

EAST AYRSHIRE COUNCIL

**PLANNING COMMITTEE: 21 OCTOBER 2016
08/0959/FL: ERECTION AND OPERATION OF A WINDFARM (9 TURBINES - 3
IN EAST AYRSHIRE) AND ASSOCIATED INFRASTRUCTURE AT PENBRECK
NEAR DOUGLAS**

**AT: PENBRECK AND CARMACOUP FOREST
NEAR DOUGLAS**

BY BROOKFIELD RENEWABLE UK LTD

**Report by Head of Planning and Economic Development
Economy and Skills**

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/applicationDetails.do?activeTab=summary&keyVal=KBPXS3GF02400>

EXECUTIVE SUMMARY SHEET

PURPOSE OF REPORT

- 1 The purpose of this report is to present for determination a local application for planning permission, to be considered by the Planning Committee under the current scheme of delegation as the Head of Planning and Economic Development, under S43A(6) of the Planning etc (Scotland) Act 2006, considers that it would be appropriate for members of the Planning Authority to take the decision given the environmental impacts of the proposed development.
- 2 Whilst it is noted that the application is not a major development in terms of the Hierarchy of Developments (Scotland) Regulations 2009 and is not significantly contrary to the Development Plan, for the reason stated above, it is appropriate that the determination of the application is made by Planning Committee.

RECOMMENDATION

- 3 It is recommended that the application should be approved subject to the conditions on the attached sheet.
- 4 Furthermore it is recommended that planning consent should be withheld until a Section 75 Agreement between the applicant and the Council has been successfully concluded to include the Heads of Terms as indicated in the report.

CONTRARY DECISION NOTE

- 5 Should the committee agree that the application should be refused contrary to the recommendation of the Head of Planning and Economic Development, in terms of the principle of the proposed development, then the application would not require to be referred to Council as it would not represent a significant departure from Council policy.

Michael Keane
Head of Planning and Economic Development

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

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APPLICATION DETAILS

- 3 **Site Description:** At the outset it is important to note that the application site is located on the border between South Lanarkshire and East Ayrshire. In this regard the proposed development subject of this report only concerns the three proposed turbines and their associated infrastructure which are located within East Ayrshire.
- 4 The application site is located approximately 7km south of the settlement of Muirkirk within the Penbreck and Carmacoup Forest, which is itself a commercial forestry plantation. In addition, the landmark hills of Cairn Table, Little Cairn Table and Wardlaw Hill are all located within the vicinity of the application site.
- 5 The area surrounding the application site is sparsely populated, although it is significant to note that a number of popular walking routes exist throughout the local area. Indeed the Muirkirk to Sanquhar (Old Drove Road) Core Path passes through the site.
- 6 The application site is located within the Muirkirk and North Lowther Uplands Special Protection Area (SPA) and also the Muirkirk Uplands Site of Special Scientific Interest

(SSSI). It is of significance to note that none of the proposed wind turbines or associated infrastructure is located within the SPA.

- 7 **Background:** Application 00/0842/FL concerned the same application site as the site subject to this report and sought planning permission for the construction and operation of a windfarm and associated infrastructure comprising a total of 18 turbines (3 within East Ayrshire) each with a hub height of 57m and a rotor diameter of 55m. Planning applications were submitted to both East Ayrshire and South Lanarkshire Councils for the constituent parts of the development within each authority.
- 8 Subsequent to the submission of both applications, an appeal was submitted to Scottish Ministers following the refusal of the planning application by South Lanarkshire Council. Thereafter the East Ayrshire element of the proposed development was called in by Scottish Ministers to allow the determination of both planning applications at the same time. East Ayrshire Council was therefore required to take a view on the application and as such recommended that the proposed development be refused. Scottish Ministers refused the appeal in 2004 for reasons which concerned issues relating to the following:
 - Proximity of the Scheduled Monument located at Cairn Table;
 - The proximity of the Muirkirk and North Lowther Uplands Special Protection Area (SPA) to the proposed development;
 - The proximity of the Muirkirk Uplands Site of Special Scientific Interest (SSSI); and
 - The proximity of the Muirkirk South Uplands Provisional Wildlife Site.
- 9 Following the refusal of the appeal, two further applications (one to South Lanarkshire Council and the other to East Ayrshire Council) were submitted in respect of the proposed development which is the subject of this report. In this regard it is of significance to note that South Lanarkshire Council approved application CL/08/0727 in 2014 which granted planning permission for the erection of a six turbine development, within South Lanarkshire, with a maximum blade tip height of 125m.
- 10 The remaining three turbines are located within East Ayrshire and are the subject of this report.
- 11 **Proposed Development:** The application seeks planning permission for the erection and operation of a windfarm (9 turbines – 3 located in East Ayrshire and 6 located in South Lanarkshire) and associated infrastructure at Penbreck and Carmacoup Forest, near Douglas.
- 12 The proposed development is situated in a sparsely populated area with the nearest settlement, Muirkirk, being located 7km north of the proposed development site. Some individual farmsteads are located within the area, the closest being located some 2.9km from the proposed development.
- 13 The proposed development, within East Ayrshire, comprises three wind turbines, each of which will provide an energy output of 3MW. The turbines themselves will measure 125m to blade tip, while the height of the hub of each turbine will measure 80m. The blade diameter will be 90m. It is proposed that the turbines will be finished in a light grey or pure white colour.

- 14 The typical foundations of each turbine will comprise a 15-16m² reinforced concrete pad with a depth of approximately 2.5m. In addition, an area of hardstanding is proposed adjacent to each of the turbine foundations to enable a stable base to site the two cranes necessary to lift the different parts of the turbines in place. The minimum area of hardstanding required at each turbine measures 40m x 20m.
- 15 Access to the proposed development site is via the A70 (from South Lanarkshire) with an estimated 17km of track required within the site to link the turbines to the A70. The 17km of track will comprise 5km of new track, 9km upgrading of existing track and approximately 3km of opencast coal haul road, previously used by Scottish Coal. All materials for the site construction will be delivered via this route.
- 16 The proposed development within East Ayrshire includes one borrow pit which is proposed to be located to the south east of the application site. The Amended Environmental Statement (ES) includes an assessment of borrow pits, while Appendix 5 of the ES specifically concerns borrow pits and was prepared by Minerals 7 Resource Management Ltd. It should be noted that for clarity, the borrow pit locations and associated details considered as part of the application are detailed on the following plans:
- Fig3.2: Site Constraints; Nov. 2009
 - Penbreck Windfarm Borrow Pit 4 Plans and Cross Section, M5, 20/02/2009
- 19 It is noted that the location of borrow pits has been identified based on the following considerations:
- Rock type;
 - Location in relation to wind farm;
 - Volume of stone v number of sites;
 - Environmental considerations; and
 - Practical considerations.
- 20 In addition the following is also noted in relation to borrow pits:
- Borrow pits would be exploited using conventional excavation techniques and sequentially as construction of the access tracks progress.
 - More than one borrow pit may be under excavation at any one time.
 - Following completion of extraction activities reinstatement of borrow pits would be undertaken.
- 21 It is of significance that to note that the application site includes a small part of the Special Protection Area (SPA) at Stoney Hill, however no turbines or associated infrastructure are proposed to be located within the SPA. The proposed location of the turbines is further east than originally proposed as a result of initial consultation responses in 2009.

The proposed location of the turbines therefore seeks to minimise the impact of the development on the SPA.

- 22 The application is supported by an Environmental Statement which was updated and amended in December 2009. In addition it is of significance to note that an up to date cumulative Landscape and Visual Impact Assessment and cumulative Noise Assessment were submitted by the applicant in support of the application in June 2016.

CONSULTATIONS AND ISSUES RAISED

- 23 Consultations were originally issued in January 2009, following the submission of the application in December 2009 and validation in January 2009. As previously noted, following the receipt of the initial consultation responses, the proposed development was amended which involved the proposed turbines being moved eastwards to minimise any effects the proposal may have on the Muirkirk and North Lowther Uplands Special Protection Area. Consequently, the position of the relocated turbines and infrastructure is what is now being considered as part of this report.
- 24 Given the time elapsed since the application was amended in 2009, the consultations were re-issued in April 2015. In addition following the submission of up to date cumulative assessments, in May 2016, which concerned Landscape and Visual Impact and Noise, further consultations were re-issued to those parties having an interest in these subjects.
- 25 Scottish Environment Protection Agency (SEPA) originally objected to the proposed development noting that further details were required in relation to mine workings and water issues. The objection was removed in May 2009 following the submission of information which provided details relating to borrow pits and confirmed that no significant issues were identified. Notwithstanding the removal of the objection, a number of outstanding issues which concerned private water supplies remained unresolved and the applicant was requested to identify any private water supplies within a 1km radius of the site and assess these appropriately.

Following the amended proposal, SEPA noted that they had no major concerns with the amended proposal but referred to previous comments which concerned peat management and highlighted their guidance document on peat related issues recommending that the applicant make themselves aware of its content. In addition SEPA note the following:

- The main environmental impact associated with changes to the peat habitat are probably best minimised through the location of components parts of the windfarm to areas of low sensitivity.
- In developing a peat management plan SEPA would expect the applicant to utilise the advice currently available and consult with experts in this field. It is SEPA's opinion that no works should commence on site until a peat management plan has been proposed and agreed by all relevant parties. SEPA would expect Scottish Natural Heritage to be consulted in this respect.
- The applicant must be aware that drainage of peat, excavation of peat, storage of peat, compaction of peat and reuse of peat will all have an impact on the

environment and minimisation of these activities and mitigation measures must be fully investigated for the entire site.

- Reuse of peat on site or its removal of site will require adherence to the Waste Management Licensing regulations and the local SEPA office should be consulted in this respect.
- The developer must contact SEPA if they are developing on peat, prior to the commencement of any works.

In addition to the above, SEPA provided a further response in June 2015 which noted that the earlier comments were still applicable and further guidance is provided in the standing advice with SEPA publishes.

Noted, these issues raised can be covered by suitable planning conditions and advisory notes.

- 26 Scottish Natural Heritage (SNH) were consulted in 2008 and 2009 following an amendment to the proposed development and on both occasions recorded their objection to the proposed development. A further consultation response was issued by SNH in July 2015 which noted that the proposed development could affect internationally important natural heritage interests and therefore the objection to the proposed development was maintained until further information was submitted. In this regard SNH advised that the Protected Species Survey submitted at this time was not current and did not cover all of the area where the infrastructure is proposed, while an Outline Habitat Management Plan and a revised assessment of impacts on the SPA qualifying interests should also be provided.

Following the submission of further ecological survey reports, SNH provided a further consultation response in January 2016 which confirmed that they are satisfied with the survey detail for protected species. It is considered that standard mitigation measures should be enough to avoid impacts of protected species such as bats. It is recommended that trenches should be covered at the end of each working day or include a means of escape for any animal falling in and that any temporarily exposed open pipe system should be capped in such a way as to prevent animals gaining access.

In addition, SNH provided a further response in September 2016 which considered the three turbines located within East Ayrshire. The response provided a detailed appraisal of the proposed development and its possible effects on the Muirkirk and North Lowther Uplands Special Protection Area (SPA) and the Muirkirk Uplands SSSI. At the outset SNH advise that the proposed development is likely to have a significant effect on the qualifying interests of the SPA through:

- Collision mortality, ie qualifying species colliding with turbines;
- Displacement of qualifying species from foraging habitat on the wind farm site during construction and operation.

In this regard SNH notes that East Ayrshire Council is required to undertake an appropriate assessment in view of the sites conservations interests.

Consequently, an assessment was carried out by East Ayrshire Council under the Habitat Regulation Appraisal, as detailed in Appendix 1.

Notwithstanding the appraisal undertaken by East Ayrshire Council, SNH advised the following:

- A small part of the SPA at Stoney Hill is included within the application site area.
- Infrastructure related to the proposal is located outside of the SPA boundary and as a result no direct or indirect impacts on habitats within the SPA are predicted and no deterioration of the SPA habitats is expected.
- No significant disturbance of the SPA qualifying species is predicted.
- Collision risks for all SPA qualifying species are likely to be low and would not be anticipated to adversely affect the viability of the populations within the SPA.
- Based on collision risks totals from other consented and in-application wind farms, a cumulative assessment for all species would not adversely affect the viability of the populations within the SPA.
- An effect on the distribution of species within the site is very unlikely due to the locations of nest sites and the core range of species.
- The loss of habitat as a result of the wind farm is small and outside of the SPA.
- It is unlikely that the species will be compromised by loss or unavailability of habitat.
- The limited land take associated with the development is not considered sufficient to lead to any significant change to the structure, function or supporting processes of the wider habitat resource, either directly or indirectly.
- There would be no disturbance from the proposal which would affect the viability or distribution of the breeding populations of qualifying species.
- There would be no significant disturbance of the breeding populations within the SPA.
- There would be no significant disturbance from the proposed development on the wintering hen harriers.
- A detailed Habitat Management Plan, including actions to help reduce potential collision risk to SPA hen harriers, and to monitor impacts, should be submitted for approval prior to construction commencing.

SNH conclude *“beyond reasonable doubt, that the construction and operation of the Penbreck wind farm will not adversely affect the integrity of the Muirkirk and North Lowther Uplands SPA, either on its own or in combination with other development.”*

Noted, the issues raised can be covered by suitable planning conditions.

- 27 Scottish Ministers have not responded to their consultation request at the time of writing this report.
- 28 Scottish Water have no objection to the proposed development however they do recommend that the developer confirms that there are no Scottish Water assets (including water supply, sewer pipes, water and waste treatment works, reservoirs etc) within the site boundary. In addition Scottish Water also advise that the development should comply with Sewers for Scotland 3rd Editions 2015, including provision of appropriate distances from Scottish Water assets.

Noted, the issues raised can be covered by suitable planning conditions.

- 29 South Lanarkshire Council (SLC) noted in 2009 that virtually all the access roads, compounds, borrow pits and necessary forestry clearances etc were located within the boundaries of South Lanarkshire Council, while it was acknowledged that the proposal would be adjacent to the Muirkirk and Lowther Uplands SPA and therefore may result in significant conservation issues. It is noted that the area of South Lanarkshire which the application applies is designated in the South Lanarkshire Local Plan as a potential windfarm area. It is of significance that following discussions and a subsequent amendment to the proposed development, South Lanarkshire Council granted their six turbine proposal in June 2014.

Noted.

- 30 Environmental Health have advised of concerns regarding two private water supplies (PWS) which may have potential to be affected by the development. The concerns relate to properties at Glenmuirshaw Farm and also Upper Wellwood Farm. It is understood that the property at Glenmuirshaw Farm is now derelict while the property at Upper Wellwood Farm is occupied. It is noted that the Garpel Water flows down past the farm and could perhaps be the water source for the premises. In this regard it is recommended that a full risk assessment is undertaken in both bases to ensure private water quality is not compromised.

In terms of noise, the Council's noise consultant ACCON UK have advised that "*there would be no reason for refusal in respect of noise. On the basis that the predicted noise levels would be so low at the nearest noise sensitive properties in East Ayrshire, there is no need for a noise condition to protect these properties.*" In all regards it is therefore submitted that the proposed development at Penbreck will not result in significant adverse noise impacts.

Noted, this issue could be covered by appropriate planning conditions which would require the applicant to submit a PWS risk assessment to include, amongst others, details of preconstruction, during construction and post construction monitoring along with appropriate mitigation and contingency measures to protect the quality and quantity of any PWS affected by the development.

- 31 Ayrshire Roads Authority offer no objection to the proposed development given that the access route to the development site for abnormal loads is confined to roads within South Lanarkshire.

Noted.

- 32 Transport Scotland offer no objection to the proposed development subject to the attachment of conditions on any grant of planning consent. The recommended conditions relate to the need for the proposed route for abnormal loads to be approved by the Trunk Roads Authority and also that during the delivery period of the abnormal loads any additional signing or temporary traffic control measures require to be approved by Transport Scotland.

Noted, these issues can be covered by suitable planning conditions.

- 33 Health and Safety Executive have not responded to their consultation request at the time of writing this report.
- 34 Historic Environment Scotland (HES) originally objected to the proposed development due to its effect on the setting of the Scheduled Ancient Monument at Cairn Table. Subsequently, the proposed development has been amended and the three turbines located within East Ayrshire moved eastwards. In light of the amended scheme, HES have removed their original objection noting that it will reduce the impact of the wind farm on the setting of the scheduled monument.

Noted.

- 35 West of Scotland Archaeology Service (WOSAS) originally noted that the submitted Environment Statement did not include an assessment of the impacts of the proposed development on the setting of the Scheduled Ancient Monument at Cairn Table. However in light of the amended scheme, which will see the proposed turbines being located further from the Scheduled Ancient Monument, WOSAS accept that the amended layout will significantly reduce the visual impact on the Scheduled Ancient Monument. Notwithstanding this acceptance, WOSAS recommend that the need for a watching brief is attached as a condition to any grant of planning consent.

Noted, these issues can be covered by a suitable planning condition.

- 36 Nith Valley Salmon Fisheries Board have not responded to their consultation request at the time of writing this report.
- 37 Royal Society for the Protection of Birds (RSPB) Scotland object to the proposed development following a review of the submitted supporting information which includes the Environmental Statement Amendment 2009. RSPB are of the opinion that East Ayrshire Council cannot conclude beyond reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the SPA.

RSPB note that the proposed windfarm is adjacent to an area recognised as being of international importance for its suite of upland birds and consider that the Penbreck Windfarm will have a likely significant effect on the Muirkirk and North Lowther Uplands SPA. In this regard RSPB note the requirement for East Ayrshire Council to carry out an appropriate assessment of the effects of the project on the integrity of the SPA. Furthermore RSPB note that they have serious concerns about the cumulative pressures on the SPA as a result of the proposed development.

RSPB do however recommend that should planning consent be granted, the conditions relating to the following issues should be attached:

- Implementation of a programme of a post construction bird monitoring;
- Establishment of a Habitat Management Group to oversee the preparation and delivery of the Habitat Management Plan.
- Submission of annual reports detailing monitoring/surveillance results.

Furthermore RSPB request that a Section 75 Agreement be entered into to secure appropriate financial security for restoration and aftercare.

The objection from RSPB is noted with some importance. In addition it is noted that RSPB recommend that conditions should be attached to any grant of planning consent while a Section 75 Legal Agreement would be required to secure appropriate financial security for restoration and aftercare.

Notwithstanding the above noted objection, RSPB also note that the applicant has not provided sufficient information to enable an Appropriate Assessment to be undertaken by East Ayrshire Council. It is however of significance to note that SNH have undertaken an appraisal of the proposed development based on the information provided and conclude “beyond reasonable doubt, that the construction and operation of the Penbreck wind farm will not adversely affect the integrity of the Muirkirk and North Lowther Uplands SPA, either on its own or in combination with other development.” Furthermore, SNH have advised that East Ayrshire Council should undertake their own Appropriate Assessment based on the information provided. In this regard East Ayrshire Council have completed an Appropriate Assessment which is included as Appendix 1 of this report.

In all regards the Appropriate Assessment undertaken by East Ayrshire Council concludes that “given the mitigation measures which will be put in place and also the proposed site layout, any impacts on site integrity as a result of the proposed development will be avoided”.

In light of the Appropriate Assessment it is considered that the proposed development is capable of positive consideration and as such should planning consent be granted suitable conditions and a Section 75 legal agreement, as proposed by RSPB will be required.

38 Scottish Wildlife Trust have not responded to their consultation request at the time of writing this report.

39 Civil Aviation Authority (CAA) noted their standard response which reminds Councils their obligations to consult with NATS, MoD as well as airport operators. In this regard the relevant bodies have been consulted as detailed below.

Noted.

40 National Air Traffic Services (NATS) originally objected to the proposed development as it was considered that it would cause an adverse impact to the Lowther Hill radar and

associated air traffic operations of NATS without suitable mitigation. In this regard, East Ayrshire Council at that time, agreed with the developer not to determine the application until an appropriate aviation solution was secured.

It is however noted that the applicant and NATS have entered into an agreement (dated 5th June 2014), which will result in the implementation of an identified and defined mitigation solution. In this regard NATS have advised that they have withdrawn their objection on the basis of suspensive conditions being attached to any grant of planning consent.

Noted, suitable conditions can be applied to any future planning consent on a suspensive basis.

- 41 Glasgow Prestwick Airport (GPA) originally objected to the proposed development in February 2009, on the basis that the wind turbines will be detected by the Primary Surveillance Radar at the airport and therefore will have a significant adverse impact on the safety and efficiency of GPA's air traffic control service.

GPA has assessed and identified a number of potential solutions likely to mitigate the impact of wind farm developments in proximity to the airport and is working with the applicant to identify the most appropriate solution to mitigate the adverse impact of the proposed Penbreck development. In this regard it is noted that the applicant and GPA have entered into an agreement which will see a number of conditions attached to any planning consent issued in order to enable GPA to select the most appropriate mitigation scheme for the development.

Noted, suitable conditions can be attached to any grant of planning consent on a suspensive basis.

- 42 Ministry of Defence (MoD) noted they have no objection to the proposed development however they recommend that the perimeter turbines are suitably lit. In addition it is also requested that the latitude, longitude and maximum height of the construction equipment is supplied to the MoD for inclusion on flying charts to ensure that military aircraft avoid the area concerned.

Noted, these issues can be covered by suitable planning conditions.

- 43 Lugar and Logan Community Council have not responded to their consultation request at the time of writing this report.

- 44 Scottish Power have not responded to their consultation request at the time of writing this report.

- 45 Scotland Gas Networks have not responded to their consultation request at the time of writing this report.

- 46 Ironside Farrar (IF) have undertaken an audit of the Landscape and Visual Impact Assessment and offer no objection to the proposed development. IF conclude that the proposed development would result in only localised significant adverse effects to landscape character and visual amenity within a few kilometres of the turbines.

Noted.

- 47 ACCON UK, the Council's noise consultants have considered the cumulative noise assessment which was submitted in June 2016 and offer no objection to the proposed development. ACCON note that the cumulative noise assessment has been carried out using appropriate methodologies and using appropriate data and conclude that there will be no significant cumulative noise effects associated with the operation of the proposed wind farm at Penbreck.

In terms of considering the proposed development on a stand-alone basis, ACCON conclude that "*there would be no reason for refusal in respect of noise. On the basis that the predicted noise levels would be so low at the nearest noise sensitive properties in East Ayrshire, there is no need for a noise condition to protect these properties.*" In all regards it is therefore submitted that the proposed development at Penbreck will not result in significant adverse noise impacts.

REPRESENTATIONS

- 48 One letter of objection was received which raised the following issues:

- Visual impact on the scenic landscape
- Impacts upon regeneration through tourism
- East Ayrshire Council have already sacrificed enough of the landscape within their boundary for wind turbines.

The issues raised are noted and as such it is submitted that the visibility of the proposed turbines, located within East Ayrshire, would be limited. Views from Muirkirk, the nearest East Ayrshire settlement to the proposed turbines, will be restricted by Cairn Table and would in any case be distant at 6.5km.

Notwithstanding the above the wind turbines will be visible from a number of key tourist viewpoints including Cairn Table. The receptors from such tourist viewpoints in this instance will be minimal with only a small number of walkers noting any effects and in this regard it is considered that the proposed development will have minimal impact on the tourism and recreational interests.

The issue relating to the impact of the proposed development on the landscape it is significant to note that East Ayrshire Council are required to assess each application on its individual merits. In all regards the proposed development has been the subject of landscape and visual assessment and is not found to result significant adverse impacts on the landscape.

49 Four letters of support were received in relation to the application which note the following:

- The proposed turbines will not be visible from Muirkirk.
- The development will have minimum intrusion on local residents and communities.

In addition, the Muirkirk Community Association and the Muirkirk Enterprise Group have both submitted letters of support noting that the developers had met with them and answered questions.

Noted.

ASSESSMENT AGAINST THE DEVELOPMENT PLAN

50 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Local Plan 2010.

Ayrshire Joint Structure Plan 2007 (AJSP)

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

Policy ECON6 notes that all renewable energy proposals shall be supported where they are deemed appropriate in terms of a number of key considerations. These considerations are dealt with in detail under ECON7 below, which deals specifically with large scale wind farm developments.

52 Policy ECON7 (Wind Farms) states that:

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

The proposed wind farm is not within an Area of Search as defined in the approved Ayrshire Joint Structure Plan.

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

The application site includes a small part of the Muirkirk and Lowther Uplands Special Protection Area (SPA) and also the North Lowther Uplands Site of Special Scientific Interest (SSSI) at Stoney Hill, however it should be noted within some

significance that no turbines or associated infrastructure are proposed to be located within the respective SPA. The SPA and SSSI comprise three adjacent upland areas (situated to the north and south of the town of Muirkirk and the northern Lowther Hills) together with Airds Moss, a low-lying blanket bog situated between the two upland areas of north and south Muirkirk.

The SPA is strictly protected in accordance with Article 4 of the EC Birds Directive and qualifies by regularly supporting breeding populations of European importance, namely, hen harrier, short eared owl, merlin, peregrine, golden plover and a non-breeding population of hen harrier. The SPA citation notes that the hen harrier population on the site is one of the largest in Britain while the population of the short eared owl is also one of the largest in Britain.

The SSSI shares the same boundaries as the SPA and protects natural features which include localised exposures of fossiliferous rock, upland habitats and blanket bog, an associated assemblage of breeding birds, a breeding population of short-eared owl and breeding and non-breeding (wintering) populations of hen harrier.

It is of significance that the original planning application was revised to take account of comments from consultees and as such the revision included changes to the site layout in order to reduce the impact of the proposal on the integrity of the adjacent Muirkirk and North Lowther Uplands SPA. Furthermore, a Protected Species Survey and an Ornithological Assessment was submitted in November 2015 which note that no nest sites of breeding birds were recorded closer than 1.1km from the proposed turbines and as such it is considered that there is no significant risk of displacement due to the three proposed turbines.

(c) The integrity of national and international designations should not be compromised;

An Appropriate Assessment has been undertaken and appraises the implications of granting planning consent for the proposed development and is appended to this report as Appendix 1. As previously stated the proposal is considered to not adversely impact on the SSSI or the SPA. It is noted that Historic Environment Scotland (HES) previously objected to the proposed development due to the impact on the scheduled monument at Carin Table, however following amendments to the proposed development HES have removed their objection.

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

In terms of cumulative impact, there are a number of developments/proposed developments which are of significant interest to this application and as such the proposed development has been assessed to take account of cumulative effects. It is significant to note that an updated cumulative noise assessment and also a cumulative landscape and visual impact assessment have been submitted in

support of the application. While independently considering both issues on a cumulative basis it is concluded that the proposed development will not result in any significant cumulative effects.

It is significant to note that Ironside Farrar have undertaken an assessment of the Cumulative Landscape and Visual Impact Assessment, as provided by the applicant, and conclude “that the 3 turbines located in East Ayrshire would result in only localised significant adverse effects to landscape character and visual amenity within a few kilometres of the turbines, including only limited effects to the SLCA. The development would in generally accord with the guidance of the EALWCS (East Ayrshire Landscape and Wind Capacity Study)”.

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

1) Historic environment;

The proposed development was amended following a number of consultee responses and as such it is of significance to note that the layout of the proposed wind turbines was subsequently amended. In this regard Historic Scotland have confirmed that they do not object to the proposed development given that the revised layout reduces the impact of the proposed development on the setting of the nearby scheduled monument at Cairn Table.

In addition following the amended layout, West of Scotland Archaeology Service have recommended that an archaeological watching brief should be maintained during the construction period and should be conditioned on any grant of planning consent.

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

There are no areas designated in proximity to the site for local or regional heritage aspects.

3) Tourism and recreational interests;

The proposed development will not result in any significant adverse effects on the regionally significant tourist resources. The wind turbines will be visible from a number of key tourist viewpoints including Cairn Table. Two Core Paths are present within the vicinity of the proposed wind turbines namely Muirkirk to Cairn Table and Muirkirk to Sanquhar. The Cairn Table Footpath represents a well-used desire line from Muirkirk to the summit of Cairn Table. In all regards it is considered that the proposed development is likely to have limited impact on the respective route given that for much of the route the turbines will not be visible. The Muirkirk to Sanquhar core path passes close to the proposed turbines however it is considered that the proposed development is unlikely to result in significant impacts. The receptors from such tourist viewpoints in this instance will be minimal with only a small number of walkers noting any effects and in this regard it is

considered that the proposed development will have minimal impact on the tourism and recreational interests.

4) Communities;

The proposed wind turbines will not be visible from Muirkirk (approximately 6.5km away) due to screening provided by Cairn Table, and as such it is considered that the proposed development will not result in an unacceptable impact on the settlement.

It should be noted that the proposed development site will be accessed from South Lanarkshire and in this regard any traffic impacts occurring as result of the proposed development are unlikely to result in any detrimental impacts to the communities of East Ayrshire.

5) Buffer zones;

The proposed development is found to be located within the 30km buffer zone as identified in the structure plan technical guidance. Notwithstanding the location within the buffer zone, the applicant has provided information which demonstrates that the proposed development will not result in unacceptable visual impacts. In all regards the Audit, undertaken on behalf of East Ayrshire Council, by Ironside Farrar of the Landscape and Visual Impact Assessment notes that “the three turbines located in East Ayrshire would result in only localised significant adverse effects to landscape character and visual amenity within a few kilometres of the turbines, including only limited effects to the Special Landscape Character Area. The development would in general accord with the guidance of the East Ayrshire Landscape Wind Capacity Study”.

6) Aviation and defence interests;

As noted above, the consultees which have aviation interests have advised that they have no objection to the proposed development subject to appropriate suspensive conditions being attached to any grant of planning consent.

7) Broadcasting installations.

The application notes that the location of the wind farm has been chosen in order that it presents no danger to communication connections. Furthermore, it is considered that appropriate conditions and/or planning obligations can be included in any grant of planning consent and any associated legal agreement in order to ensure that any interference issues, which occur following construction, are resolved.

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

The proposed development is not located within a Sensitive Landscape Area, however it is noted that the wind turbines will be visible from the adjacent Sensitive Landscape Area. In all regards, the impacts of the proposed development are not considered to be significantly adverse.

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

In relation to ecology, biodiversity, nature conservation and the water environment, it should be noted that both SNH and SEPA have raised no objection to the proposed development. It is however recommended that certain works be secured by attaching relevant planning conditions should the development be consented.

RSPB have objected to the proposed development noting that in their opinion insufficient information has been provided and as such it is not possible to conclude beyond reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the SPA. RSPB suggest that conditions are attached to any planning consent that is issued in order to ensure the following:

- ***Implementation of a programme of a post construction bird monitoring;***
- ***Establishment of a Habitat Management Group to oversee the preparation and delivery of the Habitat Management Plan.***
- ***Submission of annual reports detailing monitoring/surveillance results.***

Notwithstanding the above, SNH have advised that in their view it is possible to undertake an Appropriate Assessment and as such they have undertaken an assessment, while also advising the Planning Authority to undertake their own assessment. In this regard an Appropriate Assessment has been undertaken by the Planning Authority which concludes that in light of the site layout and also the mitigation measures which are proposed, any impacts on the integrity of the site as a result of the proposed development will be avoided.

In terms of aviation interests it is significant to note that the Civil Aviation Authority, Glasgow Prestwick Airport and the Ministry of Defence offer no objection to the proposed development subject to the attachment of relevant planning conditions.

Similarly, ACCON UK Ltd offer no objection to the proposed development advising that conditions are not required to control noise levels given that the noise levels at the nearest properties would be so low and would therefore not require any controls. Additionally no impacts are expected from shadow flicker.

Adopted East Ayrshire Local Plan 2010 (EALP)

- 53 ENV15: the Council will not be supportive of development which would cause unacceptable and irreparable damage to important landscape features within rural areas. In this regard, developers will be expected to conserve and enhance (and reinstate or replace where appropriate), those features which contribute to the intrinsic landscape value and quality of the area concerned and which are likely to be adversely affected by the particular development proposed, including
- (i) existing setting of settlements and buildings within the landscape;
 - (ii) existing woodlands, shelter belts, hedgerows and trees;
 - (iii) existing burns, rivers, lochs and other water features;
 - (iv) existing field patterns and means of enclosure including dry stone dykes, hedging and fencing;
 - (v) existing Public Rights of Way, footpaths and bridleways; and
 - (vi) existing skylines, landform and contours.

The proposed development is located approximately 7km south of the settlement of Muirkirk within the Penbreck and Carmacoup Forest. In all regards it is considered that the proposed turbines located within East Ayrshire will not result in unacceptable damage to the existing setting of settlements and buildings. Indeed, the three proposed turbines will not be visible from Muirkirk as a result of natural screening provided by Cairn Table.

The effect on the existing woodland is considered to be minimal given that the East Ayrshire element of the proposed development concerns the erection of only three of the proposed nine wind turbines. The Amended Environmental Statement states there will be a minimal impact as a result of the proposed development with appropriate mitigation proposed to ensure the ability of the Long Term Forestry Plan remains to deliver multiple benefits.

Two Core Paths are present within the vicinity of the proposed wind turbines namely Muirkirk to Cairn Table and Muirkirk to Sanquhar. The Cairn Table Footpath represents a well-used desire line from Muirkirk to the summit of Cairn Table. In all regards it is considered that the proposed development is likely to have limited impact on the respective route given that for much of the route the turbines will not be visible. The Muirkirk to Sanquhar core path passes close to the proposed turbines however it is considered that the proposed development is unlikely to result in significant impacts.

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

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

The proposed development will be visible from Cairn Table, however it is significant to note that, in the wider rural area, the proposed wind turbines will only be visible from a limited number of locations and from longer, more distant views. A Cumulative Landscape and Visual Impact Assessment was submitted by the applicant and was considered by Ironside Farrar who concluded that there would be limited visibility of the proposed development from roads and settlements.

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

The landscape character type in this area is East Ayrshire Plateau Moorlands which forms an extensive undulating upland plateau of subtly rounded hills, shallow basins and some very gently graded lower slopes. In addition the area also features a number of higher hills which includes Carin Table which itself is a landmark hill in the area and has steep slopes and a defined summit. The proposed development will be visible from Carin Table however overall it is not considered that the visibility of the proposed wind turbines are such that they will intrude on the key views to and from Cairn Table.

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

A range of planning conditions and legal obligations can be added to any grant of planning consent thus ensuring that the landscape setting is safeguarded and protected from irreversible change. The planning conditions and obligations attached to any planning consent and legal agreement will ensure the restoration of the site at the end of the consented period.

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

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

As previously noted the proposed development is located adjacent to the Muirkirk and Lowther Uplands Special Protection Area (SPA) and also the North Lowther Uplands Site of Special Scientific Interest (SSSI). Furthermore, it is of significance

to note that the original planning application was revised to take account of comments from consultees and as such the revisions included changes to the site layout in order to reduce the impact of the proposal on the integrity of the adjacent Muirkirk and North Lowther Uplands SPA. Furthermore, a Protected Species Survey and an Ornithological Assessment was submitted in November 2015 which note that no nest sites of breeding birds were recorded closer than 1.1km from the proposed turbines and as such it is considered that there is no significant risk of displacement due to the three turbines.

In terms of the cumulative effect of the proposed development it is significant to note that SNH took account of the potential cumulative impact of the proposed development and concluded that “beyond reasonable doubt, that the construction and operation of the Penbreck wind farm will not adversely affect the integrity of the Muirkirk and North Lowther Uplands SPA, either on its own or in combination with other developments”.

In all regard it is considered that the proposed development has taken account of the importance of the adjacent SPA and SSSI and as such will not result in any unacceptable adverse impacts on its own merits or adverse cumulative impacts.

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

Muirkirk is the nearest settlement within East Ayrshire to the proposed development and is located approximately 6.5km away, while the nearest residential property is located approximately 2.9km away. A cumulative landscape and visual impact assessment has been undertaken and in this regard it is considered that the proposed development will not result in any adverse impacts on nearby communities and residential properties. In addition, a cumulative noise assessment has been undertaken and concludes that there would be no significant cumulative noise effects associated with the operation of the Penbreck wind farm.

In terms of considering the proposed development as a stand-alone proposal, the applicant has submitted a landscape and visual impact assessment and also a separate noise assessment, both of which conclude that the proposed development is capable of positive consideration. Indeed ACCON have undertaken a review of the noise assessment concluding that “there would be no reason for refusal in respect of noise. On the basis that the predicted noise levels would be so low at the nearest noise sensitive properties in East Ayrshire, there is no need for a noise condition to protect these properties.” In addition the landscape and visual impact assessment which was submitted with the planning application has been reviewed and as such it is considered that the proposed development can be considered in a positive manner. Indeed views from Muirkirk will be limited as a result of screening provided by Cairn Table, while views from other areas within East Ayrshire are also restricted.

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

Any grant of planning consent will be subject to appropriate conditions which relate to archaeology interests. It is of significance to note that following the submission of an amended layout which takes account of the Scheduled Ancient Monument at Cairn Table, Historic Environment Scotland do not object to the proposed development.

In terms of Historic Gardens and Designed Landscapes, the amended Environmental Statement (2009) states that the sites at Carnell, Auchincruive and Dumfries House will have theoretical visibility of the turbines located within East Ayrshire. In this regard the Review of the Landscape and Visual Impact Assessment, undertaken by Ironside Farrar, states that “Dumfries House GDL has theoretical visibility of the East Ayrshire turbines, but is located almost 18km to the west and at a distance beyond which effect to its character are likely to be significant”. Furthermore it is significant to note that the other sites at Carnell and Auchincruive are located further away than the site at Dumfries House and as such it is considered that they also are at a distance beyond which the effect to their character is likely to be significant.

In light of the review undertaken by Ironside Farrar it is therefore considered that the three Historic Gardens and Designed Landscapes identified as have theoretical visibility of the turbines located within East Ayrshire will not suffer any significant effect to their character.

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

As has been stated in relation to other relevant policies of the Ayrshire Joint Structure Plan, it is considered that the visual impacts will not be unacceptable. A cumulative landscape and visual impact assessment was undertaken by the applicant and was assessed by Ironside Farrar who conclude that the proposed development will only result in localised significant adverse effects to landscape character and visual amenity within a few kilometres of the site. In all regards it is considered that the proposed development will not result in any unacceptable adverse impacts to the setting of the natural landscape.

- (v) on existing infrastructure.

It is considered that there will be no unacceptable impact caused by the proposed development. As noted previously the site will be accessed from South Lanarkshire and in this regard the road infrastructure within East Ayrshire is unlikely to suffer any adverse impacts as a result of the proposed development.

- 56 Policy CS14: the Council will assess all applications for wind farm developments, including extensions to existing, consented and/or operational wind farms, against the provisions of Policy ECON7 of the approved Ayrshire Joint Structure Plan: Growing a

Sustainable Ayrshire and any future supplementary planning guidance to be prepared relating to cumulative impact.

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

- 57 CS15: the Council, if mindful to grant planning permission for a commercial wind farm development, requires applicants to contribute to a dedicated Renewable Energy Fund (REF) which will be used to finance sustainable community environmental projects, particularly those designed to help reduce carbon emissions and counteract global warming. For a period of ten years from the commencement of construction work on the wind farm, all contributions will be directed exclusively to local projects within 10km of the boundary of the wind farm in East Ayrshire. Thereafter, 50% of the contributions received will be directed towards local projects with 50% being reserved for use in the wider East Ayrshire area. Contributions will be payable annually and be set at a standard rate of £2,500 per megawatt of installed capacity per annum, index linked to 1 January 2008.

The applicant has confirmed that a contribution to the Renewable Energy Fund will be paid as per the terms of Policy CS15. Any contributions received in respect of the Renewable Energy Fund would be controlled through a Section 75 legal agreement, should planning consent be granted.

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

Should planning consent be granted it is recommended that a planning condition be attached to address the requirements of this policy.

ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

59 The principal material considerations relevant to the determination of the application are as follows:

- Consultation Responses
- Representations
- Report to Council dated 24 May 2013, 19 September 2013 and 28 January 2014 and the Report to Cabinet on 21 May 2014 on decommissioning, restoration, aftercare and mitigation financial guarantees
- Scottish Government National Energy Policy
- Scottish Planning Policy
- National Planning Framework 3
- Ayrshire Joint Planning Steering Group Wind Farms: Addendum to the Ayrshire Joint Structure Plan Technical Report TR03/2006
- East Ayrshire Local Development Plan - Proposed Plan (March 2015)
- Planning Authority's Noise Consultant Report (Accon Ltd)
- Planning Authority's Landscape Architect Consultant Report (Ironsides Farrar)
- East Ayrshire Landscape Wind Capacity Study 2013
- Review by Independent Assessor (Ironsides Farrar) on behalf of the Council
- Decommissioning and Restoration Strategy

Consultation Responses

60 RSPB have raised an objection to the proposed development citing that it is not possible to determine if the development will result in an adverse effect on the integrity of the SPA due to the lack of information submitted. It is noted that RSPB recommend that conditions should be attached to any planning consent while a Section 75 Legal Agreement would be required to security appropriate financial security for restoration and aftercare.

Notwithstanding the above noted objection, RSPB also note that the applicant has not provided sufficient information to enable an Appropriate Assessment to be undertaken by East Ayrshire Council. It is however of significance to note that SNH have undertaken an appraisal of the proposed development based on the information provided and conclude "beyond reasonable doubt, that the construction and operation of the Penbreck wind farm will not adversely affect the integrity of the Muirkirk and North Lowther Uplands SPA, either on its own or in combination with other development." Furthermore, SNH have advised that East Ayrshire Council should undertake their own Appropriate Assessment based on the information provided. In this regard East Ayrshire Council have completed an Appropriate Assessment which is included as Appendix 1 of this report.

In all regards the Appropriate Assessment undertaken by East Ayrshire Council concludes that "given the mitigation measures which will be put in place and also the proposed site layout, any impacts on site integrity as a result of the proposed development will be avoided".

In light of the Appropriate Assessment it is considered that the proposed development is capable of positive consideration and as such should planning consent be granted

suitable conditions and a Section 75 legal agreement, as proposed by RSPB will be required.

Representations

- 61 The proposed development has attracted one letter of objection which raises a number of issues. Concern is raised over the visual impact of the proposed turbines on the landscape of East Ayrshire and the resultant impacts this may have on the regeneration of the local area. The objection claims that East Ayrshire Council have sacrificed enough of their land for wind turbines and as such should other neighbouring authorities wish to promote such development then the impacts should be felt within these authorities. Reference is made to decisions made by Dumfries and Galloway which are located close to the boundary with East Ayrshire. It is significant to note that in this instance the neighbouring authority is South Lanarkshire Council.
- 62 The proposed development concerns the erection of nine wind turbines, six located within South Lanarkshire and three located within East Ayrshire. South Lanarkshire Council approved the erection of the six turbines located within their boundary in June 2014. In terms of the visual impact of the three turbines located within East Ayrshire it is significant to note that Muirkirk is the nearest settlement to the proposal. In this regard it is considered that the visibility of the proposed wind turbines, from Muirkirk, will be limited given that the views will be restricted by Cairn Table and would in any case be distant at 6.5km.
- 63 In relation to the issues of regeneration and tourism, it is considered that the proposed development will not result in any significant adverse effects on the tourist potential of the area and the subsequent regeneration efforts. It is noted that the proposed wind turbines will be visible from a number of key tourist viewpoints, however it is considered that the receptors from such viewpoints in this instance will be minimal with only a small number of walkers noting any effects. In this regard it is considered that the proposed development will have minimal impact on the tourism and recreation interests.
- 64 Four letters of support were received in relation to the proposed development. The letters of support have been received from residents of Muirkirk and note that the proposed turbines will not be visible from Muirkirk and will therefore have minimal intrusion on local residents and communities.
- 65 In addition letters of support were also received from both the Muirkirk Enterprise Group and the Muirkirk Community Association.
- 66 Reports to Council dated 24 May 2013, 19 September 2013 and 28 January 2014 and the Report to Cabinet on 21 May 2014 on decommissioning, restoration, aftercare and mitigation financial guarantees

The above mentioned reports 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 wind farms.

- 67 In this regard it is significant to note that the applicant has agreed to put in place a suitable financial guarantee in respect of the decommissioning, restoration, aftercare of the proposed wind farm. The applicant has confirmed that a financial guarantee in the form of a bank guarantee with a quantum totalling £435,687 will be put in place. The bank guarantee will be subject to 3% interest compounded over 5 years.
- 68 In addition, Ironside Farrar have calculated the effect of inflation on such costs over the initial 5 year period of the guarantee noting that 3% inflation over 5 years would increase the quantum to £505,080.

Scottish Government National Energy Policy

- 69 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.
- 70 The Scottish Government's Renewable Electricity Generation Policy Statement (REGPS) June, 2013 sets out the Scottish Government's plans for renewable energy and fossil fuel thermal generation in future energy mixes. The EGPS indicates the Scottish Government's amended target of delivering the equivalent of at least 100% of gross electricity consumption from renewable by 2020. It is confirmed that this target does not mean that Scotland will be 100% dependent on renewable generation; renewable energy generation will form part of a wider, balanced electricity mix, with thermal generation continuing to play an important role.
- 71 National energy policy in Scotland, through the planning framework, indicates that the aim of national planning policy is to develop Scotland's renewable energy potential whilst safeguarding the environment and communities. In this case, it is considered that the proposed development has been designed to minimise impacts on the environment and local communities. In all regards the proposed development would therefore contribute to the generation of renewable energy whilst at the same time minimising impacts on the landscape and local communities.

Scottish Planning Policy (SPP)

- 72 At the outset it should be noted that the East Ayrshire Local Plan was adopted in 2010, while the emerging East Ayrshire Local Development Plan is currently the subject of an examination by Scottish Ministers. In this regard SPP should be considered with some importance:

Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.

Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.

Where a plan is under review, it may be appropriate in some circumstances to consider whether granting planning permission would prejudice the emerging plan. Such circumstances are only likely to apply where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan. Prematurity will be more relevant as a consideration the closer the plan is to adoption or approval.

- 73 Scottish Planning Policy sets out the Government's commitment on renewable energy developments. It states that the planning system should support *the transformational change to a low carbon economy, consistent with national objectives and targets, including deriving:*
- *30% of overall energy demand from renewable sources by 2020;*
 - *11% of heat demand from renewable sources by 2020; and*
 - *the equivalent of 100% of electricity demand from renewable sources by 2020.*
- 74 In addition SPP supports the development of a diverse range of electricity generation from renewable energy technologies, including the expansion of renewable energy generation capacity.
- 75 In terms of onshore wind more specifically, SPP advises that Planning Authorities should set out in the development plan, a spatial framework which identifies 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 which comprises 3 groups of areas. Group 1 relates to areas where wind farms will not be acceptable, namely, national parks and national scenic areas. Group 2 concerns areas of significant protection and recognises and includes designations and interests where wind farms may be appropriate in some circumstances where consideration will be required to demonstrate that any significant effects on the qualities of the areas concerned can be substantially overcome. Designations include, amongst others, SSSI's, Gardens and Designed Landscapes and areas of wild land. Areas within Group 3, are likely to be acceptable, subject to detailed consideration against identified policy criteria.
- 76 Part 163 advises that the spatial framework approach should be followed in order to deliver consistency nationally and additional constraints should not be applied at this stage. 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. It notes that individual properties and settlements not identified in development plans will be protected through local development plan policy (part 164).
- 77 Part 169 sets out the likely considerations that should be taken into account in the determination of wind farm proposals. These include a large number of issues but particularly relevant to this proposal are the scale of contribution to renewable energy

generation targets, effect on greenhouse gas emissions, cumulative impacts, impacts on communities, including visual impact, residential amenity, impacts on the historic environment, including scheduled monuments, the need for conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration and the need for a robust planning obligation to ensure that operators achieve site restoration.

- 78 Finally, paragraph 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.
- 79 The provision of a spatial framework for wind farm development provides clearer guidance on areas where windfarm development may or may not be acceptable. The group 1 areas are not applicable to East Ayrshire however the areas of significant protection set out within group 2 will be relevant in many cases. Group 2 highlights the sensitivity of the designations and interests contained within it and requires that significant effects on the qualities of these areas can be substantially overcome therefore providing a stricter test for wind farm acceptability than group 3 areas where assessment will take place against identified policy criteria. Notwithstanding this however, the considerations laid out at part 169 of SPP would be relevant to groups 2 and 3.
- 80 The development plan for East Ayrshire preceded the updated SPP. Despite this it complies with the key requirements of SPP in that it has identified areas of search where large and small scale windfarms will be suitable in principle and also sets out the criteria against which windfarm proposals will be assessed, as noted at section 6.
- 81 The proposed development falls within group 2, areas of significant protection. As previously noted, the three turbines located within East Ayrshire are situated approximately 6.5km from the settlement of Muirkirk. In this regard, it is considered that the proposed development will not result in any adverse impacts on nearby communities and residential properties. In terms of noise, ACCON have undertaken a review of the proposed development and have concluded that based on the predicted noise level of 20dB from the proposed turbines there would be no significant noise impacts at the nearest noise sensitive receptors in East Ayrshire which are located some 9km from the Penbreck site. In landscape and visual impact terms the proposed development is unlikely to result in any significant effects on the settlements within East Ayrshire with Cairn Table providing sufficient screening from Muirkirk. It is considered that any impact is likely to be found at the summit of Cairn Table however given that such impacts are only likely to be experienced by walkers it is submitted that as a stand-alone development the proposal is capable of positive consideration.

- 82 In cumulative terms both a noise assessment and a landscape and visual assessment have been undertaken and submitted by the applicant. In relation to cumulative noise impacts, the cumulative noise assessment concludes that there would be no significant cumulative noise effects associated with the operation of the Penbreck wind farm. In this regard ACCON have undertaken a review of the cumulative noise assessment and notes that it takes account of nearby developments at Kennoxhead, Lethans and Glenmuckloch. In cumulative terms ACCON conclude that *“the cumulative noise assessment has been carried out using appropriate methodologies and using the appropriate data. On this basis the conclusions of the assessment are considered to be correct in indicating that there would be no significant cumulative noise effects associated with the operation of Penbreck wind farm.”* In addition a review of the submitted cumulative Landscape and Visual Impact Assessment was undertaken by Ironside Farrar and concludes that *“that the 3 turbines located in East Ayrshire would result in only localised significant adverse effects to landscape character and visual amenity within a few kilometres of the turbines, including only limited effects to the SLCA. The development would in generally accord with the guidance of the EALWCS.”*
- 83 In all regards in light of the above cumulative noise and landscape and visual impact assessments it is considered that the impacts will limited and therefore the proposed development is capable of positive consideration.
- 84 In all regards it is considered that the proposed development is capable of positive consideration against the terms of Scottish Planning Policy.

National Planning Framework 3 (NPF3)

- 85 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 and looks to achieve the generation equivalent of at least 100% of gross electricity consumption from renewables by 2020. NPF3 recognises that an energy generation mix will continue to be required.
- 86 Section 3.23 of NPF3 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.
- 87 Whilst NPF3 offers a general support for on shore wind as part of Scotland’s energy mix, it does 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’. In all regards the proposed development has demonstrated that it will not result in an adverse impact on the neighbouring communities, the landscape and environment and also the ecology of the local area. The use of conditions attached to any grant of planning permission will further help to ensure the proposed development does not result in significant adverse impacts.

88 Consequently the proposal is considered to be consistent with the provisions of NPF3.

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

- 89 All three Ayrshire Councils have agreed that this Addendum will be used in the assessment of wind farm applications. The purpose of the Addendum is to support the implementation of wind energy policy as set out in the Ayrshire Joint Structure Plan. The addendum provides developers with greater clarity regarding those areas where the principle of wind farm development is likely to be acceptable or unacceptable and to provide further explanation of the criteria against which new development will be assessed.
- 90 In terms of the Addendum the proposed site is not located within an area afford significant protection from the effects of large scale wind farms. The Addendum requires that an assessment be undertaken against relevant development plan policies to protect the interests of designated sites. This assessment has been undertaken at part 5 of this report.
- 91 Part 14 of the Addendum concerns the cumulative impact of the proposed development and notes that such impacts will most frequently involve landscape and visual impacts but may also affect natural heritage designations and aviation interests. In this instance, the cumulative impact of landscape and visual impacts are key issues to the acceptability of the proposed development. It is of significance to note that a cumulative landscape and visual impact assessment was submitted by the applicant in May 2016 and details the likely cumulative landscape and visual effects of the three proposed turbines located within East Ayrshire. The assessment takes account of other wind turbines within the area. In all regards it is considered that the proposed development, will not result in a significant adverse cumulative landscape and visual impact.

East Ayrshire Local Development Plan - Proposed Plan (March 2015)

- 92 The East Ayrshire Local Plan was adopted in 2010 with a lifespan of 5 years, however until this plan is replaced by the Proposed Plan it will remain, along with the Ayrshire Joint Structure Plan 2007, the Development Plan for East Ayrshire against which planning applications will be determined.
- 93 As detailed previously SPP states that where the development plan is out of date then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. The wider policies in SPP will also be material considerations which should be taken into account when determining applications.
- 94 In this particular case, the wind energy policies contained in the Proposed Plan are subject to representation and require to be examined by the Directorate of Planning and Environmental Appeals (DPEA). In this regard, in compliance with the Council decision on 23 September 2015, this application will continue to be considered against the Ayrshire Joint Structure Plan 2007 and the Adopted East Ayrshire Local Plan 2010 and the

Proposed Plan will be afforded a proportionate degree of weight as a material consideration.

- 95 Policy RE1 entitled Renewable Energy Developments, requires that there are no significant adverse impacts on all criteria laid out in Schedule 1.

It is considered that the proposed development is capable of positive consideration against the terms of policy RE1 and the associated Schedule 1. Indeed, the applicant has provided a Cumulative Landscape and Visual Impact Assessment which demonstrates that the proposed development will not result in any unacceptable impacts. In all regards the Audit undertaken on behalf of East Ayrshire Council, by Ironside Farrar notes that “the three turbines located in East Ayrshire would result in only localised significant adverse effects to landscape character and visual amenity within a few kilometres of the turbines, including only limited effects to the Special Landscape Character Area”.

An outstanding objection from RSPB remains in respect of the potential impact of the proposed development on the Muirkirk and North Lowther Uplands SPA. In this regard it is significant to note the consultation response from SNH and also the conclusion of the Appropriate Assessment (included as Appendix 1 of this report) undertaken by East Ayrshire Council. Based on the information provided SNH conclude “beyond reasonable doubt, that the construction and operation of the Penbreck wind farm will not adversely affect the integrity of the Muirkirk and North Lowther Uplands SPA either on its own or in combination with other development”.

In light of all of the above it is considered that the proposed development is capable of positive consideration against the terms of Policy RE1.

- 96 Policy RE3 requires proposals to be measured against a spatial framework laid out in map 12 which identifies areas requiring significant protection, and where opportunities for turbine development will be minimal.

The proposed development is located within a Group 2 area which is afforded significant protection. The protection is afforded as a result of the SPA and SSSI which is located adjacent to the proposed development site. In all regards it is significant to note that the application site is located within the Muirkirk and North Lowther Uplands Special Protection Area (SPA) and also the Muirkirk Uplands Site of Special Scientific Interest (SSSI) however no turbines or associated infrastructure are located within either of the designations. In addition it should be noted that the applicant has demonstrated that the proposed development will not have an adverse significant impact on the area concerned. Indeed the layout has been designed to minimise impacts on the adjacent SPA and SSSI and also the Scheduled Monument at Cairn Table. In all regards it is considered that the proposed development is capable of positive consideration against the terms of Policy RE3.

- 97 Policy RE4 requires an assessment of the landscape’s capacity to absorb further turbine development; in relation to the cumulative effect alongside consented, operational and pending turbine development.

The applicant has submitted a Cumulative Landscape and Visual Impact Assessment which has been assessed and considered by Ironside Farrar who conclude that “the three turbines located in East Ayrshire would result in only localised significant adverse effects to the landscape character and visual amenity within a few kilometres of the turbines, including only limited effects to the SLCA. The development would in general accord with the guidance of the EALWCS”. It is therefore considered that the proposed development is capable of positive consideration against the terms of Policy RE4.

- 98 Policy RE5 requires that the proposal be measured against landscape sensitivity as defined by the Landscape Wind Capacity Study. This guidance should be used alongside all other policy criteria.

The landscape has a high-medium sensitivity to turbines of 70m and above. Notwithstanding this sensitivity, the applicant has submitted a landscape and visual impact assessment which assesses the proposed development on a cumulative basis in relation to the surrounding landscape. In this regard it is considered that the proposed development is capable of positive consideration against the terms of Policy RE5. The proposed layout has been designed to minimise impacts of the proposed development on the wider landscape and as such Ironside Farrar conclude in their audit that “the three turbines located in East Ayrshire would result in only localised significant adverse effects to the landscape character and visual amenity within a few kilometres of the turbines, including only limited effects to the SLCA. The development would in general accord with the guidance of the EALWCS”.

- 99 Policy RE7 states that where a wind turbine is not in operation producing electricity for a continuous period of 6 months, the operator will be required to provide evidence to the Council that the apparatus is in the process of being repaired or replaced. If this is not provided, the Council will deem the turbine to be surplus to requirements and will, through an appropriate planning condition or where deemed necessary by a legal obligation, require its removal, with the land restored to its original condition within an appropriate period to be agreed with the Council.

Any consent that may be granted should be appropriately conditioned to reflect the requirements of this policy.

- 100 Policy RE8 introduces a new community benefits policy. It states that the Council will, if mindful to grant planning permission for a wind energy development, encourage applicants to provide a community benefit payment of no less than £5,000 per mw of installed capacity per annum, payable from the date on which the first turbine is fully erect.

101 Applicants will be requested to provide the community benefit in two ways:

- (i) A minimum contribution of £2,500 per megawatt of installed capacity per annum should be made to the Council managed Renewable Energy Fund, which will be used by communities to finance a range of community, environmental and employability projects;

For a period of 10 years, all contributions will be directed exclusively to local projects within 10 kilometres of the boundary of the wind energy development. Thereafter, 50% of the contributions received will be directed towards local projects with 50% being reserved for use in the wider East Ayrshire area.

- (ii) A minimum of £2,500 per megawatt of installed capacity per annum should be paid direct to the affected communities, through an appropriate Community Fund specifically established to manage the funds received from the wind energy development.

The applicant has confirmed that a contribution of £2,500 to the Renewable Energy Fund will be paid as per the Policy CS15 of the Adopted East Ayrshire Local Plan. Such contributions are similar to the terms of Policy RE8(i) as detailed above.

In terms of part (ii) of Policy RE8, as detailed above, the applicant has not made any indication that any payments would be paid directly to the affected communities. Notwithstanding the above, it is significant to note that the East Ayrshire Local Development Plan is not yet adopted and therefore the applicant is complying with all relevant policy in meeting the terms of Policy CS15 of the Adopted East Ayrshire Local Plan.

102 Policy RE9 states that all new wind energy, waste management, landfill and electrical infrastructure proposals will require to provide an appropriate financial guarantee, acceptable to the Council, supported with payments for the cost of compliance monitoring, to ensure that all decommissioning, restoration, aftercare and mitigation requirements attached to planning consents can be met in full. 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. 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.

It should be ensured, through a Section 75 obligation that a robust restoration financial guarantee is in place before any development commences and that it is monitored regularly as per policy RE9. Supplementary planning guidance has been produced on this topic and has been publically commented on and will be assessed in line with and after the Examination process is complete. Further detail of this has been set out in the Council's submission on planning conditions and legal agreements.

103 Policy RE10 covers compliance monitoring and states that in respect of wind energy, landfill and electrical infrastructure proposals, in order to ensure that planning consents and/or Section 75 obligations are being fully complied with, developers will be required to provide financial contributions to cover the full cost of external consultants employed by the Council to undertake a Compliance Monitoring role.

If the application is consented, it should be ensured that provision is made for the developer to provide a Planning Monitoring Officer for the Development with the cost of providing this position being met by the developer. This issue will require to be secured through a Section 75 obligation between the Council and the Developer. This obligation would apply to applications to discharge planning conditions, compliance with planning conditions prior to construction and at the decommissioning and restoration of the wind farm. This would as a minimum, in relation to the commencement of construction works and thereafter until discharge of all planning conditions and post construction restoration works are complete.

Assessment of Cumulative Noise Assessment (ACCON UK Ltd)

104 A cumulative noise assessment was submitted by the applicant in May 2016, which was subsequently assessed by ACCON UK Ltd, who conclude the following:

- The cumulative noise impact assessment was carried out using the appropriate methodologies and uses appropriate data.
- The assessment is considered to be correct in indicating that there would be no significant cumulative noise effects associated with the operation of Penbreck wind farm.

105 In addition it is significant to note that, given the distance to the nearest residential property (approximately 2.9km), ACCON UK Ltd do not recommend attaching a noise condition to any potential planning consent as it is their view that “*no condition is required to control noise levels as the predicted noise levels are very low for the East Ayrshire properties*”. Furthermore, ACCON UK Ltd also that “*it is not practically possible to provide a condition to control EAM*”.

Assessment of Cumulative Landscape Assessment (Ironside Farrar Ltd)

106 The applicant has provided a Cumulative Landscape and Visual Impact Assessment which takes account of recent developments and proposals within the vicinity of the application site. Ironside Farrar have undertaken a review of the submitted Cumulative Landscape and Visual Impact Assessment and offer a number of comments and conclusions.

- 107 In its conclusion Ironside Farrar note that *“the three turbines located in East Ayrshire would result in only localised significant adverse effects to the landscape character and visual amenity within a few kilometres of the turbines, including only limited effects to the SLCA. The development would in general accord with the guidance of the EALWCS”*.
- 108 In terms of visibility it is noted that the three turbines located within East Ayrshire would have very limited visual impacts in sensitive receptors, being located centrally within the Plateau Moorland/Rolling Moorland/Southern Uplands between the Nith and Ayr valleys with little visual influence on the settlement within these lowland landscapes. Furthermore it is noted that the proposed development will result in localised theoretical visibility of the 3 turbines from parts of Cumnock, but at a distance of around 15km.

East Ayrshire Landscape Wind Capacity Study 2013 (EALWCS)

- 109 According to the EALWCS the landscape character type of the application site is Plateau Moorlands. This character type forms *“an extensive undulating upland plateau of subtly rounded hills, shallow basins and some very gently graded lower slopes but also feature the hills of Blackside, Wardlaw, Cairn Table and Corsencon Hills which have steep slopes and defined ridges and summits. The EALWCS notes that land cover is “simple, dominated by grass moorland with some coniferous forestry, although small enclosed pastures and mixed woodlands occur on the settled lower hill slopes to the south-east of Galston within the valley of the Greenock Burn”*.
- 110 *“There is very limited scope for the large typology (turbines >70m) to be accommodated within the landscape. Turbines should be set well back from the more sensitive outer edges of this landscape to avoid significant impact on small scale settled lower slopes and valleys within this character type and the adjacent landscapes”*.
- 111 Furthermore, EALWCS notes that that there is scope for the medium typology (50-70m) to be located on lower, gently graded outer hill slopes provided they are set back from the landmark hills, while smaller turbines (<50m) could be accommodated on the sparsely settled lower hill slopes and valleys of this landscape where they could be sited with a back drop by gently rising ground thus minimising visual prominence.
- 112 In this instance the proposal concerns the erection of three turbines, each with a hub height of 80m, a rotor diameter of 90m, with the entire turbine measuring 125m in height (to blade tip). It is however worthy to note that Ironside Farrar do not identify any lowland locations from which there would be significant adverse effects from views to the turbines, nor where it would be seen with Cairn Table from lowland population centres or main transport routes. In all regards it is considered that the proposed development is capable of positive consideration against the terms of the EALWCS.

Review by Independent Assessor (Ironsides Farrar) on behalf of the Council

- 113 In compliance with paragraph 24 of the Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation Financial Guarantees dated 21 May 2014 and in terms of financial security for decommissioning and restoration of the site the Planning Authority's Planning Monitoring Officer (Ironsides Farrar) has carried out an assessment of the value of the decommissioning and restoration guarantee for the Penbreck development.
- 114 This assessment has concluded that the total decommissioning and restoration costs for the East Ayrshire part of the development would amount to £435,687.
- 115 In addition, Ironsides Farrar have calculated the effect of inflation on such costs over the initial 5 year period of the guarantee noting that 3% inflation over 5 years would increase the quantum to £505,080.
- 116 In light of the above it is significant to note that the applicant has agreed to the above costs and have advised it is intended that such costs will be secured via a bank guarantee.

Applicants Proposals for Financial Guarantee

- 117 In terms of securing the site decommissioning and restoration the application intends the following arrangements:
- Based on its own calculations, Brookfield Renewable UK Limited proposes to put in place a bank guarantee to the value of £435,687, subject to a 3% inflation rate compounded over five years.
 - Brookfield Renewable UK Limited consider that this figure would cover the decommissioning costs associated with the proposed Penbreck Windfarm.
 - Any bond would have a 5 year fixed term with a succession of bonds put in place to cover the operational life of the wind farm. A new bond would be put in place before the previous bond expires.
 - The bond value would be reassessed every 5 years to provide the Council with the comfort of this periodic review.

FINANCIAL AND LEGAL IMPLICATIONS

- 118 There are potential financial implications for the Council in coming to a view on this application as, should the Planning Committee be minded to refuse the proposed Penbreck development, this could lead to an appeal by the applicant. Furthermore, if the Council is considered to have acted unreasonably in refusing the proposed development, a claim for an award of expenses could be made by the applicant.
- 119 As stated above, should the Planning Committee support the recommendation that the Council refuse this proposed development then it could result in an appeal by the

applicant to the Scottish Government Department for Planning and Environmental Appeals (DPEA). The Council would require to participate in whatever procedure is considered appropriate by the DPEA in order to put forward its case. This could be via further written representation, hearing or inquiry sessions or a combination of these methods. This therefore may also lead to further costs being incurred to the extent it may be necessary to either engage expert external advice, support or representation and/or to engage professional expert witnesses to give evidence on the Council's behalf as necessary.

- 120 Also as stated elsewhere within the report, if the Planning Committee is minded to approve planning consent for this development certain matters should be addressed by Section 75 Legal Agreement under the 1997 Act, or through conditions or other means as appropriate, (as referred to throughout the report).
- 121 In this regard Heads of Agreement under Section 75 of the 1997 Act, to be concluded prior to the issue of consent, should comprise the following:
- 122 Appropriate developer contributions towards the Renewable Energy Fund for the purpose of enabling mitigation measures and environmental improvements within East Ayrshire consistent with Council policy CS15.
- 123 An Independent Planning Monitoring Officer shall be appointed by the Planning Authority, with the cost of providing this service being met by the developer. The Independent Planning Monitoring Officer will also be consulted in relation to the discharge of respective conditions attached to any planning consent issued.
- 124 No section of development hereby authorised shall be commenced until a decommissioning, restoration and aftercare guarantee is provided by the developer and agreed with the Planning Authority that will secure the decommissioning of the turbines and the restoration and aftercare of the site.
- 125 Additionally, should the Planning Committee support the recommendation that the Council refuse this proposed development and the applicant appeals that decision, the matters noted above should be put forward by the Council within the appeal process to ensure that these matters are secured in the event of a successful appeal.
- 126 In accordance with Council's arrangements for consideration of Financial Guarantees relative to certain types of development, prior to sign off in this case by the Depute Chief Executive that Planning, Finance and Legal Services have all been involved in the process of assessing the applicant's proposed arrangements for securing their decommissioning and restoration obligations (as set out above). In this case, the applicant has agreed to provide a bank guarantee, as detailed above, for the sum of of £435,687, subject to a 3% inflation rate compounded over five years. In all regards, the proposed financial guarantee mechanism is found to be in compliance with the Council's Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation of Financial Guarantees dated 21 May 2014.
- 127 Should the Planning Committee decide to grant consent, there is no requirement to refer this application to the Scottish Government under Circular 3:2009 - 'Notification of Planning Applications'.

CONCLUSIONS

- 128 Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997, as amended, requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.
- 129 As indicated in Section 5 of this report, the proposed development is found to be capable of positive consideration against the terms of the Ayrshire Joint Structure Plan and the East Ayrshire Local Plan.
- 130 In addition a number of material considerations, relevant to the proposed development and such these are considered, on balance, to be supportive of the application particularly in terms of national policy, national planning advice and the findings of the planning authority's landscape consultant and also the acoustic consultant.
- 131 In all regards, in relation to the development plan it is considered that the proposal:
- Has been designed to ensure the site layout does not adversely impact upon the integrity of the adjacent Muirkirk and North Lowther Uplands SPA and the associated SSSI.
 - Will not result in any significant adverse effects or cumulative effects in respect of noise and landscape and visual impact.
 - Has been designed to minimise any impacts on the setting of the Scheduled Monument at Cairn Table.
 - Will result in minimal visibility from areas of East Ayrshire, with views from the nearest settlement at Muirkirk being restricted by Cairn Table and surrounding topography.
- 132 In terms of relevant material considerations, it is considered that they offer support for the proposal. The findings of both the Council's landscape consultant and acoustic consultant conclude that the proposed development will not result any adverse landscape and visual or noise impacts or cumulative impacts. In addition it is noted that the proposal accords with the terms of National Planning Framework 3, Scottish Planning Policy and the Scottish Government National Energy Policy.
- 133 It should be noted that the majority of the consultees either offered no objection or declined to comment on the acceptability of the proposed development. The only objection recorded was from RSPB on the grounds that the proposed development is located adjacent to an area which is recognised as being of international importance for its suite of upland birds. Notwithstanding their objection, RSPB do recommend the suitable conditions/obligations to be attached to any grant of planning consent and associated Section 75 Legal Agreement.
- 134 The RSPB objection relates to the potential impacts of the proposed development on the SPA and as such notes that, in their opinion, East Ayrshire Council cannot conclude

beyond reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the SPA. In this regard, extensive consultation has been undertaken with SNH who have undertaken an assessment of their own and removed their respective objection following the submission of the further information. SNH conclude *“beyond reasonable doubt, that the construction and operation of the Penbreck wind farm will not adversely affect the integrity of the Muirkirk and North Lowther Uplands SPA, either on its own or in combination with other development”*. It is noted with some significance that SNH have advised East Ayrshire Council to undertake an Appropriate Assessment based on the information which has been submitted by the applicant. The Appropriate Assessment undertaken by East Ayrshire Council concludes that *“given the mitigation measures which will be put in place and also the proposed site layout, any impacts on the site integrity as a result of the proposed development be avoided”*.

- 135 In light of the respective assessments undertaken by both SNH and East Ayrshire Council, it is considered that the proposed development can be considered in a positive manner. In addition, it is submitted that the proposed layout of the development as well as the associated mitigation measures are sufficient to enable the proposed development to proceed. Notwithstanding the above, the use of conditions will ensure that specific measures are put in place to protect the integrity of the SPA and associated species. In all regards it is considered that the proposed development is capable of positive consideration.
- 136 A number of benefits will be realised as a result of the proposed development namely:
- Contribution towards the Scottish Governments renewable energy 2020 target.
 - Significant investment that potentially could generate socio economic benefits and temporary and longer term employment opportunities within East Ayrshire.
- 137 In all regards, having considered all matters relating to the proposed development, including comments from consultees, analysis of national, regional and local planning policies, material considerations and the key benefits of the proposal, it is concluded that the proposal is capable of positive consideration with any adverse effects being minimal.

RECOMMENDATION

- 138 It is recommended that the application should be approved subject to the conditions on the attached sheet.
- 139 Furthermore it is recommended that planning consent should be withheld until a Section 75 Agreement between the applicant and the Council has been successfully concluded to include the Heads of Terms as indicated in the report.

CONTRARY DECISION NOTE

140 Should the committee agree that the application should be refused contrary to the recommendation of the Head of Planning and Economic Development, in terms of the principle of the proposed development, then the application would not require to be referred to Council as it would not represent a significant departure from Council policy.

Michael Keane
Head of planning and Economic Development

11 October 2016

FV/DMcD

LIST OF BACKGROUND PAPERS

1. National Planning Framework 3
2. Scottish Planning Policy
3. Scottish Government National Energy Policy
4. Ayrshire Joint Structure Plan (Approved 2007)
5. East Ayrshire Local Plan (Approved 2010)
6. East Ayrshire Local Development Plan, Proposed Plan
7. East Ayrshire Landscape Wind Capacity Study 2013
8. Addendum to the Ayrshire Joint Structure Plan Technical Report TR03/2006
9. Penbreck Wind Farm – Environmental Statement (November 2008)
10. Penbreck Wind Farm – Environmental Statement Amendment (December 2009)
11. Penbreck Cumulative Noise Assessment (March 2016)
12. Penbreck Cumulative Landscape and Visual Impact Assessment (May 2016)
13. ACCON UK Cumulative Noise Report (dated 23rd June 2016)
14. Ironside Farrar Audit of Landscape and Visual Impact Assessment (July 2016)
15. Reports to Council dated 24 May 2013, 19 September 2013 and 28 January 2014 and the Report to Cabinet on 21 May 2014 on decommissioning, restoration, aftercare and mitigation financial guarantees
16. Ironside Farrar Penbreck Windfarm Bond Assessment (July 2016)
17. Consultation Responses
18. Letters of Representation

Anyone wishing to inspect the above background papers should contact David Love on 01563 553688.

Implementation Officer: David McDowall, Operations Manager: Building Standards and Development Management

TP24

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 08/0959/FL

| | |
|--------------------------------|---|
| Location | Penbreck And Carmacoup Forest Near Douglas |
| Nature of Proposal: | Erection and Operation of a Windfarm (9 turbines - 3 in East Ayrshire) and associated infrastructure at Penbreck near Douglas |
| Name and Address of Applicant: | Brookfield Renewable UK Ltd 38 Thistle Street Edinburgh EH2 1EN |
| Name and Address of Agent | PNE Wind UK Ltd FAO Gilbert Stevenson Development Operations Manager 38 Thistle Street Edinburgh EH2 1EN |

Officer's Ref: David Love
01563 553688

Subject to **[notification to the Scottish Ministers]**

The above Full Application application should be

Duration of Permission

1. The permission hereby granted will last for 25 years from the date from the first export date. The permission will expire at the end of that period unless the Planning Authority has expressly approved an extension in writing. Upon expiry, all wind turbines, buildings, masts and other ancillary equipment and infrastructure shall be dismantled to at least ground level and removed from the site, and the site restored in accordance with the decommissioning, restoration and aftercare scheme to be submitted in line with condition 9.

Reason: In recognition of the expected temporary lifespan of the development and to ensure that the site is restored to an agreed acceptable condition at the end of its operation life, all interests of amenity of the site and wider environment.

Implementation

2. The development shall be implemented in full and in strict accordance with the approved plans and the details included within the Amended Environmental Statement (dated December 2009) and all associated addendums and associated documents, unless otherwise agreed in writing by the Planning authority or unless otherwise required by conditions attached to this permission.

Reason: in order to define the terms of the planning permission.

Design and Operation of Turbines

3. (a) No wind turbine shall be erected or installed on site until details of the structures, including: design, colour and finish, height, rotor diameter and operational sound power levels have been submitted to and approved in writing by the Planning Authority. The design of the turbines shall be consistent with the candidate turbine as approved with the planning application. The overall tip height of the turbines shall not exceed 125m in height.

(b) No name, sign, logo or other advertisement shall be displayed on any external surface of the wind turbines, save those required by law, unless otherwise approved in writing by the Planning Authority.

Reason: In the interests of visual amenity.

4. All turbines blades shall rotate in the same direction.

Reason: In the interest of visual amenity.

5. The development shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discoloration, until such time as the wind farm is decommissioned.

Reason: In the interest of visual amenity.

Aviation

6. No development shall commence unless and until such time as the Planning Authority receives confirmation from the Airport Operator and NATS that:
 - (a) a Radar Mitigation Scheme has been identified; and
 - (b) the Radar Mitigation Scheme can be implemented and maintained for the lifetime of the development.

Reason: in the interests of aviation safety.

7. No blade shall be fitted to any turbine or turbines forming part of the development and no such turbine shall operate, save as provided for and in accordance with the Testing Protocol, unless and until such time as the Planning Authority received confirmation from the Airport Operator and NATS that:
 - (a) All measures required by the Radar Mitigation Scheme prior to operation of any turbine have been implemented; and
 - (b) The Civil Aviation Authority has evidenced its approval to the Airport Operator that the Radar Mitigation Scheme is acceptable mitigation for the development and has been satisfactorily implemented by the Airport Operator.

Reason: in the interests of aviation safety.

8. No turbine shall operate other than in accordance with the terms of the Radar Mitigation Scheme.

Reason: in the interests of aviation safety.

“*Airport Operator*” means Glasgow Prestwick Airport Limited or any successor as holder of a licence under the Air Navigation Order 2000 from the Civil Aviation Authority to operate Glasgow Prestwick Airport.

“*NATS*” means National Air Traffic Services.

“*Radar Mitigation Scheme*” means such equipment, procedural or technological measures, as the Airport Operator identifies as necessary and sufficient to prevent the operation of the development or of any turbines forming part of the development impacting adversely on radar performance or on the performance of other navigational aids at Glasgow Prestwick Airport or on maintaining safe and efficient air traffic control services or procedures or airspace and which the Airport Operator is winning and able to implement and maintain for the lifetime of the development or for such shorter period as may be agreed in consultation with the Airport Operator as necessary to mitigate any such adverse impact.

“*Testing Protocol*” means the protocol to control the operation of any turbine or turbines forming part of the development for the purposes of testing of the Radar Mitigation Scheme.

Decommissioning, Restoration and Aftercare

9. No development shall take place until a decommissioning, site restoration and aftercare scheme (the Development Scheme) for the wind farm has been submitted to and approved in writing by the Planning Authority. The Decommissioning Scheme shall include details of:
 - (a) Works for the decommissioning and removal of all turbines (together with their foundations to a depth of 1 metre) and all above ground ancillary buildings and equipment;

- (b) The treatment of ground surfaces and the restoration of the site to its former condition, or other such condition as is agreed by the Planning Authority;
- (c) Environmental management provisions;
- (d) A traffic management plan;
- (e) A decommissioning timetable; and
- (f) Appropriate aftercare following site restoration.

The Decommissioning Scheme shall be submitted to the Planning Authority no later than three months prior to the commencement of development.

Reason: to ensure the decommissioning of the wind farm and the reinstatement of the site in an environmentally acceptable manner.

- 10. No later than 24 months before the expiry of this permission an updated Decommissioning Scheme that takes account of the Scheme approved under condition 9 and incorporating the current best environmental practice shall be submitted to the Planning Authority for its written approval.

Reason: to ensure the decommissioning of the wind farm and the reinstatement of the site in an environmentally acceptable manner.

- 11. The Decommissioning Scheme approved under condition 9 shall be implemented (with the exception of aftercare works) within such period as may be provided in the Scheme, which period shall not exceed 12 months after the expiry of this permission.

Reason: to ensure the decommissioning of the wind farm and the reinstatement of the site in an environmentally acceptable manner.

- 12. (a) If any turbine installed and commissioned fails to supply electricity to the electricity grid network for a continuous period of six months, the developer shall notify this to the Planning Authority within seven days following that continuous period.
- (b) Unless the turbine is in the process of being repaired or replaced and evidenced to be so by the Developer, or unless otherwise agreed in writing by the Planning Authority, the turbine shall be deemed to have ceased to be required and:
 - (i) The turbine (including its foundations to a depth of 1 metre and any ancillary surface equipment solely related to that turbine) shall be dismantled and removed from the site; and
 - (ii) The land shall be restored to such condition as is agreed by the Planning Authority.

all in accordance with a scheme to be submitted by the developer within one month of the date of notification under part (a), for the written approval of the Planning Authority; and

- (c) The scheme approved under part (b) shall be implemented within three months of notification of its approval by the Planning Authority.

Reason: To ensure that any non-operational turbine is removed from site in the interests of safety, amenity and environmental protection and as required by Policy CS16 of the East Ayrshire Local Plan (approved 2010).

- 13. On an annual basis following the first export date of electricity from the site, the developer shall provide the Planning Authority with a report detailing the operations of each turbine on the site. Said report shall be submitted within 14 days of the due date of the annual report and shall include details of the turbine operation including, but not exclusively: dates operational, total number of days non-operational, consecutive number of days non-operational, electrical output of the turbine and reasons for nonoperation of the turbines.

Reason: to allow the Planning Authority to assess if the turbine has been operational in the preceding twelve months.

Private Water Supply

- 14. Prior to Commencement of Development, the Operator shall submit a water risk assessment (the Water Risk Assessment) of the effects of the development on the quantity and quality of water supplied to all properties with a private water supply that may be affected by the development for the written approval of the Planning Authority in consultation with SEPA. The Water Risk Assessment shall include, but not exclusively, details of any necessary mitigation measures and monitoring arrangements prior to commencement of development, during construction and upon completion of construction. Thereafter any mitigation measures identified in the approved Water Risk Assessment shall be implemented and maintained by the Operator.

Reason: To ensure the protection of the quantity and quality of Private Water Supplies.

Ground Conditions

- 15. The Company shall undertake on-going monitoring of ground conditions during the construction phase of the wind farm. Monitoring results shall be fed into risk analysis reports to be submitted to the Planning Authority on a quarterly basis. If a risk of peat failure is identified, the Company shall install such geotechnical instrumentation to monitor ground conditions as recommended by an appropriately qualified geotechnical engineer and shall monitor ground conditions. Any necessary remediation work shall be implemented by the Company following consultation with the Planning Authority and the Environmental Clerk of Works to the satisfaction of the approved geotechnical engineer.

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

16. Excavated peat shall not be placed onto another peat surface until the adequacy of the ground to support the local and any additional risk of peat landslide has been assessed by an appropriately qualified geotechnical engineer and the Planning Authority has given written approval.

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

Transport

17. (a) At least three months prior to the Commencement of Development the Developer shall submit a Traffic Management Plan (TMP) for the written approval of the Planning Authority in consultation with Transport Scotland and the Ayrshire Roads Alliance. The Traffic Management Plan shall include, but not limited to, the following:
 - (i) The proposed route for abnormal load deliveries;
 - (ii) The source of construction material should this include the use of non-trunk roads;
 - (iii) Removal/replacement of street furniture, junction widening and traffic management measures during abnormal load deliveries;
 - (iv) Any additional signing or temporary traffic control measures deemed necessary due to the size or length of the loads being delivered and must be undertaken by a recognized Quality Assured traffic management consultant, with confirmation that Transport Scotland and/or its Operating Company has approved such measures.
 - (v) Road maintenance and cleaning/wheel wash facilities.

For the avoidance of doubt, no construction work shall take place until the Traffic Management Plan has been approved in writing by the Planning Authority.

- (b) The Traffic management Plan approved under part (a) shall be implemented by the Developer and adhered to during all construction works unless otherwise agreed in writing by the Planning Authority.

Reason: In the interests of road safety and to enable safe and suitable access for vehicles to and from the site.

Pollution Control

18. No development shall commence unless and until a Pollution Prevention and Incident Plan has been submitted and approved in writing by the Planning Authority. For the avoidance of doubt the Pollution Prevention and Incident Plan should incorporate:
- (a) Pollution Prevention Plan;
 - (b) Pollution Incident Plan; and
 - (c) Pollution control monitoring Plan.

Reason: To ensure the development is undertaken in a manner which minimises pollution risk and to ensure appropriate management and mitigation measures are put in place.

Planning Monitoring Officer

19. There shall be no Commencement of Development unless a suitably qualified environmental consultant to assist the Planning Authority has been appointed by the Planning Authority to monitor compliance with the terms of the deemed planning permission and conditions attached to this consent ("PMO"), with the costs of such appointment being met in full by the Developer. There shall also be a planning monitoring scheme submitted to and approved by the Planning Authority in writing. The planning monitoring scheme to follow the appointment shall;
- (a) Impose a duty to monitor compliance with the terms of the deemed planning permission and conditions attached to this consent;
 - (b) Assess information submitted in relation to the discharge of the suspensive planning conditions;
 - (c) Require the PMO to submit a monthly photo report to the Planning Authority summarising works undertaken on site and a quarterly compliance monitoring report
 - (d) Require the PMO to report to the Planning Authority any incidences of non-compliance with the terms of the deemed planning permission and conditions attached to this consent at the earliest practical opportunity.

The PMO shall be appointed on the approved terms throughout the period from pre-construction phase when the suspensive conditions are being satisfied, during the construction phase of the Development until completion of the Development and from commencement of decommissioning and restoration until completion of restoration and aftercare of the site.

Unless otherwise agreed with the Planning Authority, no later than 3 months prior to decommissioning of the Development or the expiration of this consent (whichever is the earlier), a suitably qualified environmental consultant. ("PMO") shall be appointed by the Planning Authority in accordance with the terms of the planning monitoring scheme to

monitor compliance during the decommissioning, restoration and aftercare phases of the development, with the costs of such appointment being met in full by the Developer.

Reason: To enable the development to be suitably monitored to ensure compliance with the consent issued.

Borrow Pits

20. There shall be no Commencement of Development unless a site specific scheme for the working and restoration of the borrow pit forming part of the Development has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The scheme shall include;
- (a) A detailed working method statement based on site survey information and ground investigation;
 - (b) Details of the handling of any overburden (including peat, soil and rock);
 - (c) Drainage, including measures to minimise surrounding areas of peatland, water dependant sensitive habitats and Ground Water Dependant Terrestrial Ecosystems (GWDTE) from drying out;
 - (d) A programme of implementation of the works described in the scheme; and
 - (e) Details of the reinstatement, restoration and aftercare of the borrow pit at the end of the construction period, to include topographic surveys of pre-construction profiles, and details of topographical surveys to be undertaken of the restored borrow pit profiles.

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

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

Reason: to ensure the restoration of the borrow pit.

Construction and Environmental Management Plan

22. (a) No works shall commence on site unless a Construction and Environmental Management Plan (CEMP) is submitted to and approved in writing by the Planning Authority in consultation with SEPA and SNH. The CEMP shall be submitted to and approved in writing by the Planning Authority no later than 3 months prior to the proposed date of commencement. The CEMP shall incorporate detailed pollution prevention and mitigation measures for all construction elements capable of giving rise to pollution during all these phases of construction, reinstatement after construction and final site decommissioning. The CEMP shall also include any site specific construction method statements provided by the operator as required by the Planning Authority and statutory consultees. The CEMP shall comprise the following details:
- (i) Details of all on site construction and construction of access tracks, including drainage, mitigation, post–construction restoration and reinstatement work, and the timetables for such work;
 - (ii) A scaled plan and details to include the anticipated layout and width of temporary and permanent tracks, cable routing, turbine bases, crane standings, site compounds, control building, areas designated for parking and any ancillary buildings;
 - (iii) Environmental policy statement, to include responsibility for all environmental features, safeguards and mitigation;
 - (iv) Details of any tree felling operations,
 - (v) Details of wheel washing facilities and their siting;
 - (vi) details of the cleaning of the site entrances, site tracks and the adjacent public roads and the sheeting of all HGVs taking spoil or construction materials to and from the site to prevent spillage or deposit of any materials on roads;
 - (vii) Details of methods for working cable trenches and foundation works and their timing;
 - (viii) Details of the construction of the substation, control buildings and anemometry masts and their timing;
 - (ix) Details of bridges and culverts for any new or upgraded water crossings;
 - (x) Details of proposals to protect private water supplies on site during construction;

- (xi) Details of how micro siting will be implemented and controlled during the construction process and which shall have reference to the terms of conditions 25;
 - (xii) Details of dust management arrangements;
 - (xiii) Details of borrow pits which shall include the location, extent and means of working, demarcation of the sites, the volume of material to be extracted, the storage of overburden, drainage measures, air over pressure and ground vibration caused by blasting, landscape and visual impacts, details of blasting (including times for blasting) and restoration scheme with landscaping and timescale information.
 - (xiv) Pollution prevention and control arrangements, including protection of water courses and ground water and soils, bunding of fuel storage areas and sewage disposal;
 - (xv) Plans showing the details of peat/soil stripping at the site and the storage and proposed use and replacement of peat, topsoil and subsoil. The scheme shall incorporate a method statement setting out the measures to protect and store peat and details of the disposal of surplus materials including peat;
 - (xvi) Pre-construction surveys for otters together with any mitigation measures.
 - (xvii) Proposals to ensure that at the end of each daily working period, all excavations are made safe to facilitate escape routes for animals.
 - (xviii) Details for site waste management.
 - (xix) Post construction restoration/reinstatement of the temporary working areas and borrow pits;
 - (xx) A construction noise management plan. The plan shall take account of conditions 20 and 22 of this consent;
 - (xxi) The arrangements for all on site storage of fuels and oil;
 - (xxii) All other pollution prevention issues and related mitigation measures identified in the Environmental Statement submitted with the application.
 - (xxiii) The CEMP shall include a finalised Site Environmental Management Plan, Site Waste Management Plan and Soil and Peat Management Plan.
- (b) Construction methods on site shall be in accordance with the CEMP approved under part (a), unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure that the development is undertaken in a manner that minimises pollution risk from construction activities.

Habitat Management Plan

23. (a) At least three months prior to commencement of development the Developer shall submit a Habitat Management Plan (HMP), for the written approval of the Planning Authority in consultation with SNH, RSPB and SEPA. The HMP shall take account of the mitigation measures outlined in the ES, Addendums and supporting documents which formed part of the planning application package as submitted to the Planning Authority. The HMP shall operate for the full lifespan of the windfarm including decommissioning and include measures for, but not be limited to:
- (i) Protection and restoration of peat land habitat;
 - (ii) Mitigation and management to reduce the potential risk to hen harriers to negligible levels;
 - (iii) Monitoring and mitigation protocols for protected species;
 - (iv) Management and mitigation of habitats and species present on site for the duration of the consent;
 - (v) Habitat and species enhancement opportunities;
 - (vi) Mitigation and management to benefit the species for which the Muirkirk and North Lowther Uplands SPA and SSSI are designated.
- (b) The HMP shall be implemented in accordance with the details approved by part (a), unless otherwise agreed in writing by the Planning Authority.

Reason: To protect and enhance local nature conservation interests in the longer term.

Ecological Clerk of Works

24. (a) At least two months prior to the commencement of development the Developer shall appoint a full time independent and suitably qualified Ecological Clerk of Works (ECoW). Details of the proposed ECoW and the terms of appointment shall be submitted to and approved in writing by the Planning Authority and will include, but is not limited to:
- (i) Monitoring compliance with the ecological mitigation works that have been approved in this consent;
 - (ii) Advising the operator on adequate protection of nature conservation interests on the site;
 - (iii) Directing the micro-siting and placement of turbines and tracks in line with condition 25;

- (iv) Monitoring the compliance with the Habitat Management Plan, Construction and Environmental Management Plan and all relevant method statements approved under the conditions of this consent;
 - (v) Ensuring that good practice measures with regards to the protection of breeding birds are implemented;
 - (vi) Supervise bird survey work before, during and immediately after construction; and
 - (vii) Ensure that the full range of relevant protected species checks are undertaken prior to construction.
- (b) The ECoW shall be paid for by the Developer and will remain in post until post-construction restoration is complete. The Ecological Clerk of Works shall have a duty to report promptly, or in any case within two days, to the Planning Authority and the Developer's nominated construction project manager any non-compliance with the hydrological or ecological aspects of the CEMP and any other relevant approved plans approved under planning condition.

Reason: In the interests of environmental protection.

Financial Bond

25. (a) At least three months prior to Commencement of Development, the Developer shall provide to the Planning Authority written details of the bond or other financial provision which it proposes to put in place to cover all decommissioning and site restoration.
- (b) No work shall commence on site until the Developer has provided documentary evidence to the Planning Authority that the proposed bond or other financial provision is in place and written confirmation has been given by the Planning Authority that the proposed bond or other financial provision is satisfactory.
- (c) The Developer shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent.
- (d) The adequacy of the approved bond or other financial provision will be subject to review at yearly intervals, or such other intervals as agreed by the Planning Authority, from Commencement of Development, to be paid for by the Developer and conducted by a competent independent professional who has relevant experience in such matters. The findings of such reviews will be provided to the Developer and the Planning Authority. Any revisions to the bond or other financial provision recommended by the review shall be made by the Developer within 28 days of that review and documentary evidence provided to the Planning Authority by the Developer to that effect.

Reason: To ensure that there are sufficient funds available for the full costs of site restoration.

Micrositing

26. (a) Following the completion of ground investigation studies and prior to the construction of installation of the turbines, buildings, equipment and site tracks, the Developer shall submit details of the precise micro-siting of each turbine and of all ancillary buildings, equipment and site tracks which takes account of the terms of part (b) for the written approval of the Planning Authority.
- (b) The micro-siting shall be no more than 25 metres in any direction with the agreement of the ECoW appointed under condition 20 and between 25 metres with the agreement of the ECoW and the Planning Authority from the position of each turbine, building, equipment or site track (with the exception of (i) and (ii) below) as shown on Figure 1.2 of the Amended Environmental Statement (December 2009), or subsequent detailed plans submitted under condition 18 or otherwise agreed in writing by the Planning Authority.
- (i) No turbine or other feature approved by this consent shall be microsited to a revised location if that location is outwith the application site boundary; and
- (ii) No turbine or other feature approved by this consent shall be microsited to a revised location if that location is outwith the administrative boundary of East Ayrshire Council.
- (c) Within one month of the completion of all construction works the Developer shall submit finalised details to the Planning Authority of the actual position of each turbine and of all ancillary buildings, equipment and site tracks.

Reason: In the interests of environmental protection and to ensure any micrositing of turbines does not extend beyond the scope of this application site to which this consent relates.

Ecological Issues

27. (a) Implementation of a programme of post-construction bird monitoring, to be agreed with SNH and RSPB, in order to validate the assumptions of the Amended Environmental Statement and Addendum.
- (b) Establishment of a Habitat Management Group (HMG) of which RSPB Scotland should be a member, to oversee the preparation and delivery of the HMP and to review and assess that information from the ongoing monitoring/surveillance results. The HMG should have powers to make reasonable changes to HMP necessary to deliver its agreed aims.
- (d) Annual report should be submitted to the HMG on the monitoring/surveillance results. Information on Schedule 1 Species should remain confidential, supplied only to the local raptor study group, SNH and RSPB Scotland.

Reason: To protect and enhance local nature conservation interests in the longer term.

28. All trenches should be covered at the end of each working day or include a means of escape for any animal falling in and that any temporarily exposed open pipe system should be capped in such a way as to prevent animals gaining access.

Reason: To protect and enhance local nature conservation interests.

29. The Developer shall undertake on-going monitoring of ground conditions during the construction phase of the wind farm. Monitoring results shall be fed into risk analysis reports to be submitted to the Planning Authority on a quarterly basis. If a risk of peat failure is identified, the Company shall install such geotechnical instrumentation to monitor ground conditions as is recommended by an appropriately qualified geotechnical engineer and shall monitor ground conditions. Any necessary remediation work shall be implemented by the Company following consultation with the Planning Authority and the Environmental Clerk of Works (ECoW) to the satisfaction of the approved geotechnical engineer.

Reason: In the interests of maintaining ground stability.

30. Excavated peat shall not be placed onto another peat surface until the adequacy of the ground to support the load and any additional risk of peat landslide has been assessed by an appropriately qualified geotechnical engineer and the Planning Authority has given written approval.

Reason: In the interests of maintaining ground stability.

Scottish Water Assets

31. Prior to the commencement of development, the developer shall confirm with Scottish Water that no Scottish Water assets (including water supply and sewer pipes, water and waste treatment works, reservoirs etc) are located within the boundary of the application site.

All Scottish Water assets potentially affected by the development should be identified, with particular consideration being given to access roads and pipe crossings. In the event that an asset conflicts with the development then contact should be made with Scottish Water to agree appropriate mitigation.

Reason: In the interests of protecting Scottish Water assets.

32. The development should be carried out in accordance with Sewers for Scotland and Water for Scotland 3rd Editions 2015, including provision of appropriate clearance distances from Scottish water assets.

Reason: In the interests of protecting Scottish Water assets.

Notification to Ministry of Defence

33. (a) At least two months prior to the proposed date of commencement of construction of the development, the Developer shall provide the Planning Authority and the Ministry of Defence (the MoD) with a written statement containing the following information:
- (i) The proposed date of commencement of construction;
 - (ii) The proposed date of completion of construction; and
 - (iii) The proposed maximum height of any construction equipment on site.

and no work shall commence on site until the MoD has confirmed to the Planning Authority that the above information has been provided.

- (b) The Developer shall, as soon as reasonably practical and in any event a minimum of 7 days prior to the event, provide to the Planning authority and the MoD written notice of any proposed changes to the information provided under (a);
- (c) The Developer shall provide written confirmation to the Planning Authority and the MoD of the actual date on which construction is commenced and the actual maximum extension height of any construction equipment on site within 7 days of that commencement date; and
- (d) the Developer shall provide written confirmation to the Planning Authority and the MoD of the actual date on which construction of turbines is completed within 7 days of that date.

Reason: To ensure that the MoD is informed of any activities that may potentially affect its interests in respect of overflying of the site.

34. At least 14 days in advance of the proposed date of erection of the first turbine, the developer shall provide the Planning Authority and the MoD with a written statement containing the following information:

- (a) The proposed location of each turbine in latitude and longitude and having taken into account any micro-siting adjustments agreed in terms of condition 22 (in degrees, minutes and seconds);
- (b) The proposed height above ground level of each turbine (in metres to blade tip); and
- (c) that the perimeter turbines are fitted with 25 candela omni directional infrared aviation warning lighting with an optimized flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point.

and no turbine shall be erected on site until the MoD has confirmed to the Planning authority that the above information has been provided.

Reason: To ensure that the MoD is informed of any activities that may potentially affect its interests in respect of overflying of the site and to ensure that appropriate aviation warning lighting is provided.

35. One month after the completion of construction of all the turbines on the site the developer shall provide the planning Authority and the MoD with a written statement containing the following information:
- (a) the actual location of each turbine in latitude and longitude (in degrees, minutes and seconds);
 - (b) the actual height above ground level of each turbine (in metres to blade tip); and
 - (c) Confirmation that appropriate aviation warning lighting has been installed.

Reason: To ensure the MoD is provided with accurate information that can be utilized to protect air safety.

Archaeology

36. The developer shall secure the implementation of an archaeological watching brief, to be carried out by an archaeological organisation acceptable to the Planning Authority, during all ground disturbance. The retained archaeological organisation shall be afforded access at all reasonable times and allowed to record, recover and report items of interest and finds. A method statement for the watching brief will be submitted by the Developer, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority prior to commencement of the watching brief. The name of the archaeological organisation retained by the developer shall be given to the Planning Authority and to the West of Scotland Archaeology Service in writing not less than 14 days before development commences.

Reason: In order to minimise adverse impacts on archaeology on site.

Working times and Noise

37. Construction work (including the delivery of construction materials and equipment) shall only take place between the hours of 07.30 and 19.30 on Mondays to Saturdays, and no such construction work shall take place on Sundays or public holidays. Outside these hours works at the site shall be limited to emergency works and dust suppression, unless otherwise approved in writing by the Planning Authority. Any exceptional requirement for the delivery of construction materials and equipment outside the above hours shall only take place if approved in writing by the Planning Authority having been given a minimum of two working days' notice of the proposed delivery. The Planning Authority shall also be informed in writing of any emergency works within 24 hours of their occurrence.

Reason: To minimise the impact of construction operations on the amenity of local residents.

38. All activities associated with the construction of the development shall be carried out in accordance with British Standard BS5228:2009: Code of Practice for noise and vibration control on construction and open sites – Part 1: Noise and Part 2: Vibration

Reason: To protect the amenity of the area

Boundary Treatments and Public Access

39. The application site boundary shall not be delineated in any way with the exception of temporary treatments associated with appropriate health and safety or such other pertinent legislation during on going construction works or unless otherwise agreed in writing by the Planning Authority.

Reason: To minimise visual intrusion and to allow for better site access during operation.

40. (a) Prior to the commencement of development, the Developer shall submit a method statement to the Planning Authority for its written approval detailing how public access will be maintained to the public right of way (RoW) identified as route B17 and shown on Figure 12.1 of the Amended Environmental Statement during construction works. Should construction activities require that the RoW be temporarily closed, the method statement shall set out a suitable temporary revised route in proximity to the existing route, appropriate on site signage to advise walkers of the revised route and the length of time that the diversion will be required.

(b) The method statement approved under part (a) shall be implemented on site as approved during construction works. Upon cessation of the construction works affecting the RoW, the diversion shall be removed and full reinstatement of the RoW undertaken.

Reason: To maintain safe public access to the Right of Way during construction works.

Television Interference

41. (a) No wind turbine shall be erected until a scheme to secure the investigation and alleviation of any interference to TV reception at residential properties lawfully existing at the date of this permission and caused by the operation of the turbines has been submitted to and approved in writing by the planning authority. The scheme shall set out an appropriate time period during which it will be operational, that period being no less than 1 year following the erection and operation of the final turbine.

(b) The scheme approved under part (a) shall be implemented as approved.

Reason: For the protection of television reception for local residents.

Definitions

Unless otherwise stipulated within any particular condition:

“Commencement of Development” means commencement of the development through a material operation as defined by Section 27 of the Town and Country Planning (Scotland) Act 1997.

“Developer” means Brookfield Renewable Energy Group or any subsequent operator of the wind farm.

“First Export Date” means the date on which any first turbine forming part of the development

APPENDIX 1: APPROPRIATE ASSESSMENT

Appraisal of the implications of granting planning consent for the proposed erection and operation of a Windfarm (9 turbines – 3 located within East Ayrshire) and associated infrastructure at Penbreck.

| SPA and Project Description | |
|---|--|
| Brief description of the project | <p>The proposed development seeks planning permission for the erection and operation of a windfarm which would comprise 9 wind turbines, three of which would be located within East Ayrshire. The other six turbines are located within South Lanarkshire.</p> <p>The turbines proposed will measure 125m to blade tip. The height of the hub of each turbine will measure 90m, while the blade diameter will measure 90m. It is proposed that the turbines will be finished in a light grey or pure white colour.</p> <p>a. Access to the proposed development site would be via the A70 (from South Lanarkshire) with an estimated 17km of track required within the site to link the turbines to the A70. The 17km of track will comprise 5km of new track, 9km upgrading of existing track and approximately 3km of Scottish Coal Road.</p> <p>b. It is of significance to note that South Lanarkshire Council approved application CL/08/0727 in 2014 which granted planning permission for the six turbines of the project which are located within their administrative boundary.</p> <p>The proposed development site is located to the east of both the Muirkirk and North Lowther Uplands Special Protection Area (SPA) and the North Lowther Uplands Site of Special Scientific Interest (SSSI).</p> |
| Brief description of the designated Natura site | <p>The Muirkirk and North Lowther Uplands SPA is designated under the EC Directive 79/409 on the Conservation of Wild Birds for:</p> <p><u>Article 4.1</u></p> <ul style="list-style-type: none"> ▪ Hen harrier <i>Circus cyaneus</i>, 29.2 breeding females representing 6% of breeding female population in Great Britain. ▪ Short-eared owls <i>Asio flammeus</i>, 23 pairs representing 3% of the breeding population in Great Britain. ▪ Merin <i>Falco columbarius</i>, 9 pairs representing 0.7% of the breeding population in Great Britain. |

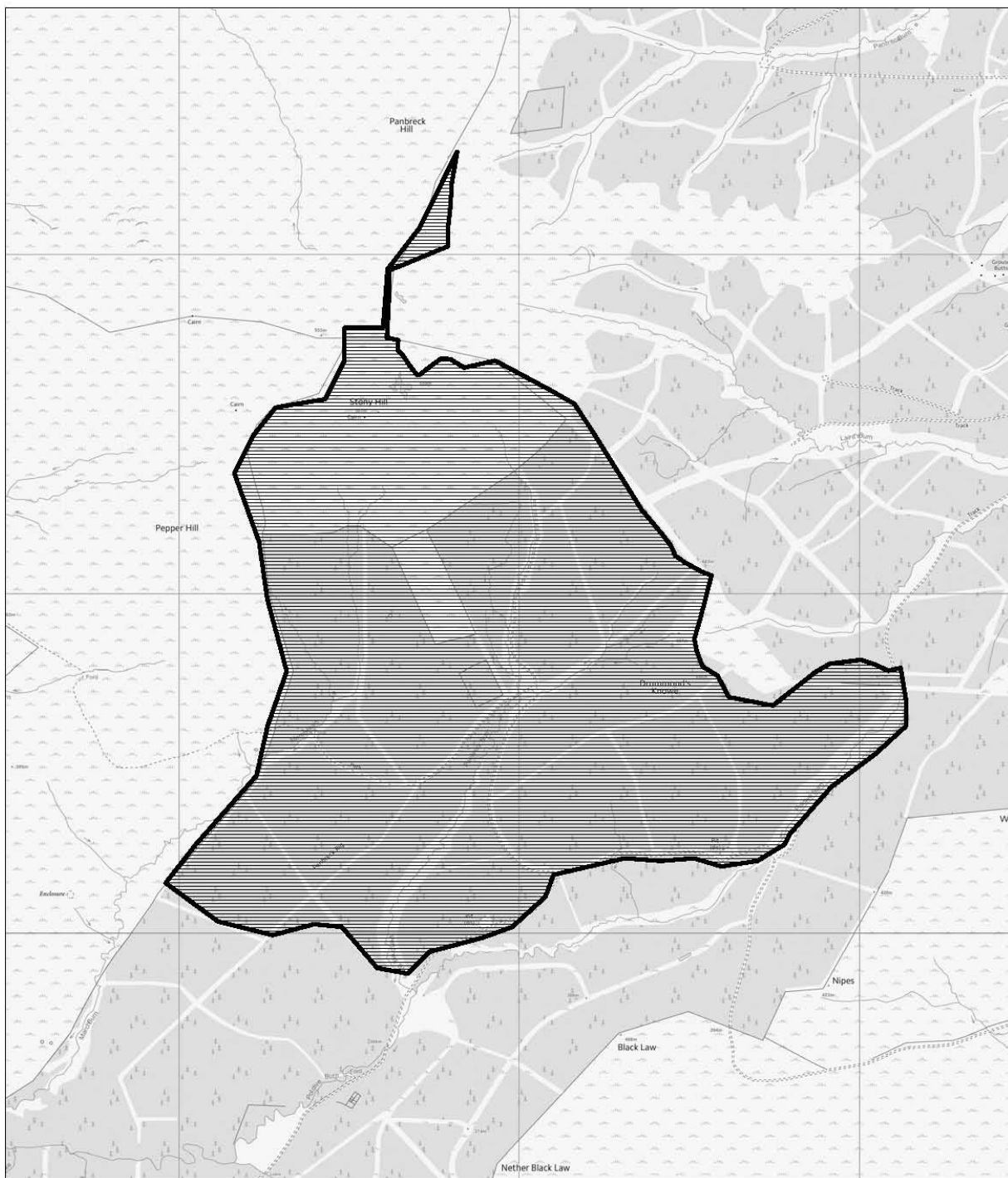
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| | | <ul style="list-style-type: none"> ▪ Peregrine <i>Falco peregrinus</i>, 6 pairs representing 0.5% of the breeding population in Great Britain. Golden plover <i>Pluvialis apricaria</i>, (estimated minimum of 154 pairs representing 0.7% of the breeding population in Great Britain. <p>In addition the SPA in question is found to regularly support a wintering population of European importance of Hen Harrier <i>Circus cyaneus</i>, 12 individuals representing 2% of the population in Great Britain.</p> <p>The predominant habitats include semi-natural areas of blanket bog, acid grasslands and heath.</p> <p>It should be noted that the boundaries of the SPA are coincident with those of the North Lowther Uplands SSSI.</p> |
| | <p>Conservation objectives for Muirkirk and North Lowther Uplands SPA</p> | <p>To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained.</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> ▪ Population of the species as a viable component of the site ▪ Distribution of the species within site ▪ Distribution and extent of habitats supporting the species ▪ Structure, function and supporting processes of habitats supporting the species ▪ No significant disturbance of the species <p>The qualifying species are:</p> <ul style="list-style-type: none"> ▪ Golden plover (<i>Pluvialis apricaria</i>) ▪ Hen harrier (<i>Circus cyaneus</i>) ▪ Merlin (<i>Falco columbarius</i>) ▪ Peregrine (<i>Falco peregrinus</i>) ▪ Short-eared owl (<i>Asio flammeus</i>) |
| Significance of Effects: Screening | | |
| | <p>Is the proposal directly connected with, or necessary to, conservation management of the Natura site?</p> | <p>The proposal is not directly connected with, or necessary to, the conservation management of The Muirkirk and North Lowther Uplands SPA.</p> |
| | <p>Consider whether there are any likely direct, indirect or secondary impacts</p> | <p>The potential impacts of the proposed development include:</p> <ul style="list-style-type: none"> ▪ The impact of the proposed turbines and access track on the breeding birds in the area. |

| | | |
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| | of the project on the Natura site. | <ul style="list-style-type: none"> ▪ Potential collision risks with turbines for breeding birds in the area. ▪ Potential disturbance of breeding birds as a result of construction or operational activity. |
| | Consider the key phases of development and the risk of effects associated with each. | <p>Construction work:</p> <ul style="list-style-type: none"> ▪ Potential disturbance of golden plover, hen harrier, merlin, peregrine and short eared owl. ▪ Potential displacement of hen harriers, peregrine falcon, merlin, golden plover and short eared owl as a result of the proposed wind farm. <p>Operational:</p> <ul style="list-style-type: none"> ▪ Potential displacement of hen harriers, peregrine falcon, merlin, golden plover and short eared owl as a result of the proposed wind farm. ▪ Potential collision risk from hen harriers, peregrine falcon, merlin, golden plover and short eared owl, flying over the windfarm to reach habitat on the other side. |
| | Appraise which individual elements of the overall project would give rise to the greatest risk of effects. State any element of the project where the scale or magnitude of effect is not known. | <p>A small part of the development site is located within the Muirkirk and North Lowther Uplands SPA (at Stoney Hill). It is however of significance that the infrastructure which forms part of the proposed development is located outwith the SPA boundary.</p> <p>The infrastructure proposed as part of the development includes:</p> <ul style="list-style-type: none"> ▪ Three wind turbines (up to 3MW per turbine). ▪ Access tracks. <p>Risks of disturbance due to construction and operational activity arise from:</p> <ul style="list-style-type: none"> ▪ Risk of loss or injury to birds as a result of collision with rotating blades of three turbines with a ground to tip height of 125m. ▪ Potential loss of habitat for qualifying bird species connecting with the adjacent SPA. |
| | Is the plan/project likely to have a significant effect on the Muirkirk and North Lowther Uplands SPA, either alone or in combination, with other plans or projects? | <p>A small part of the development site is located within the Muirkirk and North Lowther Uplands SPA (at Stoney Hill). It is however of significance that the infrastructure which forms part of the proposed development is located outwith the SPA boundary.</p> <p>The applicant has provided details noting that no nest sites of any of the qualifying species are recorded closer than 1.1km from the turbines. Furthermore it is noted that such distances refers to distances when considering all nine turbines, the distances to the three turbines under consideration may therefore be greater.</p> |

Appraisal of Impacts on Site Integrity

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| | <p>Identify the relevant conservation objectives to consider for the Muirkirk and North Lowther Uplands SPA.</p> | <ul style="list-style-type: none"> ▪ Population of the species as a viable component of the site ▪ Distribution of the species within site ▪ Distribution and extent of habitats supporting the species ▪ Structure, function and supporting processes of habitats supporting the species ▪ No significant disturbance of the species |
| | <p>Can it be ascertained that the proposal/plan will not adversely affect the integrity of the Muirkirk and North Lowther Uplands SPA.</p> | <p>It can be ascertained that the proposed development will not have an adverse impact on the integrity of the SPA in respect of the qualifying interests.</p> <p>In respect of the proposed wind farm development, which proposed the erection of three wind turbines within the boundaries of East Ayrshire, an assessment of SPA qualifying species has been undertaken and is included in the Amended Environmental Statement. In addition further details were submitted following a request from Scottish Natural Heritage. The following is concluded:</p> <ul style="list-style-type: none"> ▪ The proposed development does not result in habitat loss within the Muirkirk and North Lowther Uplands SPA. ▪ No nest sites are located closer than 1.1km from the proposed turbines (this distances represents all nine turbines and as such the three turbines located within East Ayrshire may therefore be located at a greater distance). ▪ Qualifying species do not breed in the vicinity of the proposed turbine locations while the main activity of the qualifying species is also not located within the vicinity of the proposed turbines. Disturbance/displacement is therefore not considered to be an issue. ▪ The forest is not a preferred foraging area for the qualifying species with no flights corridors across the forest between the difference parts of the SPA. ▪ Collision risk modelling for the two breeding season gave very low collision risks for the qualifying species. Over the 25 year lifetime of the turbines the annual collision rates are as follows: <ul style="list-style-type: none"> c. Hen harrier: 0.12 d. Peregrine: 0.06 e. Golden plover: 0.07 <p>Furthermore it should be noted that the above collision rates relate to all nine wind turbines and as such the collision rates which relate to the three turbines within East Ayrshire are likely to be lower.</p> |

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| | | In light of all of the above it is not considered that the proposed development will not adversely affect the integrity of the Muirkirk and North Lowther Uplands SPA. |
| | Consider whether mitigation measures can be adopted to avoid impacts on site integrity. | The proposed layout of the wind farm has been revised in order to take account of comments received from statutory consultees including SNH to minimise the impact of the proposal on the integrity of the Muirkirk and North Lowther Uplands SPA. In addition, conditions can be attached to any grant of planning consent which will protect the integrity of the Muirkirk and North Lowther Uplands SPA and reduce any impacts associated with the development. |
| Conclusion of Appraisal | | |
| | Can impacts on site integrity be avoided | Based on the appraisal of the proposed development it is concluded that the given the mitigation measures which will be put in place and also the proposed site layout, any impacts on site integrity as a result of the proposed development will be avoided. |



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|----------------|---|---|--|
| Title/Location | Penbreck Windfarm Application No. 08/0959/FL | East Ayrshire Council Department of Neighbourhood Services Planning & Economic Development Service The Johnnie Walker Bond 15 Strand Street Kilmarnock KA1 1HU Tel: (01563) 576790 Fax: (01563) 554592 E-Mail : Planning@east-ayrshire.gov.uk Com Date : 21.10.2016 | |
| Key | Application Site | | |

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