse visual effects would be experienced from settlements including parts of New Cumnock, Cumnock, Ochiltree, Skares, Drongan and the smaller settlements of Dalleagles and Burnside. As noted within the July 2020 IFL LVIA audit, from these locations the wind farm would appear as an '*irregular extended array of turbines seen on the horizon*'. Significant adverse effects would also be experienced from parts of the A70, the B741 mostly between Manieght and New Cumnock, a number of nearby minor roads, core paths and public rights of way including those to the west of New Cumnock.

305. To the south and west, significant adverse effects are more localised due to the visual containment of the wind farm and restricted visibility. Localised significant effects are predicted to recreational routes to the higher ground within the Craigengillan estate including Auchenroy Hill and the Dark Sky Observatory and also to parts of Loch Doon. The settlements of Dalmellington and Patna and the A713 Ayr to Castle Douglas road would experience no significant visual effects. Bellsbank would have some visibility but the overall effect is not predicted as significant.

306. Although there would be some improvement to the appearance of the wind farm as a result of the revised design from some viewpoints to the east and also from Maneight on the B741, there would be no overall change to the assessment of effects.

307. Significant cumulative visual effects would occur from most of the locations where significant visual effects would be experienced.

308. From the east/ Upland Basin, significant cumulative effects would arise mainly with views to Enoch Hill, Pencloe, Hare Hill, Afton, Lethans and Greenburn.

309. From the north, the proposals would visually connect with and significantly add to Polquhairn, South Kyle, Overhill and Greenburn wind turbines.

310. From the south, cumulative visual effects would typically arise with views to South Kyle, Benbrack and Dersalloch.

- **Cumulative impacts – likely cumulative impacts arising from all of the considerations below, recognising that in some areas the cumulative impact of existing and consented energy development may limit the capacity for further development;**

311. Due to the number of existing, consented and proposed wind energy developments in the vicinity of the proposed development, cumulative effects are likely to arise in respect of several of the criteria. These effects are considered under the individual respective criteria.

- **Impacts on carbon rich soils, deep peat and priority peatland habitats; using the carbon calculator;**

312. The applicant has undertaken peat depth surveys at the site which are contained within Technical Appendices 2.8 and 2.9. This also contains an assessment of blanket and mire condition and informs the Draft Peat Management Plan (DPMP). The DPMP provides details on potential volumes of peat which would be excavated, its characteristics and how it would be managed and reused.

313. The peat survey notes that much of the site is underlain by peatland although this is mostly planted over by commercial forestry. Other areas have been disturbed by opencast mining operations. Areas of more semi-natural habitats are noted as being present, notably peatland (including areas of blanket mire), rush mire and grassland. A few deeper areas of peat are found scattered throughout the study

area, with a maximum recorded depth of 7.58m. The peat survey also maps the presence of Class 1 peatland areas within the site.

314. The peat depth survey shows the wind farm development infrastructure would be located outwith the deepest areas of peat and as considered in terms of the Spatial Framework above, almost completely avoids the nationally important Class 1 peatland areas within the site. Micrositing should allow for further avoidance of deep peat.

315. Approximately 203,273m^3 of peat is estimated as requiring excavation as a result of the development. It is proposed that this peat would be reused for the reinstatement of stone extraction areas, substation verges, turbine foundations and crane hardstanding verges and for the 35ha Habitat Management Plan (HMP) restoration area proposed. This HMP area would comprise areas of unrestored opencast sites and would involve the use of most the excavated peat (175,000m^3) being spread here to form a soil horizon and bring the areas back into beneficial use.

316. A carbon balance assessment was contained within EIA Report Technical Appendix 2.7 which was updated for the 49 turbine development within AI2. This replaces the EIA Report assessment. The carbon payback period calculated for the development taking account of the carbon losses and assuming replacement of fossil fuel mix generation capacity with wind generation is 1.9 years.

317. In conclusion, the proposed development would require a substantial volume of peat to be removed due to construction. This is due to the widespread coverage of peat across the site, although mostly as shallower depths. The development does, however, generally avoid the most sensitive areas of peatland (i.e. the deepest areas and Class 1 peatland). The majority of excavated peat is proposed for re-use on abandoned and unrestored opencast areas, where no soils are currently present.

318. SEPA Guidance on Developments on Peat and Off-site Uses of Waste Peat sets out a peat management hierarchy which puts minimisation of peat excavation and disturbance at the top of the hierarchy. Although the development avoids the deepest areas of peat, particularly in respect of turbine foundations, through micrositing and further peat probing work, there may be scope for further avoidance of the deeper areas of peat to minimise its excavation. It is, however, acknowledged that the widespread coverage of peat across the site makes avoidance more difficult.

319. After minimisation of peat excavation, the hierarchy encourages the use of peat on site in construction or reinstatement, including restoration of hardstanding areas, borrow pits, road verges and peatland restoration areas. It is considered that there-use of peat as proposed broadly meets these requirements. No peat is proposed to be disposed off-site which is the least preferred position set out in the hierarchy. It is also noted that SEPA and NatureScot in their responses to the Scottish Government have raised no objection or concern with regard to impacts on peat.

320. **Taking account of the above considerations, it is considered that there are no significant impacts arising from the proposed development relating to peat.**

- **Effects on the natural heritage, including birds. Renewable energy proposals will only be approved where the Council has ascertained that they would not have an adverse effect on the integrity of a Natura 2000 site;**

321. Chapters 7 and 8 of the EIA Report respectively consider effects on natural heritage and ornithology.

Natura 2000 sites

322. The application site would not have any adverse impacts on any Natura 2000 site. The closest is the Muirkirk and Lowther Uplands Special Protection Area (SPA) and Special Area of Conservation (SAC) located some 13km to the east and north east.

323. Chapter 7 (Ecology) considers impacts on designated sites, terrestrial habitats, aquatic habitats, protected species and Groundwater Dependent Terrestrial Ecosystems.

324. The EIA Report assesses construction, operational and cumulative effects on ecological receptors.

Features scoped out of further assessment

325. In terms of designated sites within 5km of the proposed development, the EIA Report notes the presence of five Sites of Special Scientific Interest (SSSIs): Dalmellington Moss, Barlosh Moss, Bogton Loch, Ness Glen and Loch Doon. This does not include Benbeoch SSSI which directly adjoins the site and is designated for its geological features rather than ecological features.

326. The Report scopes out the assessment of effects on SSSIs due to a combination of the qualifying interests and distance from the site and a lack of connectivity. Similarly, Local Nature Conservation Sites, none of which are within the application site, are also scoped out. These include Benbeoch/Pennyvennie Glen and Dunaskin Glen/Benquhat Hill. The EIA Report considers that they would not be affected by the development. This is considered to be reasonable.

327. The EIA Report scopes out several other potential receptors from further assessment and gives a rationale. This includes otters and water vole, pine marten, red squirrel, badger, reptiles, great crested newts and other amphibians, roosting bats, fish, deer, non-NVC habitats such as conifer plantation, clear fell and bare ground. In addition, locally important habits (flushes, dry dwarf shrub heath, swamp and broadleaf woodland are scoped out of the assessment. Scoping out is subject to mitigation measures being implemented as appropriate to the feature.

328. With regard to the rationale for scoping out assessment of effects on badgers, the EIA Report states badger sett G is located in an area that overlaps with a proposed stone extraction area (SEA4) meaning it would be affected by the development. The Report states that if it is necessary to utilise the stone extraction area in this location, it is recommended that a badger survey is undertaken by a suitably trained Ecological Clerk of Works (ECoW) prior to construction to determine the status of the setts and the location of any new setts adding that where possible, the stone extraction area should be microsited to avoid the sett. If micrositing is not possible, the Report notes that it may be necessary to obtain a licence from SNH to disturb/destroy the sett depending on the location of the works and status of the sett and further pre-construction surveys.

329. With regard to this matter, NatureScot (SNH) comment that a mitigation plan should be prepared in relation to sett G.

330. Impacts on habitats may include direct loss through infrastructure construction and indirect effects through habitat fragmentation or changes caused by pollution and hydrology changes.

331. The assessment predicts the total direct and indirect loss of 95.64 ha of habitat as a result of permanent infrastructure. Direct loss due to stone extraction areas (temporary infrastructure) is estimated at 8.77 ha.

Features scoped into assessment

- Blanket bog and wet modified bog

332. With regard to blanket bog and wet modified bog, which is scoped into the assessment, the assessment focuses on construction effects which may occur as a result of direct habitat loss and indirect effects from potential drying effects. The assessment notes the presence of small patches of Class 1 nationally important carbon rich soils and peatland to the south west of the site as well blanket bog and wet modified bog which is considered to be of local value.

333. Direct loss of blanket bog communities is predicted to be up to be 0.23 ha due to permanent infrastructure and stone extraction areas which is 0.32% of the blanket bog resource within the site. Losses due to drainage around infrastructure predicts a worst case scenario of an increase to 1.17ha (1.65% of blanket within the site). The Report considers this magnitude of loss to be negligible to low in the long term.

334. Loss of wet modified bog is predicted to total 2.58 ha (5.27% of wet modified bog within the site). This is also considered to of a low magnitude.

335. The nature conservation value of the bog habitat is considered by the Report to be of Local Value. The overall significance of effect to blanket bog and wet modified bog is considered to be not significant which is considered to be a reasonable assessment.

336. The Report considers there to be no mitigation that is required during construction in addition to standard built-in mitigation and adoption of good practice construction methods. Mitigation also includes enhancement measures proposed in the Outline Habitat Management Plan (HMP).

337. Notwithstanding this predicted non-significant effect to blanket and wet modified bog, mitigation is proposed in the Outline HMP in the form of measures to enhance areas of blanket bog to the south west of the site. This includes areas identified as Class 1 peatland. In total 50.29 ha is proposed to be restored from forestry to blanket bog habitat and 30.07 ha would be managed to enhance existing blanket bog. With a total (direct and indirect) loss of blanket bog and wet modified bog estimated at 3.75 ha, the EIA Report notes that the HMP area covers an area over 21 times greater than the total loss of bog habitat. In addition, it is proposed to restore a 35 ha area of unrestored surface mine to marshy/acid grassland mosaic using excavated peat from the construction of the proposed wind farm. This is detailed further in the peat criteria above.

338. **SNH support the principle of the outline HMP as noted in the consultations section above. Scottish Forestry note the proposals for deforestation of 23.99 ha to facilitate the HMP and question how the total loss of 50.29 ha is justified to mitigate for the loss of 3.75 ha of bog habitat which is only of local importance.**

- Bats

339. Impacts on bats are considered during the operational phase due to the collision risk upon bat species together with the risk that bats may be affected by barotrauma when flying in close proximity to turbine blades.

340. The Report notes that no bat roosts were found within the site but bat activity data suggests that maternity roots of Nyctalus, Leiser's, soprano and common pipistelle bats may be in relatively close proximity to the site.

341. Given the consideration of nature conservation value, conservation status and magnitude, the effect significance of collision risk on the Nyctalus, common and soprano pipistrelle bats is assessed significant. The effect significance of collision risk on Nathusius' Pipistrelle is assessed as not significant.

342. Cumulative effects with other wind farms is considered in the EIA Report in respect of bats as it is not considered likely that there would be any significant cumulative effects in respect of blanket bog and wet modified blanket bog loss. In respect of bats, the EIA Report predicts significant cumulative effects for Liesler's and Noctule and common pipistrelle and soprano bats.

343. In order to mitigate for the significant effects on bats as summarised above, the EIA Report proposes measures including reduced rotation speed whilst idling, post construction monitoring to refine mitigation and curtailment which would be implemented from year 2 of monitoring if the results of the first year of monitoring conclude that further measures are required.

344. Following implantation of mitigation measures, the EIA Report considers there to be no significant impacts on bats.

345. **SNH support the mitigation measures proposed for bats as detailed in the Section 7.5 Mitigation of EIA Chapter 7 and Chapter 11: Schedule of Mitigation of the EIA Report and recommend that these measures should be implemented.**

Birds

346. Chapter 8 (ornithology) considers effects on ornithology as a result of direct habitat loss, displacement of birds through indirect loss of habitat, habitat modification and death and injury through collision with turbine blades.

347. Due to various factors including recording activity within the site, predicted risk of collision and breeding activity, Chapter 8 scopes effects on Black Grouse, goshawk, peregrine Falcon and golden plover into the assessment, including cumulative assessment. Effects are considered during construction, operation (collision risk) and at decommissioning stage. Potential construction effects are noted to include displacement and disturbance and disruption of breeding and foraging birds. Direct habitat loss may also impact on breeding or foraging.

348. Cumulative effects are considered in respect of the proposed development with operational and in construction projects; with operational, in construction and approved projects; and with operational, in construction, approved projects and in-planning projects. Wind farms at scoping stage are not included (this includes Greenburn which was at scoping stage at the time of submission). Only the assessment of black grouse was scoped into the cumulative assessment.

- Black Grouse

349. The EIA Report notes that there is the potential for the displacement of black grouse from existing lekking, nesting or foraging areas during construction. If the current population is limited by habitat, then any displacement of foraging grouse may have a material effect on the population's viability. NatureScot advocate that a buffer of up to 750m should be applied to avoid all disturbance during construction. Of the five

leks located in surveys, three (leks 1, 2 and 3) were recorded within 750m of turbines. Taking account of the worst case scenario (loss of three males), the unmitigated effect of this is considered to be significant.

350. No significant effects are predicted in the EIA Report with respect to collision risk.

351. With regard to potential effects of displacement at operational stage, the Report notes that leks may be disturbed at 300 – 500m from a disturbance source and NatureScot advocate a buffer of up to 500m to avoid all potential disturbance displacement effects during wind farm operation. Of the five leks located two (leks 1 and 3) were recorded within around 500m of turbine locations. The Report takes into account the existence of House of Water operations within 500m of lek 1 which suggests that black grouse are able to habituate to such activity.

352. Lek 3 is noted as being located within commercial forestry and that in the absence of the proposed development and the continuation of forestry management, the replanted areas would continue to mature and clear fell areas would also be replanted, thus slowly reducing the suitability of the area for black grouse. Consequently, this lek is considered in the EIA Report to be of relatively low importance over the medium to long term. The Report also considers that any birds that are displaced from leks 1 and 3 would shift to the other leks (2, 4 and 5) rather than lost to the population. However, a worst case scenario is adopted which assumes that breeding at leks 1 and 3 would be disrupted over the course of the operational development (25 years). The unmitigated effect is therefore considered to be significant.

353. With regard to cumulative effects on black grouse, the Report considers there to be potential cumulative effects in all three tiers of cumulative development and predicts there to be a potentially significant effect from disturbance – displacement should all of the cumulative projects become operational.

354. Mitigation is predicted to reduce the effect to not significant. Proposed mitigation includes pre-construction surveys to identify any leks within 750m of construction sites with a 750m buffer being established.

355. Mitigation proposed during operation includes measures in the outline HMP designed to increase the quality of habitat for black grouse within the site in order to off-set loss of habitat. This would comprise a 26.83 ha area of woodland fringe where sitka spruce would be thinned to increase habitat quality for black grouse as well as a 47.18 ha area of native woodland planting.

- Golden Plover

356. The EIA Report does not predict there to be any significant effects to Golden Plover during construction. This is because of the abundance of similar suitable habitat within the wider area.

357. Operational effects due to collision risk are considered to be not significant.

358. Operational effects due to displacement from turbines are considered to be not significant following the results of a long terms study of golden plover within an active wind farm which showed no significant effect from wind farm operation.

359. No construction mitigation is considered necessary in the Report. This is subject to pre and during construction surveys taking place.

- Goshawk

360. The EIA Report does not predict there to be any significant effects to goshawk during construction. This is because, as noted in the Report, with the presence of ongoing forestry operations, the scenario of disturbance to one potential territory would not be dissimilar to the future baseline scenario and therefore continuation of breeding within the sire or nearby is more likely than abandonment of territories.

361. Operational effects due to collision risk are considered to be not significant.

362. Operational effects due to displacement from turbines are considered to be not significant due to the presence of available forestry habitat adjacent to the proposed development and that the potential displacement of a pair of breeding goshawk will equate to a similar effect with the ongoing forestry operations.

363. Pre-construction surveys are proposed to identify any nests within 400m of forested areas which, if identified, will require the implementation of a buffer.

- Peregrine Falcon

364. The EIA Report does not predict there to be any significant effects to the peregrine falcon during construction. This is because the one record of breeding territories is well outside the recommended 750m buffer distance. The other breeding territory is within 750m of the proposed development (but outwith the site) and the Report considers that the 750m is an over precautionary maximum and that the nest crag is approximately 160m higher than the construction compound and actual distance to this pair as a result of construction is considered to be negligible.

365. Operational effects due to collision risk are considered to be not significant.

366. Operational effects due to displacement from turbines are considered to be not significant due to the distances and because most of the 2km territories will continue to remain unchanged with the potential habitat loss considered to be limited.

367. Surveys to monitor breeding activity at the closed nest will be undertaken during construction to ensure that reasonable precautions are undertaken to avoid disturbance. It is also recommended that lighting at the construction compound is kept to a minimum and angled away from the direction of the nest.

368. NatureScot make no specific comments in respect of impacts to birds. RSPB Scotland strongly advise that the current status of the Southern Scotland black grouse population is taken into consideration in relation to the potential impact of the development and that full consideration is given to mitigate impact through design amendments which go beyond those already proposed through the HMP.

Summary of natural heritage considerations summary

369. In summary, it is agreed that there would be no significant effects on any designated natural heritage sites. With respect to protected species, mitigation measures should ensure in most cases that there are no significant impacts. However, specific measures, including a licence may be required in respect of the badger sett located within Stone Extraction Area 4. The mitigation measures in respect of bats may include curtailment following monitoring of effects in the first year of operation.

370. With respect to Black Grouse, there is concern that the development may have a significant effect on leks from construction and during operation due to disturbance and RSPB strongly advise that the impact of the development on black grouse is mitigated through design amendments (see consultation response above). Mitigation

includes measures to enhance areas for grouse habitat which are in the HMP. RSPB strongly advise that mitigation should primarily be through design meaning that turbines should be located at least 500m from leks. RSPB also have concerns about the proximity of parts of the HMP areas to turbines and the potential they have for creating a collision risk. RSPB are content, however, that this matter can be dealt with by condition.

371. In response to the concerns of RSPB regarding black grouse, the applicant provided further information in the AI2 submission. In it, the applicant's ornithology consultants MacArthur Green respond directly to the comments made in both of the RSPB consultation responses. As is summarised in the consulations section above, RSPB maintain their advice that turbines should be located at least 500m from leks. They do, however, accept the position with respect to lek 3 which is at risk of displacement even if the wind farm did not become operational. However, in respect of lek 1, RSPB continue to advise that turbine 13 which is within 500m should be relocated.

372. NatureScot also note the proximity of four turbines to leks 1 and 3 which may result in the loss of leks. They recommend on post construction monitoring to check this.

373. The Council has no internal expertise on this matter. The concerns of RSPB Scotland are however noted as is advice of NatureScot which contrasts with RSPB advice and does not recommend relocating turbines despite noting that the proximity may result in the loss of leks. It is ultimately for the Scottish Ministers to take a view on this matter which now appears to be focussed on the proximity of T13 to lek 1. In terms of the Council's consideration, in view of the lack of internal expertise on this matter, it is not a matter which should be given significant weight in the overall consideration of the application by the Council.

374. The EIA Report considers the effect on blanket bog and wet modified bog to be not significant. Part of the mitigation proposed includes the implementation of the draft HMP which includes felling an area of forestry to restore to blanket bog. Scottish Forestry question the need for this amount of felling for bog restoration as mitigation for a relatively minor impact from bog habitat loss. Ultimately, these competing land use interests must be weighed by the Scottish Ministers but should they decide that areas of forestry should not be removed for the purpose of restoration of blanket bog, it is strongly suggested that an appropriate equivalent area of blanket bog restoration be provided elsewhere in the site, or offsite, to ensure that proper mitigation is delivered.

- **Impacts on wild land**

375. The application site is not located within or in close proximity to any designated wild land. The closest area of wild land is Merrick, approximately 20km south-west of the application site. Whilst some visibility of the turbines may be theoretically possible from the summit of Merrick, the distance means that any effects would be minimal.

- **Impacts on all aspects on the historic environment**

376. EIA Report Chapter 5 on cultural heritage considers the likely significant effects on the historic environment. This includes direct effects, effects on the setting of assets in the wider landscape and cumulative effects on settings in the wider landscape up to 10km from the proposed development. Two study areas were used for the assessment – an inner study area and an outer study area. The inner study area is based on the application site and considers direct effects. The outer study area is a 10km area extending from the outermost turbines and used for the identification of cultural heritage assets whose settings may be affected.

377. Within the inner study area, the EIA Report considers effects on medieval or later farmsteads, other buildings and structures, sheepfolds, enclosures and other structures, cultivation remains and mining remains. Heritage assets considered within the outer study area include scheduled monuments, listed buildings, conservation areas and designed inventory gardens and designed landscapes.

378. Potential construction effects would arise from activity associated with the construction of the proposed development which may disturb or destroy features of cultural heritage interest. The EIA Report states that the proposed development has been designed to avoid all sensitive constraints identified. There are, however, 14 recorded assets which lie within 100m of elements of the proposed infrastructure (i.e. within the proposed micrositing allowance). The Report notes that micrositing of the proposed development could result in high magnitude direct adverse impacts.

379. Mitigation measures proposed during construction includes avoidance of five of the recorded assets, taking account of the proposed micrositing allowance; pre-construction walkover survey and watching briefs

380. Potential effects on setting during the operational phase is noted as having potential to affect assets both within the inner study area and outer study area. Assets identified by HES or WoSAS are addressed in the assessment and supported by visualisations and photomontages.

Dumfries House Category A listed building and Inventory Garden and Designed Landscape (GDL)

381. Effects on the setting Dumfries and its GDL along with 11 other listed buildings within the GDL is considered within the EIA Report. This is supported by a wireline image (Figure 5.4) from the top of the entrance steps to Dumfries House. The development would be entirely screened from this viewpoint due to topography and woodland. Figure 5.5 is a visualisation of the view from the western end of the category A listed Temple which is to more elevated ground north of the main house (the house is not visible in this view due to screening from woodland). This shows views to the proposed wind farm turbines which would be contained to an extent by topography and forestry. From the northern access to Dumfries House, (Figure 4.10) the turbines become more visible with the increase in elevation but still contained to some extent behind the containing ridge.

382. Across the GDL as a whole, there would be views to the proposed wind farm from its more northerly and elevated parts including the Temple. However, elsewhere topography and screening from woodland limits views such that there would be no or little visibility from the majority of the GDL and its listed buildings.

383. The EIA Report assesses that the proposed development wold result in some changes to some views of medium magnitude. The introduction of the proposed development into the wider landscape, around 6k south of Dumfries House is considered in the Report to result in an adverse effect of low magnitude on an asset of high sensitivity and of moderate significance which is significant in EIA terms.

Craigengillan House Category A listed building and Inventory Garden and Designed Landscape (GDL)

384. Craigengillan House and GDL occupies a wooded valley along the River Doon, southwest of Dalmellington. The designed landscape also has a non-inventory part which extends to the east over Bellsbank plantation to the A713 between Dalmellington and Carsphairn. The GDL also includes five other listed buildings and two scheduled monuments.

385. The blade tip ZTV shows theoretical visibility over the higher ground within the GDL including from Auchenroy Hill, Wee Cairn Hill and Shear Hill. Visibility from the lower lying parts of the GDL along the Doon valley floor is reduced due to topography and woodland. In addition, there is no theoretical visibility from the main house and stables. Visibility is also limited from the two scheduled monuments.

386. Figure 5.6 provides a wireframe visualisation from the eastern access to Craigengillan House and stables. This shows only parts of the blades of two turbines being theoretically visible. Figure 5.7 provides a photomontage from an elevated viewpoint on Glessel Hill just outside the boundary of the GDL with the house and observatory within the image. Three turbine hubs and 11 tips would be visible in this view set behind Benbeoch. A similar level of visibility is afforded from the Scottish Dark Sky Observatory. The EIA Report considers that the view of the wind farm from the summit of Auchenroy Hill (Figure 4.27), which is in the north western part of the GDL would not affect the views over the GDL due to the view being offset to the north of the view over the GDL. At lower elevations including from the B741 listed bridge north of Bogton Loch there is very little visibility (as can be seen from Figure 4.27 photomontage).

387. Overall the EIA Report assesses the effect of the proposed development around 6.8km to the north east of Craigengillan House and GDL would be of negligible magnitude on an asset of high sensitivity and of minor significance which is not significant in EIA terms.

Waterside Conservation Area (CA) and Scheduled Monuments (SMs)

388. The EIA Report considers Waterside CA and SMs as an associated group. The SMs are: Dalmellington Ironworks; the Iron Slag Bing; and the Miners' Villages and Minerals Railways. The CA includes the former Ironworks along with five listed buildings.

389. The blade tip ZTV shows limited visibility from this group. No visibility is predicted from any of the listed buildings within the CA. Overall the impact of the proposed development from these assets is assessed as negligible magnitude on assets of medium and high sensitivity resulting in effects of minor significance, not significant in EIA terms.

Laight Castle Scheduled Monument (SM)

390. Laight Castle is the remains of a tower house standing on a steep sided spur above the Dunaskin Burn in open moorland to the hillside above and to the northeast of Dalmellington Ironworks. A wireline visualisation shows only one turbine blade being visible. The EIA Report assesses the impact to be not significant.

Auchencloich Castle (SM)

391. Auchencloich Castle SM consists of the remains of a tower house located directly to the west side of the Burnton Burn and the main open aspect view from the site is to the north along the valley of the Burn towards the Lugar valley. The wireline visualisation shows that in the absence of the intervening woodland which is present, there would be nine hubs being theoretically visible together with the blade tips of a number of other turbines. The presence of woodland is considered in the EIA Report to screen views from the castle such that the main open views to the north would not be adversely affected. The resultant effect is considered to be not significant.

Auchinleck House Category A Listed Building

392. Auchinleck House is located within a non-inventory GDL to the east bank of the Lugar Water. The estate also includes five other listed buildings as well as two scheduled monuments. Figure 5.12 provides a wireline visualisation of the predicted theoretical visibility from the front (south east elevation) of Auchinleck House. The wireline shows, in the absence of screening woodland, the development would be visible along the skyline approximately 8.5km from the viewpoint. The EIA Report also considers this to be a representative theoretical view from other parts of the estate.

293. Visibility is, however, minimised due to the presence of woodland and plantation blocks. The EIA Report notes that views from the main house, ancillary buildings and two GDLs would be screened. The proposed development would be more likely in open views from within the policies towards the south.

394. The Report assesses the impact on Auchinleck House to be of low adverse magnitude on an asset of high sensitivity with the resultant effect of minor significance, not significant in EIA terms.

395. There is no explicit assessment of the impacts on the non-inventory GDL or its other noted assets, however, due to a combination of distance, screening and lower sensitivity in the cases of the category B and C listed buildings and non-inventory GDL, it is not considered likely that there would be significant effects.

Little Rigend Castle (SM)

396. The remains of this castle are located to the south bank of the River Nith, close to its confluence with the Beoch Lane within a valley setting. The EIA Report notes the setting to be dominated by surface coal working at House of Water and Greenburn and commercial forestry which is unsympathetic to the cultural significance of the asset and that restoration to a modified landscape would still lack something of the original panorama Three turbines would be visible in views to the north east. Overall the effect is considered to be not significant.

Cumulative effects

397. The EIA report assesses cumulative operational effects on heritage assets in combination primarily with the following wind farms

- Dersalloch (operational)
- Overhill (consented)
- Polquhairn (consented)
- South Kyle (consented)
- Benbreack (consented)
- Enoch Hill (in planning at time of application)
- Greenburn (scoping at time of application)

398. The EIA Report predicts significant cumulative effects from on the Dumfries House GDL as a result of developments visible from higher parts of the estate with more open views. Three consented developments would be seen in combination the proposed developments - Overhill, Polquhairn and Knockshinnoch with the proposed wind farm closer than any of these. Pencloe and Enoch Hill would also be visible but more distant and largely screened by topography. The EIA Report notes the greatest impact on the Dumfries House GDL would arise in combination with Greenburn (in scoping at the time of application). From the viewpoint at Figure 5.5 (The Temple),

the EIA Report predicts an overall significant cumulative effect in combination with Greenburn in particular.

399. The EIA Report considers the cumulative effects for other assets as being of minor significance either due to the separation distance of the limited instruction on the setting.

Summary of historic environment/cultural heritage considerations

400. In summary, the EIA Report predicts significant effects on the setting of the Dumfries House GDL including cumulatively. However, visibility of the proposed wind farm would be restricted to the higher parts of the GDL to the north and it does not consider that the cultural significance of the House, its associated listed buildings and GDL as a whole would be appreciably diminished

401. Historic Environment Scotland (HES) note that as there would be no visibility from the core of the estate and from the Category A listed Dumfries House itself, they are content that the proposals would not raise issues of national importance such that they would object. WoSAS do not make any objections in respect of local archaeological effects.

402. In respect of The Temple Category A listed building, HES, as the statutory consultee agree with the EIA Report that there would be a significant adverse effect on the setting of this listed building. However, they are content that factors such as its outlying nature within the GDL whole and the recent introduction of the Avenue (thereby altering its setting and views) mean that this effect would not raise issues such that they would object.

403. It is noted that the EIA Report takes a fairly generalised approach to the assessment of effects on the setting of the GDL and listed buildings within it. There is no clear separate assessment of the individual listed buildings. Instead it considers the main Dumfries House, its GDL and associated listed buildings together. HES appear to take a more site specific approach to the consideration of the impacts on the setting of The Temple, in particular noting the outlying location of the Temple within the GDL and the recent alteration to its setting and views. This is in greater alignment with HES guidance on Managing Change in the Historic Environment: Setting which requires consideration of the factors that contribute to the setting of the individual assets and whether the proposed development would potentially impact on these factors.

404. Given that HES consider there to be significant effects on the setting of The Temple (notwithstanding their further consideration of the setting and subsequent non-objection), there is a requirement under Section 59 of the Planning (Listed Buildings and Conservation Areas) Scotland Act 1997 for the decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. As the decision maker, it is for the Scottish Ministers to take account of the views of HES and apply any necessary test in respect of the requirements of Section 59 of the aforementioned Act.

405. It is agreed that no other overall significant effects on cultural heritage are likely as a result of the proposed development with the implementation of mitigation measures.

- **Effects on hydrology, the water environment, flood risk and groundwater dependent terrestrial ecosystems (GWDTE);**

406. EIA Report Chapter 9 focuses on effects to these matters during the construction phase when it is more likely that there will be significant effects. Effects on GWDTE, runoff volumes and rates due to changes in drainage patterns; water quality and water use are all considered.

407. The EIA Report notes a number of surface water features within the centre and north of the site which generally drain to the north and are tributaries of the Burnock Water. Land in the southeast of the site is noted as generally draining towards the River Nith via tributaries. A small area of land drains to the Water of Coyle and another area to the south drains to the Cummock Burn.

408. The EIA Report also notes that the site is underlain by the Cumnock Groundwater Body. This was designated in 2014 by SEPA as being Poor overall quality due to a legacy of pollution related to mining or quarrying.

Flood Risk

409. The EIA Report notes that no infrastructure is proposed within 50m buffer zones of the watercourse at Black Water which is shown to be at high and medium risk of flooding according to SEPA mapping. Infrastructure here would be outwith the flood risk area. No further assessment of fluvial or tidal flooding is considered necessary in the Report. The EIA Report also considers that due to the topography, hydrology and infrastructure locations, it is not considered that infrastructure would be significantly affected by localised ground water flooding.

410. **It is generally agreed that providing mitigation measures, including Sustainable Drainage Systems (SuDS) are employed, there should be no significant adverse risk from flooding.**

Water Quality

411. The EIA Report notes that the Burnock Water, Water of Coyle and Cummock Water are all classified under SEPA's River Basin Management Plans (RBMP) as having Good water quality and the objective is to ensure that no deterioration occurs unless caused by a new activity with specified benefits. The River Nith is designated as having Moderate water quality with the objective being to achieve good quality by 2027.

412. The construction of the development may impact on water quality during construction in particular due to pollution associated with contaminated run off and from sediment laden runoff. The EIA Report proposes pollution prevention measures specified in the CEMP which would be finalised as a condition. In addition, 50m buffers are proposed around watercourses. Sustainable Drainage design (SuDS) measures are also proposed to be integral to the design. **Providing these measures are employed, it is considered that there should be no significant effects.**

Private Water Supplies (PWS)

413. The EIA Report refers to a PWS Assessment within Technical Appendix 2.4. Only one PWS source at Clawfin is noted as being located within 250m of the site (the distance which SEPA identifies for assessment of risk). The PWS is listed as being sourced from a surface water spring and is noted that the development taking access is an existing hard surface access track at the access from the B741.

414. **Given that no new infrastructure is proposed in this area and that the access is not one of the primary HGV accesses, it is agreed that no further assessment of the risk to this PWS is required.**

415. **With regard to other PWS locations, it is agreed that there is sufficient distance and/or no hydrological connection with the proposed infrastructure such that they warrant further assessment.**

Groundwater Dependent Terrestrial Ecosystems (GWDTE)

416. The EIA Report refers to the National Vegetation Classification (NVC) results in Technical Appendix 7.1 which identifies those habitats which may be classified as potentially groundwater dependent. GWDTE sensitivity is also assigned. The Report identifies that many of the potential GWDTE may only be partially groundwater fed or not dependent on groundwater. The Report identifies a total of 11 areas which may potentially be classified as GWDTE. A further assessment of these potential GWDTEs (with the exception of those found on mine workings which were not considered to be true GWDTEs) was undertaken. This assessment ranks the GWDTEs on a four tier approach ranging from Highly – dominant where high potential GWDTEs dominate to Moderately – subdominant where potential moderate GWDTEs make up a sub-dominant percentage cover and no potential high GWDTEs are present.

417. The Assessment does not consider low or non GWDTE. Highly dominant GWDTE are located just north of the northwest entrance to the main site. Proposed turbines 21, 22, 23 and 24 are located around the habitat which is focused to a block of plantation. Turbines 8 to 14 are around a more extensive area of Moderately dominant GWDTE. The impacts on these GDTWEs as a result of disruption to flow paths to the habitats has been assessed. The Assessment notes the unique character of the site due to areas of mine workings and previously disturbed land meaning that the underlying groundwater body is considered likely to be heavily modified and potentially poor quality. The habitats are also assessed as having reduced sensitivity for this reason. Notwithstanding this the assessment of flow paths has been undertaken. Where intersections to flow paths are identified to natural non-disturbed ground, mitigation is proposed in the form of culverts under tracks to maintain flow paths. At Turbine 22 it is proposed that cut-off drains are constructed around the turbine to maintain a flow immediately down gradient.

418. **Providing mitigation measures are finalised and implemented, it is considered that there would be no likely significant effects in respect of hydrology, the water environment, flood risk and groundwater dependent terrestrial ecosystems**.

- **Re-use of excavated peat, forest removal and forest waste;**

Re-use of excavated peat

419. The re-use of excavated peat is considered under Impacts to peat above and notes that according to the draft PMP, approximately 203,273m^3 of peat is estimated as requiring excavation as a result of the development. It is proposed that this peat would be reused for the reinstatement of stone extraction areas, substation verges, turbine foundations and crane hardstanding verges and for the 35ha Habitat Management Plan (HMP) restoration area proposed. This HMP area would comprise areas of unrestored opencast sites and would involve the use of most of the excavated peat (175,000m^3) being spread here to form a soil horizon and bring the areas back into beneficial use. It is noted that the outline Regeneration and Enhancement Statement appears to suggest that the hauling of excavated peat to the central Chalmerston area for restoration purposes and the spreading with soils would be an 'additional benefit' which would be subject of a future planning application. However, the matter of excess peat re-use needs to be considered as part of the current application. If it isn't to be used for restoration, another appropriate use would need

to be found for excess peat and set out in the PMP. For the purposes of this assessment, it is assumed that the approximate 175,000m³ of excavated peat would be used for restoration purposes in accordance with the draft PMP and HMP.

420. The total volume of reinstatement requirements is 207,258m³ meaning that, according to the PMP, there is a greater demand for peat than there is supply withinthe site (a deficit of around 3,985m³). The DPMP considers that the peat balance can be achieved by adjusting the depth of peat used for restoration works within the temporary SEAs thereby ensuring that no surplus peat is excavated than predicted. It also considers that the extent of abandoned and unrestored surface mining areas within the site offer additional capacity for peat reuse and restoration, if required.

421. **Notwithstanding the assertion of the PMP that there may not be sufficient peat from excavation to meet restoration needs, the main objective of SEPA Guidance on Developments on Peat and Off-site Uses of Waste peat (2017) is that the excavation of peat is minimised in the first instance. Thereafter, any excess peat should be used on site for acceptable reinstatement and restoration purposes. The Guidance does not advocate excavating more peat than is necessary to meet a demand elsewhere on the site as this will be considered as waste. Providing the evolving PMP meets these objectives, the proposed uses of excess peat is supported and appears to be in line with SEPA Guidance. SEPA have also not objected in this respect.**

Forest Removal

422. The proposed development lies within an area of existing commercial forestry plantations. Technical Appendix 2.11 contains a forestry report which sets out the wind farm felling and restocking plan proposals (with the existing forest plans) along with proposals for compensatory planting and forestry waste.

423. The forestry study area, within which the application site is located, comprises an area of nearly 4000ha which is state owned forestry known as the North Kyle Forest. Forestry accounts for almost 70% of the study area. Most of the forestry area is planted with Sitka spruce and other conifer species. The remaining almost 31% is open ground and former mining sites (15.41% and 15.02% respectively).

Baseline proposals

424. The baseline felling plan proposes felling of around 40% of the forestry in 5 year phases between 2015 and 2039. Most felling (around 31%) is proposed outside the plan period due to the areas of younger crops recently planted and with an area of nearly 30% not proposed to be felled.

425. Baseline restocking plans propose restocking with a reduced area of sitka spruce, a greater area of open ground and greater areas of broadleaf mixed species.

Wind farm proposals

426. The wind farm felling plan proposes to advance the felling of 421.36 ha of forestry compared to the baseline felling plan.

427. Wind farm restocking plan amends the baseline restocking plan to take account of the infrastructure requirements and site conditions. The wind farm restocking plan would have 127.37ha of open ground due to the wind farm. An area of 29.08ha is also proposed as Woodland Fringe which is intended to comprise native woodland. Other changes would be a reduction in conifer woodland and an increase in the area of open

ground of 23.99 ha which is to facilitate the HMP for restoration of peatland (as considered under effects on natural heritage above). There would be an overall decrease in the stocked area of woodland of 151.36 ha.

Compensatory planting

428. It is proposed to compensate for the net loss of 151.36 ha of woodland in compliance with the Scottish Government's Control of Woodland Removal Policy. The Forestry Report states that the applicant is committed to providing appropriate off-site compensatory planting, the extent, location and composition of which would require to be agreed with Scottish Forestry.

429. **Scottish Forestry's (SF) comments on the proposals are set out above under Scottish Government consultations. SF notes the significant increase in felling required in the period 2020-2024 which they consider will have a serious impact on the ability of the forest plan to meet UK Forest Standard requirements. SF consider there to be options for a more diverse structure in future rotations by breaking up large areas of even aged forest and seek clarification on the wind farm restocking plan to ensure that sufficient opportunities are created to increase diversity.**

430. **SF also question the need to deforest an area of 23.99ha to facilitate the delivery of the draft HMP and again seek clarification on how this fits with the criteria for woodland removal in the Control of Woodland Removal Policy and in SF peatland management guidance.**

431. **Subject to clarification of the peatland restoration area, SF are content with the method of calculating the area of compensatory planting and that the compensatory planting plan must be a condition of any consent.**

Forest waste

432. The forestry report sets out the hierarchy for uses for forestry waste in accordance with SEPA guidance. It is proposed that brash would be left in situ to provide nutrients for the next rotation where crops are being replanted. Otherwise, brash will be removed and treated in line with the hierarchy. Stumps would be left in situ except where excavated as part of the construction. It is proposed that full consideration and further details of forest waste will be included in a Forestry Waste Management Plan to form part of the CEMP.

433. **SEPA objections regarding the proposed use of brash for coverage on the site were withdrawn following discussions with the applicant.**

- **Impacts on forestry and woodlands, with reference to the Ayrshire and Arran Forestry and Woodland Strategy (2014);**

434. Most of the impacts on forestry and woodlands is considered above under forest removal and forest waste. Forestry proposals generally align with the strategic nature of the Ayrshire and Arran Forestry and Woodland Strategy. In respect of the Ayrshire Uplands within which the North Kyle Forest is located, the priorities include "*retention of existing areas of softwood forest, but restructuring to include a higher proportion of open ground, achieve a better landscape fit and contribute to restoration objectives where appropriate*". In addition… "*ensuring that any reduction in the extent of woodland resulting from restructuring or wind energy development are compensated within Ayrshire where required by the Scottish Government's Policy on Control of Woodland*."

435. **With the exception of comments from SF in respect of the amount of felling proposed within phase 2 of the felling plan, proposed replanting and the need for felling in respect of the HMP, the proposals generally accord with the Forestry and Woodland Strategy. It is recommended that the wind farm forest plan is revised to take account of SF comments. Compensatory planting should be within Ayrshire meet the above guidance. This should be included in the compensatory planting condition.**

- **Effects on greenhouse gas emissions**

436. The proposed wind farm would produce electricity from a renewable source which would result in a reduction in the production of carbon when compared coal fired or other carbon producing form of electricity generation. The expected carbon savings from the wind farm compared to a fossil fuel mix of electricity generation is 217,419 tonnes per year. Over the lifetime of the development, however, it is expected that there will be carbon losses as a result of factors including turbine manufacturing, peat disturbance and forestry felling. However, mitigation including replanting and bog restoration also requires to taken into account. Overall the net carbon emissions as a result of the development are expected at 406,654 tonnes over the life time. This means that the overall carbons savings expected over the lifetime of the development is just over 5M tonnes (an average of 201,153 tonnes saved per year).

- **Impacts on communities and individual dwellings, including visual impact, residential amenity, noise and shadow flicker;**

Visual impact and residential visual amenity impact on communities and individual dwellings

437. Visual impacts on settlements (i.e. towns and villages) are considered as part of the landscape and visual assessment above. It is considered that there would be significant visual effects to parts of the settlements of Cumnock, New Cumnock, Ochiltree, Skares, Drongan, Dalleagles. The assessment of visual impacts on private individual dwellings is separate to this and utilises a different methodology based on the premise that visual effects to individual dwellings do not normally have a wider public interest unlike visual effects on settlements (noting that the planning system works in the public interest and not the private interest). Instead, the assessment on private dwellings focusses on how the visual effects of the proposed development affect the residential amenity of the property.

438. The applicant undertook a Residential Visual Amenity Study (RVAS) to assess the likely effects on the visual amenity of properties within 2km of the proposed development which is contained within Technical Appendix 4.7 of the EIA Report. This is supplemented by 360° visualisations from three viewpoints around the property at Upper Beoch following a request for such information from EAC officers following comments from IFL contained in their audit of the EIA Report. These supplementary visualisations are contained within the Applicant's response statement dated May 2020 within the AI1 submission. This response statement also contains an analysis of the visualisations. Following a further request from EAC officers, revised visualisations to show the effects of the omitted turbines from Upper Beoch were submitted in the AI2 submission along with a comparative assessment of the effects on residential amenity as a result of the 49 turbine scheme compared to the 54 turbine scheme. All of that information has been taken into account in addition to relevant guidance, consultation responses and from site visits to properties.

439. Guidance on undertaking a Residential Visual Amenity Study (or Assessment) is contained within the Landscape Institute (LI) Technical Guidance Note 2/19. The RVAS carried out by the applicant broadly aligns with this guidance. It explains that

the purpose of the Assessment to be provide a well-reasoned answer to the question: '*is the effect of the development on Residential Visual Amenity of such nature and / or magnitude that it potentially affects 'living conditions' or residential amenity?*' This is referred to as the Residential Visual Amenity Threshold.

440. In forming a judgement of effects on residential visual amenity, the LI Guidance notes that this final step should be undertaken following conclusions with respect to the magnitude and significance of visual effect. Only those properties which have the largest magnitude of effect should be judged for the effects on residential amenity (i.e. to determine whether the Residential Visual Amenity Threshold has been reached).

441. The RVAS identifies individual properties within 2km of the proposed development which would be subject to views of the wind farm and where there would be potential for visual receptors to experience significant visual effects. Out of the properties assessed within 2km, 8 were identified as having potential views of the proposed development. The impacts on residential visual amenity were also assessed at each of these properties (rather than firstly determining if the visual effect was significant in EIA terms).

442. The eight properties assessed are: Knockdunder, Knockburnie, Lanehead, Craighouse, Maneight, Nith Lodge Farm, Knockenlee and Upper Beoch Farm.

443. As noted, there is no distinct assessment of visual effects from these properties and IFL provide their own assessment of this which considers that there are likely to be significant visual effects in EIA terms on all of these properties except Knockdunder, and Lanehead.

444. In terms of residential amenity, the RVAS finds there to be no overbearing or overwhelming effects and consequently concludes that none of the properties assessed would be subject to effects that would be considered overbearing or pervasive and that the proposed development is not considered to contribute to encirclement or properties by wind farms. It therefore contends that the properties would not be affected by the proposed development to the extent that they would be considered unattractive or unsatisfactory places to live. In most cases, it is agreed that there would be no unacceptable effects on the residential amenity of these properties.

445. However, in respect of the original 54 turbine scheme, it was considered by officersthat there could be visual effects on Upper Beoch which in combination with consented developments at Overhill, South Kyle and Enoch Hill, may have an unacceptable overwhelming effect. This was verified following the submission of 360° wireframes and photography from the property. It was noted in IFL comments following the submission of wireframes that the due to the addition of North Kyle to the cumulative visual experience from Upper Beoch, views to nearby wind energy development would become an inescapable feature of views from many parts of the property, akin to living within a wind farm. It was therefore judged by IFL that the presence of North Kyle turbines would exceed the Residential Visual Amenity Threshold at the property. The comments from IFL also noted that turbines 8 – 12 have the greatest visual effect on Upper Beoch. These concerns were shared by the Planning Authority.

446. Notwithstanding the applicant's conclusion on the 54 turbine scheme, the proposed development has been revised so that three of the closest turbines which were closest to Upper Beoch have been omitted from the scheme (T10, T11 and T12). Following the revisions to the scheme the applicant considers that there would be a "*notable improvement to the appearance of the proposed development often reducing the*

number and prominence of turbines and achieving greater separation between the property and proposed development".

447. Upper Beoch is located approximately 1.5km south of the proposed development within an undulating local landscape predominantly used for commercial forestry (not part of the North Kyle forest). The dwellinghouse and curtilage is located west of the Beoch Lane, a tributary of the River Nith. A private access drive from the B741 approaches the house from the north west and into a parking courtyard area. The house is orientated towards this area with the primary elevations facing towards the parking area (i.e. to the north west) and to the south east towards the Beoch Lane. Agricultural/stable buildings adjoin the dwellinghouse to the north west. Open views from the house are primarily obtained to the south east towards the upper Beoch Lane valley. Views from the north west elevation are orientated towards the forested valley side. Within the curtilage of the property, the main garden is to the south east of the house, with views primarily orientated to the south and south east along the Beoch Lane valley. The courtyard/parking area and access to the north west is at a more elevated location (particularly the access point) from where there are more wide ranging views to the north west, north and east over the house.

448. North Kyle turbines are proposed in an arc from the west round to the north east of Upper Beoch. Topography and forestry would almost fully screen views of turbines to the west and north west where they would also be set behind the consented Overhill turbines. It is when the view turns to the north and north east, upstream along the Beoch Lane valley, that turbines would come more fully into view and in closer proximity. In particular, it is turbines 3 – 9, 14 – 17 and 19 (ie 13 turbines) which would be visible in this view at varying separation distances, ground level heights and vertical visibility. The removal of turbines 10, 11 and 12 from this view has meant the loss of three of the most prominent turbines which were visible in views to the north east. The closest is now T8 which would be 1.9km distant. In addition, the tips of turbines 1 and 2 would no longer be visible.

449. From within the house and curtilage, this view of the North Kyle turbines would be most apparent from the front courtyard/parking area. The layout of the dwellinghouse would obscure most views to the proposed turbines to the north/north east. From the garden to the south east, it would be turbine 8 in particular that would be visible. Although this would now be the closest turbine, in this view it would be partially screened by existing buildings and would occupy a small part of the view from the garden. The consented South Kyle (currently under construction) turbines and the tips of four of the Enoch Hill turbines would also be visible in views from the garden but these are distant views at 4km from Upper Beoch and with views partially screened by garden vegetation and forestry.

450. From the north west parts of the curtilage at the access to the parking area, the North Kyle turbines would be visible to the north along with Overhill (where not obscured by forestry) and South Kyle and Enoch Hill to the east (visible from the elevated driveway).

451. The IFL audit of the original 54 turbine scheme considered that the contribution of the North Kyle turbines to the cumulative experience at Upper Beoch, by way of their proximity and prevalence in views would exceed the Residential Amenity Threshold at the property.

452. **In conclusion with regard to residential visual amenity effects to Upper Beoch, account is taken of the omission of the three of the most prominent turbines in views, the orientation of the dwellinghouse which reduces views to proposed turbines and the minimal horizontal extent of application turbines from the south east garden, it is not considered that the effect on the residential amenity**

of Upper Beoch would be substantially overbearing either on their own on cumulatively such that it would exceed the threshold of residential visual amenity at the property.

453. **The most extensive view of the application and cumulative turbines would be from the more elevated driveway access and north west curtilage, however, this represents one relatively small part of the dwellinghouse curtilage and due to the omission of the three most prominent turbines, the view from here would be significantly improved such that turbines would no longer be overwhelming or overbearing.**

454. **It is therefore considered that although there would be significant visual effects in EIA terms on Upper Beoch as a result of the proposals, there would not be an overall unacceptable adverse impact on the residential amenity at the property.**

455. **It should be noted that the cumulative assessment is based on the existing and consented wind farms only. This does not take account of the in planning schemes at Enoch Hill and Overhill which propose to increase turbine heights.**

Shadow Flicker

456. Scottish Government planning advice on onshore wind turbines advises that in most cases shadow flicker should not be a problem if there is a separation distance between turbines and dwellings. As general rule, 10 rotor diameters is advised. Otherwise, developers should provide calculations to quantify the effect. The shadow flicker effect occurs under certain circumstances only as a combination of geographical position, time of day, time of year, the orientation of dwelling and angle to the sun and the interactions between these factors.

457. A shadow flicker assessment was undertaken by the applicant which is contained within Technical Appendix 2.13. It adopts an assessment using 11 rotor diameter lengths rather than 10. This is in accordance with Guidance in Northern Ireland which is the only detailed assessment guide available in the UK.

458. Within the 11 rotor diameter (1,496m) buffer of each turbine, three properties were identified:
    - Upper Beoch Farm (1391m from turbine 10);
    - Lanehead (1326m from turbine 2); and
    - Craighouse (1383m from turbine 2)

459. It should be noted that the turbines which were assessed as being closest to these properties have now been omitted from the scheme. The closest turbine to all of these properties is now T8. This increases the separation sufficiently outwith the 11 rotor diameter distance. **Based on the Northern Ireland Guidance and otherwise recognising that the nearest turbine is now some 1.9km distant from Upper Beoch, it is considered that the effects would not be significant. Although not assessed by the applicant, no shadow flicker is now anticipated at any property following the revisions made.**

Noise

460. EIA Report Chapter 6 considers the effects of noise from construction, operation and decommissioning of the proposed development.

461. The Report focusses on the operational effects on the basis that constriction and decommissioning, including felling and on-site construction activities will occur at

distances that are unlikely to result in noise levels that breach typical construction noise limits. This along with the temporary nature of the works means that detailed assessment is not considered to be necessary. Standard noise mitigation measures would be employed via the CEMP. ACCON (the Council's noise consultant) concurs with this assessment finding and advises that the requirement for a blasting management plan should be included in a planning condition.

462. Due to the anticipated completion of House of Water restoration prior to the commencement of construction at North Kyle, it is not considered necessary to assess these effects cumulatively.

463. The operational noise assessment focuses on dwellings located in proximity to the proposed development and also considers cumulative noise impacts from other proposed, consented and operational wind farms in the area.

464. The assessment measured baseline noise conditions at 7 locations and in total assessed effects on 19 properties. Cumulative wind farms considered in the assessment are: Polquhairn; South Kyle; Enoch Hill; and Overhill. It should be noted that the assessment does not include cumulative effects from the proposed Greenburn wind farm. This development was at scoping stage at the time of the North Kyle application and there was no need, at this stage to include it within the assessment. Despite two submissions of Additional Environmental Information, this has not been updated since the Greenburn S36 application was submitted to the Scottish Government. Despite this being drawn to the attention of the Scottish Government by the Planning Authority, the Scottish Government has not required the applicant to provide up to date information to reflect the application stage Greenburn windfarm. It will therefore be up to the decision maker (Scottish Ministers) to ensure that they have all necessary information to make a decision on the application. Should it be considered that further information on the cumulative assessment of the North Kyle wind farm is required by Scottish Ministers, it is recommended that the Council is consulted on this noting that it will be the Council that is responsible for enforcing any future planning conditions.

465. The assessment is based on ETSU-R-97 which sets out noise guidelines for assessment and rating of noise from wind farms. ETSU guidelines set noise limits during daytime of 35-40 dB LA90 or 5 dB(A) above the 'quiet day-time hours' prevailing background noise, whichever is the greater. The actual value within the 35-40 dB(A) range depends on the number of dwellings in the vicinity; impact of the limit on the number of kWh generated; and the duration of exposure.

466. Night time limits are 43 dB LA90 or 5 dB(A) above the prevailing night-time hours' background noise, whichever is the greater. These limits also include noise from cumulative wind farms.

467. The EIA Report applies the lower daytime limit (i.e. 35 dB LA90) for all properties except at The Craig House, Upper Beoch, Maneight, Knockenlee, Drumbowie, Ravensroft, Meiklehill and Nith Lodge where the upper limit has been applied. The factors in determining the limit are considered in the Operational Noise Assessment Technical Report (Technical Appendix 6.1). The noise assessment explains that only eight properties would be subject to noise levels between the lower and upper limits and these properties would not be downwind of the turbines (when noise would be highest) for the majority of the time. It is therefore considered in the Assessment that it is acceptable in this instance to apply noise limits between the lower and upper ETU-R-97 derived limits.

468. ACCON, as the Council's consultant on noise, confirm that this is reasonable given that Upper Beoch and other most affected properties will not be downwind of the

proposed turbines or the South Kyle turbines during the prevailing south-westerly winds.

469. The results of the proposed development predicted noise levels and the predicted cumulative noise levels show the noise levels being within or meeting the upper noise limits at all properties, including cumulatively. The highest predicted noise levels from the proposed development alone are at Upper Beoch (38dB LA90 for wind speeds of 6 m/s and above). The next highest levels of 36dB LA90 are predicted at The Craig House. Cumulatively, predicted noise levels at Upper Beoch are predicted as being within the limit by 0.1 dB for 7 m/s speeds and 0.4 dB for 6 m/s wind speeds. The night time limit would be met at all properties.

470. The Noise Assessment sets out day time and night time noise limits for each property taking into account the derived noise limits which apply to North Kyle wind farm along with noise from other consented wind farms and wind farms in planning (except Greenburn). It is suggested by ACCON and agreed that these noise limits form the basis of a planning condition.

471. The Noise Assessment also discussed amplitude modulation (AM). Studies by the Institute of Accoustics (IOA) and Department of Energy and Climate Change (DECC) have been undertaken to consider AM effects. The DECC study issued recommendations in 2016 and included a proposed penalty scheme for rating AM. A model noise condition was subsequently published in an IOA Acoustics Bulletin article that incorporated an AM penalty scheme. ACCON, however, note that neither the UK nor the Scottish Government has yet issued any policy which adopts the penalty scheme and advise that where AM results in nuisance, appropriate action can be taken by the Local Authority through their statutory nuisance powers.

472. The Noise Assessment also considers infrasound effects and notes that newer, more modern turbines are of an ‘upwind’ design which means the wind passes through the turbines before passing the tower which eliminates the thumping type sound associated with infrasound.

473. **In summary, it is considered that the proposed development meets the noise limits set by the applicant in accordance with ETSU-R-97. The noise limits set are considered to be reasonable, taking account of the location of properties with the upper noise limit and their respective locations, most of which are not downwind of the proposed development. These noise limits should therefore form the basis of site-specific limits within conditions. As noted above however, cumulative noise predictions do not take account of the now in planning Greenburn wind farm, nor do they take account of the revised Enoch Hill and Overhill developments which propose to increase turbine heights. All are at planning stage following the submission of the North Kyle proposal. Therefore, the foregoing position with respect to noise from this development must be tempered by this lack of updated assessment and that it will also therefore be incumbent on Scottish Ministers to ensure that these matters are fully considered in any decision that is made.**

474. It is also recommended that a condition should require a protocol to be submitted to the planning authority setting out in detail the sequence of noise measurements and actions required to investigate any noise complaint such that the wind farm responsible for potential breaches of their respective limits can be identified.

475. In addition, post commissioning noise monitoring should be required, a condition to control amplitude modulation may also be appropriate and a condition to control blasting from construction should be added.

- **Impacts on Tourism and Recreation**

476. Impacts on tourism are assessed separately from the EIA Report within the Socio-economic and Tourism Impact Assessment document submitted as part of the application. Within this Report, it considers the potential effects of the proposed development on tourism and recreational assets, taking account of literature on the relationship between wind farms and tourism.

477. The Report identifies local tourism and recreational assets based on an analysis of the VisitScotland website. These include:
    - Dumfries House and estate;
    - The Baird Institute;
    - The Burns House Museum;
    - The Scottish Industrial Railway Centre;
    - Various assets within Dalmellington;
    - Craigenillan estate and the Scottish Dark Sky Observatory;
    - The Galloway Forest Dark Sky Park;
    - Loch Doon Castle and the Loch Doon Castle visitor centre/Roundhouse café.

478. Local recreational routes are identified using the Walk the Highlands website. This shows that one of Scotland's 29 Great Trails, the River Ayr Way is 9km form the site at its closest. Other walks identified within 15km of the site are:

    - Lady Hunter Blair's Walk near Straiton, which is a 3.3 km walk approximately 10km from the site;
    - Monument and Bennan Hill, near Straiton, which is an 8.3 km route and approximately 11 km from the site;
    - Ness Glen, near Loch Doon, which is a 3 km walk and approximately 6 km from the site; and
    - Craiglea Trail and Loch Doon Castle, which is a 3.5km walk and approximately 13km from the site.

479. The Report notes that there are no core paths within the site boundary, however it does not identify any core paths which are outwith the site and may potentially be indirectly affected by the development.

480. A tourist route is identified as one of Scotland's 13 Road Trips which passes nearby the proposed development. The Galloway Tourist Route which connects Gretna to Ayr routes along the A713 through Dalmellington and Patna. In addition, and not identified in the Report, the South West Coastal 300 route has part of its route on the B741 New Cumnock to Straiton road.

481. The Report also identifies an informal rote which allows access partly through the site to Benbeoch, a prominent hill with interesting geological features. This has been noted as being popular with local residents. The site is also identified as a SSSI for its geological features.

482. Tourist accommodation is listed the vicinity of New Cumnock, Cumnock, Dalmellington, Mauchline, Stair, Coylton, Straiton/Kirkmichael and others located more rurally.

483. The Report then goes onto consider various studies which have been undertaken exploring the effects of wind energy development on tourism. These are:

    - BiGGAR Economics (2017) Wind Farms and Tourism Trends in Scotland.

According to the Report, this found no link between the development of a wind farm and tourism related employment.

- Glasgow Caledonian University (2008), The Economic Impacts of Wind Farms on Scottish Tourism which notes that one of the findings as a result of a survey carried out on tourists in Scotland found that 25% viewed wind farms negatively and the majority had either a positive or neutral view. A significant minority preferred landscapes without wind farms and notes that very few would change their intention to revisit Scotland based on them.

- VisitScotland (2012), Wind Farm Consumer Research which noted that the majority of respondents to a survey were in agreement about the importance of natural scenery and landscape, for most of the respondents, their decision to stay in the UK for a short holiday would not be affected by the presence of a wind farm.

- Scottish Parliament Economy, Energy and Tourism Committee (2012), Report on the achievability of Scottish Government's renewable energy targets. The Report notes one of the conclusions of this committee which was that assertions made about the negative impact on Scotland's tourism industry from renewable energy which were contradicted by research evidence from VisitScotland and others.

484. The applicant's tourism assessment concludes that economic impact literature to date has found limited evidence to suggest that there is a link between the development of wind farms and tourism and the literature that suggests that the potential effect would be relatively small.

485. The applicant's assessment of the impact of the proposed development on the tourism assets take account of the above literature review.

486. Negligible tourism effects are predicted by the assessment in respect of all of the above assets. This is due to a combination of lack of views of the development from the asset, distance, type of tourism asset and value to the tourism economy. It is generally agreed that the development would have the effects as described in the Assessment.

487. No assessment has been carried out on the tourism or recreational impact on core paths within the area. The Landscape and Visual assessment found that there would be significant visual impacts on many core paths including the New Cumnock Circular, Auchenroy Hill and Dalcairnie Falls (upper parts of the route) and Craigengillan to Knockdon (Upper Parts). Although significant visual impacts are identified, it does not, however, translate that views of the proposed wind farm would necessarily have a tourism or recreational impact. There would be no direct impact and taking account of the preceding literature, there is no evidence to suggest that views of the wind farm would stop people from using these routes.

488. The application also includes outline proposals to enhance public access and recreation within the application site including the use of the wind farm access tracks during operation and the creation of 8km of additional footpaths/cycleways which may have a positive tourism and recreational impact. It is noted that the Regeneration and Enhancement Statement suggests that additional footpaths/tracks may be part of the 'additional works' package which would be the subject of a future application. This requires to be further clarified.

- **Public access, including impacts on long distance walking and cycling routes and scenic routes identified in National Planning Framework 3;**

489. Public access in terms of the impact of the proposals on recreational routes is considered above. Currently public access within much of the application site is limited and has been discouraged due to the presence of surface coal mining around much of the perimeter and within the North Kyle Forest as well as from ongoing forestry operations. The only recorded public access routes within the site are two rights of way (SCD18 and 19) which run from the B741 through forestry and entering the application site at Little Rigend Hill and onto the former Craigman Farm (demolished) and rights of way SCD5 and 6 are located to the south west of the site and cross the existing haul road which is one of the proposed access routes for HGV traffic. Rights of way SCD18 and 19 have been severed by opencast coal workings at House of Water.

490. The EIA Report does not contain an assessment of the impact on these routes. from the consultation response from Scotways objects to the proposals due to the lack of consideration of these rights of way, the proximity of turbines to rights of way SCD18 and 19 and lack of detail on how these rights of way will be reinstated and linked into the development. The Council's Countryside Access Officer does not object and welcomes proposals in the Outline Outdoor Access Management Plan (subject to being consulted on a final plan). The Access Officer also notes the use of the Welsh guidance in ensuring that turbines are located a sufficient distance from access routes.

491. The applicant's Response Statement (May 2020) responds to comments made by Scotways. With regard to SCD18 and 19, it notes that this route is inaccessible due to historic opencast workings and the restoration plan for House of Water does not make provision for the reinstatement of the routes.

492. With regard to set back of turbines from public access routes (including rights of way), the Response Statement considers that the guidance is contrary to experience in Scotland where there are many examples of public access being encouraged at operational wind farms such as Whitelee where public recreational routes and wind turbines co-exist successfully.

493. The Response Statement also states that the applicant will provide a linkage from the wind farm access tracks to reconnect with the original alignment of SCD18 and SCD19 within the Application Site and considers that there is an opportunity to reinstate the rights of way that have been lost to opencast workings.

494. With regard to rights of way SCD5 and 6, the Outline Outdoor Access Management Plan (Technical Appendix 2.12) proposes to provide signage and management of access during construction activities where these routes cross the site access. This Plan also proposes more general public access mitigation measures across the site during construction.

495. During the operational phase, it is proposed that full public access will be available to all wind farm access tracks. The Outline Outdoor Access Management Plan, however, notes the hazards associated with public access to the site with regard to previously mined areas, noting that full restoration measures proposed do not form part of the proposed development. Mitigation for this is proposed in the form of notice boards with information regarding the site and how best to access it and of the potential hazards of previously mined areas and associated water bodies. Entrance signs would also warn of the risk of ice from turbine blades and felling operations.

496. **Overall, it is considered that the proposed wind farm presents opportunities to improve and increase access to the North Kyle Forest area which has historically been almost inaccessible due to mining and forestry activities. With**

regard to SCD 18 and 19 which have been lost to opencast workings, the opportunity to reinstate and link to this is welcomed. With regard to the setback distance of turbines from access routes, it is noted that this is Welsh good practice guidance and there is no such guidance in Scotland. It is also noted as per the applicant's response that turbine and access routes appear to coexist at other wind farms fairly successfully.

497. **A final Outdoor Access Management plan should be required and secured via planning condition which further considers all of the matters that are in the Outline Plan and provides site specific proposals for access based on consultation with relevant stakeholders. This should also further consider mitigation measures in respect of historic mine workings as well as the other hazards noted. On this basis, it is considered that the proposed wind farm would result in an overall improvement to public access within this part of the North Kyle Forest.**

- **Net economic impact, including local and community socio-economic benefits such as employment, associated business and supply chain opportunities;**

498. The applicant's Socio-Economic and Tourism Impact Assessment provides an assessment of socio-economic effects as a result of the proposals alongside an assessment of economic effects on tourism which is considered in the tourism criterion above. No significant economic effects on tourism are anticipated.

499. According to the Assessment, the construction phase of the proposed development is expected to contribute up to £18.7 million direct and indirect Gross Value Added and 279 direct and indirect job years in East Ayrshire. During each year of operation, the development, directly and indirectly, may contribute up to £1.9 million GVA and 26 jobs in East Ayrshire.

500. The Assessment considers measures which may maximise the economic impacts including early identification of potential suppliers and meet the supplier events, partnerships with East Ayrshire Council and Ayrshire Chamber of Commerce.

501. The Assessment also sets out proposals for boosting funding to communities and community benefit funding. However, this is a voluntary developer contribution and is not a material consideration to be taken into account.

502. Also considered in the Assessment are the improvements to the site in line with the North Kyle Forest Masterplan. Shared ownership opportunities are also noted, although these proposals do not appear to be developed beyond the initial concept.

503. **Overall, although there is uncertainty over the economic contribution to East Ayrshire, simply by the nature of unknown suppliers and contractors at this stage, it is acknowledged that the proposed development, by virtue of its scale and location, would have a substantial economic impact on the area, both directly and indirectly and particularly during the construction phase.**

- **Impacts on aviation and defence interests and seismological recording;**

504. The proposed development is outwith the zone in which consultation is required in respect of the Eskdalemuir seismological recording station.

505. With regard to aviation interests, it is noted that both Glasgow Prestwick Airport (GPA) and NATS have objections to the proposals due to impacts on en-route radar (in the

case of NATS) and due to impacts on its primary radars and flight path procedures in the case of GPA.

506. In terms of defence, MOD have not objected subject to lighting of perimeter turbines. The most recent responses from MOD suggest that infrared or visible red lighting would be acceptable. It is recommended that infrared lighting is required by condition to minimise visual impacts from lighting at night time.

- **Impacts on road traffic including during construction and decommissioning;**

507. EIA Report Chapter 10 considers traffic and transport impacts from the development. The Report considers effects on the following roads:

- A70 between its junctions with the A77(T) and A76(T);
- U728 between its junctions with the A70 and B7046;
- B7046 between its junction with the U728 and the proposed north site access;
- A713 between its junction with the A77(T) and Dalmellington;
- B741 between its junctions with the A713 and A76(T);
- A76(T) between Auchinleck and New Cumnock; and
- A77(T) between St Quivox and Nether Auchindrane.

508. A Transport Assessment is contained within Appendix TA 10.1 of the EIA Report and considers the effects during the 36 month construction period of development traffic generation, construction vehicle movements, development traffic routeing / distribution and the predicted impact.

509. The Assessment anticipates the following vehicle types would require regular access to the site from the public road:

- Heavy and light goods traffic related to the extraction of forestry over the first 24 months of the programme (note that forestry works are anticipated to commence 12 months prior to the commencement of wind farm construction). The Assessment considers the anticipated 15,000 two-way vehicle movements required to extract timber.
- Staff transport, cars, vans and minibuses.
- Construction equipment and materials, deliveries of machinery and supplies such as concrete and raw materials. The Assessment does not consider that aggregate for infrastructure construction will need to be supplied to the site as the proposed stone extraction areas are considered to be of adequate quality to allow for on-site sourcing of these materials. Concrete is proposed to be batched on-site and aggregate and sand for concrete, cement, sand for cable trenches and rebar will be imported from off-site quarries and suppliers.
- Abnormal Indivisible Loads (AILs) consisting of wind turbine components and heavy lift crane(s).
- Escort vehicles for AIL deliveries.

510. The maximum traffic movements associated with the construction of the proposed development are predicted in the Assessment to occur in months 22 to 24 of the programme. An average of 84 HGV movements are predicted per day during these months and it is estimated there would be a further 126 car and minibus/LGV movements.

511. The highest volume of traffic is anticipated to be generated by the requirement for aggregate, sand and cement for on-site batching of concrete. It is assumed in the Assessment that materials would be imported from Garpel Quarry, Muirkirk.

512. HGV traffic and AILs would only be able to use access points on the B7046 and A713 according to the Assessment.

513. It is proposed that AIL traffic and crane trips would originate from King George V (KGV) Dock, Glasgow accessing the site via the A77 and A713 to the access point north of Dalmellington or via the M77/A76/A70/U728 to the B7046 access point.

514. In order to assess the predicted impact of traffic during the construction phase, estimated total trips on the study network are estimated by comparing construction traffic flows combined with future year baseline traffic data. The resulting figures are compared with the weekday future baseline. This predicts the highest percentage increase in traffic as a result of the development to be to the U728 between A70 and B7046 and the B7046 at the proposed north site entrance where total traffic over a year is expected to increase by 15.29% and 14.74% respectively. Increases of up to 1.34% are predicted to roads elsewhere in the study area.

515. Using IEMA guidelines the Assessment goes onto assess impacts where increases are predicted at more than 10% and where such an uplift is anticipated in relation to highly sensitive receptors. Although the Assessment does not consider the U728 and B7046 to be highly sensitive receptors, an assessment of effect significance is still carried out on these routes.

516. In considering the effects on severance, driver delay, pedestrian delay, pedestrian amenity, fear and intimidation and accidents and safety, the Assessment considers effects to be not significant in respect of all of these factors.

517. In considering potential cumulative construction effects with the proposed development combined with Pencloe, Overhill and Enoch Hill wind farm, the Assessment noted that it was highly unlikely that the construction programmes for the proposed development and the identified wind farms would coincide. However, in adopting a worst case scenario approach, the assessment predicts that cumulative HGV flows may increase by just over 30% on the A76 trunk road. Notwithstanding the low likelihood of all developments being constructed simultaneously, the applicant's assessment considers that this increase in traffic on the A76(T) would not result in any significant effects.

518. Mitigation proposed for general construction traffic includes the following:

- The formation of a community liaison group to disseminate information and take feedback.

- The use of the B7046 and A713 access points only for construction traffic

- A Construction Traffic Management Plan (CTMP) with the following measures:

    - All materials delivery lorries (dry materials) would be sheeted to reduce dust and stop spillage on public roads;
    - Specific training and disciplinary measures would be established to ensure the highest standards are maintained to prevent construction vehicles from carrying mud and debris onto the carriageway;
    - Wheel wash facilities would be established at the site entrance;
    - Working hours would be limited to between 0700 and 1900 Monday to Saturday though deliveries would be prohibited after 1300 on a Saturday save for AIL component delivery which could take place outside these hours;

- Appropriate traffic management measures would be put in place on the U278, B7046 and A713 to avoid conflict with general traffic, subject to the agreement of the roads authority;
- Provision of construction updates on the project website and a newsletter to be distributed to residents within an agreed distance of the site;
- All drivers would be required to attend an induction to include a safety briefing; the need for appropriate care and speed control over the sections of the construction route pass through settlements; identification of specific sensitive areas; identification of the specified route; and the requirement not to deviate from the specified route.
- An Abnormal Load Traffic Management Plan (TMP) (which would form part of the CTMP).

- Video footage of the pre-construction phase condition of the abnormal loads access routes and the construction vehicles routes to provide a baseline of the state of the road prior to any construction work commencing in order to allow for any changes in road condition during construction. Any necessary repairs would be coordinated with the Roads Authority.

519. Mitigation in respect of AILs includes the following:

- Swept path assessments to identify areas where remedial works would be required to accommodate the movement of AILs and details of the required modifications;

- A Traffic Management Plan for the delivery of AILs to reduce conflicts between abnormal load traffic and other road users.

520. Further information in respect of the content of a future CTMP is provided in the applicant's Response Statement dated May 2020. The Response Statement also notes that the use of Main Street in Ochiltree is proposed as an abnormal load route for the delivery of turbine blade sections only as it is not possible for those loads to negotiate the bend on the A70. The Statement also notes that consultation has taken place with Ochiltee Community Council and Hub and both support the application.

521. In respect of roads being used, the Response Statement notes that the protection and reinstatement of damage to these roads caused by development construction traffic can be secured through a suitably worded condition and if necessary a Section 96 Agreement with East Ayrshire Council. The applicant does not agree that there is a reasonable requirement to commit to pay £1.00 per tonne on imported materials to the proposed development site.

522. The Ayrshire Roads Alliance (ARA) as consultee in respect of all roads in East Ayrshire with the exception of trunk roads advise that they have no objection subject to conditions requiring the submission and approval of a CTMP and details of abnormal load routes and mitigation works.

523. ARA also consider the use of Main Street through Ochiltree as an abnormal load route to be very sensitive due to residential, school and the community frontage which use this route and should only be taken as a last resort. ARA request that the developer provide fuller details on the proposed route through Ochiltree and engage with the local community on the detailed proposals brought forward through the CTMP and abnormal load traffic management plan.

524. Notwithstanding the applicant's comments, ARA recommend an agreement with the Council to provide a financial contribution based on a rate of £1.00 per tonne for imported materials. If this is not accepted, ARA would require a Road Construction

Bond in favour of the Council should be held as a security for extraordinary road repairs airing from the development.

525. It is agreed with the Ayrshire Roads Alliance that there is a need for mitigation measures to be agreed and implemented in respect of construction traffic. The abnormal load route through Ochiltree has been highlighted as a particular sensitivity and mitigation measures (contained within a CTMP) should take full account of this.

526. With regard to the recommendation in respect of a £1.00 per tonne financial contribution in respect of imported materials, the applicant has responded to this in the Response Statement dated May 2020 (AI1) and disagrees that this is a reasonable requirement. The applicant does, however, acknowledge the need to protect local roads and that reinstatement may be required during the construction period and considers that this can be secured through a suitably worded condition and if necessary a S96 agreement under the Roads (Scotland) Act 1984.

527. **It is agreed that the imposition of a requirement for a financial contribution to the roads authority based the tonnage of materials imported would be unreasonable and the seemingly arbitrary contribution would not necessarily directly address the potential issue of damage to roads caused by construction traffic (i.e. there is likely to be a mismatch in the cost of repairs compared to the contributions gathered). As this issue is a matter related to the maintenance of public roads rather than a planning matter, this would be better dealt with under Roads legislation as suggested by the applicant in a separate legal agreement and it is recommended that the applicant liaises directly with ARA in this respect.**

- **Impacts on adjacent trunk roads;**

528. Trunk roads affected by the proposed development are the A77(T) and A76(T). Traffic added to the A77(T) north of the A70 would be minimal at a predicted 0.20% increase and the same cumulatively. The A76(T) north of Auchinleck may see a 33.55% increase in HGV traffic if all cumulative schemes considered are constructed simultaneously. Notwithstanding this, the Assessment considers the effect of this on this trunk road to not be significant.

529. **Transport Scotland, as consultee with regard to trunk road impacts, do not object in terms of the environmental impacts on the trunk road network, subject to conditions.**

- **Impacts on telecommunications and broadcasting installations, particularly ensuring that transmission links are not compromised;**

530. No material adverse issues have been raised by relevant Scottish Government consultees in respect of these matters.

- **The appropriate siting and design of turbines and ancillary works;**

531. Some aspects of the siting and design of turbines and ancillary works in wind farms do not necessarily contribute to the EIA Report LVIA significance assessment as has previously been considered. Guidance on the design and layout of turbines is contained within SNH Guidance on Siting and Designing Wind Farms in the Landscape Version 3 2017. This Guidance notes that the layout of turbines should relate to the specific characteristics of the landscape. It also acknowledges that turbine layout is primarily influenced by wind speed considerations, land ownership, physical constraints such as watercourses and deep peat. It also states that many landscape and visual sensitivities can be addressed through good design. For the

simple, relatively even and large scale landscape which most of the wind farm would be sited within, the Guidance considers that the layout of turbines should be visually balanced, simple and consistent in image. It is considered that for most of the proposed development, this has broadly been achieved. Where the landscape of the wind farm merges into the lower lying Upland Basin to the east, achieving a simple and regular layout becomes more difficult and it is here in particular that the negative effects of stacking, overlapping and unevenness in the appearance becomes apparent in views from the east (e.g. from viewpoints in New Cumnock). The scale of the turbines at this location also has adverse effects on the character of the lower lying Upland Basin landscape.

532. With regard to the proposed micrositing allowance of 100m, it is noted that NatureScot raise concerns that this allowance may exacerbate the appearance of overlapping turbines in key views from the north and request that should the position of turbines change significantly following detailed site investigation with revised visualisations submitted by the applicant.

533. The applicant has requested a 100m micrositing allowance to allow for flexibility. This, however, has implications for the design and may lead to a worsening of effects of stacking and overlapping as highlighted by NatureScot. For this reason, it is considered that a 50m micrositing limit should be recommended. This is in line with other developments approved in East Ayrshire and would give more certainty that the design would vary very little from that which may be consented.

534. Should the design change following more detailed site investigations such that turbines may require to be sited outwith the 50m limit, this should be dealt with on an individual basis in line with the necessary processes (i.e. as a variation to the S36 or as a non-material variation under Planning legislation). A blanket 100m allowance for all turbines could result in a design which looks notably different to what may be consented without any reasonable form of control.

- **The need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration;**

535. Given that the proposed development is time limited, it is recommended that conditions are attached to any consent granted which require proposals to be submitted and approved for the decommissioning, restoration and aftercare of the site.

536. It is recommended an Outline Decommissioning and Restoration Plan (ODRP) be secured through conditions and agreed before commencement of development. Thereafter, it is recommended reviews take place every 5 years, to coincide with the financial guarantee reviews. This will provide a document that can be utilised by the Council, if required, during the lifetime of the consent and will help to inform the restoration quantum value.

537. No later than one year prior to the consent expiring or decommissioning of the development, whichever is earlier, the Applicant would then require to submit a full Decommissioning, Restoration and Aftercare Plan, based on the ODRP but updating and fully detailing it. A planning condition should be used to secure this detailed Decommissioning, Restoration and Aftercare Plan. This two-stage approach is advocated by the NatureScot guidance document 'Decommissioning and Restoration Plans for wind farms.'

- **The need for a robust planning obligation to ensure that operators achieve site restoration;**

538. It is considered to be necessary that a robust obligation under S75 of the Town and Country Planning (Scotland) Act 1997, as well as a planning condition, be used to secure site restoration by provision of an appropriate financial guarantee. This approach gives the Council the widest scope of powers to secure site restoration and is supported through policy and guidance. This has been the approach taken by the Planning Authority to these type of developments drawing on experiences gained through the open cast coal investigations.

539. Circular 3/2012 sets out policy tests which planning obligations should meet. The first is that the obligation should be necessary to make the development acceptable in planning terms and that the planning authority should first consider the use of a planning condition before using a legal agreement under S75 to secure the requirement.

540. In this case, it is considered that a condition would not, on its own, provide the greatest security that an appropriate financial guarantee would be in place for the duration of the consent. It is considered to be essential that the financial guarantee is in place for the full duration of the development without any lapses. Most financial guarantees have a limited timespan (normally 5 years) and so if the financial guarantee expires and the planning authority requires the operator to obtain a new one and they refused to do so, the enforcement powers under a planning condition would not give the powers necessary to ensure that a new financial guarantee is obtained.

541. Failure to comply with a Breach of Conditions Notice would ultimately only result in a fine with no means for the Council to carry out remedial action. This issuing of an Enforcement Notice would leave a significant period of time where no guarantee is in place. The remedial action would be to require a guarantee to be put in place. If the developer does not comply with the Enforcement Notice, the Council has the right to enter the land and take steps necessary to remedy the breach. However, this still does not resolve the issue of the need for a financial guarantee to be in place should the developer default in the restoration obligations.

542. It is for these reasons that it is considered necessary for a planning obligation under S75 to be put in place to best secure the necessary continual financial security for the site for the lifetime of the development, in preference solely to a condition. A S75 obligation is a contractual obligation and in the event that the obligation is not adhered to then either party is entitled to go to court and seek an order for a specific implement. Enforcement through the courts under the terms of a S75 obligation would provide the Council with a more straight forward and more appropriate right of enforcement in the event of a breach.

543. It is considered, however, that a condition in addition to a S75 obligation would give the widest scope of enforcement powers.

- **The scale of contribution to renewable energy generation targets;**

544. The proposed 49 turbine development would have a maximum generating capacity of 205.8MW based on turbines with a generating capacity of 4.2MW as proposed.

545. Energy generation targets set by the Scottish Government are ambitious with the Scottish Energy Strategy setting two new targets. These are that the equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption is to be supplied from renewable sources and an increase by 30% in the productivity of energy use across the Scottish Economy. The Strategy advises that installed capacity in the region of 17GW will be required in 2030 to meet the 50% target. In this respect the 205.8MW electricity generating capacity of the proposal, would make a significant contribution to the energy generation targets.

- **Opportunities for energy storage**

546. The application does not include any proposals in this respect.

Policy RE3 Summary

547. In summary in respect of Policy RES3, the proposed application site is almost wholly within a Group 3 area as identified in the spatial framework (area with potential for wind energy development). Where it falls within Group 2 areas (areas afforded significant protection), it has been demonstrated that the adverse effects on such areas (Class 1 areas of carbon and peatland), can be sufficiently overcome.

548. In terms of this matters within the Schedule 1 criteria, following the assessment carried out above, the proposed wind farm is not considered to have unacceptable adverse impacts (following implementation of mitigation and subject to appropriate relevant conditions) in respect of:

- Carbon rich soils, deep peat and carbon balance (using the carbon calculator);
- Natural heritage, including birds;
- Wild land;
- The historic environment;
- Hydrology, water environment, flood risk and groundwater dependent terrestrial ecosystems;
- Re-use of excavated peat, forest removal and forest waste;
- Forestry and woodlands, with reference to the Ayrshire and Arran Forestry and woodland Strategy (2013);
- Residential visual amenity;
- Noise;
- Shadow flicker;
- Tourism and recreation;
- Public access, including impacts on long distance walking and cycling routes and scenic routes identified in NPF3;
- Road traffic including during construction and decommissioning;
- Trunk roads; and
- Telecommunications and broadcasting installations;

The development would have positive effects in respect of:

- The scale of contribution to renewable energy generation targets;
- Net economic impact;
- Public access within the application site;

549. There may also be additional positive effects as a result of the HMP areas proposed in providing larger areas than required for mitigation purposes for the creation and improvement of habitat for black grouse in particular. However, concerns remain about the impact on this on forestry removal policy and on the potential conflict created by areas being sited too close to wind turbines, resulting in collision risk. It is likely that these issues can be resolved in a final HMP, however, as it presently stands, there should be caution in applying weight in favour of the proposed development in respect of the HMP.

550. Most of the adverse issues in relation to the proposed wind farm arise as a result of landscape and visual impacts. For any large scale wind energy development, it is impossible to avoid significant effects, however, the main consideration is whether the

adverse effects would be unacceptable, particularly when balanced against the positive aspects of the proposal.

551. Taking account of the development's scale and its broad accordance with EALWCS guidance in respect of its location (with the exception of the eastern parts of the scheme which cross into the more sensitive Upland Basin landscape); the limited significant landscape and visual effects to the west (including to the Doon valley and the settlements and other receptors within it); and the overall assessment of no significant effects on designated landscapes, the consideration of potentially unacceptable adverse landscape and visual impacts is focused on the effects to the north and east of the proposal where most of the significant effects are predicted.

552. Apart from the host Foothills with Forestry and Opencast Mining LCT where significant landscape impacts are considered to be broadly acceptable by virtue of the simple and large scale nature of this landscape as well as the modifications which have taken place within it, there are predicted to be significant landscape character impacts to parts of two other LCTs.

553. These are the Ayrshire Lowlands LCT (to the north) the effects of which would be largely contained to the area south of the A70 (within 5-6km); and the Upland Basin LCT (to the east), within the River Nith corridor west of New Cumnock. Significant cumulative landscape effects are also predicted to this part of the Upland Basin in combination with existing, consented and proposed wind energy developments.

554. There are no other landscape LCTs where overall significant landscape character effects are predicted, according to IFL's response.

555. Most of the significant visual effects from the development are predicted to be to receptors to the north of the proposed development (by virtue of the extensive visibility in this area) and to the east of the proposal.

556. To the north the significant visual effects are also cumulative due to the additional effects of the proposed North Kyle wind farm to consented and proposed schemes at South Kyle, Overhill, Polquhairn and Greenburn (with combinations differing depending on locations).

557. To the east, within the Upland Basin, significant visual effects are also cumulative due to views of the proposed North Kyle wind farm alongside views to Enoch Hill, Pencloe, Hare Hill, Afton, Lethans and Greenburn wind farms.

558. Significant visual and cumulative visual effects would be experienced from the settlements of Ochiltree (particularly to the western part), Skares, elevated parts of Cumnock, western parts of new Cumnock and the smaller settlements of Dalleagles and Burnside on the B741 to the south of the site.

559. Significant visual effects are predicted to some transport routes, mainly to the north and south of the proposal, including the A70, between Ochiltree and Killoch; the B741 between Maneight and New Cumnock and west of Dalmellington and the B7046 Cumnock to Drongan road. Significant visual effects are <u>not</u> predicted to the A76, A713 or overall to the Glasgow and South Western Railway Line.

560. Significant visual effects are also predicted to core paths between Ochiltree and Drongan; the New Cumnock Circular and the upper parts of routes within the Craigengillan estate including Auchenroy Hill. No significant visual effects are predicted to the River Ayr Way or routes within the Dumfries House Estate.

561. Some of the identified significant landscape and visual effects are exacerbated by the layout and location of turbines. When viewing from the north, turbines to the west appear more exposed, seen with small scale lowland farms and houses and bigger electricity pylons, accentuating the scale of turbines. From the east, there are issues of stacking and an uneven arrangement with turbines seen to be advancing into the Upland Basin. However, the design successfully limits impacts to the west.

562. In order to mitigate for some of the most significant effects to the north and east of the proposal, a total of 15 turbines were suggested for removal (turbines 1-12 and 16-18). The applicant amended the scheme to remove 5 of the turbines suggested (1, 2, 10, 11 and 12). The effect of this sufficiently mitigates for the otherwise unacceptable adverse residential visual amenity impacts to Upper Beoch although the property remains subject to significant visual impact. The LVIA significant effects remain largely unchanged although there would be minor improvements locally to the direct impacts on the upper Nith valley and also to the visual amenity impacts to the B741 between Maneight and New Cumnock and the settlements along that road.

563. The removal of all 15 of the turbines, as was suggested to the applicant by officers, may have reduced the impacts (direct and indirect) on the Upland Basin (particularly turbines 3-9 with 1 and 2 now omitted). However, it is acknowledged that the Upland Basin landscape within which turbines 3, 6 and 7 are located has been significantly modified due to past opencast mining activity which is considered to lessen its sensitivity at this location. Notwithstanding this, significant effects to the landscape would occur along the upper part of the Nith valley towards New Cumnock.

564. It is not necessarily the case that removal of all of the turbines suggested would remove all of the significant landscape impacts, however it is likely that it would reduce the effects. Weight should, however, be given to the prediction that the significant landscape character effects as a result of the 49 turbines scheme would be relatively localised to within 5-6km and not within the Upland Basin as a whole.

565. Turbines 4, 5 and 16 are also noted as being prominent in views from New Cumnock and their removal may slightly improve that view, but this effect is likely to be minimal, particularly considering the distance from New Cumnock and the restricted parts of the town from which the wind farm would be viewed.

566. The removal of turbines 16, 17 and 18 may have improved views from the north by removing turbines which are prominently sited on high ground. However, given the scale of the wind farm, the significant visual effects of this would not be reduced.

567. The removal of turbines 3 - 9 is likely to have the most effect in reducing significant landscape character effects. However, as previously considered, the significant effects are presently relatively localised.

568. In considering whether the adverse landscape and visual effects of proposed development are acceptable in terms of Policy RE3, there has to be a balancing exercise undertaken. As considered above, the proposed scheme would be located to an area which is in general alignment with the EAWLCS (with the exception of its encroachment into the Upland Basin) and it would have substantial positive effects, particularly in respect of renewable energy generation. The design is reasonably successful in limiting the adverse landscape and visual effects from many locations (including designated landscapes and the sensitive Doon valley). The design and mitigation measures proposed also mitigate other significant effects to an acceptable level, for example in terms of noise, cultural heritage and residential visual amenity.

569. **Taking account of the foregoing deliberations, although there would be significant landscape and visual impacts as noted, particularly to the north and**

east of the proposed development, it is considered that it is in overall accordance with Policy RE3. Although there are also presently unresolved materially adverse impacts on aviation matters, and potentially black grouse, these are matters which are primarily for other consultees (ie NATS/GPA and RSPB/SNH respectively), who have expertise on such matters, to advise the Scottish Government on. Ultimately it will be for the Scottish Government to take account of the respective consultees' advice in determining the S36 application.

Policy RE5: Financial Guarantees

570. Policy RE5 requires that where necessary in terms of the scale and complexity of the proposal, and the consequences of any failure to restore the site, the Council will require an appropriate financial guarantee in respect of wind energy, waste management, landfill and electrical infrastructure proposals, to ensure that all decommissioning, restoration, aftercare and mitigation requirements attached to planning consents can be met in full.

571. Any planning permission granted for such developments will be appropriately conditioned and/or subject to a Section 75 obligation to ensure that an appropriate financial guarantee is put in place to the satisfaction of the Council. No development will be permitted on site until any legal obligation and planning conditions have been discharged by the Council.

572. The financial guarantee mechanism and the amount covered will be reviewed at regular intervals by an independent party. The developer will be required to demonstrate to the satisfaction of the Council that the guarantees continue to be of a sufficient level to cover all potential restoration, aftercare, decommissioning and mitigation costs.

573. **As is considered within the Schedule 1 criteria above, there is a need for a financial guarantee to be in place for the duration of the development and it is necessary that this is secured by a S75 obligation and a condition to ensure the widest scope of powers is available to the Council should it need to enforce against the operator.**

Policy ENV8: Protecting and Enhancing the Landscape

574. Policy ENV8 states that the protection and enhancement of East Ayrshire's landscape character as identified in the Ayrshire Landscape Character Assessment will be a key consideration in assessing the appropriateness of development proposals in the rural area. The Council will require that:

(i) Development proposals are sited and designed to respect the nature and landscape character of the area and to minimise visual impact. Particular attention will be paid to size, scale, layout, materials, design, finish and colour.

(ii) Where visual impacts are unavoidable, development proposals should include adequate mitigation measures to minimise such impacts on the landscape.

(iii) Particular features that contribute to the value, quality and character of the landscape are conserved and enhanced. Development that would result in the loss of valuable landscape features, to such an extent that character and value of the landscape, are unacceptably diminished, will not be supported. Such landscape features include:

a. Settings of settlements and buildings within the landscape;

b. Skylines, distinctive landform features, landmark hills and prominent views;
c. Woodlands, hedgerows and trees;
d. Field patterns and means of enclosure, including dry stone dykes; and
e. Rights of way and footpaths

575. Development that would create unacceptable visual intrusion or irreparable damage to landscape character will not be supported by the Council.

576. **Landscape and visual impacts as a result of the development are considered within the Policy RE3 Schedule 1 criteria above. In terms of the NatureScot Landscape Character Assessment, the development would result in direct landscape impacts to the Foothills Landscape Character Type (LCT). This coincides with the Foothills with Forest and Opencast mining LCT in the EAWLCS which considers there to be scope for wind energy development within this landscape. There would also be direct and indirect landscape impacts on the Upland Basin LCT which is lower lying, smaller scaled and more settled. Direct landscape impacts would be attributable to the area within the Upland Basin previously subject to opencast operations. The loss of and impact on features within this particular area is not considered to be as adverse as it may be if the land had not been disturbed for opencast coaling. The turbines within the Upland Basin LCT and in close proximity to it, would, however, have indirect adverse effects on the setting of this landscape and on the Upper Nith Valley. There would also be significant adverse landscape character impacts to the Agricultural Lowlands, particularly south of the A70 due to the impacts of the wind farm on the setting of this landscape.**

577. **Significant visual impacts would be extensive, particularly to the north and east of the proposed development.**

578. **Given the significant landscape and visual impacts of the proposed development, particularly to the Upland Basin and Agricultural lowlands (to the east and north respectively) it is considered that it would be contrary to part (i) of this policy, (ii) given that mitigation is not possible. With regard to (iii), it is not considered that the development would some direct loss of landscape features and indirectly a loss of character, particularly to parts of the Upland Basin and Agricultural lowlands LCTs.**

579. **However, in terms of the development's acceptability under this policy, balance has to be given to the merits of the development proposed and in particular, its acceptability in terms of Policy RE3. Taking account of this, the development is not considered to be unacceptable under Policy ENV8 despite it being contrary to parts of it.**

Policy ENV10: Carbon Rich Soils

580. This policy states that in recognition of the role of peatland soils as valuable carbon stores or "sinks", the Council will seek to minimise adverse impacts from development on such soils, including by the release of CO2 to the atmosphere. The Council will support and promote the restoration of peatland habitats, where there is potential for such habitats to become active carbon stores and help to reduce net carbon emissions.

581. However, development may be permitted for renewable energy generating developments on carbon rich soils where it can be demonstrated (in accordance with the Scottish Government's 'carbon calculator' or other equivalent evidence) that the balance of advantage in terms of climate change mitigation lies with the energy

generation proposal, and that any significant effects on these areas can be substantially overcome by siting, design or other mitigation.

582. **Consideration has been given to carbon rich soils in relation to policy RE3 and Schedule 1. As previously noted the 'carbon calculator' indicates that the development would have a carbon payback period of 1.9 years demonstrating an advantage in terms of climate change mitigation as a result of the development. Policy ENV10 also requires that any significant effects be substantially overcome by siting, design or other mitigation. This is akin to the Group 2 type consideration of Policy RE3 and the proposal raises no significant issues in this respect.**

583. **The application also proposes area of peatland restoration within its HMP proposals which are broadly supported by this policy subject to further consideration in respect of impacts to grouse and deforestation.**

584. The following policies are relevant to the development to varying degrees. Detailed consideration of the subject matter to which the policies relate has been given under Policy RE3 and Schedule 1 above and therefore it is not considered necessary to reiterate similar considerations in respect of each. This detailed consideration has indicated that the development has no unacceptable adverse impacts on any of the subjects of relevance to East Ayrshire and to which these policies relate. Having considered the detailed wording of each of the policies the proposal can be described as being in compliance with, or through planning conditions could be made to be in compliance with:

- T1 (Transportation requirements for new development) noting that the proposal has no objection from ARA and Transport Scotland subject to conditions.
- T4 (Development and Protection of Core Paths and Natural Routes) noting that there are no core paths within the site and public access is currently very limited. Indirect impacts on core paths have also been considered in terms of recreational interests with no significant impacts found.
- ENV1 (Listed Buildings) as no unacceptable adverse impacts on the setting of listed buildings are expected (noting the HES view in respect of the significant effects on the setting of The Temple);
- ENV2 (Scheduled Monuments and Archaeological Resources) as no significant adverse impacts are expected and WoSAS have raised no objection;
- ENV4 (Gardens and Designed Landscapes) as no overall significant landscape or cultural effects on GDLs are expected.
- ENV6 (Nature Conservation) as there would be no significant impacts on the matters this policy seeks to protect with the exception of potential impacts on black grouse, as noted in the RSPB comments.
- ENV7 (Wild Land and Sensitive Landscape Area) as no significant adverse effects are expected to either of these designations.
- ENV9 (Trees, Woodland and Forestry) as, subject to a revised forest plan being submitted and approved, there should be no significant adverse impacts.
- ENV11 (Flood Prevention) as no significant flooding impact is expected.
- ENV12 (Water, air and light and noise pollution) as no significant effects are expect in respect of any of those matters.
- RES11 (Residential Amenity) noting that there are not considered to be any significant and unacceptable impacts in respect of noise, shadow flicker or overbearing residential visual amenity impacts.

Overarching Policy OP1

585. This overarching policy requires that all development proposals will require to meet the following criteria in so far as they are relevant, or otherwise demonstrate how their contribution to sustainable development in the context of the subsequent relevant policies in the local development plan and Scottish Planning Policy would outweigh any lack of consistency with the relevant criteria:

(i) Comply with the provisions and principles of the LDP vision and spatial strategy, all relevant LDP policies and associated supplementary guidance and non-statutory guidance;

This proposed development is located in the rural area, the vision for which is that wind energy development will have taken place to ensure that the potential for electricity from renewable sources is achieved in line with national climate change targets whilst giving due regard to relevant environmental, community and cumulative impact considerations.

As considered under Policy RE3, the proposed development would have a renewable energy generating capacity of 205MW, contributing substantially to renewable energy targets. The development would also result in carbon savings over its lifetime, contributing to carbon reduction targets. These benefits, as well as others, require to be balanced against the adverse effects of the proposals.

Similarly, in respect of the spatial strategy, it aims to identify opportunities for renewable energy development, particularly wind energy, giving due regard to relevant environmental, community and cumulative impacts.

As assessed under Landscape and Visual Impacts, it is considered that there will be significant adverse landscape and visual impacts as a result of the proposal and this is considered to be contrary to that particular criterion. In terms of the acceptability of this, balance against the benefits of the proposal is required.

(i) Be fully compatible with surrounding established uses and have no unacceptable impacts on the environmental quality of the area;

The proposal does not raise any material issues in respect of this criterion.

(iii) Ensure that the size, scale, layout, and design enhances the character and amenity of the area and creates a clear sense of place;

It is considered that the relevance of this criterion to wind energy development is tenuous at best as large scale wind energy development is likely to have a number of significant adverse impacts on the character and amenity of the area particularly by way of landscape and visual impact.

However, in so far as it is relevant to the proposal, although the changes to size and layout would further impact on visual amenity, they are not considered to be so significant that they would affect compliance with this criterion. The proposed development may also have some benefits in creating recreational uses into an area which has been lacking in this regard, adding to placemaking.

(iv) Where possible, reuse vacant previously developed land in preference to greenfield land;

This criterion is not applicable to wind energy development as preference for brownfield sites over greenfield does not form part of the wind energy spatial framework.

(v) Be of the highest quality design by meeting with the provisions of SPP, the Scottish Government's policy statement Designing Streets, the Council's Design Guidance and any master plan/design brief prepared for the site;

This criterion is not applicable to a wind energy development.

(vi) Prepare Master Plans/Design Statements in line with Planning Advice Notes 83 and 68 respectively where requested by the Council and/or where this is set out as a requirement in Volume 2 of the LDP;

This criterion is not applicable to a wind energy development.

(vii) Be compatible with, and where possible implement, projects shown on the LDP placemaking maps;

This criterion is not applicable to a wind energy development.

(viii) Ensure that there is no unacceptable loss of safeguarded areas of open space/green infrastructure and prime quality agricultural land;

There is no such loss associated with this development.

(ix) Protect and enhance natural and built heritage designations and link to and integrate with green infrastructure where possible;

Consideration of impacts on the natural and built heritage is set out above against the detailed wind energy policies and the proposed development is not considered to be contrary.

(x) Ensure that there are no unacceptable impacts on the landscape character or tourism offer of the area;

Consideration of such matters is set out above against the detailed wind energy policies. In summary it is considered that there would be some materially adverse impacts on landscape character. However, it is not considered that there would be materially adverse effects on tourism.

(xi) Meet with the requirements of all relevant service providers and the Ayrshire Roads Alliance; and

The Ayrshire Roads Alliance (and Transport Scotland) do not object to the proposed development.

No other relevant consultees have objected.

(xii) Be accessible to all.

In respect of wind energy development, there is a limit to how accessible it is expected that a wind farm should be. At present, the site has very little, if any opportunities for recreational access. However, in the operational phase, it is proposed that public access is encouraged through the use wind farm access roads as well as new access tracks specifically for pedestrians and cyclists (assuming that new access tracks form part of the current application).

East Ayrshire Minerals Local Development Plan (MLDP) 2020

Policy MIN SS3: Coalfield Communities Landscape Partnership

586. This policy encourages and supports developments that contribute to the vision and aims of the Coalfield Communities Landscape Partnership, as a key means of regenerating and rejuvenating the former coalfield area.

587. The vision of the Coalfield Communities Landscape Partnership (CCLP) is that Coalfield Communities share the benefits of a renewed landscape, welcoming visitors from afar to celebrate their unique heritage and promote stewardship of the land, shaped by an understanding of the past and needs of the future.

According to the CCLP website, the scheme aims to:

- Address the threats to the natural, built and cultural heritage through conservation, enhancement and promotion, capitalising on the area's assets for the benefit of the people in the landscape;
- Create opportunities for learning, recreation and wellbeing with the landscape for people with a range of abilities and backgrounds;

- Reveal the past lives of the communities, drawing upon their close relationship with the land, thereby connecting people with their heritage and inspiring stewardship;

- Equip people with the skills and knowledge to manage their landscape sustainably, building capacity and making it a successful place for residents and visitors alike.

588. **The application site falls within the boundary of the CCLP and is also within the boundary of one of the potential projects which is the North Kyle Forest Masterplan (Pioneer phase). The North Kyle Forest Masterplan is considered further below as a material consideration.**

589. **The above vision and aims are very broad and are intended primarily to provide a basis for the selection and development of the projects within the area. In terms of how the proposed wind energy development should be considered in terms of the vision and aims, the main consideration is whether it is likely to cause any prejudice to the aims being realised and/or if it provides opportunities which would positively align with the aims.**

590. **The development site is located in an area which has been significantly and extensively disturbed through past mining activities and has also been in commercial forestry use. Impacts on natural resources such as peat and protected species are considered above and there are not considered to be significant impacts in this respect. Significant landscape and visual impacts are predicted within the CCLP boundary, however, this is not considered to conflict materially with the above vision and aims.**

591. **The application also contains proposals to provide further enhancement to the area which may align with the above vision and aims. These include promoting walking and cycle access into the area of the North Kyle Forest where the wind farm is proposed, creating wetland and bog habitat, reshaping areas of spoil and spreading excavated peat onto areas of former opencast workings to form a soil horizon for seeding.**

592. **Overall, it is not considered that the proposed wind farm would materially prejudice the vision and aims of the CCLP and may create opportunities which align with the aims. This is taking account of the broad support for wind energy development set out in the vision and spatial strategy of the LDP.**

Policy MIN SS4: Former minerals opportunity sites and placemaking

593. This policy states that on former minerals opportunity sites the Council will support proposals that contribute to rural placemaking and provide amenity after-uses that protect and improve the environmental quality of the site and surrounding area and increase the value of the sites to local communities. Amenity after-uses are encouraged that support healthy lifestyles and improve connections between rural settlements.

Amenity after-uses include the creation of:

- formal and informal recreational areas;
- multi-functional woodland;
- geological exposures;
- wetlands;
- regenerated wildlife habitats and/or new habitat networks; and
- foot and cycle networks.

594. In addition to the amenity afteruses, the Council further encourages new, innovative uses on the former minerals opportunity sites which support at least one of the four restoration and placemaking themes of the MLDP. Such proposals will be required to demonstrate a clear on-site benefit to the environment and local communities.

595. The Council will be particularly supportive of multi-use developments that incorporate a range of uses, including the amenity afteruses listed above.

596. The Council encourages any interested party or potential applicant to engage with the Council and communities at an early stage of project development to agree the principle of the proposal and to promote joined up working to achieve the best possible outcome for the former minerals opportunity sites.

597. The principle of any proposals that come forward must be in accordance with the vision and aims of the MLDP and all relevant Development Plan policies.

598. **The proposed wind farm development is within the former minerals opportunity site identified as Dalmellington North in the MLDP. The proposed development would primarily bring the site in to use for the generation of renewable energy contributing to Scottish Government targets in respect of renewable energy and reducing greenhouse gas emissions. In addition to this use, the site would continue to be used for commercial forestry but with proposals for a more diverse range of species, more open space, creation of improved habitats, bog restoration proposals and provision of public access tracks (as proposed within the outline HMP and Outdoor Access Statement respectively).**

599. **These proposals are consider to contribute to rural placemaking, increasing the value of the site to neighbouring communities, in accordance with this policy. These proposals also fit with at least one of the MLDP restoration and Placemaking themes, particularly by stimulating opportunities for inclusive economic growth in the rural area which benefits its communities.**

600. **The proposed development would also accord with the vision for the MLDP which includes that former minerals sites will be restored or reused resulting**

in a sustainable environmental, economic and social legacy, contribution to the wider regeneration and enhancement of East Ayrshire's landscape and environment. The assessment against other development plan policies should take place primarily in respect of the LDP policies and these are considered above and in the conclusions section below.

Policy MIN SUP2: Borrow Pits

601. Policy MIN SUP2 states that borrow pits will only be permitted where it can be demonstrated that:
    - there are significant environmental or economic benefits compared to obtaining material from local quarries;
    - they are time-limited;
    - they are tied to a particular project; and
    - there are appropriate reclamation measures in place.

602. All borrow pits will be required to be within the planning application boundary of the project the mineral is to be used for. The requirement for the information of an additional borrow pit will need to be justified in terms of insufficient (fit for purpose) supplies in the first borrow pit.

603. In addition to being assessed against the broader provisions of the plan, proposals for borrow pits will be considered in relation to:

    (i) The needs of particular construction projects;
    (ii) The distance of the project from suitable quarries;
    (iii) The number of vehicle movements which will be avoided;
    (iv) Carbon assessments;
    (v) The duration of the excavation
    (vi) Site specific proposals for restoration and aftercare;
    (vii) Environmental considerations such as impacts on water environment including watercourses and GWDTEs; and
    (viii) Potential disturbance to wildlife.

604. The Council will require applicants to submit supporting evidence in respect of the above criteria to accompany any application which involves the creation of borrow pits.

605. **The application proposes that stone will be sourced from the existing over-widened haul road, from existing spoil and overburden areas and from overburden stores at various locations along the route of the haul road. This source of stone is preferred to the use of newly won materials and is considered to constitute a sustainable method of sourcing stone. However, this is subject to further investigation of the stones' suitability for its intended use.**

606. **Should these sources of stone not be suitable, it is proposed that it would be sourced from four temporary borrow pits (referred to as stone extraction areas (SEAs) in the application. The SEAs are shown as larger areas intended to be 'areas of search' pending further site investigations to determine the extent of materials. It is estimated that a total of 572,000 m^3 could be sourced from the SEAs and that this would be sufficient for the construction of infrastructure.**

607. **With regard to the above policy requirements, there are benefits from sourcing on-site as opposed to from local quarries in terms of the reduction in travel required for this which will lead to a decrease in carbon emissions and less impact on the local road network.**

608. **The SEAs are proposed as temporary for the duration of extraction only. Thereafter, restoration would be required by condition. The SEAs are proposed in relation to the proposed wind farm only.**

609. **Issues such as carbon assessments, environmental and wildlife matters have been assessed as part of the overall wind farm proposal under Policy RE3 and there is no need to carry out a separate assessment for the borrow pits alone. SNH have raised concerns about the impact of SEA4 on a badger sett, however, it is considered that this can be sufficiently mitigated.**

610. **Details of restoration can be submitted and approved by condition. The duration of excavation has not been considered in the EIA Report but this can be sufficiently controlled through condition.**

611. **Taking account of the above matters and the absence of any changes in respect of the borrow pits proposed, it is considered that the development proposed would accord with this policy.**

Development plan summary

612. The policies which are within the East Ayrshire LDP are considered to be most relevant to this proposal and Policy RE3 in particular contains most of the criteria against which such a wind energy proposal requires to be assessed. Overarching Policy 1 allows for a more 'high level' assessment which also takes account of the overall LDP vision and spatial strategy.

613. The main considerations in considering compliance with the development plan are whether the benefits of the proposal which are primarily in terms of renewable energy development, reduced carbon emissions, public access and economic development outweigh the negative effects which are the adverse landscape and visual effects set out above.

614. As considered above, the development is considered to accord with Policy RE3 as the positive effects of the proposed development are considered to outweigh the adverse landscape and visual effects. Similarly, with Policy OP1, the proposed development is considered to accord with this overarching policy, including the vision and spatial strategy.

615. In terms of other development plan policies, including those within the MLDP (and have less relevance to the proposed development), there are none which the proposed development would be in breach of.

616. Taking account of the above assessment, the proposed development is considered to be in accordance with the development plan for East Ayrshire.

ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

617. The principal material considerations relevant to the appraisal of the application are National Planning Framework 3, Scottish Planning Policy, National and Scottish Government Energy Policy, Scottish Government online Guidance for Onshore Wind Turbines, the East Ayrshire Landscape Wind Capacity Study 2018, North Kyle Forest Masterplan and the applicant's supporting statements including the Regeneration and Enhancement Statement, consultation responses and representations

618. Additionally, the Council's approach to decommissioning and restoration as set out in Reports to Council dated 24 May 2013, 19 September 2013 and 28 January 2014, the Report to Cabinet on 21 May 2014 on decommissioning, restoration, aftercare

and mitigation financial guarantees and Heads of Planning, Scotland (HoPS) subcommittee position statement on financial guarantees, are also relevant material considerations.

National Planning Framework 3 (NPF3)

619. NPF3 is a long term strategy for Scotland. It is the spatial expression of the Government Economic Strategy, and its plans for development and investment in infrastructure. As part of the transition to a low carbon economy it advises that the ambition is to achieve at least an 80% reduction in greenhouse gas emissions by 2050. Section 3.8 advises that by 2020, 30% of overall energy demand will come from renewables including the equivalent of at least 100% of gross electricity consumption. Section 3.11 recognises that an energy generation mix will continue to be required. Section 3.15 highlights that at least 500MW of renewable energy will be in community and local ownership by 2020,

620. Section 3.23 advises that onshore wind will continue to make a significant contribution to diversification of energy supplies. It notes that windfarms should not be located in national parks or national scenic areas. It advises that the required spatial framework will be set out in SPP to guide new energy developments to appropriate locations, taking into account important features. Section 3.24 highlights that local and community ownership can have a lasting impact on rural Scotland and 3.25 highlights the opportunities for manufacturing and servicing to support the renewables energy sector will continue to grow across rural areas, broadening the distribution of employment and development.

621. NPF3 offers broad support for onshore wind as part of Scotland's energy mix highlighting in particular the benefits in tackling climate change by reducing greenhouse gas emissions. It does however note that there are areas where developments are unacceptable and, through the SPP spatial strategy, areas where they may be appropriate but 'taking into account important features'.

622. The proposed wind farm will contribute to the reduction in greenhouse gas emissions as highlighted through the carbon calculations. Further, it will generate a substantial quantity of renewable electricity given the generating capacity of the development and the yield expected by the applicant. NPF3 does highlight though that some developments may be inappropriate should 'important features' identified through the SPP spatial strategy indicate this. In this case, there are landscape and visual impacts in particular, amongst other relevant impacts. As NPF3 highlights that SPP sets out the required approach to spatial frameworks, guiding new development to appropriate locations and taking into account important features, detailed consideration for site specific compliance will largely take place against that document.

623. **Given the strategic scope of NPF3 and its general support for a low carbon economy, including renewable energy developments, the development draws support in principle from NPF3.**

Scottish Planning Policy

624. SPP sets out national planning policies which reflect Scottish Ministers priorities for the operation of the planning system and for the development and use of land. It is a statement of Scottish Government policy on how national land use planning matters should be addressed across the country.

625. SPP introduces a presumption in favour of development that contributes to sustainable development and advises that the planning system should support

economically, environmentally and socially sustainable places by enabling development that balances costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost. At part 29 it lists thirteen principles that should guide policies and decisions towards this aim.

626. In decision making SPP advises that the presumption in favour of development that contributes to sustainable development is a material consideration. Where a development plan is more than five years old, a policy in an otherwise up to date development plan is out of date or the plan does not contain policies relevant to the proposal, the presumption in favour of development that contributes to sustainable development is a significant material consideration. In such circumstances decision makers are also required to take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies of SPP.

627. At part 154, SPP advises that the planning system should support the transformational change to a low carbon economy, consistent with national objectives and targets. It should support the development of a diverse range of electricity generation from renewable energy technologies – including the expansion of renewable energy generation capacity and should guide development to appropriate locations and advise on the issues that will be taken into account when specific proposals are being assessed.

628. Regarding onshore wind SPP advises that Planning Authorities should set out in the development plan a spatial framework identifying those areas that are likely to be most appropriate for onshore wind farms as a guide for developers and communities. The SPP includes a spatial framework made up of three 'groups' of areas. Group 1 relates to National Parks and National Scenic Areas where wind farms will not be acceptable. Group 2 relates to areas of significant protection and includes designations and interests where wind farms may be appropriate in some circumstances and consideration will be required to demonstrate that any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation. In group 3 areas wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.

629. The spatial framework is complemented by a more detailed and exacting development management process where the merits of an individual proposal will be carefully considered against the full range of environmental, community, and cumulative impacts (part 169). It notes that individual properties and settlements not identified in development plans will be protected through local development plan policy (part 164).

630. Part 170 notes that areas identified for windfarms should be suitable for use in perpetuity noting that consents may be time limited but wind farms should nevertheless be sited and designed to ensure impacts are minimised and to protect an acceptable level of amenity for adjacent communities. Finally, part 173 on community benefit advises that where a proposal is acceptable in land use terms, and consent is being granted, local authorities may wish to engage in negotiations to secure community benefit in line with the Scottish Government Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments document.

631. SPP (as revised in December 2020) introduces a presumption in favour of sustainable development. Part 29 sets out thirteen principles which should be taken into account in assessing whether the proposed development supports sustainable development. These principles and consideration of the development against each are as follows:

1. Giving due weight to net economic benefit;
2. Responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
3. Supporting good design and the six qualities of successful places;
4. Making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
5. Supporting delivery of accessible housing, business, retailing and leisure development;
6. Supporting delivery of infrastructure, for example transport, education, energy, digital and water;
7. Supporting climate change mitigation and adaptation including taking account of flood risk;
8. Improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;
9. Having regard to the principles for sustainable land use set out in the Land Use Strategy;
10. Protecting, enhancing and promoting access to cultural heritage, including the historic environment;
11. Protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
12. Reducing waste, facilitating its management and promoting resource recovery;
13. Avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

632. **Taking account of each of the above criteria which are relevant to the varied development, it is considered that the proposal would have particular positive impacts in terms of supporting climate change mitigation; supporting the delivery of infrastructure; improving health and well-being by offering opportunities for physical activity; economic benefit and making efficient use of existing capacities of land. In terms of the sustainable land use principles set out in the Land Use Strategy there would be positive contributions in respect of some aspects such as the delivery of multiple benefits from land, its contribution to delivering climate change adaption and mitigation and outdoor recreation. Negative aspects are likely in respect of landscape change due to the impacts primarily on parts of the Upland Basin and East Ayrshire Lowlands. The negative impacts due to the adverse landscape and visual impacts are considered to be outweighed in terms of the overall sustainable development criteria. The proposed development is therefore considered to contribute to sustainable development and should be taken account of as a material consideration.**

National and Scottish Government Climate Change and Energy Policy

633. The Energy White Paper 2007 committed the UK Government to the delivery of a low carbon economy. Subsequent legislation and policies have sought to increase the proportion of energy that is derived from renewable sources and to reduce emissions of greenhouse gases. These measures are in response to legally binding European targets that require 15% of the UK's energy to be derived from renewable sources by 2020 and for there to be a 16% reduction in greenhouse gas emissions by the same deadline. In October 2017, the UK Government published The Clean Growth Strategy setting out ambitious policies and proposals, through to 2032 and beyond, to reduce emissions across the economy and promote clean growth. The Policies and Proposals specific to growing low carbon sources of electricity are set out on page 99

of the Strategy and it is clear that renewables (and particularly offshore wind and solar) are expected to play an important role alongside nuclear power.

634. The Climate Change (Scotland) Act 2009 sets out the Scottish Government's key commitments in terms of environmental legislation which promotes reductions in greenhouse gas emissions. Part 1 of this Act creates the statutory framework for reduction of greenhouse gas emissions in Scotland by setting an interim 42% reduction target for 2020 and an 80% reduction by 2050. The Act also requires Scottish Ministers to set annual targets for Scottish emissions from 2010 to 2050. The Third Report on Proposals and Polices was published in 2018 and sets out how Scotland can deliver its target of 66% emissions reductions, relative to the baseline, for the period 2018-2032.

635. The Scottish Energy Strategy was published in December 2017 and is a recent expression of the Scottish Government Energy Strategy. The document sets out a 2050 vision for Energy in Scotland. The strategy is intended to support the achievement of long term climate change targets which are touched upon above and address the impact of poor energy provision. It sets out six energy priorities in supporting the 2050 vision which includes continuing support for renewable and low carbon solutions to meet local and national heat, transport and electricity needs, helping to achieve ambitious emissions reduction targets.

636. The Strategy promotes a 'whole system view' which intends to broaden the Scottish Government's focus to include heat, transport, electricity and energy efficiency to create an integrated approach. In terms of a future energy system, the Strategy does not provide certainty about how this might evolve however it does foresee that a greater proportion of both heat and transport demand is likely to be met by electricity which would allow the continued growth of low carbon electricity generation, combined with storage and other smart technologies.

637. The Strategy does not give any certainty over the future energy systems however it does set out two targets for the Scottish energy system by 2030:

- The equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption to be supplied from renewable sources, and
- An increase by 30% in the productivity of energy use across the Scottish economy.

638. Diagram 10 on page 24 of the Strategy shows the 2030 renewable energy target and renewable energy demands. The text supporting the diagram highlights that renewable electricity has outperformed the interim 2015 target of 50% and could rise to over 140% of Scottish electricity consumption. It goes on to note that this assumes a considerably higher market penetration of renewable electricity than today, requiring in the region of 17GW of installed capacity in 2030. To place this in context, statistics from the Scottish Government notes that Scotland had an installed renewable electricity capacity of 11.9GW as of June 2020. A further 13.9GW is under construction, has been consented or is in planning, a proportion of which would be expected to add to the installed total in due course.

639. In relation to onshore wind, at page 43 the Strategy notes that this technology will continue to play a vital role. Support will continue to be given to development in the right places, including extension and replacements of existing sites, noting that the relevant planning and consenting processes will remain vitally important.

640. Specific to onshore wind, the Scottish Government also published The Onshore Wind Policy Statement to accompany the Scottish Energy Strategy. The Statement sets out

the Scottish Government's longstanding support for onshore wind development and the continued need for more onshore wind development and capacity as well as noting the potential for energy storage to enhance onshore wind. The document recognises that environmental and other impacts including impacts on landscape must be taken into consideration.

641. The Scottish Government Chief Planner wrote to Scottish Heads of Planning to "*re-emphasise that the Scottish Government's Scottish Planning Policy (2014) and Electricity Generation Policy Statement (2013) set out the Scottish Government's current position on on-shore wind farms and that this remains the case*" and that the target of 100% gross electricity consumption from renewables is not a cap on supporting such developments, including on shore wind, once the target has been reached. He advised that decisions should be informed by relevant development plan policies, themselves informed by Scottish Planning Policy. Whilst not energy or climate change policy in itself, it is useful interpretation of how the targets should be approached.

642. The Scottish Climate Change Plan was published in 2018 and sets a vision that by 2032, Scotland will have reduced its emissions by 66% against 1990 levels. Ambitions in respect of electricity generation remain consistent with the Scottish Government Energy Strategy 2017 in that by 2032 Scotland's electricity system will be largely decarbonised.

643. An update to the Climate Change Plan was published in December 2020 and this increases the ambition to reduce emissions to 75% against 1990 levels by 2032. In respect of the electricity sector, the update's ambitions in respect of a decarbonised electricity system remain the same, however, new climate change targets also mean a move to low carbon electricity system with potential Negative Emission Technologies (NETs) to deliver negative emissions from the electricity sector, for example through use of bioenergy for electricity generation combined with carbon capture and storage.

644. **The proposed development draws support in principle from energy and climate change policy. With a contribution of an additional 205MW of renewable energy, it contributes towards renewable energy generation targets, helping to secure the move to a low carbon electricity system, contributing to climate change targets.**

Scottish Government Guidance – On Shore Wind Turbines

645. This guidance is published by the Scottish Government and is an online resource that provides Planning Authorities with guidance in the consideration of proposals. It was last updated on 28 May 2014. In the period since publication spatial guidance has changed therefore elements relating to spatial planning should not be relied upon however the technical matters and typical considerations matters that the advice sets out remain largely relevant and useful. These matters have been considered in some detail against Policy RE3 and Schedule 1 of the East Ayrshire LDP.

The East Ayrshire Landscape Wind Capacity Study 2018 (EAWLCS)

<u>East Ayrshire Landscape Wind Capacity Study (EAWLCS) 2018</u>

646. The EAWLCS aims to inform both strategic spatial planning for wind energy developments and to provide guidance on the appraisal of individual wind farm and wind turbine development proposals. In particular, is provides a landscape and visual sensitivity assessment for potential wind farm developments within the 12 different

landscape character types in East Ayrshire, considering potential cumulative effects with other operational and consented wind energy developments.

647. Almost all of the application turbines are located within the Foothills with Forestry and Opencast Mining Landscape Character Type (LCT17A) as identified within the East Ayrshire Landscape Wind Capacity Study (EAWLCS) 2018. Within this LCT the EAWLCS notes that…

> "*There is very limited scope for the very large typology (turbines more than 130m) to be accommodated and that turbines less than 150m high would reduce intrusion as well as cumulative effects on surrounding more sensitive landscapes. Turbines should be set well back from the more sensitive north-eastern, eastern and south-western edges of these foothills to avoid significant impact on smaller scale settled landscapes and to also minimise cumulative effects with operational and consented wind farms seen from the Upland Basin and Upland River Valley (Upper Doon Valley) LCTs*"

648. The proposed development reasonably successfully complies with this guidance in terms of its set back from the sensitive south-western edge of the foothills being contained behind the more prominent peaks of Benquhat Hill and Benbeoch therefore reducing landscape and visual impacts to the Upper Doon Valley.

649. To the north east, Carsgalioch Hill provides some containment, however there are turbines located on or close to the containing edge around High Mount, increasing visibility to landscape and visual receptors to the north within the East Ayrshire Lowlands LCT.

650. To the east, turbines spill into the Upland Basin LCT increasing the impacts within this smaller scaled and settled LCT. The guidance for the Foothills with Forestry and Opencast Mining also notes the issue of a potential perceived 'encirclement' of the Upland Basin which may result from development on this LCT as well as to the East Ayrshire Southern Uplands, the Southern Uplands with Forest and the Plateau Moorlands LCTs. The presence of turbines which spill into the Upland Basin is also likely to exacerbate this cumulative effect.

651. The EAWLCS also notes the potential for exacerbation of the existing landscape fragmentation caused by opencast coal mining through the siting of wind turbines within disturbed ground. Opencast sites at the Chalmerston complex in particular are the most visible and significant of the unrestored sites in the vicinity without prospect of full restoration. Council proposed work to the Chalmerston complex using bond funds consists of safety and remedial work only. Additional works are proposed within the applicant's Regeneration and Enhancement Activities Statement which is discussed further below. However, the sites would remain largely unrestored. House of Water is undergoing restoration to a modified landscape. The unrestored/partially restored surface mines would be seen together with turbines from within the LCT itself and from its fringes. However, from more distant views, the effects of the turbines alongside the disturbed coal site landform would be less apparent.

652. **The proposed development generally accords with this guidance, noting that turbines are fairly well contained to the west and north (albeit still with significant landscape and visual effects to the north in particular). To the east, turbines spill into the lower lying and Upland Basin LCT affecting the upper Nith Valley landscape and therefore the proposed development is at odds with this particular part of the guidance, resulting in significant adverse direct and indirect landscape effects on the character of the Upland Basin LCT within around 5km.**

North Kyle Forest Masterplan (NKFM)

653. The NKFM is a Forestry and Land Scotland (FLS) led plan for the regeneration of the North Kyle Forest area. It is a 30 year vision to transform the area into "*a place of adventure, reflection and beauty that draws in locals and visitors and sustaining enterprise and investment and generating income for the local communities*". The NKFM provides high level proposals for restoration, energy production, wetland creation, access for walking and cycling, creation of a biosphere route and establishment of activity zones and a 'Hub' as a focus for tourism and recreation.

654. It is unclear presently what the status of the NKFM is within FLS as it is not referred to within the FLS website or available to view anywhere else online. However, the 'Pioneer' phase is referred to as one of the CCLP projects and it is therefore considered that the development has most relevance in relation to this phase.

655. The aims of the Pioneer phase are to establish wetland habitats with suitable access and interpretation; provide well signed walking/cycling routes ensuring good connections with adjacent communities; form a cultural heritage/arts strategy; develop a brand and market the area; and provide signage and gateways.

656. **It is considered that it is possible for the proposed wind farm to coexist with the NKFM proposals and contribute to them. This is taking account of one of the high level proposals which is for energy production. The application includes proposals for the creation of improved habitat and peatland and the provision of access within the site. The HMP, Outdoor Access Management Plan and additional regeneration and enhancement activities (considered below) within a future planning application should develop these proposals further taking cognisance of the NKFM proposals.**

Applicant's Regeneration and Enhancement Activities Statement (REAS)

657. The applicant submitted, alongside the windfarm application a document which outlines "*regeneration and enhancement opportunities which could be assisted through the project*". It sets out "*the potential to secure restoration of abandoned areas, landscape and ecological improvements, and provision of improved recreational access to North Kyle*".

658. Areas of potential activities are focussed on the Chalmerston complex with the area split into four main compartments:

- Chalmerston North;
- Coyle Water;
- Chalmerston Central; and
- Chalmerston South.

659. The REAS acknowledges the aims of the MLDP and NKFM visions and aims (as considered above), as well as Council proposals for safety and remedial works at Chalmerston which are programmed to take place independently of the proposed wind farm development.

660. The REAS splits the proposed activities into those which are 'built-in' to the wind farm proposal and those which are proposed as additional activities, to be the subject of a separate future planning application. It is proposed that all works would take place simultaneously with the wind farm development. The REAS estimates the total value of proposed works at £5.2 million with approximately half of this built in to the wind farm project. The remaining value of works (approximately £2.6 million) is proposed

to be financed by the applicant. The works which are proposed are set out and considered below.

Built-in works at Chalmerston North:

661. **"*The project will manage and enhance 30ha of existing wet modified blanket bog within the areas of open moorland. An additional 50ha of afforested bog habitat that is underlain by deep peat will be felled and restored to bog by increasing the water table and encouraging the growth of bog plants. Margins of new bog will be planted/thinned to create 27ha of woodland fringe habitat, which create an environment favoured by black grouse*".**

662. These works align with those proposed in the applicant's outline HMP (Area B) within Technical Appendix 7.4 of the EIA Report. The HMP is primarily a means of mitigating for loss of habit and impacts on black grouse. There are, however, some concerns from RSPB and Scottish Forestry about other impacts as a result of the creation of some of the HMP areas. RSPB note concerns regarding the location of bog restoration in close proximity of turbines may result in an increased risk of collision. Scottish Forestry note concerns about the need for tree felling and the ability of this to comply with forestry policy on felling.

663. The principle of this built in work is supported in terms of its mitigation for habitat loss. The HMP proposals also appear to go beyond what it necessary in terms of mitigation as is noted under natural heritage considerations in the Policy RE3 Schedule 1 criterion. The final HMP requires further consideration and likely amendments to take account of the impacts on forestry and black grouse and as a result, the works which are proposed in the REAS may be subject to change. The weight accorded to this particular activity requires to take account of the potential impacts in respect of the HMP and the likely future changes in the final version.

664. **"*Earthworks to create a 1 in 10 access road improvement to the north. Project road ways and tracks are to be retained for future network improvement to the north Kyle Forest*".**

665. This appears to be a proposal which would be of most benefit in respect of the ongoing forestry operations.

Built-in works at Coyle Water

666. **"*It is proposed that a tracked access will be provided towards Coyle Water to provide for connectivity for the establishment of the 'Hub' in the future*".**

667. The NKFM identifies the area around Coyle Water as being the 'hub' for future visitor and recreational facilities. There is a notional proposal for a watersports centre at Coyle Water.

668. Coyle Water is located outwith the application site but it appears that there is a proposal to provide links from wind farm tracks to Coyle Water. For the purposes of considering the built in works, these links could only be constructed as far as the application site boundary. These proposals are supported in principle in so far as they would facilitate future potential linkages outwith the application site and potentially to a future recreational space proposed in the NKFM. It is however noted that there are currently no firm proposals associated with the hub element and therefore the weight placed on this element must be balanced against this uncertainty.

Built-in works at Chalmerston Central:

669. **"*The project will involve grading throughout the area to provide a network of tracks. Throughout the construction phase, a large resource of peat will become available for restoration, capable of regenerating approximately 35ha of land, at a depth of 0.5m*".**

670. With respect to the use of peat for restoration, the Peat Management Plan (PMP) for the application sets out how excavated peat would be managed in accordance with SEPA guidance. Approximately 203,273m^3 requires to be excavated during construction. SEPA guidance requires that impacts on peat are minimised as far as possible, with avoidance of peat disturbance and excavation being the priority. Following this, any excavated peat should be used on site where possible and this includes for peatland restoration purposes. Some of the excavated peat is proposed for the post construction restoration of verges, stone extraction areas etc. The majority (around 175,000m^3) is proposed to be used for restoration of former opencast areas as per the REAS proposal. The principle of this is acceptable in terms of the SEPA guidance depending on the physical nature of the peat and/or if excessive quantities are excavated (i.e. more than needed). Had the area of former opencast workings not been available for spreading of peat for restoration purposes, the PMP would need to consider an alternative means of using or disposing of this excess peat which may not so easily comply with SEPA guidance and require further authorisation or licencing from SEPA.

671. It is further noted that the REAS considers the hauling of and spreading of peat to this area to be 'additional works' i.e. not built in to the wind farm proposal and to be the subject of a future planning application. This is at odds with the PMP proposals and if the hauling and spreading of peat for restoration is not undertaken as part of the overall construction of the development, it is possible that it would be contravening SEPA Guidance as it may be considered disposal.

672. Therefore, for the purposes of considering this particular aspect of the REAS, the hauling and spreading of peat for restoration purposes as set out in the PMP should be considered as part of the 'built-in' works. In general terms, the restoration of former opencast areas with peat is supported, however, it should be noted that excavation of peat requires to be minimised regardless of any opencast restoration needs. The presence of an area for excess peat to be used on site has the benefit of allowing the applicant to accord with SEPA Guidance on using excess peat onsite.

673. It is not clear if the grading of land proposed also includes the provision of a network of tracks and if so, whether they are for wind farm access tracks or separate recreational paths.

674. ***"It is proposed that areas of natural regeneration, in addition to those that are already present on site, be incorporated to provide further diversity and localised natural colonisation".***

675. This appears to be a relatively minimal measure, but it nevertheless supported.

676. ***"Project roadways and tracks to be retained for future network improvements to North Kyle"***

677. It is normal practice for wind access tracks to be open for public use in the operational phase of the development. Given the current lack of public access to the North Kyle

Forest, the provision of public access into part of the forest where the wind farm is proposed with potential future linkages, is supported.

Built-in works at Chalmerston South:

678. ***"The Project will maintain access through this area to provide access from the South through North Kyle."***

679. Considerations of this are similar to those above in that the provision of public access into the forest is supported.

Built-in works at North Kyle Forest Haul Road (NKFHR):

680. ***"The project will prioritise recovery of construction materials from the edges of the NKFHR (where the material is suitable) to allow for narrowing of the road".***

681. This proposal is supported in principle due to the potential visual improvements and due to the resource efficiency benefits. It is, however, noted that it is subject to the suitability of materials, hence proposals for four separate stone extraction areas.

Summary of built-in works considerations

682. **The above 'built-in' works which are set out in the REAS generally reiterate those which have been considered in the EIA Report and within this report. Some, including the formation peat restoration, are supported only on the basis that the applicant minimises the disturbance to existing peat from excavation. There is a need for the developer to deal with excavated peat on-site and so the restoration use for the majority of the excavated peat is also an opportunity to meet SEPA guidance on disposal of excess excavated peat. Provision of access is considered within the RE3 criteria.**

683. **The proposed enhancement of bog area is part of the HMP and has also previously considered under Policy RE3. Due to the potential impacts of this on forestry and black grouse, this can be afforded little weight at present, although the final version should address these impacts.**

684. **It is unclear as to whether any of the proposed footpaths additional to the wind farm access tracks are considered as 'built-in' works but it is considered that such footpaths could be further developed and form part of the proposals for access within a final Outdoor Access Management Plan and this would allow more weight be attributed. There are uncertainties regarding the impacts of the proposed bog enhancement areas and NKFHR narrowing proposals which also limits the weight which can be given to the built-in activities.**

685. **Whilst much of this 'built-in' work is supported or otherwise thought to be acceptable, it is closely associated with work that requires to take place anyway to facilitate the windfarm. This includes sourcing stone from existing tracks which could be viewed as something of a windfall and may prevent the burden and costs of opening borrow pits. It also includes the use of peat to restore an area of the site, which peat otherwise would have to have been accounted for and found an alternative use anyway as a result of construction should no such readily restorable land have been available. The positive weight to be given to such 'regeneration and enhancement' should therefore be viewed in that context and somewhat tempered.**

Additional regeneration and enhancement activities

686. The REAS outlines potential opportunities for regeneration and enhancement activities which are in addition to those considered above as 'built-in' activities. The letter dated 19th August in the AI1 submission notes that the additional activities would be subject to a separate application for planning permission to East Ayrshire Council and the precise scope of the additional works be detailed in consultation with East Ayrshire Council, local communities and other stakeholders. The works would then be secured through S75 obligations, binding on the applicant and landowners.

687. Some of the additional activities, as noted above should be included as 'in-built' works, in particular the use of excavated peat for restoration and would not be appropriate to form part of a future application. It is further considered that footpaths and signage etc. within the application site could form part of the 'built-in' activities and that these proposals should be developed further within a finalised Outdoor Access Management Plan. Such plans and the access provisions that they contain are a common feature of windfarm developments and should not, in the main, be treated as some form of enhancement.

688. **In principle, the potential for additional regeneration and enhancement works to take place alongside the construction of the wind farm is supported and it is noted that the applicant wishes to develop these opportunities further within a future planning application. This would have the benefit of ensuring that these additional works are fully considered and consulted upon, particularly those works which are outwith the current application site. However, the outcome of a future planning application cannot be predicted and it is not known what would be included in any such application.**

689. **Notwithstanding this, the applicant's commitment to such works with a value of £2.6M and a forthcoming planning application to be secured by a unilateral S75 agreement weighs in favour of the application and should be secured as far as possible by a suitably worded legal agreement which should be concluded prior to the issue of any consent.**

Consultation Responses

690. Consultation responses from internal Council consultees, external consultants and Scottish Government consultees have all been considered where relevant in the development plan assessment above, helping to inform the development's accordance with the respective policies.

691. The comments of IFL have provided a useful audit of the landscape and visual chapter of the EIA Report as summarised in the consultations section above. Significant weight should be given to those comments in coming to a view on the landscape and visual effects of the development. Several significant landscape and visual effects are noted, broadly in line with the applicant's LVIA findings. The acceptability of these effects requires to be weighed against the other policy and material considerations.

692. No internal council consultees have objected. ARA consider there to be potential adverse issues with the transportation of abnormal loads along Ochiltree Main Street. ARA also recommend that there should be mitigation in place for extraordinary maintenance of the affected local road network.

693. ACCON as the council's noise consultant, consider that the proposed development can operate within the noise limits set, both on its own and cumulatively (noting that

the cumulative assessment does not include applications at Overhill and Enoch Hill to increase turbine heights, nor does it include Greenburn wind farm).

694. Scottish Government consultation responses include objections from Glasgow Prestwick Airport and NATS due to unresolved aviation impacts.

695. NatureScot do not object but have provided advice in respect of landscape and visual and ecology issues.

696. Scottish Forestry raise concerns about the large area of felling proposed in one phase and also about the justification for felling to form habitat management areas.

697. RSPB Scotland have not objected but provide strong advice in respect of impacts to the southern Scotland black grouse population. It is expected that RSPB will provide a further consultation response in respect of the additional information submitted within the AI2 submission.

698. The Coal Authority request conditions are imposed to ensure that intrusive site investigations in respect of past mine workings and any remedial works and/or mitigation measures are carried out prior to commencement of development.

699. Ochiltree Community Council is the sole community council consultee response that has been received who support the application.

700. Objections remain from Scotways awaiting further information on details of an additional linkage to connect SCD18 and 19 to reinstate these rights of way and due to the proximity of turbines to rights of way. An assessment of public access effects has been carried out under Policy RE3 Schedule 1 and it is considered that there would be an overall improvement to public access subject to the provision and implementation of a finalised Outdoor Access Management Plan.

Representations

701. Representations to the Scottish Government Energy Consents Unit are summarised in the Representations section above. Where relevant, the matters raised have been considered elsewhere in this report. It is for Scottish Minsters to take account of representations and place weight accordingly in determining the application.

Reports to Council dated 19 September 2013 and 28 January 2014 and Reports to Cabinet dated 24 May 2013 and 21 May 2014 on decommissioning, restoration, aftercare and mitigation financial guarantees.

702. The reports mentioned above to Council and Cabinet collectively set out an approach for the submission, agreement, implementation and monitoring of financial guarantees that are required in respect of the decommissioning, restoration, after care and mitigation of inter alia onshore windfarms (also including single wind turbines).

703. The Applicant has not submitted a decommissioning, restoration and aftercare report to detail the works associated with those activities and the likely costs as yet, although have advised that they intend to submit this to the Council and Scottish Government soon and prior to any final decision being made. Ironside Farrar Ltd have therefore to date, not been provided with any document to review and have subsequently not been able to advise the Council of the likely costs for undertaking such works.

704. Whilst there has been no assessment or agreement of the costs associated with decommissioning, restoration and aftercare, it is considered to be acceptable that this

takes place following the Council's final view is given. It is recommended that a Section 75 legal agreement secures the financial guarantee. This should be in place prior to the grant of any consent by the Scottish Ministers, or agreement, to the satisfaction of the Planning Authority, of another arrangement to secure a legal obligation, to ensure that these matters are properly secured.

Heads of Planning Scotland Energy and Resources sub-committee: Position statement on the operation of financial mechanisms to secure decommissioning, restoration and aftercare of development sites

705. This document is produced by a working group and contributors drawn from Scottish Council's, Scottish Government and SEPA. The document incorporates some similar advice to the Council reports mentioned above but also goes further, seeking to identify the best financial tools, develop a standard section 75 template, establish a template for the assessment of costs, establish good practice for the review of financial guarantees and establish standards for compliance and monitoring. Of particular note is the position that a section 75 agreement is the most appropriate method of securing a financial guarantee although conditions can also be used. The position statement reiterates the benefits of involving planning, legal and finance in agreeing the guarantee value, the importance of agreeing the correct guarantee quantum and of reviewing the value throughout the lifespan of the development. The Council approach generally reflects this position statement in that an independent assessor provides a quantum figure, planning, legal and finance are involved in discussions on the quantum and guarantee mechanism and that a legal agreement to secure this (as well as a planning condition) is requested.

LEGAL/RISK IMPLICATIONS

706. **Financial Implications:** There are potential financial implications for the Council in coming to a view on this application. Should the Planning Committee be minded to formally object to the proposed North Kyle development this will trigger a Public Local Inquiry in terms of Section 62 and Schedule 8 of the Electricity Act 1989 unless the Council withdraws its objection. The financial implications associated with such a position include the potential for costs to be incurred in engaging expert external advice, support or representation including expert witnesses to give evidence on the Council's behalf at the Inquiry. 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.

707. If the Council is minded to raise no objection to the proposed development, there are financial implications for the Council in negotiating and concluding a Section 75 legal agreement as well as the detail of the planning conditions. This will primarily relate to Council officer time but may also involve the further input of the Council's consultants for decommissioning and restoration matters in the pursuit of a mutually agreeable financial guarantee quantum.

708. There are also financial implications for the Council in relation to the financial guarantee to ensure that decommissioning and restoration of the development takes place.

709. In compliance with the Council's Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation of Financial Guarantees dated 21 May 2014, any wind farm proposal is expected to comply with the terms of this report in relation to the submission, agreement, implementation and monitoring of financial guarantees. It will also be expected to be in accordance with the assessment of costs from Ironside Farrar (once known), subject to any agreed modifications which might be justified on cause shown by the Applicant during further negotiation at the appropriate stage.

Such matters will require to be progressed with the applicant and the Scottish Government following submission of the Council's consultation response and before any decision is issued by the Scottish Ministers.

710. **Legal Implications:** The matters set out in the bullet points below should be addressed with a Section 75 Legal Agreement under the 1997 Act. The agreement should be concluded before consent is issued and this should be made clear to Scottish Ministers.

- An independent Planning Monitoring Officer (PMO) to be appointed by the Planning Authority, with the cost of providing this service being met by the developer. Such appointment would address suspensive and ongoing environmental planning condition advice, on site monitoring and reporting during the construction period and any restoration period following construction and during the decommissioning and restoration period.

- The provision of a suitable decommissioning, restoration and aftercare guarantee by the developer, agreed by the Planning Authority as being sufficient and acceptable in value and risk, to secure the decommissioning of the turbines and the restoration and aftercare of the site, that appropriate review periods and mechanisms to alter the guarantee are agreed and that the Council's costs in reviewing the value are paid by the developer.

- The securing of a separate planning application for additional regeneration and enhancement works to the Chalmerston opencast complex to the value of £2.6M and for the applicant to be required to undertake such works as may be approved in that application during the construction and post construction restoration phase.

711. A suitable legal agreement should also be put in place for contributions to Ayrshire Roads Alliance to mitigate for any extraordinary damage to the local public road network caused by construction traffic. The requirement for this can be secured under separate legislation by the ARA and as such the Council should not insist upon this as part of the consultation response to the Scottish Government.

712. The reasons for requiring an obligation on the financial guarantee are set out above under the assessment of the development against Schedule 1 of Policy RE3. Further justification is set out in the Council's Cabinet Report and the HoPS position statement on financial mechanisms.

713. In relation to the Planning Monitoring Officer (PMO), this function is a fundamental appointment and is a way of seeking to ensure robust independent compliance in the discharge of the environmental planning conditions and thereafter, robust assessment of compliance in the construction and then decommissioning, restoration and aftercare of this large scale development. The development of a wind farm will have significant environmental impacts and the issues that arise are complex and specialist, especially so where the development is as large and faceted as the North Kyle development. It is imperative that the planning authority has access to a PMO to provide it with expert and specialist support (and not ordinarily available to the planning authority) to ensure the proper implementation of this major land development.

714. It is important that the planning authority appoint such an expert as this provides, and importantly is seen to provide, independent advice to the planning authority (as opposed to a developer appointed PMO). Securing the reimbursement of this cannot be secured by planning condition as it would require a payment to be made by the applicant to the Council. As such, a legal obligation is considered to be appropriate

such that the Council appoint and pay for the PMO and the applicant reimburses this cost to the planning authority.

POLICY/HR/EQUALITY/FINANCIAL IMPLICATIONS

715. There are no policy, HR or equality implications resulting from this application.

COMMUNITY PLAN/TRANSFORMATION IMPLICATIONS

716. Section 2: Vision and Spatial Strategy of the East Ayrshire Local Development Plan 2017, referred to above, states that it takes account of and embeds the main themes and vision of the Community Plan.

CONCLUSIONS

717. The approach to the assessment and recommendations within this report recognise that the Council is a consultee under The Electricity Act 1989 and that Scottish Ministers are the determining authority.

718. In approaching this assessment, it is considered to be reasonable to primarily assess the development against this Council's development plan, being the local planning policy framework relevant to land use decisions for this Council area. As this proposed development is presented under The Electricity Act 1989, Section 25 of the Town and Country Planning (Scotland) Act 1997 (the status of the development plan) does not apply. As such the development plan is a material consideration, amongst others, in the assessment of Section 36 wind farm development. In addition to the development plan, other matters considered material to this Council's view have been taken into account.

719. The development plan comprises the East Ayrshire Local Development Plan (LDP) and the East Ayrshire Minerals Local Development Plan (MLDP).

720. In terms of the LDP, Policy RE3 is the most relevant policy to consider and covers most of the issues which are pertinent to the wind farm proposal. Most other LDP policies which are relevant replicate the matters which are included within the RE3 Schedule 1 criteria. As an overarching Policy, OP1 is also of relevance in taking an overall view on the proposed development, taking account of the LDP vision and strategic aims.

721. MLDP policies are relevant insofar as ensuring that the development does not materially and unacceptably conflict with its visions in terms of the Coalfield Communities Landscape Partnership and uses for former minerals opportunity sites. As considered above, the development is not considered to conflict with MLDP policies.

722. The proposed development is assessed as being in overall accordance with Policy RE3.

723. Policy RE3 firstly requires that wind energy developments are assessed using the spatial framework for wind energy development. The proposed application site is almost wholly within a Group 3 area as identified in the spatial framework (area with potential for wind energy development). Where it falls within Group 2 areas (areas afforded significant protection), it has been demonstrated that the adverse effects on such areas (Class 1 areas of carbon and peatland), can be sufficiently overcome.

724. In terms of the matters within the Schedule 1 criteria, following the assessment carried out above under Policy RE3, it is considered that there would not be unacceptable

adverse impacts in respect of most of criteria. In respect of the scale of contribution to renewable energy generation targets; net economic impact and public access, there would be positive effects which weigh in favour the proposed development.

725. Most of the adverse issues in relation to the proposed wind farm arise as a result of landscape and visual impacts. For any large scale wind energy development, it is impossible to avoid significant effects, however, the main consideration is whether the adverse effects would be unacceptable, particularly when balanced against the positive aspects of the proposal.

726. The consideration of potentially unacceptable adverse landscape and visual impacts is focused on the effects to the north and east of the proposal where most of the significant effects are predicted.

727. As considered above, the proposed scheme would be located to an area which is in general alignment with the EAWLCS guidance (with the exception of its encroachment into the Upland Basin) and it would have substantial positive effects, particularly in respect of renewable energy generation. The design is reasonably successful in limiting the adverse landscape and visual effects from many locations (including designated landscapes and the sensitive Doon valley). The design and mitigation measures proposed also mitigate other significant effects to an acceptable level, for example in terms of noise, cultural heritage and residential visual amenity.

728. Although there would be significant landscape and visual impacts as noted, particularly to the north and east of the proposed development, it is considered that it is in overall accordance with Policy RE3. There are presently unresolved materially adverse impacts on aviation matters, and potentially black grouse, these are matters which are primarily for other consultees (i.e. NATS/GPA and RSPB/SNH respectively), who have expertise on such matters, to advise the Scottish Government on. Ultimately it will be for the Scottish Government to take account of the respective consultees' advice in determining the S36 application.

729. In terms of other development plan policies, the proposed development is considered to be in broad accordance with Policy OP1, in terms of the LDP vision and strategy, primarily due to its accordance with Policy RE3.

730. As there are no other policies in the LDP or MLDP which the proposed development is considered to be in breach of, it is considered overall to be in accordance with the Council's development plan.

731. In terms of other material considerations, the proposed development draws broad support from national policy including SPP and NPF4. The additional regeneration and enhancement works at Chalmerston in the Regeneration and Enhancement Activities Statement add to the consideration in favour of the proposal and these should be secured and implemented as far as possible within a S75 obligation.

732. In conclusion, it is considered that the proposed development accords with the Development Plan primarily on the basis of its acceptability under Policy RE3 which requires all of the relevant matters within Schedule 1 to be considered. In balancing those matters, it is considered that the positive aspects of the proposal, namely the contribution to renewable energy targets and climate change mitigation, economic benefits and improvement to public access outweigh the adverse landscape and visual impacts. This is subject to planning conditions and a legal agreement(s) as set out. Most of the other material considerations lend support to the proposed development or do not indicate that the development is unacceptable. On this basis, the Council should offer no objection to the proposed development.

CONTRARY DECISION NOTE

Should the Committee resolve to object to the application contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to Council as the scheme of delegation does not include provision for this to take place where a view is being sought on a Section 36 consultation.

David McDowall
Interim Head of Planning and Economic Development

Background Papers:

1. Application documents including EIA Report and Additional Information.
2. Adopted East Ayrshire Local Development Plan (2017) including supplementary guidance.
3. Minerals Local Development Plan 2020
4. National Planning Framework 3
5. Scottish Planning Policy
6. Scottish Government Guidance – Onshore Wind Turbines, May 2014
7. SEPA Guidance on Peat and Off-site uses of Waste Peat 2017
8. Scottish Natural Heritage Guidance: Assessing the Cumulative Impact of Onshore Wind Energy Developments, March 2012
9. Scottish Natural Heritage Guidance: Siting and Designing Wind Farms in the Landscape Version 3, February 2017
10. PAN 1/2011: Planning and Noise
11. ACCON Ltd Noise Assessment
12. Ironside Farrar Limited review of LVIA and subsequent comments
13. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019Scottish Energy Strategy: The future of energy in Scotland (December 2017)
14. Onshore Wind Policy Statement (December 2017)
15. The Energy White Paper 2007
16. Scottish Government Good Practice Principles for Shared Ownership of Onshore Renewable Energy Developments (May 2019)
17. The Scottish Government Climate Change Plan 2018 and 2020 update
18. Scottish Government Electricity Generation Policy Statement 2013
19. East Ayrshire Council Report to Cabinet, 21 May 2014, Independent Review of the Regulation of Opencast Coal Operations in East Ayrshire – The Council's Response
20. East Ayrshire Council Report to Council, 19 September 2013East Ayrshire Council Report to Cabinet, 24 May 2013
21. Circular 4/1998: Planning Conditions
22. Circular 3/2012: Planning Obligations and Good Neighbour Agreements
23. SNH Guidance: Decommissioning and Restoration Plans for wind farms, Version 2 February 2016
24. Ayrshire and Arran Forestry and Woodland Strategy 2014
25. Consultation responses
26. North Kyle Forest Masterplan
27. HES Managing Change in the Historic Environment: Setting

Person to Contact:

Mhairi Douglas
Planning Team Leader
Email: mhairi.douglas@east-ayrshire.gov.uk

Implementation Officer:

Craig Iles
Operations Manager: Building Standards and Development Management
Email: craig.iles@east-ayrshire.gov.uk

TP24

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 19/0006/S36

Location	Land Within The North Kyle Forest, Approximately 5.5km East Of Patna, 6km West Of New Cumnock And 2.5km North East Of Dalmellington.
Nature of Proposal:	Consultation under Section of 36 of the Electricity Act 1989 for the construction of a wind farm comprising the erection of 49 wind turbines with maximum tip heights of 149.9m.
Name and Address of Applicant:	North Kyle Wind Farm Limited, Caledonian Exchange,19a Canning Street , Edinburgh, EH3 8EG

Officer's Ref: Mhairi Douglas

The attachment of planning conditions to the deemed planning consent to address the following matters:

Roads matters

Submission and approval of:

- Construction Traffic Management Plan (CTMP) and AIL Traffic Management Plan and route including accommodation measures and traffic control measures. The AILTMP shall take full account of the sensitivities within the settlement of Ochiiltree in the mitigation measures. The CTMP should also cover the forestry felling phase.
- Road construction details for all road layout improvements;
- Visibility sightline splays;
- Access layout plans for commercial access construction and hard surfacing of all
- new accesses taken off the public road;
- Condition surveys of the delivery route, including structural assessments of
- infrastructure and any remedial works required;

Aviation and defence

Conditions should address requirements of NATS and GPA should objections be withdrawn.

Details to be submitted and approved of infrared lighting to perimeter turbines and other matters, in accordance with MOD advice.

Archaeology

Condition to secure the implementation of a programme of archaeological works in accordance with a written scheme of investigation.

Outdoor Access

The submission and approval of a full Outdoor Access Management Plan in respect of the construction phase and operational phase of the development.

The construction phase Plan should include mitigation measures in respect of the crossing of Rights of Way.

The operational phase plan should detail the overall strategy for public access to the site and include details of any additional access paths, linkages, proposals for reinstatement of Rights of Way 18 and 19, signage and mitigation measures in respect of historic mine workings and any other hazards.

Peat

- The submission and approval of a Peat Management Plan in line with SEPA advice.
- The submission and approval of a Peat Landslide Risk Hazard Assessment.

Construction Environmental Management Plan (CEMP)

Site investigation detailing all intrusive site and ground investigations, including tree felling for these works and method statements for carrying out of all investigative works including any mitigation measures required.

Detailed site specific CEMP, taking into account findings of the site and ground investigations. This will include Construction Method Statements (CMS) and will incorporate the following matters unless otherwise addressed as standalone documents:

a. Plans and details of all cut roads and floating tracks;

b. Construction/laying of cable trenches and turbine bases;

c. Details of soil stripping, storage and re-use;

d. The construction of crane pads and all foundations;

e. Details of the construction of control buildings, sub-stations and construction compound;

f. Formation of hardstanding areas;

g. Watercourse crossings, ensuring compliance with the Controlled Activity Regulations where appropriate;

h. Qualitative hydrological assessment of all Groundwater Dependent Terrestrial Ecosystems (GWDTE's) at potential risk of the development, including details of measures to reduce and mitigate impacts from all construction elements capable of impacting on groundwater flows and hydrological connectivity;

i. A Pollution Prevention and Incident Plan (PPIP);

j. A Waste Plan inlcudng for forestry waste;

k. Site drainage plans;

l. Construction Noise Management Plan;

m. Dust prevention measures;

n. Flood risk management measures;

o. Storage of chemicals and fuels and other materials during construction;

p. Temporary site illumination;

q. Ecology monitoring;

r. Phasing plan for construction works;

s. Post construction restoration/reinstatement of working areas and timetables for this;

t. Methodology for dealing with changes required to the CEMP;

The CEMP should be updated to include the specific pollution risks associated with the excavation and movement of surface mine backfill materials and appropriate mitigation measures in accordance with SEPA advice. Any requirements for a Bio-security Plan should also be detailed in the CEMP.

Forestry

Submission of a revised Wind Farm Forest Plan to take account of Scottish Forestry comments, along with a Compensatory Planting Plan which sets out the consents and agreement required. Compensatory Planting should be located within Ayrshire in accordance with the Ayrshire and Arran Woodland Strategy.

Former Mine Workings

The submission and approval of a scheme of intrusive site investigations to assess the ground conditions to establish the extraction situation in respect of historic coal mining and the potential risks posed to the development. Thereafter a scheme of remediation measures, informed by the site investigation results, should be submitted for approval. The condition should accord with the requirements of the Coal Authority.

Natural Heritage

Conditions should cover:

- Pre-construction, construction and post-construction fish monitoring surveys, taking advice from the NSFB and Marine Science Scotland.
- Mitigation and monitoring plan for watercourses and fish species.

- Species Protection Plans for protected species. This should take account of advice from SNH and RSPB Scotland particularly in respect of black grouse, bats and badgers.
- Post construction bird monitoring.

- A final HMP to be developed in liaison with Scottish Forestry, RSPB Scotland and SNH to be submitted and approved.
- Establishment of a Habitat Management Group.
- Appointment of an Environmental Clerk of Works (ECoW) for pre-construction (including forestry felling), construction and post construction restoration phases.

Water Environment

Water Quality Monitoring Plan (hydrochemical including turbidity, flow data and macroinvertebrate sampling).

Micrositing

A micrositing limit of 50m should be imposed on turbines and other infrastructure.

Decommissioning and Restoration

Submission and approval of the following:

- Outline Decommissioning and Restoration Plan (including aftercare);
- Full Decommissioning and Restoration Plan (including aftercare);
- Non-operational/redundant turbine removal;
- Financial guarantee to cover construction, decommissioning, restoration and
- aftercare plus regular updates to this;
- Development to be decommissioned, site restored and aftercare undertaken in
- accordance with approved Decommissioning and Restoration Plan;

Borrow Pits/stone extraction

- Scheme based on detailed site investigations, setting out details and methods of stone extraction from the existing North Kyle Forest Haul Road (NKFH) and/or Stone Extraction Areas.
- Borrow pit blasting.
- Restoration schemes in respect of Stone Extraction Areas and the NKFHR.

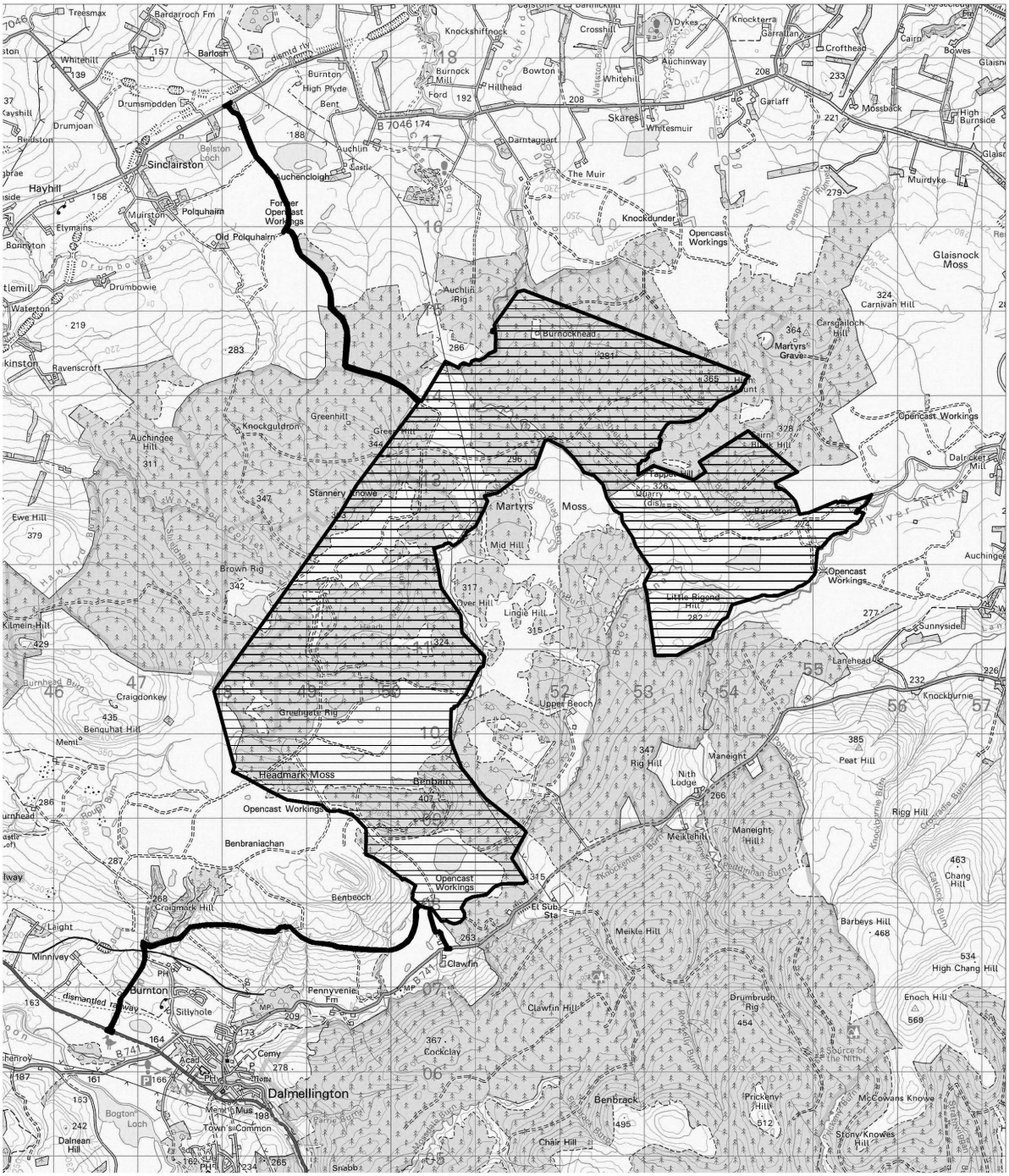
Operational Noise

Conditions should cover:

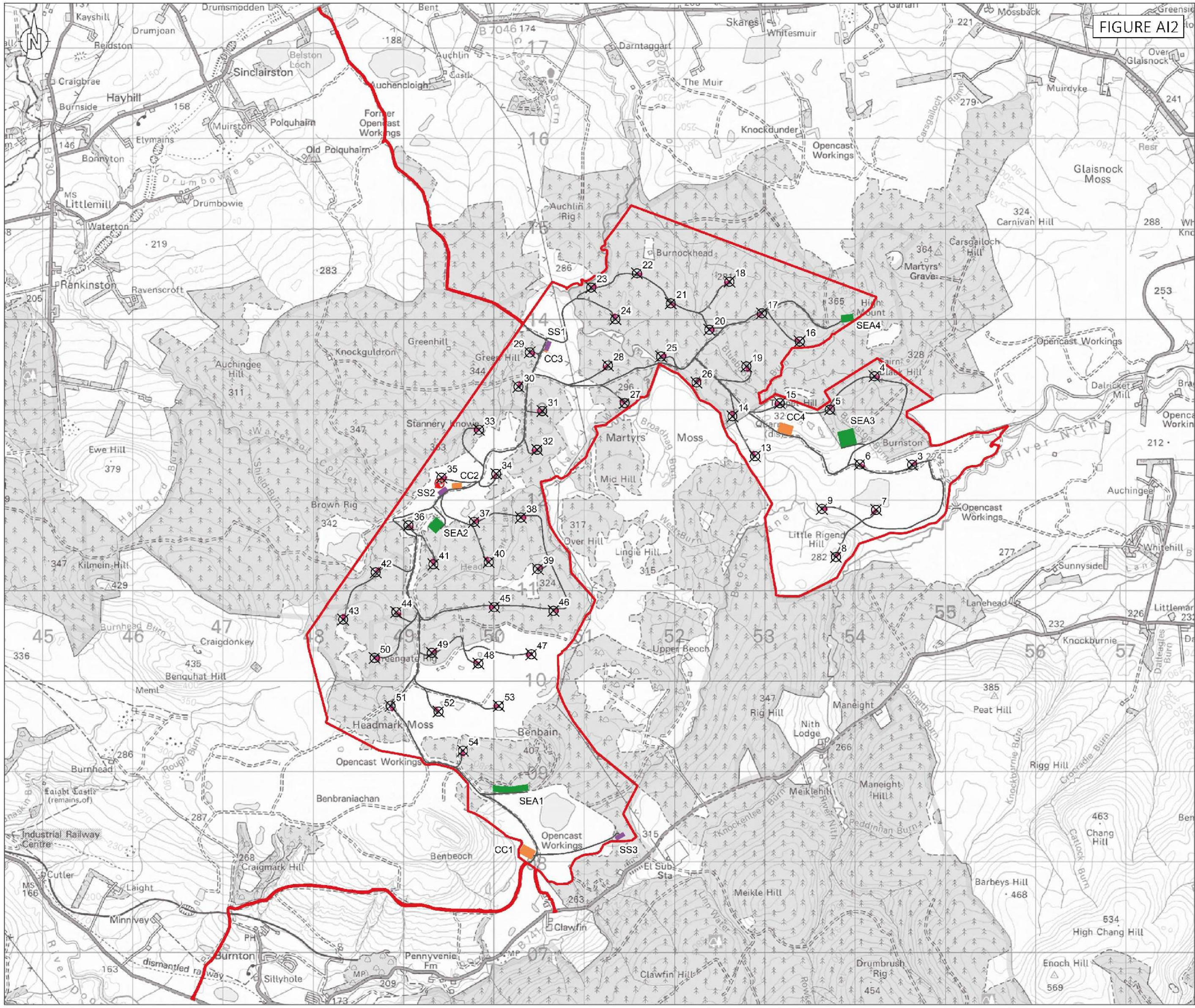
- Appropriate standalone and cumulative noise limits including noise complaint investigation and compliance protocols.
- Appropriate noise monitoring periods.

General

- Mitigation and enhancement measures outlined in Chapter 11 of the EIA Report to be implemented unless otherwise superseded by consultation with relevant agencies when discussing related impacts for separate conditions.
- Turbine details.
- Details of all ancillary buildings and construction compound.
- Construction hours.
- Complaints procedure and mitigation if it is found the development affects radio
- and other telecommunication signals;



Title/Location	**North Kyle Windfarm** **Nr Dalmellington** **Application No. 19/0006/S36**	**East Ayrshire Council** Economy and Skills Planning & Economic Development The Opera House 8 John Finnie Street Kilmarnock KA1 1DD Tel: (01563) 576790 e-mail : submittoplanning@east-ayrshire.gov.uk **Com Date: 15/01/2021**
Key	**Application Site**	



LEGEND

- Site Boundary
- Turbine
- Telecommunication Mast

Infrastructure

- Stone Extraction Area (SEA)
- Construction Compound (CC)
- Substation (SS)
- Turning Head
- Turbine Foundation and Footprint
- Crane Pad Foundation
- Access Track

DRAWING STATUS	PLANNING
PROJECT	North Kyle Energy Project
CLIENT	Brockwell Energy
TITLE	Revised Wind Farm Layout
DATE: July 2020	DRAWN: CR
SCALE: 1:40,000 @A3	CHECKED: CH
DRAWING N°: M17.117.D.017	REV: B

PleydellSmithyman

PLEYDELL SMITHYMAN LIMITED
20a, THE WHARFAGE, IRONBRIDGE, SHROPSHIRE, TF8 7NH.
TEL: 01952 433211 FAX: 01952 433323
EMAIL: psl@pleydellsmithyman.co.uk
WEBSITE: www.pleydellsmithyman.co.uk